PETITIONER:
DR. PRADEEP JAIN ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS. ETC.

DATE OF JUDGMENT22/06/1984

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
SEN, AMARENDRA NATH (J)
MISRA RANGNATH

CITATION:
1984 AIR 1420 1984 SCR (3) 942
1984 SCC (3) 655 1984 SCALE (1)894

ACT:
Constitution of India-Art. 14-Equal opportunity-Reservation of seats in medical colleges for M.B.B.S. and post-graduate medical courses on basis of domicile or residential qualification and institutional preference-By State and Union Territories-If valid. What should be the extent of such reservation. For admission to M.B.B.S. and Higher courses-Merit only consideration-Whether and when departure can be made.

Constitution of India-Art. 141-Judgment in this case applicable to all States and Union Territories except the State of Andhra Pradesh and Jammu & Kashmir.

Constitution of India-Art. 5-Only one domicile-Domicile in the territory of India-To say domicile in one State or another-Not right.

Words and Phrases-'Domicile'-Concept of-Basically a legal concept.

Words and Phrases-'Merit'-What is.

HEADNOTE:
In regard to admission to M.B.B.S. and post-graduate medical courses, a somewhat uniform and consistent practice had grown in almost all the States and Union Territories to give preference to those candidates who had their domicile or permanent residence within the State for a specified number of years ranging from 3 to 20 years and to those who had studied in educational institutions in the State for a continuous period varying from 4 to 10 years. Sometimes the requirement was phrased by saying that the applicant must have his domicile in the State. The petitioners and the appellant who sought admission in M.B.B.S. and M.D.S. courses in different universities of different States and Union Territory of Delhi challenged the residential requirement and institutional preference on the ground of being violative of Constitution. The question which arose for consideration was whether, consistently with the constitutional values, admissions to a medical college or any other institution of higher learning situate in a State could be confined to those who had their 'domicile' within the State or who were resident within the State for a specified number of years or can any reservation in

admissions be made for them so as to give them precedence over those
943
who do not possess 'domicile' or residential qualification within the State, irrespective of merit.

Disposing of the writ petitions and the civil appeal.
^

HELD:

(Per Bhagwati and Ranganath Misra, JJ.)

The entire country is taken as one nation with one citizenship and every effort of the Constitution makers is directed towards emphasizing, maintaining and preserving the unity and integrity of the nation. Now if India is one nation and there is only one citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and is entitled to equality before the law and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamil Nadu or speaking Tamil language can be regarded as an outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or speaking Marathi language be regarded as an outsider in Karnataka. He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or Karnataka, as the case may be. To regard him as an outsider would be to deny him his constitutional rights and to derecognise the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent States. [954F-H; 955A-B]

Article 15, clauses (1) and (2) bar discrimination on grounds not only of religion, race, caste or sex but also of place of birth. Art. 16(2) goes further and provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of, any employment or office under the state. Therefore, it would appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State which also covers an office under any local or other authority within the State or any corporation, such as, a public sector corporation which is an instrumentality or agency of the State.

[955H; 956A-C]

Ramana Dayaram Shetty v. International Airport Authority of India & Ors., [1979] 3 S.C.R. 1014, referred to.

So far as admissions to an education institution such as a medical college are concerned, Art. 16(2) has no application. If, therefore, there is any residence requirement for admission to a medical college in a State, it cannot be condemned as unconstitutional on ground of violation of Art, 16(2). Nor can Article 15 clauses (1) and (2) be invoked for invalidating such residence requirement because these clauses prohibit discrimination on ground of residence and, as pointed out by this Court in D.P. Joshi v. State
944
of Madhya Bharat, residence and place of birth are "two distinct conceptions with different connotations both in law

and in fact". The only provision of the Constitution on the touch-stone of which such residence requirement for admission to a medical college in a State can be required to be tested is Art. 14 and that is precisely the challenge which falls to be considered in these writ petitions. [957C-E]

D.P. Joshi v. State of Madhya Bharat, [1955] 1 SCR 1215, referred to.

The word 'domicile' is to identify the personal law by which an individual is governed in respect of various matters such as the essential validity of a marriage, the effect of marriage on the proprietory rights of husband and wife, jurisdiction in divorce and nullity of marriage, illegitimacy, legitimation and adoption and testamentary and intestate succession to moveables. [957F-G]

Halsbury's Laws of England (Fourth Edition) vol. 8, paragraph 421 & 422 and Wicker v. Homes, [1858] 7 HL Cases 124, referred to.

Domicile is basically a legal concept for the purpose of determining what is the personal law applicable to an individual and even if an individual has no permanent home, he is invested with a domicile by law. There are two main classes of domicile: domicile of origin that is communicated by operation of law to each person at birth, that is the domicile of his father or his mother according as he is legitimate or illegitimate and domicile of choice which every person of full age is free to acquire in substitution for that which he presently possesses. The domicile of origin attaches to an individual by birth while the domicile of choice is acquired by residence in a territory subject to a distinctive legal system, with the intention to reside there permanently or indefinitely. Now the area of domicile, whether it be domicile of origin or domicile of choice, is the country which has the distinctive legal system and not merely the particular place in the country where the individual resides. [958B-E]

Whether there can be anything like a domicile in a state forming part of the Union of India ? The Constitution recognises only one domicile, namely, domicile in India. Art. 5 of the Constitution is clear and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India. "The legal system which prevails throughout the territory of India is one single indivisible system. It would be absurd to suggest that the Legal system varies from State to State or that the legal system of a State is different from the legal system of the Union of India, merely because with respect to the subjects within their legislative competence, the States have power to make laws. The concept of 'domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States. It would not, therefore, be right to say that a citizen of India is domiciled in one state or another forming part of the Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any
945
change: he does not acquire a new domicile of choice. His domicile remains the same, namely, Indian domicile. Moreover to think in terms of state domicile with be highly detrimental to the concept of unity and integrity of India. [958H; 959A; D;F-H]

The argument of the State Governments that the word

'domicile' in the Rules of some of the State Governments prescribing domiciliary requirement for admission to medical colleges situate within their territories, is used not in its technical legal sense but in a popular sense as meaning residence and is intended to convey the idea of intention to reside permanently or indefinitely, is accepted. Therefore, the Court would also interpret the word 'domicile' used in the Rules regulating admissions to medical colleges framed by some of the States in the same loose sense of permanent residence and not in the technical sense in which it is used in private international law. But even so the Court wishes to warn against the use of the word 'domicile' with reference to States forming part of the Union of India, because it is a word which is likely to conjure up the notion of an independent State and encourage in a subtle and insidious manner the dormant sovereign impulses of different regions [959H; 960A-D]

D.P. Joshi v State of Madhya Bharat, [1955] 1 SCR 1215 and Vasundro v. State of Mysore, [1971] Suppl. SCR 381, referred to.

It is dangerous to use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. Therefore, it is strongly urged upon the State Government to exercise this wrong use of the expression 'domicile' from the rules regulating admissions to their educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions. [960E-G]

As the position stands today, there is considerable paucity of seats in medical colleges to satisfy the increasing demand of students for admission and some principle has therefore, to be evolved for making selection of students for admission to the medical colleges and such principle has to be in conformity with the requirement of Art. 14. Now, the primary imperative of Art. 14 is equal opportunity for all across the nation for education and advancement and that cannot be made dependent upon where a citizen resides. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious deteriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available,

946

simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote substandard candidates and bring about fall in medical competence, injurious in the long run to the very region.[963G-H; 964D-H]

Jagdish Saran v Union of India, [1980] 2 SCR 831, P. Rajendran v. State of Madras. [1968] 2 SCR 786 and Periakaruppan v. State of Tamil Nadu, [1971]2 SCR 430, referred to.

What is merit which must govern the process of selection ? It undoubtedly consists of a high degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and infinite capacity for hard work, but that is not enough; it also calls for a sense of social commitment and dedication to the cause of the poor. Merit cannot be measured in terms of marks alone, but human sympathies are equally important. The heart is as much a factor as the head in assessing the social value of a member of the medical profession. This is also an aspect which may, to the limited extent possible, be borne in mind while determining merit for selection of candidates for admission to medical colleges though concededly it would not be easy to do so, since it is a factor which is extremely difficult to judge and not easily susceptible to evaluation.[967E-F; H; 968A]

Jagdish Saran v. Union of India, [1980] 2 SCR 831, referred to.

The scheme of admission to medical colleges may depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals. [969F]

Ahmedabad St. Xavier's College Society and Anr. v State of Gujarat. [1974]1 SCR 717 at 799 and Jagdish Saran v. Union of India. (1980) 2 SCR 831. referred to.

There are, in the application of this principle, two considerations which appear to have weighed with the Courts in justifying departure from the principle of selection based on merit. One is what may be called State has by and large been frowned upon by the court and struck down as invalid interest and the other is what may be described as a region's claim of backwardness. [969G]

D.P. Joshi v. State of Madhya Bharat [1955] 1 SCR 1215, referred to.

Though intra-state discrimination between persons resident in different districts or regions of a State as in Minor P. Rajendran's case and Perukaruppan's case the Court has in D.N. Chanchala's case and other similar cases upheld institutional reservation effected through university-wise distribution of seats for admission to medical colleges. The Court has also by its decision in D.P. Joshi's case and N. Vasundhara's case sustained the constitutional validity of reservation based on residence requirement within a State for the purpose of admission to
947
medical colleges. These decisions which all relate to admission to M.B.B.S. course are binding upon the Court and it is therefore not possible for the Court to held, in the face of these decisions, that residence requirement in a State for admission to M.B.B.S. course is irrational and irrelevant and cannot be introduced as a condition for admission without violating the mandate of equality of opportunity contained in Art. 14. The Court is therefore of the view that a certain percentage of reservation of seats in the medical colleges on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State and for this purpose, there

should be no distinction between schools affiliated to State Board and schools affiliated to the Central Board of Secondary Education. [979C-F; 981D-F]

P. Rajendran v. State of Madras, [1968]2 SCR 786, Periakaruppan v. State of Tamil Nadu, [1971] 2 SCR 430, D.N. Chanchala v. State of Mysore, [1971] Supp. SCR 608, D.P. Joshi v. State of Madhya Bharat, [1955] 1 SCR 1215, Vasundra v. State of Mysore, [1971] Suppl. SCR 381, Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat, [1974] 1 SCC 717 at 799 and State of Uttar Pradesh v. P. Tandon, [1975] 2 SCR 761, referred to.

What should be the extent of reservation based on residence requirement and institutional preference ? Wholesale reservation made by some of the State of Governments on the basis of 'domicile' or residence requirement within the State or the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit, must be condemned, and are unconstitutional and void as being in violation of Art. 14 of the Constitution. [982G; 983E-F]

Jagdish Saran v. Union of India [1980] 2 SCR 831, referred to.

It is not possible to provide a categorical answer to this question for, as pointed out by the policy statement of the Government of India, the extent of such reservation would depend on several factors including opportunities for professional education in that particular area, the extent of competition, level of educational development of the area and other relevant factors. But the Court is of the opinion that such reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made. The Medical Education Review Committee has suggested that the outer limit should not exceed 75 per cent but in the opinion of the Court it would be fair and just to fix the outer limit at 70 per cent. This outer limit of reservation is being laid down in an attempt to reconcile the apparently conflicting claim of equality and excellence. It may be made clear that this outer limit fixed by the Court will be subject to any reduction or attenuation which may be
948
made by the Indian Medical Council which is the statutory body of medical practitioners whose functional obligations include setting standards for medical education and providing for its regulation and coordination. This outer limit fixed by the Court must gradually over the years be progressively reduced but that is a task which would have to be performed by the Indian Medical Council. The Indian Medical Council is directed to consider within a period of nine months from today whether the outer limit of 70 per cent fixed by the Court needs to be reduced and if the Indian Medical Council determines a shorter outer limit, it will be binding on the States and the Union Territories. The Indian Medical Council is also directed to subject the outer limit so fixed to reconsideration at the end of every three years but in no event should the outer limit exceed 70 per cent fixed by the Court. The result is that in any event at least 30 per cent of the open seats shall be available for admission of students on all India basis irrespective of the State or university from which they come and such admissions shall be granted purely on merit on the basis of either all India Entrance Examinations or entrance examination to be

held by the State. Of course, it need not be added that even where reservation on the basis of residence requirement or institutional preference is made in accordance with the directions given in this judgment, admissions from the source or sources indicated by such reservation shall be based only on merit, because the object must be to select the best and most meritorious students from within such source or sources. [983G-H; 984A-H; 985A-B]

But different considerations must prevail while considering the question of reservation based on residence requirement within the State or on institutional preference for admission to the post-graduate courses, such as, M.S., M.D. and the like. There excellence cannot be allowed to be compromised by any other considerations because that would be deterimental to the interest of the nation. Therefore so far as admissions to post graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But having regard to broaded considerations of equality of opportunity and institutional continuity in education which has its own importance and value, it is directed that though residence requirement within the State shall not be ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which is being fixed will also be subject to revision on the lower side by the Indian Medical Council in the same manner as in the case of admissions to the M.B.B.S. course. But even in regard to admissions to the post-graduate course, it is directed that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis. [985C-D; 987F-H; 988 A-B]

949

What has been said in regard to admissions to the M.B.B.S. and post graduate courses must apply equally in relation to admissions to the B.D.S. and M.D.S. courses. So for as admissions to the B.D.S. and M.D.S. courses are concerned, it will be the Indian Dental Council which is the statutory body of dental practitioners, which will have to carry out the directions given to the Indian Medical Council in regard to admissions to M.B.B.S. and post-graduate courses. The directions given to the Indian Medical Council may therefore be read as applicable mutatis mutands to the Indian Dental Council so far as admissions to B.D.S. and M.D.S. courses are concerned. [988C-E]

In the instant case, the provisional admissions given to the petitioners shall not be disturbed but they shall be treated as final admissions. [988H]

(Per Bhagwati, Amarendra Nath Sen and Ranganath Misra, JJ.)

The judgment shall be implemented with effect from the next academic year 1985-86. Whatever admissions, provisional or otherwise, have been made for the academic year 1984-85, shall not be disturbed on the basis of the judgment. The

judgment will not apply to the State of Andhra Pradesh and Jammu & Kashmir because there were special Constitutional provisions in regard to them which would need independent consideration by this Court.
[991G-H; 992A]

(Per Amarendra Nath Sen, J.)

I agree with the orders passed by my learned brother Bhagwati J. and also the directions given by him. [989A]

The question of constitutional validity of reservation of seats within reasonable limits on the basis of residence and also the question of institutionalised reservation of seats clearly appear to be concluded by various decision of this Court, as has been rightly pointed out by my learned brother in his judgment in which he has referred at length to these decisions. These decisions are binding on this Court and are to be followed. Constitutional validity of such reservations within the reasonable limit must, therefore, be upheld. [989H; 990A-B]

The real question is the question of the extent of the limit to which such reservations may be considered to be reasonable. The question of reasonableness of such reservations must necessarily be determined with reference to the facts and circumstances of particular cases and with reference to the situation prevailing at any given time. [990C]

On the question of admission to post-graduate medical courses I must confess that I have some misgivings in my mind as to the further classification made on the footings of super-specialities. Both my learned brothers, however, agree on this. Also in a broader perspective this classification may serve the interests of the nation better, though interests of individual States to a small extent may be effected. This distinction in case of super-specialities proceeds on the basis that in these very important spheres the criterion for selection should be merit only without any institutionalised reservations or any reservation on the ground of residence. I also agree that the orders and directions proposed in regard to admission to M.B.B.S. and post-graduate
950
courses are also to be read as applicable mutatis mutandis in relation to admission to B.D.S. and M.D.S. courses, [990E-G]

JUDGMENT:

CIVIL APPELLATE/ORIGINAL JURISDICTION: Writ Petition Nos. 6091, 8882-83, 9219, 9820 of 1983 and 10658, 10761 of 1983 & CMP. No. 29116/83 (in WP. No. 9618/83)
(Under article 32 of the Constitution of India)
With
Civil Appeal No. 6392 of 1983

Appeal by Special leave from the Judgment and Order dated the 17th August, 1983 of the Delhi High Court in C.W.P. No. 1791 of 1983.

V.M. Tarkunde, A.K. Srivastava, S.K. Jain and Vijay Hansaria, for the petitioners.

R. Venkataramani for the Appellant in CA. 6392/83.

A.K. Ganguli, S.K. Baga & N.S. Das Bahl for the Respondents in CA. No. 6392 of 1983.

P.P. Rao and A.K. Ganguli for the Delhi University.

S.N. Chaudhary for the Respondents (State of Assam)

K.G. Bhagat, Addl. Sol. General, Miss A. Subhashini & R.N. Poddar for the Respondent-Union of India.

Kapil Sibal and Mrs. Shobha Dixit for the Respondent-State of U.P.

D.P. Mukherjee and G.S. Chatterjee for the Respondent-State of West Bengal.

G.S. Narayana, Ashivini Kumar, C.V. Subba Rao, Swaraj Kaushal & Mr. M. Veerappa, for the Respondent-State of Karanataka.

K. Parasaran and B. Parthasarthi for the Respondent-States of Andhra Pradesh.

Yogeshwar Prasad and Mrs. Rani Chhabra for the Respondent.

P.K. Pillai, for the Respondent-State of Kerala.

P.N. Nag, for the State of H.P.

P.R. Mridul, and R.K. Mehta for the State of Orissa.

Altaf Ahmed for the State of J & K.

The following Judgments were delivered

951

BHAGWATI, J. This group of Writ Petitions raises a question of great national importance affecting admissions to medical colleges, both at the under-graduate and at the post-graduate levels. The question is, whether, consistently with the constitutional values, admissions to a medical college or any other institution of higher learning situate in a State can be confined to those who have their 'domicile' within the State or who are resident within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess 'domicile' or residential qualification within the State, irrespective of merit. This question has assumed considerable significance in the present day context, because we find that today the integrity of the nation is threatened by the divisive forces of regionalism, linguism and communalism and regional linguistic and communal loyalties are gaining ascendancy in national life and seeking to tear apart and destroy national integrity. We tend to forget that India is one nation and we are all Indians first and Indians last. It is time we remind ourselves what the great visionary and builder of modern India, Jawaharlal Nehru said, "Who dies if India lives : who lives if India dies ?" We must realise, and this is unfortunately that many in public life tend to overlook, sometimes out of ignorance of the forces of history and sometimes deliberately with a view to promoting their self-interest, that national interest must inevitably and for ever prevail over any other considerations proceeding from regional, linguistic or communal attachments. If only we keep these basic considerations uppermost in our minds and follow the sure path indicated by the founding fathers of the Constitution, we do not think the question arising in this group of writ petitions should present any difficulty of solution.

The history of India over the past centuries bears witness to the fact that India was at no time a single political unit. Even during the reign of the Maurya dynasty, though a large part of the country was under the sovereignty of the Mauryan kings, there were considerable portions of the territory which were under the rule of independent kingdoms. So also during the Moghul rule which extended over large parts of the territory of India, there were independent rulers who enjoyed political sovereignty over the territories of their respective kingdoms. It is an interesting fact of history that India was forged into a nation neither on account of a common language nor on account of the continued existence of a single political regime over its territories but on account of a

952

common culture evolved over the centuries. It is cultural unity something more fundamental and enduring that any other bond which may unite the people of a country together-which has welded this country into a nation. But, until the advent of the British rule, it was not constituted into a single political unit. There were throughout the period of history for which we have fairly authenticated account, various kingdoms and principalities which were occasionally engaged in conflict with one another. During the British rule, India became a compact political unit having one single political regime over its entire territories and this led to the evolution of the concept of a nation. This concept of one nation took firm roots in the minds and hearts of the people during the struggle for independence under the leadership of Mahatma Gandhi. He has rightly been called the Father of the Nation because it was he who awakened in the people of this country a sense of national consciousness and instilled in them a high sense of patriotism without which it is not possible to build a country into nationhood. By the time the Constitution of India came to be enacted, insurgent India, breaking a new path of nonviolent revolution and fighting to free itself from the shackles of foreign domination, had emerged into nationhood and "the people of India" were inspired by a new enthusiasm, a high noble spirit of sacrifice and above all, a strong sense of nationalism and in the Constitution which they framed, they set about the task of a strong nation based on certain cherished values for which they had fought.

The Preamble of the Constitution was therefore, framed with the great care and deliberation so that it reflects the high purpose and noble objective of the Constitution makers. The Preamble declares in highly emotive words pregnant with meaning and significance:

> "We, The People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship;
>
> Equality of status and of opportunity; and to promote among them all
>
> Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

953

> In Our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact And Give To Ourselves This Constitution."

These words embody the hopes and aspirations of the people and capture and reproduce the social, economic and political philosophy underlying the Constitution and running through the warp and woof of its entire fabric. It is significant to note that the Preamble emphasises that the people who have given to themselves this glorious document are the people of India, the people of this great nation called India and it gives expression to the resolve of the people of India to constitute India into a sovereign socialist secular democratic republic and to promote among all its citizens fraternity assuring the dignity of the individual and the unity and integrity of the nation. The Constitution makers were aware of the past history of the country and they were also conscious that the divisive forces of regionalism, linguism and communalism may one day raise their ugly head and threaten the unity and integrity of the nation, particularly in the context of the partition of India and the ever present danger of the imperialist

forces adopting new stratagems, apparently innocuous, but calculated to destabilise India and re-establish their hegemony and, therefore, they laid great emphasis on the unity and integrity of the nation in the very Preamble of the Constitution. Article 1 of the Constitution then proceeds to declare that India shall be a Union of States but emphasizes that though a Union of States, it is still one nation with one citizenship. Part II dealing with citizenship recognises only Indian citizenship: it does not recognise citizenship of any State forming part of the Union. Then follow Articles 14 and 15 which are intended to strike against discrimination and arbitrariness in state action, whether legislatives or administrative. They read as follows:

"Article 14: The State shall not deny to any persons equality before the law or the equal protection of the laws within the territory of India."

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

(2) No citizen shall on grounds only of religion, race, caste. sex, place of birth or any of them, be subject

954

to any disability, liability, restriction or condition with regard to-

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

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

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

Article 19 (1) again recognises the essential unity and integrity of the nation and reinforces the concept of one nation by providing in clauses (d) and (e) that every citizen shall have the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. Article 301 declares that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free. Then there are situations envisaged in certain Articles of the Constitution such as Articles 353 and 356 where the executive power of a State forming part of the Union is exercisable by the Central Government or subject to the directions of the Central Government. Thus, the entire country is taken as one nation with one citizenship and every effort of the Constitution makers is directed towards emphasizing, maintaining and preserving the unity and integrity of the nation. Now if India is one nation and there is only one citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and is entitled to equality before the law and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamil Nadu or speaking Tamil language can

be regarded as an outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or/speaking Marathi language be
955
regarded as an outsider in Karnataka. He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or Karnataka, as the case may be. To regard him as an outsider would be to deny him his constitutional rights and to derecognise the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent states.

But, unfortunately, we find that in the last few years, owing to the emergence of narrow parochial loyalties fostered by interested parties with a view to gaining advantage for themselves, a serious threat has developed to the unity and integrity of the nation and the very concept of India as a nation is in peril. The threat is obtrusive at some places while at others it is still silent and is masquerading under the guise of apparently innocuous and rather attractive clap-trap. The reason is that when the Constitution came into operation, we took the spirit of nation-hood for granted and paid little attention to nourish it, unmindful of the fact that it was a hard-won concept. We allowed 'sons of the soil' demands to develop claiming special treatment on the basis of residence in the concerned State, because recognising and conceding such demands had a populist appeal. The result is that 'sons of the soil' claims, though not altogether illegitimate if confined within reasonable bounds, are breaking asunder the unity and integrity of the nation by fostering and strengthening narrow parochial loyalties based on language and residence within a state. Today unfortunately, a citizen who has his permanent residence in a state entertains the feeling that he must have a preferential claim to be appointed to an office or post in the state or to be admitted to an educational institution within the state vis-a-vis citizen who has his permanent residence in another state, because the latter is an outsider and must yield place to a citizen who is a permanent resident of the state, irrespective of merit. This, in our opinion, is a dangerous feeling which, if allowed to grow, indiscriminately, might one day break up the country into fragments, though, as we shall presently point out, the principle of equality of opportunity for education and advancement itself may justify, within reasonable limits, a preferential policy based on residence.

We may point out at this stage that though Article 15 (2) clauses (1) and (2) bars discrimination on grounds not only of religion, race, caste or sex but also of place of birth, Article 16 (2) goes
956
further and provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in state employment. So far as employment under the state, or any local or other authority is concerned, no citizen can be given preference nor can any discrimination be practised against him on the ground only of residence. It would thus appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State and having regard to the expansive meaning given to the word 'State' in Ramana Dayaram Shetty v. International Airport Authority of India & Ors., it is obvious that this constitutional prohibition would also cover an office under any local or other authority within the State or any

corporation, such as a public sector corporation which is an instrumentality or agency of the State. But Article 16 (3) provides an exception to this rule by laying down that Parliament may make a law "prescribing, in regard to a class or classes of employment or appointment to an office under the government of, or any local or other authority, in a state or union territory, any requirement as to residence within that state or union territory prior to such employment." or appointment Parliament alone is given the right to enact an exception to the ban on discrimination based on residence and that too only with respect to positions within the employment of a State Government. But even so, without any parliamentary enactment permitting them to do so, many of the State Governments have been pursuing policies of localism since long and these policies are now quite wide spread. Parliament has in fact exercised little control over these policies States. The only action which Parliament has taken under Article 16 (3) giving it the right to set residence requirements has been the enactment of the Public Employment (Requirement as to Residence) Act, 1957 aimed at abolishing all existing residence requirements in the States and enacting exceptions only in the case of the special instances of Andhra Pradesh, Manipur, Tripura and Himchal Pradesh. There is therefore at present no parliamentary enactment permitting preferential policies based on residence requirement except in the case of Andhra Pradesh, Manipur Tripura and Himachal Pradesh where the Central Government has been given the right to issue directions setting residence requirements in the subordinate services. Yet, in the face of Article 16 (2), some of the States are adopting ‘sons of the soil’ policies prescribing reservation
957
or preference based on domicile or residence requirement for employment or appointment to an office under the government of a State or any local or other authority or public sector corporation or any other corporation which is an instrumentality or agency of the State. Prima facie this would seem to be constitutionally impermissible though we do not wish to express any definite opinion upon it, since it does not directly arise for consideration in these writ petitions and civil appeal.

But, it is clear that so far as admissions to an educational institution such as a medical college are concerned, Article 16(2) has no application, If, therefore, there is any residence requirement for admission to a medical college in a State, it cannot be condemned as unconstitutional on ground of violation of Article 15 clauses (1) and (2). Nor can Article 16(2) be invoked for invalidating such residence requirement because these clauses prohibits discrimination on ground of place of birth and not on ground of residence and, as pointed out by this Court in D.P. Joshi v. State of Madhya Bharat, residence and place of birth are "two distinct conceptions with different connotations both in law and in fact". The only provision of the Constitution on the touch-stone of which such residence requirement can be required to be tested is Article 14 and that is precisely the challenge which falls to be considered by us in these writ petitions.

Now there are in our country in almost all States residence requirements for admission to a medical college. Sometimes the requirement is phrased by saying that the applicant must have his domicile in the State. We must protest against the use of the word ‘domicile’ in relation to a State within the union of India. The word ‘domicile’ is

to identify the personal law by which an individual is governed in respect of various matters such as the essential validity of a marriage, the effect of marriage on the proprietary rights of husband and wife, jurisdiction in divorce and nullity of marriage, illegitimacy, legitimation and adoption and testamentary and intestate succession to moveables. 'Domicile' as pointed out in Halsbury's laws of England (Fourth Edition) Volume 8 paragraph 421, "is the legal relationship between an individual and a territory with a distinctive legal system which invokes that system as his personal law." "(Emphasis supplied.) It is well settled that the domicile of a person is in

958

that country in which he either has or is deemed by law to have his permanent home "By domicile" said Lord Cranworth in Wicker v. Homes we mean home, the permanent home.' The notion which lies at the root of the concept of domicile is that of permanent home." But it is basically a legal concept for the purpose of determining what is the personal law applicable to an individual and even if an individual has no permanent home, he is invested with a domicile by law. There are two main classes of domicile: domicile of origin that is communicated by operation of law to each person at birth, that is the domicile of his father or his mother according as he is legitimate or illegitimate and domicile of choice which every person or full age is free to acquire in substitution for that which he presently possesses. The domicile of origin attaches to an individual by birth while the domicile of choice is acquired by residence in a territory subject to a distinctive legal system, with the intention to reside there permanently or indefinitely. Now the area of domicile, whether it be domicile of origin or domicile of choice, is the country which has the distinctive legal system and not merely the particular place in the country where the individual resides. This position is brought out clearly and emphatically in paragraph 422 of Halsbury's Laws of England (Fourth Edition) Volume 8 where it is stated: "Each person who has, or whom the law deems to have, his permanent home within the territorial limits of a single system of law is domiciled in the country over which the system extends; and he is domiciled in the whole of that country even though his home may be fixed at a particular spot within it." What would be the position under a federal polity is also set out in the same paragraph of volume 8 of Halsbury's Laws of England (Fourth Edition): "In federal states some branches of law are within the competence of the federal authorities and for these purposes the whole federation will be subject to a single system of law and an individual may be spoken of as domiciled in the federation as a whole; other branches of law are within the competence of the states or provinces of the federation and the individual will be domiciled in one state or province only." This being the true legal position in regard to domicile, let us proceed to consider whether there can be anything like a domicile in a state forming part of the Union of India.

Now it is clear on a reading of the Constitution that it

959

recognises only one domicile namely, domicile in India. Article 5 of the Constitution is clear and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India." Moreover, it must be remembered that India is not a federal state in the traditional sense of that term. It is not a compact of sovereign states which

have come together to form a federation by ceding a part of their sovereignty to the federal states. It has undoubtedly certain federal features but it is still not a federal state and it has only one citizenship, namely, the citizenship of India. It has also one single unified legal system which extends throughout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India. The legal system which prevails through-out the territory of India is one single indivisible system with a single unified justicing system having the Supreme Court of India at the apex of the hierarchy, which lays down the law for the entire country. It is true that with respect to subjects set out in List II of the Seventh Schedule to the Constitution, the States have the power to make laws and subject to the over-riding power of Parliament, the States can also make laws with respect to subjects enumerated in List III of the Seventh Schedule to the Constitution, but the legal system under the rubric of which such laws are made by the States is a single legal system which may truly be described as the Indian Legal system. It would be absurd to suggest that the legal system varies from State to State or that the legal system of a State is different from the legal system of the Union of India; merely because with respect to the subjects within their legislative competence, the States have power to make laws. The concept of 'domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States. It would not, therefore, in our opinion be right to say that a citizen of India is domiciled in one state or another forming part of the Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any change: he does not acquire a new domicile of choice. His domicile remains the same, namely, Indian domicile. We think it highly deterimental to the concept of unity and integrity of India to think in terms of State domicile. It is true and there we agree with the argument advanced on behalf of the State Governments, that the word 'domicile' in the Rules of
960
some of the State Governments prescribing domicilary requirement for admission to medical colleges situate within their territories, is used not in its technical legal sense but in a popular sense as meaning residence and is intended to convey the idea of intention to reside permanently or indefinitely. That is, in fact the sense in which the word 'domicile' was understood by a five Judge Bench of this Court in D. P. Joshi's case (supra) while construing a Rule prescribing capitation fee for admission to a medical college in the State of Madhya Bharat and it was in the same sense that word 'domicile' was understood in Rule 3 of the Selection Rules made by the State of Mysore in Vasundra v. State of Mysore. We would also, therefore, interpret the word 'domicile' used in the Rules regulating admissions to medical colleges framed by some of the States in the same loose sense of permanent residence and not in the technical sense in which it is used in private international law. But even so we wish to warm against the use of the word 'domicile' with reference to States forming part of the Union of India, because it is a word which is likely to conjure up the notion of an independent State and encourage in a subtle and insidious manner the dormant sovereign impulses of different regions. We think it is dangerous to

use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. When we use a word which has come to represent a concept or idea, for conveying a different concept or idea it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity of meaning. The concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in the long run tend to break up the unity and integrity of the country. We would, therefore, strongly urge upon the State Governments to exercise this wrong use of the expression 'domicile' from the rules regulating admissions to their educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions.

We may now proceed to consider whether residential requirement or institutional preference in admissions to technical and medical colleges can be regarded as constitutionally permissible. Can it stand the test of Article 14 or does it fall foul of it and must be struck down as constitutionally invalid. It is not possible to answer this question by a simple "yes" or "no" It raises a
961
delicate but complex problem involving consideration of divers factors in the light of varying social and economic facts and calls for a balanced and harmonious adjustment of competing interests. But, before we embark upon a consideration of this question, it may be pointed out that there is before us one Civil Appeal, namely, C.A.No. 6392 of 1983 filed by Rita Nirankari and five writ petitions, namely, Writ Petition Nos. 8882 of 1983, 8883 of 1983, 9618 of 1981, 10658 of 1983 and 10761 of 1983 filled by Nitin Aggarwal, Seema Garg, Menakshi, Alka Aggarwal and Shalini Shailendra Kumar respectively. These civil appeal and writ petitions relate to admissions to medical colleges affiliated to the Delhi University and situate in the Union Territory of Delhi. Then we have writ petition No. 982 of 1983 filed by Dr. Mrs. Reena Ranjit Kumar and writ petition No. 9219 of 1983 filed by Nandini Daftary which relate to admission to the M.D.S. Course and M.B.B.S. course respectively of Karnataka University. We have also writ petition No. 6091 of 1983 filed by Dr. Pradeep Jain seeking admission to the M.D.S. course in King George Medical College, Lucknow affiliated to the Lucknow University. When these writ petitions and civil appeal were admitted, we made interim orders in some of them granting provisional admission to the petitioners and we may make it clear that wherever we have granted provisional admissions shall not be disturbed, irrespective of the result of these civil appeal and writ petitions. We may also point out that since these civil appeal and writ petitions challenged the constitutional validity of residential requirement and institutional preference in regard to admissions in medical colleges in the States of Karnataka and Uttar Pradesh and the Union Territory of Delhi and we were informed that it is the Uniform and consistent practice in almost all States to provide for such residential requirement or institutional preference we directed that notices of these civil appeal and writ petitions may be issued to the Union of India and the States of Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamilnadu and West Bengal and the State Governments to which such notices are issued shall file their counter affidavits

dealing in particular with the question of reservation in admission on the basis of domicile or residential requirement within two weeks from the date of service of such notices. Some of the State Governments could not file their counter affidavits within the time granted by us and they accordingly made an application for extension of time and by an order dated 30th August, 1983 we extended the time for filing of counter affidavits
962
and directed the State Governments to set out in their counter affidavits facts and figures showing as to what is the procedure which is being followed by them so far as admissions to medical colleges in their States are concerned. It appears that most of the state Governments to whom notices were issued filed their counter affidavits and though no notice was directed to be issued to the State of Himachal Pradesh, the Government of that State also filed a counter affidavit. The Delhi University in its counter affidavit gave a brief synopsis summarising the domicile or residential requirement or institutional preference followed by each State Government for admission to the medical colleges situate within its territory. It is not necessary for the purpose of the present judgement to reproduce in detail the precise domicile or residential requirement or institutional preference adopted and prevailing in different States in regard to admissions to medical colleges. Suffice it to state that for admission to M.B.B.S. course, domicile or permanent residence is required in some States, residence for a specified number of years ranging from three to twenty years is required in some other States while in a few States the requirement is that the candidate should have studied in an educational institution in the State for a continuous period varying from four to ten years or the candidate should be a bona fide resident of one State and in case of admissions to M.D.S. Course in Uttar Pradesh the candidate should be either a citizen of India, domicile of whose father is in Uttar Pradesh and who himself is domiciled in Uttar Pradesh or a citizen of India, domicile of whose father may not be in Uttar Pradesh but who himself has resided in Uttar Pradesh for not less than five years at the time of making the application and so far as admissions to M.D.S. Course in Karnataka are concerned, the candidate should have studied for at least five years in an educational institution in the State of Karnataka prior to his joining B.D.S. Course. The position in regard to admissions in medical colleges in the Union Territory of Delhi is a little different, because there, out of a total of 410 seats available for admission to the M.B.B.S. course in the three medical colleges affiliated to the Delhi university, 148 are reserved seats and 262 are non-reserved seats and for filling in the 262 non-reserved seats, an entrance examination is held and the first 50 seats are filled from amongst the eligible candidates who pass the entrance examination in order of merit and the remaining 212 seats are filled, again on merit, but by candidates who have passed their qualifying examination from the schools situate in the Union Territory of Delhi
963
only. It will thus be seen that in almost all States and Union Territories admissions to medical colleges are based either on residence requirements or on institutional preferences. The question is whether such reservations or preferences are constitutionally valid when tested on the touch-stone of Article 14.

There can be no doubt that the demand for admission to

medical colleges has over the last two decades increased enormously and outstripped the availability of seats in the medical colleges in the country. Today large numbers of young men and women are clamouring to get admission in the medical colleges not only because they can find gainful employment for themselves but they can also serve the people and the available seats in the medical colleges are not sufficient to meet the increasing demand. The proportion of medical practitioners to the population is very low compared to some other countries and there is considerable unmet need for medical services. It is possible that in highly urbanised areas, there may be a surfeit of doctors but there are large tracts of rural areas throughout the country where competent and adequate medical services are not available. The reason partly is that the doctors who have been brought up and educated in urban areas or who are trained in medical colleges situate in cities and big towns acquire an indelible urban slant and prefer not to go to the rural areas, but more importantly, proper and adequate facilities are not provided and quite often even necessary medicines and drugs are not supplied in rural areas with the result that the doctors, even if otherwise inclined to go to rural areas with a view to serving the people, find that they cannot be of any service to the people and this acts as a disincentive against doctors setting down in rural areas. What is, therefore, necessary is to set up proper and adequate structures in rural areas where competent medical services can be provided by the doctors and some motivation must be provided to the doctors servicing those areas. But, as the position stands today, there is considerable paucity of seats in medical colleges to satisfy the increasing demand of students for admission and some principle has, there fore, to be evolved for making selection of students for admission to the medical colleges and such principle has to be in conformity with the requirement of Article 14. Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in Jagdish Saran v. Union of India "this" has burning relevance
964
to our times when the country is gradually being broken up into fragments by narrow domestic walls" by surrender to narrow parochial loyalties. What is fundamental, as an enduring value of our polity is guarantee to each of equal opportunity to unfold the full potential of his personality. Any one anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the resident of any particular State; it is more or less evenly distributed and given proper opportunity and environment, every one has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential he will be able in his own way to

manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizen in the country and no citizen can legitimately, without serious deteriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up. Moreover it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote sub-standard candidates and bring about fall in medical competence, injurious
965
in the long run to the very region. "It is no blessing to inflict quacks and medical midgets on people by whole-sale sacrifice of talent at the thresh-hold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students.

This was the consideration which weighed with the Court in Minor P. Rajendran v. State of Madras in striking down a rule made by the State of Madras allocating seats in medical colleges on district-wise basis. Wanchoo, C.J. Speaking on behalf of the Court, observed:

> "The question whether districtwise allocation is violative of Art. 14 will depend on what is the object to be achieved in the matter of admission to medical colleges. Considering the fact that there is a large number of candidates than seats available, selection has got to be made. The object of selection can only be to secure the best possible material for admission to colleges subject the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that object would be defeated if seats are allocated district by district. It cannot be and has not been denied that the object of selection is to secure the best possible talent from the two sources so that the country may have the best possible doctors. If that is the object, that argument on behalf of the petitioners appellant is that object cannot possibly be served by allocating seats districtwise. It is true that Art. 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however

that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the

966

object to be achieved. Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional colleges, the allocation of seats districtwise has no reasonable relation with the object to be achieved. If anything such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable, would result in discrimination, in as much as better qualified candidates from one district may be rejected while less qualified candidates from other districts may be admitted from either of the two sources."

Then again in Periakaruppan v. State of Tamil Nadu, the same consideration prevailed with the Court in striking down the scheme of selection of candidates for admission to medical colleges in the State of Tamil Nadu for the year 1970-71. It was a unit-wise scheme under which the medical colleges in the city of Madras were constituted as one unit and each of the other medical colleges in the Mofussil was constituted as a unit and a separate selection committee was set up for each of these units. The intending applicants were asked to apply to any one of the committees but were advised to apply to the committee nearest to their place of residence and if they applied to more than one committee, their applications were to be forwarded by the Government to only one of the committees. The petitioners who were unsuccessful in getting admission, challenged the validity of this unit-wise scheme and contended that the unit-wise scheme infringed Article 14 of the Constitution, inter alia, because the applicants of some of the units were in a better position than those who applied to other units, since the ratio between the applicants and the number of seats in each unit varied and several applicants who secured lesser marks than the petitioners were selected merely because their applications came to be considered in other units. This challenge was upheld by the Court and Hegde, J. speaking on behalf of the Court observed:

"We shall first take up the plea regarding the division of medical seats on unitwise basis. It is admitted that minimum marks required for being selected in some unit is less than in the other units. Hence prima facie the scheme in question results in discrimination against some of the applicants. Before a classification can be justified, it must be based on an objective criteria and further it

967

must have reasonable nexus with the object intended to be achieved. The object intended to be achieved in the present case is to select the best candidates for being admitted to Medical Colleges. That object cannot be satisfactorily achieved by the method adopted."

These two decisions do not bear directly on the question raised before us, namely, whether any reservation can be legitimately made in admissions to medical colleges on the basis of residence requirement within the State or any institutional preference can be given students who have passed the qualifying examination held by the same university. They deal with two specific instances of intra-state discrimination between citizens residing within the same State and strike down such discrimination as violative of Article 14 on the ground that it has no rational relation

to the object of selection, namely, to get the best and most meritorious students and, in fact, tends to defeat such object, But, in taking this view, they clearly and categorically proceed on the basis of the principle that the object of any valid scheme of admissions must be to "select the best candidates for being admitted to medical colleges" and that if any departure is to be made "from the principle of selection on the basis of merit" it must be justified on the touchstone of Art. 14.

But let us understand what we mean when we say that selection for admission to medical colleges must be based on merit. What is merit which must govern the process of selection ? It undoubtedly consists of a high degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and infinite capacity for hard work, but that is not enough; it also calls for a sense of social commitment and dedication to the cause of the poor. We agree with Krishna Iyer, J. when he says in Jagdish Saran's case (supra): "If potential for rural service or aptitude for rendering medical attention among backward people is a criterion of merit-and it, undoubtedly, is in a land of sickness and misery, neglect and penury, wails and tears-then, surely, belonging to a university catering to a deprived region is a plus point of merit. Excellence is composite and the heart and its sensitivity are as precious in the case of educational values as the head and its creativity and social medicine for the common people is more relevant than peak performance in freak cases." Merit cannot be measured in terms of marks alone, but human sympathies are equally important. The heart is as much a factor as the head in assessing the social, value of a member of the medical profession. This is also an aspect which may, to
968
the limited extent possible, be borne in mind while determining merit for selection of candidates for admission to medical colleges though concededly it would not be easy to do so, since it is a factor which is extremely difficult to judge and not easily susceptible to evaluation.

We may now proceed to consider what are the circumstances in which departure may justifiably be made from the principle of selection based on merit. Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection followed for making admissions to medical colleges, it must satisfy the test of equality. Now the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. In a hierachical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground the every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make that equality clause sterile and perpetuate existing inequalities. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, in fact, legal equality always tends to accentuate it. What the famous poet Willian Blanks said graphically is very true, namely, "One law for the Lion and the Ox is oppression," Those who are unequal. in fact.

cannot treated by identical standards; that may be equality in law but it would certainly not be real equality. It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality Such affirmative action though apparently discriminatory is calculated to produce equality an a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful section, so that each member of the community, whatever is his births occupation or social position may enjoy equal opportunity of
969
using to the full his natural endowments of physique, of character and of intelligence. We may in this connection usefully quote what Mathew, J. said in Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat.

> "It is obvious that "equality in law precludes discrimination of any kind; whereas equality, in fact, may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations."

We cannot, therefore, have arid equality which does not take into account the social and economic disabilities and inequalities from which large masses of people suffer in the country. Equality in law must produce real equality; de jure equality must ultimately find its raison d'etre in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. The State must, to use again the words of Krishna Iyer. J. in Jagdish Saran's case (supra) weave those special facilities into the web of equality which, in an equitable setting provide for the weak and promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity equality is not negated or neglected where special provisions are geared to the large goal of the disabled getting over their disablement consistently with the general good and individual merit." The scheme of admission to medical colleges may, therefore, depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals.

There are. in the application of this principle, two considerations which appear to have weighed with the Court in justifying departure from the principle of selection based on merit. One is what may be called State interest and the other is what may be described as a region's claim of backwardness. The legitimacy of claim of State interest was recognised explicitly in one of the early decisions of this Court in D.P. Joshi's case (supra) The Rule impugned in this case was a Rule made by the State of
970
Madhya Bharat for admission to the Mahatma Gandhi Memorial Medical College, Indore providing that no capitation fee should be charged for students who are bona fide residents of Madhya Bharat but for other non-Madhya Bharat students, there should be a capitation fee of Rs. 1300 for nominees and Rs. 1500 for others. The expression bona fide resident' was defined for the purpose of this Rule to mean inter alia a citizen whose original domicile was in Madhya Bharat

provided he had not acquired a domicile elsewhere or a citizen whose original domicile was not in Madhya Bharat but who had acquired a domicile in Madhya Bharat and had resided there for not less than five years at the date of the application for admission. The constitutional validity of this Rule was challenged on the ground that it discriminated between students who were bona fide residents of Madhya Bharat and students who were not and since this discrimination was based on residence in the State of Madhya Bharat, it was violative of Article 14 of the Constitution. The Court by a majority of four against one held that the Rule was not discriminatory as being in contravention of Article 14, because the classification between students who were bona fide residents of Madhya Bharat and those who were not was based on an intelligible differentia having rational relation to the object of the Rule. Venkatarama Ayyar, J. speaking on behalf of the majority observed:

> "The object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. (Vide Article 41). The State has to contribute for the up keep and the running of its educational institutions. We are in this petition concerned with a Medical College, and it is well known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State ? A concession given to the residents of the State in the

971

> matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the College, settle down as doctors and serve the needs of the locality. The classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation, and is in consequence not open to attack. It has been held in The State of Punjab v. Ajab Singh and Anr. that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern, primarily of the State. The contention, therefore, that the rule imposing capitation fee is in contravention of Article 14 must be rejected." (emphasis supplied)

It may be noted that here discrimination was based on residence within the State of Madhya Bharat and yet it was held justified on the ground that the object of the State in making the Rules was to encourage students who were residents of Madhya Bharat to take up the medical course so that "some of them might, after passing out from the college, settle down as doctors and serve the needs of the locality" and the classification made by the Rule had rational relation to this object. This justification of the discrimination based on residence obviously rest on the assumption that those who were bona fide residents of Madhya

Bharat would after becoming doctors settle down and serve the needs of the people in the State. We are not sure whether any facts were pleaded in the affidavits justifying this assumption but the judgment of Venkatarama Ayyar, J. show that the decision of the majority Judges proceeded on this assumption and that was regarded as a valid ground justifying the discrimination made by the impugned Rule.

We may point out that in Minor P. Rajendran's case (supra) also, an argument was put forward on behalf of the State Government that if selection was made district-wise, those selected from a district were likely to settle down as practitioners in that districts so that the districts were likely to benefit from their training. But this argument was rejected by the Court and district-wise admission to medical colleges was struck down as constitutionally invalid. It is significant to note that the Court did not reject this argument as intrinsically irrelevant but the only ground on
972
which it was rejected was that "it was neither pleaded in the counter affidavit of the State nor had the State placed any facts or figures justifying the plea that students selected district-wise would settle down as medical practitioners in the respective district where they resided". It would be interesting to speculate what court would have decided if the State Government had placed sufficient material before the court showing that students coming from different districts in the State ordinarily settle down as medical practitioners in the respective districts from where they come.

This Court also upheld reservation based on residence requirement for a period of not less than ten years, for admission to medical colleges in the then State of Mysore, in the subsequent decision in N. Vsaundhara's case (supra). The Rule which was impugned in that case was Rule 3 of the Rules for selection of candidates for admission to the professional course leading to MBBS course in the Government Medical Colleges in the then State of Mysore and this Rule provided that "no person who is not a citizen of India and who is not domiciled and resident in the State of Mysore for not less than ten years at any time prior to the date of the application for a seat, shall be eligible to apply." The petitioner's application for admission was rejected on the ground that she had not resided in the State for a period of ten years as required by Rule 3 and she consequently challenged the constitutional validity of that Rule on the plea that it violated the right to equality guaranteed by Article 14. The challenge was however negatived and the constitutional validity of Rule 3 was upheld by a 3 Judge Bench of this Court. The Court relied upon the decision in D.P. Joshi's case (supra) and observed:

> "If classification based on residence does not impinge upon the principle of equality enshrined in Art. 14 as held by this Court in the decision already cited which is binding upon us, then the further condition of the residence in the State being there for at least ten years would also seem to be equally valid unless it is shown by the petitioner that selection of the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia. The object of framing the impugned rule seems to be to attempt to impart medical education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the

973

inhabitants of the State of Mysore. It is true that it is possible to say with absolute certainty that all those admitted to the medical colleges would necessarily stay in Mysore State after qualifying as doctors: they have indeed a fundamental right as citizens to settle anywhere in India and they are also free, if they so desire and can manage, to go out of India for further studies or even otherwise. But these possibilities are permissible and inherent in our constitutional set-up and these considerations cannot adversely affect the constitutionality of the otherwise valid rule. The problem as noticed in minor P. Rajendran's case and as revealed by a large number of cases which have recently come to this Court is that the number of candidates desirous of having medical education is very much larger than the number of seats available in medical colleges. The need and demand for doctors in our country is so great that young boys and girls feel that in medical profession they can both get gainful employment and serve the people. The State has therefore to formulate with reasonable foresight a just schemes of classification for imparting medical education to the available candidates which would serve the object and purpose of providing broad based medical aid to the people of the State and to provide medical education to those who are best suited for such education. Proper classification inspired by this consideration and selection on merit from such classified groups therefore cannot be challenged on the ground of inequality violating Art. 14. The impugned rule has not been shown by the petitioner to suffer from the vice of unreasonableness. The counter-affidavit filed by the State on the other hand discloses the purpose to be that of serving the interests of the residents of the State by providing medical aid for them."

Here also reservation based on residence requirement of not less than ten years was held to be non-discriminatory though it denied equality of opportunity for admission to the medical colleges in the State to all those who did not satisfy this residence requirement. The Court took the view that the object of the State Government in making such reservation based on residence requirement of not less than ten years was to "impart medical

974

education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the inhabitants of the State". The principle of selection based on merit across the board was thus allowed to be modified by the claim of State interest in providing broad based medical aid to the people of the State" and reservation based on residence requirement of not less than ten years was upheld as a valid reservation. We find an choice of the same reasoning in the following words from the judgment of Dua, J. in D.N. Chanchala v. State of Mysore.

"the object of selection for admission to the medical colleges considered in the background of the Directive Principles of State Policy contained in our Constitution, appears to be to select the best material from amongst the candidates in order not only to provide them with adequate means of livelihood but also to provide the much needed medical aid to the people and to improve public health generally"

(Emphasis supplied)

The claim of State interest in providing adequate medical service to the people of the State by imparting medical education to students who by reason of their residence in the State would be likely to settle down and serve the people of the State as doctors has thus been regarded by the Court as a legitimate ground for laying down residence requirement for admission to medical colleges in the State.

We may also conveniently at this stage refer to the decision of this Court in D.N. Chanchala's case (supra). The reservation impugned in this case was university-wise reservation under which preference for admission to a medical college run by a university was given to students who had passed the PUC examination of that university and only 20 per cent of the seats were available to those passing the PUC Examination of other universities. The petitioner who had passed PUC examination held by the Bangalore university, applied for admission to any one of the medical colleges affiliated to the Karnataka University. But she did not come within the merit list on the basis of which 20 per cent of

975

the open seats were filled up and since she had not passed the PUC Examination held by the Karnataka University, her application for admission to a medical college affiliated to the Karnataka University, was rejected. She therefore filed a writ petition under Article 32 of the Constitution contending inter alia that the University wise distribution of seats was discriminatory and being without any rational basis was violative of Article 14. This contention was however rejected by a 3 Judge Bench of this Court. Shelet, J. speaking on behalf of the Court held that there was no constitutional infirmity involved in giving preference to students who had passed the PUC Examination of the same University and gave the following reasons in support of this conclusion:

> "The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centres for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the Universities are set up for satisfying-the educational needs of different areas where they are set up and medical colleges are established in those areas, it can safely be presumed that they also were so set up to satisfy the needs for medical training of those attached to those universities. In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of districtwise or unitwise selection as any student from any part of the State can pass the qualifying examination in any of the three universities

irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit

976

outsiders upto 20% of the total available seats in any one of these colleges, i.e., those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is, therefore, impossible to say that the basis of selection adopted in these rules would defeat the object of the rules as was said in Rajendran's case or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As a well known, different universities have different standards in the examinations held by them. A preference to one attached to one university in its own institutions for post graduate or technical training is not uncommon. Rules giving such a preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with these which were held invalid in the aforesaid two decisions. Further, the Government which bears the financial burden of running the Government colleges if entitled to lay down criteria for admission would be made, provided of course such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged. In our view, the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university from a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the

977

rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14."

University-wise distribution of seats was thus upheld by the Court as constitutionally valid even though it was not in conformity with the principle of selection based on merit and marked a departure from it. The view taken by the court was that university-wise distribution of seats was not discriminatory because it was based on a rational principle. There was nothing unreasonable in providing that in granting admissions to medical colleges affiliated to a university, reservation shall be made in favour of candidates who have passed PUC examination of that university, firstly, because it would be quite legitimate for students who are attached

to a university to entertain a desire to "have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own" university since that promote institutional continuity which has its own value and secondly, because any student from any part of the country could pass the qualifying examination of that university, irrespective, of the place of his birth or residence.

The second consideration which has legitimately weighed with the courts in diluting the principle of selection based on merit is the claim of backwardness made on behalf of any particular region. There have been cases where students residing in a backward region have been given preferential treatment in admissions to medical colleges and such preferential treatment has been upheld on the ground that though apparently discriminatory against others, it is intended to correct the imbalance or handicap from which the students from the backward region are suffering and thus bring about real equality in the larger sense. Such preferential treatment for those residing in the backward region is designed to produce equal opportunity on a broader basis by providing to neglected geographical or human areas an opportunity to rise which they would not have if no preferential treatment is given to them and they are treated on the same basis as others for admissions to medical colleges, because then they would never be able to compete with others more advantageously placed. If creatively and imaginatively applied, preferential treatment based on residence in a backward region can play a significant role in reducing uneven levels of development and such
978
preferential treatment would presumably satisfy the test of Article 14, because it would be calculated to redress the existing imbalance between different regions in the State. There may be a case where a region is educationally backward or woefully deficient in medical services and in such a case there would be serious educational and health service disparity for that backward region which must be redressed by an equality and service minded welfare State. The purpose of such a policy would be to remove the existing inequality and to promote welfare based equality for the residents of the backward region. If the State in such a case seeks to remove the absence of opportunity for medical education and to provide competent and adequate medical services in such backward region by starting a medical college in the heart of such backward region and reserves a high percentage of seats there to students from that region, it may not be possible to castigate such reservation or preferential treatment as discriminatory. What is directly intended to abolish existing disparity cannot be accused of discrimination. Krishna Iyer, J. said to the same effect when he observed in Jagdish Saran's case at page 856 of the Report:

> "We have no doubt that where the human region from which the alumni of an institution are largely drawn is backward, either from the angle of opportunities for technical education or availability of medical services for the people, the provision of a high ratio of reservation hardly militates against the equality mandate-viewed in the perspective of social justice."

This was precisely the ground on which, in the State of Uttar Pradesh v. P. Tandon this Court allowed reservation in medical admissions for people of the hill and Uttarakhand areas of the State of U.P. on the ground that those areas were socially and educationally backward. Similarly, the Andhra Pradesh High Court in Devi v. Kakatie Medical

College, held that preferential treatment of Telangana students in medical admissions was justified since

> "Kakatiya Medical College was started for the spread of medical education mainly for Telangana region. which is educationally backward in the State. If in view of this object, provision is made to cater to the educational needs mainly of that particular region, as it badly

979

> requires such assistance, it cannot be said that the object to be achieved has on relation to the classification made by giving larger representation to the Andhra region. The increase in the Telangana quota is consistent with and promotes and advances the object underlying the establishment of the institution."

We are however not concerned here with a case of reservation or preference for persons from a backward region within a State and we need not therefore dwell any longer upon it.

It will be noticed from the above discussion that though intra-state discrimination between persons resident in different districts or regions of a State has by an large been frowned upon by the court and struck down as invalid as in Minor P. Rajendran's case (supra) and Perukaruppan's case (supra), the Court has in D.N. Chanchalla's case and other similar cases up-held institutional reservation effected through university wise distribution of seats for admission to medical colleges. The Court has also by its decisions in D.P. Joshi's case and N. Vasundhara's case (supra) sustained the constitutional validity of reservation based on residence within a State for the purpose of admission to medical college. These decisions which all relate to admission to MBBS course are binding upon us and it is therefore not possible for us to hold, in the face of these decisions, that residence requirement in at State for admission to MBBS course is irrational and irrelevant and cannot be introduced as a condition for admission without violating the mandate of equality of opportunity contained in Article 14 We must proceed on the basis that at least so far as admission to MBBS course is concerned, residence requirement in a State can be introduced as a condition for admission to the MBBS course. It is of course true that the Medical Education Review Committee established by the Government of India has in its report recommended after taking into account all relevant considerations, that the "final objective should be to ensure that all admissions to the MBBS course should be open to candidates on an All India basis without the imposition of existing domiciliary condition," but having regard to the practical difficulties of transition to the stage where admissions to MBBS course in all medical colleges would be on All India Basis, the medical Education Review Committee has suggested "that to begin with not less than 25 per cent seats in each institution may be open to candidates on all India basis." We are not all sure whether at

980

the present stage it would be consistent with the mandate of equality in its broader dynamic sense to provide that admissions to the MBBS course in all medical colleges in the country should be on all India basis. Theoretically, of course, if admissions are given on the basis of all India national entrance examination, each individual would have equal opportunity of securing admission, but that would not take into account diverse consideration, such as, differing level of social, economic and educational development of

different regions, disparity in the number of seats available for admission to the MBBS course in different States, difficulties which may be experienced by students from one region who might in the competition on all India basis get admission to the MBBS course in another region far remote from their own and other allied factors. There can be no doubt that the policy of ensuring admissions to the MBBS course on all India basis is a highly desirable policy, based as it is on the postulate that India is one national and every citizen of India is entitled to have equal opportunity for education and advancement, but it is an ideal to be aimed at and it may not be realistically possible. in the present circumstances, to adopt it, for it cannot produce real equality of opportunity unless there is complete absence of disparities and inequalities a situation which simply does not exist in the country today. There are massive social and economic disparities and inequalities not only between the States and States but also between region and region within a state and even between citizens and citizens within the same region. There is a yawning gap between the rich and the poor and there are so many disabilities and injustices from which the poor suffer as a class that they cannot avail themselves of any opportunities which may in law be open to them. They do not have the social and material resources to take advantage of these opportunities which remain merely on paper recognised by law but non-existent in fact.

Students from backward States or regions will hardly be able to compete with those from advanced States or regions because, though possessing an intelligent mind, they would have had no adequate opportunities for development so as to be in a position to compete with others. So also students belonging to the weaker sections who have not, by reason of their socially or economically disadvantaged position, been able to secure education in good schools would be at a disadvantage compared to students

981

belonging to the affluent or well-to-do families who have had the best of school education and in open All India Competition, they would be likely to be worsted. There would also be a number of students who, if they do not get admission in a medical college near their residence and are assigned admission in a far off college in another State as a result of open All India competition, may not be able to go to such other college on account of leak of resources and facilities and in the result, they would be effectively deprived of a real opportunity for pursing the medical course even though on paper they would have got admission in a medical college. It would be tantamount to telling these students that they are given an opportunity of taking up the medical course, but if they cannot afford it by reason of the medical college to which they are admitted being far away in another State, it is their bad luck: the State cannot help it, because the State has done all that it could, namely, provide equal opportunity to all for medical education. But the question is whether the opportunity provided is real or illusory? We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from

the school system of the educational hinterland of the medical colleges in the State and for this purpose, there should be no distinction between schools affiliated to State Board and schools affiliated to the Central Board of Secondary Education, It would be constitutionally permissible to provide, as an interim measure until we reach the stage when we can consistently with the broad mandate of the rule of equality in the larger sense; ensure admissions to the M.B.B.S, course on the basis of national entrance examination an ideal which we must increasingly strive to reach for reservation of a certain percentage of seats in the medical colleges for students satisfying a prescribed residence requirement as also for students who have passed P.U.C. or pre-medical examination or any other qualifying examination held by the university or the State and for this purpose it should make no difference whether the qualifying examination is conducted by the State Board or by the Central Board of Secondary Education, because no discrimination can be made between schools affiliated

982

can be made between schools affiliated to the Central Board of Secondary Education. We may point out that at the close of the arguments we asked the learned Attorney General to inform the court as to what was the stand of the Government of India in the matter of such reservation and the learned Attorney General in response to the inquiry made by the Court filed a policy statement which contained the following formulation of the policy of the Government of India:

> "Central Government is generally opposed to the principle of reservation based on domicile or residence for admission to institution of higher education, whether professional or otherwise. In view of the territorially articulated nature of the system of institutions of higher learning including institutions of professional education, there is no objection, however, to stipulating reservation or preference for a reasonable quantum in under-graduate courses for students hailing from the school system of educational hinterland of the institutions. For this purpose, there should be no distinction between schools affiliated to CBSC."

We are glad to find that the policy of the Government of India in the matter of reservation based on residence requirement and institutional preference accords with the view taken by us in that behalf. We may point out that even if at some stage it is decided to regulate admissions to the M.B.B.S. course on the basis of All India Entrance Examination, some provision would have to be made for allocation of seats amongst the selected candidates on the basis of residence or institutional affiliation so as to take into account the aforementioned factors.

The only question which remains to be considered is as to what should be the extent of reservation based on residence requirement and institutional preference. There can be no doubt that such reservation cannot completely exclude admission of students from other universities and States on the basis of merit judged in open competition. Krishna Iyer, J. rightly remarked in Jagdish Saran's case (supra) at page 845 and 846 of the Report:

> "Reservation must-be kept in check by the demands

983

> of competence. You cannot extend the shelter of reservation where minimum qualifications are absent, Similarly, all the best talent cannot be completely excluded by wholesale reservation. So a certain

> percentage which may be available, must be kept open for meritorious performance regardless of university, State and the like. Complete exclusion of the rest of the country for the sake of a province, wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the alter of equalisation when the Constitution mandates for every one equality before and equal protection of the law-may be fatal folly, self-defeating educational technology and anti-national if made a routine rule of State policy. A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with the partial recognition of the presence of competitive merit-such is the dynamics of social justice which animates the three egalitarian articles of the Constitution."

We agree wholly with these observations made by the learned Judge and we unreservedly condemn wholesale reservation made by some of the State Governments on the basis of 'domicile' or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit. We declare such wholesale reservation to be unconstitutional and void as being in violation of Article 14 of the Constitution.

But, then to what extent can reservation based on residence requirement within the State or on institutional preference for students passing the qualifying examination held by the university or the state be regarded as constitutionally permissible? It is not possible to provide a categorical answer to this question for, as pointed out by the policy statement of Government of India, the extent of such reservation would depend on several factors including opportunities for professional education in that particular area, the extent of competition, level of educational development of the area and other relevant factors. It may be that in a State were

984

the level of educational development is woefully low, there are comparatively inadequate opportunities for training in the medical speciality and there is large scale social and economic backwardness, there may be justification for reservation of a higher percentage of seats in the medical colleges in the State and such higher percentage may not militate against "the equality mandate viewed in the perspective of social justice". So many variables depending on social and economic facts in the context of educational opportunities would enter into the determination of the question as to what in the case of any particular State, should be the limit of reservation based on residence requirement within the State or on institutional preference. But, in our opinion, such reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made. The Medical Education Review Committee has suggested that the outer limit should not exceed 75 per cent but we are the view that it would be fair and just to fix the outer limit at 70 per cent. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting claims of equality and excellence. We may make it clear that this outer limit fixed by us will be subject to any reduction or attenuation which may be made by the Indian Medical Council which is the statutory body of medical practitioners whose functional

obligations include setting standards for medical education and providing for its regulation and coordination. We are of the opinion that this outer limit fixed by us must gradually over the years be progressively reduced but that is a task which would have to be performed by the Indian Medical Council. We would direct the Indian Medical Council to consider within a period of nine months from today whether the outer limit of 70 per cent fixed by us needs to be reduced and if the Indian Medical Council determines a shorter outer limit, it will be binding on the States and the Union Territories. We would also direct the Indian Medical Council to subject the outer limit so fixed to reconsideration at the end of every three years but in no event should the outer limit exceed 70 per cent fixed by us. The result is that in any event at least 30 per cent of the open seats shall be available for admission of students on all India basis irrespective of the State or university from which they come and such admissions shall be granted purely on merit on the basis of either all India Entrance Examn. or entrance examination to be held by the State. Of
985
course, we need not add that even where reservation on the basis of residence requirement or institutional preference is made in accordance with the directions given in this judgment, admissions from the source or sources indicated by such reservation shall be based only on merit, because the object must be to select the best and most meritorious student from within such source or sources.

So much for admission to the M.B.B.S. course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to post graduate courses, such as, M.D., M.S. and the like. There we cannot allow excellence to be compromised by any other considerations because that would be deterimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Jagdish Saran's case, and we wholly endorse what he has said:

> "The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scale of speciality here the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph. D., M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss the considerations we have expended upon as important loss their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk."
>
> "If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks then another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less
986
at the lesser levels of education, jobs no disciplines of social inconsequence, but more at the higher levels

of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

"Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post graduate or post doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tune performance at the difficult highest of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting substandard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by over ruling equality and quality all together, is a social risk where the stage is post graduate or post-doctoral."

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and in deed that view has been so ably expressed in these passages that we do not think we can usefully

987

add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that playing with merit, so far as admissions to post graduate courses are concerned, for pampering local feeling, will boomeriang. We may with advantage reproduce the recommendation of the Indian Medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration:

"Student for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities."

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

"So far as admissions to the institutions of post-graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all

India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes."

We are therefore of the view that so far as admissions to post-graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to border considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical colleges or university but

988

such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the M.B.B.S. course. But, even in regard, to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis.

What we have said about in regard to admissions to the M.B.B.S. and post-graduate courses must apply equally in relation to admissions to the B.D.S. and M.D.S. courses. So far as admissions to the B.D.S. and M.D.S. courses are concerned, it will be the Indian Dental Council which is the statutory body of dental practitioners, which will have to carry out the directions given by us to the Indian Medical Council in regard to admissions to M.B.B.S. and post-graduate courses. The directions given by us to the Indian Medical Council may therefore be read as applicable mutatis mutandis to the Indian Dental Council so far as admissions to BDS and MDS courses are concerned.

The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and moreover we have reached this decision after giving notice to the Union of India and all he State Governments and Union Territories. We may point out that it is not necessary for us to give any further directions in these writ petitions in regard to the admissions of the petitioners in the writ petitions, because the academic term for which the admissions were sought has already expired and so far as concerns the petitioners who have already been provisionally admitted, we have directed that the provisional admissions given to them shall not be disturbed but they shall be treated as final admissions. The writ petitions and the civil appeal will accordingly stand disposed of in the above terms. There will be no order as to costs in the writ petitions and the civil appeal.

989

AMARENDRA NATH SEN, J. have had the advantage of reading the judgment of my learned brother, Bhagwati, J. I agree with the orders passed by my learned brother and also

the directions given by him. I, however, propose to indicates in brief my own reasons.

My learned brother in his judgment has referred to various aspects of national life and has very aptly emphasise on the need of Unity of India. My learned brother in his judgment has set out the relevant facts and circumstances and has also considered the relevant decisions on the question involved in the present proceedings.

Unity in diversity is the essential peculiarity of Indian culture and constitutes the basic philosophy of Indian nationality. It is also a fundamental tenet of our constitution which seeks to promote the unity while maintaining at the same time the distinctiveness of the various classes and kinds of people belonging to different States forming the Indian Nation. Equality in the eye of law is the fundamental postulates and is guaranteed under the Constitution. Each and every kind of discrimination is not in violation of the Constitutional concept of equality and does not necessarily undermine the Unity of India. The validity of any discrimination has to be tested on the touchstone of Art. 14 of the Constitution. Appropriate classification may in very many cases from the vary core of equality and promote unity in the true sense amidst diversity.

To my mind the questions involved in these proceedings lies within a short compass. The first question relates to reservation of seats for admission to Medical Colleges in any State on the basis of residence of the applicant in the State for such admission. Connected with this question is the question of institutionalised reservation of seats for admission to Medical Colleges. The other question raised is the question of reservation of seats on such considerations for admission to post-graduate medical courses.

The question of constitutional validity of reservation of seats within reasonable limits on the basis of residence and also the question of institutionalised reservation of seats clearly appear
990
to be concluded by various decisions of this Court, as has rightly pointed out by my learned brother in his judgment in which he has referred at length to these decisions. These decisions are binding on this Court and are to be followed. Constitutional validity of such reservations within the reasonable limit must, therefore, be upheld.

The real question is the question of the extent of the limit to which such reservations may be considered to be reasonable. The question of reasonableness of such reservations must necessarily be determined with reference to the facts and circumstances of particular cases and with reference to the situation prevailing at any given time. My learned brother in his judgment has elaborately and carefully considered these aspects. On a careful consideration of all the facts and circumstances and the materials placed, my learned brother has proposed appropriate orders and has given necessary directions in this regard. The orders passed by my learned brother and the directions given by him on a consideration of the materials on record and the earlier decisions of this Court will serve the cause of justice, meet the requirements of law and will not affect or undermine national unity. I am, therefore, in entire agreement with the orders passed and directions given by him in this regard.

On the question of admission to post-graduate medical courses I must confess that I have some misgivings in my mind as to the further classification made on the footings

of supper-specialities. Both my learned brothers, however, agree on this. Also in a broader perspective this classification my serve the interests of the nation better, though interests of individual States to a small extent may be affected. This distinction in case of super-specialities proceeds on the basis that in these very important spheres the criterion for selection should be merit only without institutionalised reservations or any reservation on the ground of residence. I also agree that the orders and directions proposed in regard to admission to MBBS and post-graduate courses are also to be read as applicable mutatis mutandis in relation to admission to BDS and MDS courses.

The problem of admission to medical colleges and the post graduate medical studies can only be properly and effectively solved by the setting up of more medical colleges and by increas-

991

ing the number of seats in such colleges to enable aspirants to have their aim of being qualified as medical practitioners and specialists in various subjects achieved. The same is also the position with regard to BDS and MDS courses. This aspect has been very appropriately noticed by my learned brother in his judgment.

ORDER

With these observations I agree with the orders passed and the directions given by my learned brother Bhagwati, J.

Some of the students seeking admission to the MBBS course in this academic year have made an application to this Court that the Judgment delivered on 22nd June, 1984 in the medical admission cases may be given effect to only from the next academic year, because admissions have already been made in the medical colleges attached to some of the Universities in the country prior to the delivery of the judgment on 22nd June, 1984 and moreover some time would be required for the purpose of achieving uniformity in the procedure relating to admissions in the various Universities. We accordingly issued notice on the application to the learned advocates who had appeared on behalf of the various parties at the hearing of the main writ petitions as also to the Attorney General and after hearing them, we have come to the conclusion and this is accepted by all parties that in view of the fact that all formalities for admission, including the holding of entrance examination, have been completed in some of the States prior to the judgment dated 22-6-1984 and also since some time would we required for making the necessary preparations for implementing the judgment, it is not practicable to give effect to the judgment from the present academic year and in fact compelling some States to give effect to the judgment from the present academic year when others have not, would result in producing inequality and if all the States were to be required to implement the judgment immediately, admissions already made would have to be cancelled and fresh entrance examinations would have to be held and this would require at least 2 or 2 1/2 months delaying the commencement of the academic term apart from causing immense hardship to the students. We therefore direct that the judgment shall be implemented with effect from the next academic year 1985-86. Whatever admissions, provisional or otherwise, have been made for the academic year 1984-85, shall not be disturbed on the basis of the judgment. We may make it clear that the judgment will not apply to the States of Andhra Pradesh and Jammu & Kashmir because at the

992

time of hearing of the main writ petitions, it was pointed

out to us by the learned advocates appearing on behalf of those States that there were special Constitutional provisions in regard to them which would need independent consideration by this Court.

This order will form part of the main judgment delivered on 22-6-1984,

H.S.K.

993