List of Dates and Events

26.01.1950 This Country became republic with the objective of securing to its citizens justice, liberty, equality and fraternity. Article 14 to 16 of Constitution of India provided to its citizens equality rights. Article 14 of the Constitution consists of two parts. It asks the State not to deny to any person equality before law. It also asks the State not to deny the equal protection of the laws. The concept of equal protection required the State to mete out differential treatment to persons in different situations in order to establish equilibrium amongst all. This is the basis of the rule that equals should be treated equally and unequals must be treated unequally if the doctrine of equality which is one of the corner-stone of our Constitution is to be duly implemented. In order to do justice amongst unequals, the State has to resort to compensatory or protective discrimination. Article 15 (4) & 16 (4) mentions about socially and educationally backward classes and other backward classes for which states have been empowered to make reservations in educational institutions and public employment.

01.01.1979 An Order made by the President of India, in the year 1979, under Article 340 of the Constitution, a Backward Class Commission was appointed to investigate the conditions of socially and educationally backward classes within the territory of India, which Commission is popularly known as Mandal Commission.

31.12.1980 Mandal Commission conducted detailed surveys and studies to identify backward classes in the country and prepared a

report dated 31.12.1980 about their conditions and made recommendations inter alia for providing 27% reservations in civil employment of the Central government for the people belonging to backward classes. The criteria adopted for identification of people of the backward classes was caste identified on the basis of its social, educational and economical backwardness.

07.09.1990 Justice (Retd) Gurnam Singh Commission was constituted by Haryana Government as per article 340 of the Constitution and its report was submitted on 30.12.1990. Report of this commission was challenged in Hon'ble Supreme Court. On 07.02.1994, Haryana Government gave a statement in Hon'ble Supreme Court that recommendation of the Gurnam Singh Commission and the Notification dt. 05.02.91 issued pursuant to the said recommendations **has not been acted upon and will not be acted upon**. In view of the said statement, these writ petitions were allowed to be withdrawn.

16.11.1992 Hon'ble Supreme Court of India vide its Judgment in **"Indra Sawhney Vs. Union of India reported as AIR 1993 SC 477, 1992 Supp 2 SCR 454"** by majority upheld the decision of the government of India to grant 27% reservation to the backward classes on caste basis as recommended by the Mandal Commission. In the said Judgment this Hon'ble Supreme Court further recommended for constitution of a permanent body in centre and States to deal with the requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of backward classes of citizens. A criterion adopted by Mandal Commission for identification of

other backward classes was approved by the Court in case Indira Sawhney (supra).

20.07.1995 Government of Haryana provided reservation to Backward Class Block –A and Backward Class Block-B as per recommendation of second Backward Class Commission.

24.01.2013 Five castes namely 1. Bishnoi 2. Jat 3. Jat Sikh 4. Ror 5. Tyagi residing in the Haryana State, were declared as Special Backward Classes & 10% reservation in jobs under Government/Government Undertaking and Local Bodies as well as in educational institutions has been given to them as **Special Backward Classes** on the report and recommendation dated 12.12.2012 of Jusitice (Retd) K. C. Gupta Commission**, in exclusion to the already notified 27% reservation provided to Backward Classes.**

23.9.2013 Another Notification vide which reservation to **Economically Backward persons** belonging to ***General Category*** *has been provided to the extent of :-*

i) ***10 percent*** *in jobs in Government, Government undertakings and in Local Bodies in direct recruitment to* ***Class III and Class IV posts****;*

ii) ***4 percent*** *in Jobs in Government, Government undertakings and in Local Bodies in direct recruitment to* ***Class I and Class II posts****;*

iii) ***10 percent*** *in admission in Government and Government aided educational institutions has been provided for***, in exclusion to the already notified 27% reservation provided to Backward Classes as well as** 10% reservation given to Special Backward class mentioned above.

10.10.2013 Community of Mulla Jats/Muslim Jats residing in the State included in the list of Special Backward Classes vides notification No.770 SW(1)-2013 increasing number of castes in Special Backward Class to Six.

10.02.2014 Notifications providing reservations to Special Backward Classes and Economically Backward Persons were challenged in this Hon'ble Court in **CWP-2441-2014 (PIL).**

26.02.2014 National Backward Class Commission (NCBC) rejected the request of Haryana Government for inclusion of Jats of Haryana in the Central List of Other Backward Classes vides its advice dated 26.02.2014 to Union of India stating that Jat community of Haryana is not socially and educationally backward. Justice (Retd) K. C. Gupta Commission report was also rejected by National Backward Class Commission in view of various irregularities and discrepancies.

04.03.2014 Central government, against the recommendation / advice of the NCBC, included Jat community in the central list of other backward classes for the states of Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, NCT of Delhi, Rajasthan (Bharatpur and Dholpur districts), Uttar Pradesh and Uttarakhand.

17.03.2015 Hon'ble Supreme Court of India set aside the notification dated 04.03.2014 issued by Government of India by which name of "JAT Caste" was included in Central List of OTHER BACKWARD CLASESS on the basis of K C Gupta Commission Report in the case titled as **"Ram Singh & Ors versus Union of India"**. Hon'ble Supreme Court also rejected Justice (Retd) K C Gupta Commission Report for the

reasons stated in its judgment dated 17.03.2015 & upheld the NCBC advice report dated 26.02.2014.

21.07.2015 Hon'ble Supreme Court of India dismissed the review petition of the Union of India against the judgment dated 17.03.2015 in case **Ram Singh & Ors (supra).**

27.07.2015 This Hon'ble High Court by a common order dated 27.07.2015 in CWP-9132-2015, CWP-2441-2014 (PIL) and other petitions restrained the State of Haryana to give any employment in the Government service and admission in educational institution to Castes belonging to SPECIAL BACKWARD CLASS relying the judgment of Hon'ble Supreme Court in case Ram Singh & Others (supra).

12.02.2016 Unlawful agitation, vandalism started in parts of Haryana State dominating Jat Community demanding reservation to Jat community again. Arson, looting and vandalism were committed by agitators. Innocent citizens were killed during this unlawful agitation and public & private properties worth many thousand crores were ablaze to fire by agitators. Government of Haryana for political reasons bowed down before unlawful demand of Jat community agitators and assured them grant of reservation again in state services and educational institutions by bringing a bill in assembly.

29.03.2016 Bill for Haryana Backward Classes Reservation in Services and Admissions in Educational Institutions) Act, 2016 {**herein after referred as Act, 2016 }** providing reservations to backwards classes of Haryana presented in Haryana assembly after approval from cabinet. It was passed in assembly at same time without any discussion. Act, 2016

provides reservation for Backwards classes of Block-A, Block-B under Schedule-I & II, and it has also included *Six castes of Special Backward Class castes in a different name,* **Backward Class Block-C (under Schedule-III)** without any socio-educational-economic data or new report of Backward Class Commission in relation to these Six castes even after order dated 27.07.2015 passed by this Hon'ble High Court in CWP-2441-2014 ; CWP-9132-2015 and other petitions by which State of Haryana has been restrained from providing reservation to these six castes under Special Backward Class notification. Providing of reservation to these six castes under Schedule-III in the name of Backward Classes Block-C is illegal and unconstitutional.

31.03.2016 Vide notification no. 365 SW (1)-2016 dated 31.03.2016 the Govt. of Haryana withdraws notification no. 59 SW (1)-2013, dated 24.01.2013 and notification no. 770 SW (1)-2013, dated 10.10.2013 vides which 10% reservation was being provided to Special Backward Classes (Jat, Jat Sikh, Ror, Bishnoi, Tyagi, Mulla Jat/Muslim Jat) in public services and educational institutions of Haryana.

.04.2016 Act 2016 received assent of Governor and came into force.

Hence the present petition.

Place: Chandigarh

Dated: .04.2016 (**Mukesh Kumar Verma**) **(Ganesh Kumar Sharma)**

Advocates

Counsels for the Petitioner

In the High Court for the States of Punjab and Haryana at Chandigarh.

C.W.P. No……….. of 2016

MEMO OF PARTIES

Murari Lal Gupta S/o Sh. Sri Kishan Tola, aged about 52 years Secretary, Sewa Samiti Bhiwani, R/o H. No. 2214, Sector-13, HUDA, Bhiwani .

………………Petitioner

Versus

1- State of Haryana through its Chief Secretary, Haryana Civil Secretariat, Chandigarh.

2- The Principal Secretary to Government Haryana, Welfare of Scheduled Castes and Backward Classes Department, Haryana Civil Secretariat, Chandigarh.

………Respondents

Place: Chandigarh

Dated: .04.2016 (**Mukesh Kumar Verma**) **(Ganesh Kumar Sharma)**

Advocates

Counsels for the Petitioner

Civil Writ Petition under article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in nature of certiorari for quashing the **Schedule-III** framed for providing reservation to "Backward classes Block-C" in **Haryana Backward Classes (Reservation in Services and Admissions in Educational Institutions) Act, 2016** (Referred hereinafter as 'Act 2016') **(*Annexure P-1) as*** being contrary to the **basic structure of the constitution,** ultra vires, contemptuous, arbitrary, null & void as by enacting the schedule III , the findings of facts have been reversed by the state legislature **which amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal and also amounts to over-ruling the Court verdict as held by the Hon'ble Supreme Court in** a catena of decisions starting from **Shri Prithvi Common Mills Limited and another v. Broach Barough Municipality and others, (1969) 2 SCC 283**, till the recent decision in State of **Tamil Nadu v. State of Kerala, AIR 2014 SC 2407**, popularly known as **Mullaperiyas Dam case** and then followed by the latest judgment in **S.T. Sadiq v. State of Kerala, 2015 (2) SCALE 69.** A final judgment, once rendered, operates and remains in force until altered by the court in an appropriate proceeding. A unilateral legislation nullifying a judgment is constitutionally impermissible. Enacting Schedule-III of Act 2016 on the basis of same Justice K. C. Gupta Commission Report, as in between 17.03.2015, when the judgment was rendered by Hon'ble Supreme Court in case Ram Singh &

Ors (supra), 27.07.2015 when the order was passed by this Hon'ble High Court in CWP-2441-2014, CWP-9132-2015 and 29.03.2016 when Act 2016 was passed by Haryana State legislature, **no new facts emerged nor there was any change in circumstances except occurrence of violent agitation and threat of repetition of more violent agitation**. **Haryana Government and Haryana State Legislature did not have a single piece of information of fact before it concerning backwardness of six castes mentioned in Schedule-III of Act 2016 or any other matter or material contradicting or even doubting the finding of fact of the Hon'ble Supreme Court judgment dated 17.03.2015. Under such circumstances,** legislative exercise of enacting Schedule-III of Act 2016 amounts to sitting over the decision of the Court as an Appellate Authority and consequently amounts to over-ruling the Court verdict given in Ram Singh Case. The said action not only is contrary to the **basic structure of the constitution**, but also is in violation of Article 15 (4) & 16 (4) of Constitution of India; **"Indira Sawhney (supra)"** and order dated 27.07.2015 passed by this Hon'ble High Court in CWP-2441-2014 (PIL), CWP-9132-2015 etc by which Six castes, 1. Jat, 2. Jat Sikh, 3. Ror, 4. Bishnoi, 5. Tyagi, 6. Mulla Jat/Muslim Jat residing in the Haryana State has been declared as **Backward Classes Block "C"** without any valid report/recommendation of backward class commission & 10% reservation in jobs under Government/Government Undertaking and Local Bodies as well as in educational institutions, 6% in Class I and II posts

has been given to them, in exclusion to the already notified 27% reservation provided to Backward Classes (Block-A & B) & 10% to Economically Backward Persons**, resulting into exceeding the ceiling limit of 50% imposed by Hon'ble Supreme Court in case Indira Sawhney versus Union of India and** as such Schedule-III of Act 2016 is liable tobe quashed/struck down.

And

Issuance of an appropriate writ, order or direction to struck off/delete the provision of "Schedule-III" reservation in name of Backward Classes Block-C from Act 2016 and to alter **{Section 2(b), Schedule of Classes}** and other parts of the 'Act 2016' to incorporate the results of striking off/deletion of ***"Schedule-III" and name of "Backward Classes Block-C"*** as if Schedule-III was not added in Act 2016.

And

It is further prayed that during the pendency of the present writ petition, the operation and effect of aforesaid provisions of providing reservation to aforementioned Six castes/classes under **"Schedule-III/ Backward Classes Block -C"** of 'the act, 2016', which is infringing the Fundamental Rights of the petitioner and the public at large as enshrined in Articles 14, 15, 15(4), 16 & 16 (4) of the Constitution of India and is against judgment given by Hon'ble Supreme Court of India & this Hon'ble High Court, may kindly be stayed with immediate effect till the disposal of writ petition, in the interest of justice.

And/OR

Further for the issuance of such other appropriate order as this Hon'ble court may deem fit and proper in the facts and circumstances of the case and in the interest of justice and fair play.

Most respectfully showeth:-

1. That the petitioner is a citizen of India and is competent to invoke the extra-ordinary writ jurisdiction under Article 226/227 of the constitution of India. Petitioner is a social activist and also had filed various Public Interest Litigations bearing CWP no. 24988/2012 (Muarai Lal Gupta Versus Union of India & Ors), CWP No. 22353/2013 (Muarai Lal Gupta Versus Union of India & Ors), & CWP-2441-2014 (Murari Lal Gupta Versus State of Haryana & Ors), CWP-3564-2016 (Murari Lal Gupta Versus State of Haryana & Ors) before this Hon'ble High Court raising the issue of illegal broadcasting/telecasting of unauthorized programmes on illegally run channels in violation of The Cable Television Networks (Regulation)Act, 1995 and the rules framed there under; law and order implementation, and reservation in violation of law laid down by Hon'ble Supreme Court of India. Petitioner also has taken up the issue of corruption in various Haryana Government offices in public interest and is an RTI Activist also. Petitioner have own business of commission agent in Bhiwani and has no private interest in the issues raised in writ petitions, however, larger public interest is involved in it. As the **Schedule-III** for providing reservation to "Backward classes Block-C" in **Haryana Backward Classes (Reservation in Services and Admissions in Educational Institutions) Act, 2016** (Referred hereinafter as 'Act 2016') has illegally been enacted **over-ruling the final and binding Court verdict**, therefore, in view of law

laid down below by the Hon'ble Supreme Court in "**Indra Sawhney Vs. Union of India reported as AIR 1993 SC 477, 1992 Supp 2 SCR 454"**, the petitioner is entitled to challenge the said **Schedule-III which is reproduced as under:-**

> *89. Not only should a class be a backward class for meriting reservations, it should also be inadequately represented in the services under the State. The language of Clause (4) makes it clear that the question* ***whether a backward class of citizens is not adequately represented in the services under the State is a matter within the subjective satisfaction of the State. This is evident from the fact that the said requirement is preceded by the words "in the opinion of the State". This*** *opinion can be formed by the State on its own, i.e., on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is, there must be some material upon which the opinion is formed. Indeed, in this matter the court should show due deference to the opinion of the State, which in the present context means the executive.* ***The executive is supposed to know the existing conditions in the society, drawn as it is from among the representatives of the people in Parliament/Legislature****. It does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within subjective satisfaction of the executive are well and extensively stated in Barium Chemicals v. Company Law Board, which need not be repeated here."*
>
> ***"Any citizen has a right to challenge and court has obligation to strike it down by directing exclusion of such group from the***

backward class. Inadequacy provides jurisdiction not only for exercise of power but its continuance as well. If that itself ceases to exist the power cannot be continued to be exercised. Where power is coupled with duty the condition precedent must exist for valid exercise of power. Mere identification of collectivity or group by a Commission cannot clothe the government to exercise the power unless it further undertakes the exercise of determining if such group or collectivity is adequately or inadequately represented. The exercise is mandatory not in the larger sense alone but in the narrower sense as well".

2. That hence, the petitioner herein challenges legality and validity of **Schedule-III** incorporated in "***Haryana Backward Classes (Reservation in Services and Admissions in Educational Institutions) Act, 2016 (Annexure P-1)" by which*** reservations to Six castes 1. Jat, 2. Jat Sikh, 3. Ror, 4. Bishnoi, 5. Tyagi, 6. Mulla Jat/Muslim Jat has been provided by declaring them as Backward Classes Block-C. This reservation provided to Backward classes Block-C is without any valid lawful basis and creation of Schedule-III in Act 2016 is ultra vires, unconstitutional, contemptuous and is in violation of judgment given by Hon'ble Supreme Court of India on 17.03.2015 in case **"Ram Singh & Ors Versus Union of India**", **"Indira Sawhney (supra)"** and order dated 27.07.2015 passed by this Hon'ble High Court in CWP-2441-2014 (PIL), CWP-9132-2015 etc. As per schedule-III of 'the act, 2016', Six castes namely, 1. Jat, 2. Jat Sikh, 3. Ror, 4. Bishnoi, 5. Tyagi, 6. Mulla Jat/Muslim Jat residing in the Haryana State has been declared as **Backward Class Block "C"** & 10% reservation in jobs under Government/Government Undertaking and Local Bodies as well as in educational institutions, 6% in Class I and II posts has been given to

these six castes in exclusion to the already notified 27% reservation provided to Backward Classes (Block-A & B) & 10% to Economically Backward Persons**, resulting into exceeding the ceiling limit of 50% imposed by Hon'ble Supreme Court in case Indira Sawhney (supra).**

It is pertinent to mention here that State of Haryana vides its notification no. 59 SW(1)-2013 dated 24th January 2013 (Annexure P-4) & another Notification *No.-733SW(1)-2013T dated 10.10.2013 (Annexure P-5)* had also declared six classes/castes namely 1. Bishnoi 2. Jat 3. Jat Sikh 4. Ror 5. Tyagi, 6. Mulla Jats/Muslim Jats residing in the Haryana State as **Special Backward Classes** & 10% reservation in jobs under Government/Government Undertaking and Local Bodies as well as in educational institutions and 4% in Class I & II posts was provided from to them as Special Backward Classes. Reservation provided to these Six castes under special backward class was stayed by this Hon'ble High Court vide order dated 27.07.2015 in CWP-9132-2015 (Annexure P-11) and CWP-2441-2014 (PIL) (Annexure P-12) etc. Petitioner is also petitioner no. 1 in CWP-2441-2014 (PIL) which is now on regular board at serial no. 902.

3. That the facts relevant for the present petition are that in the year 1980, a commission headed by Shri B.P. Mandal, commonly known as Mandal Commission was appointed in terms of article 340 of the Constitution of India to investigate into the conditions of socially and educationally backward classes in India and to make recommendations as to what steps should be taken by the Union and state governments to improve their conditions.

Further to its appointment, the Mandal Commission conducted detailed surveys and studies to identify backward classes in the country and prepared a report dated 31.12.1980 about their conditions and made recommendations inter-alia for providing 27% reservations in civil employment of the Central government for the people belonging to backward classes. The criteria adopted for identification of people of the backward classes was caste identified on the basis of its social, educational and economical backwardness.

On 13.08.1990 the government of India published a memorandum whereby it decided to give 27% reservation to backward classes identified as per recommendation of the Mandal Commission on caste basis. The said decision of the government along with Memorandum dated 25.09.1991 was challenged before Hon'ble Supreme Court of India, where Hon'ble Supreme Court of India vide its Judgment dated 16.11.1992 in "**Indra Sawhney Vs. Union of India reported as AIR 1993 SC 477, 1992 Supp 2 SCR 454"** by majority upheld the decision of the government of India to grant 27% reservation to the backward classes on caste basis as recommended by the Mandal Commission. In the said Judgment Hon'ble Supreme Court further recommended for constitution of a permanent body to deal with requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of backward classes of citizens.

4. That on 07.09.1990 Justice (Retd) Gurnam Singh Commission was constituted by Haryana Government as per article 340 of constitution for identification of backward classes in Haryana and its report was submitted to Government on 30.12.1990. Report of this commission was challenged before Hon'ble Supreme Court of India. On 07.02.1994, Haryana

Government gave a statement in Hon'ble Supreme Court that recommendation of the Gurnam Singh Commission and the Notification dt. 05.02.91 issued pursuant to the said recommendations has not been acted upon and will not be acted upon. In view of the said statement, these writ petitions were allowed to be withdrawn by Hon'ble Supreme Court. True copy of record of proceedings dated 07.02.1994 in Hon'ble Supreme Court of India is attached hereto as **Annexure P-2.**

On 20.07.1995, on the basis of recommendations of Haryana Second Backward Classes Commission and other considerations, Government of Haryana notified Ahir/Yadav, Meo, Saini, Gujjar and Lodh/Lodha communities as Backward Classes- B and gave 11% reservation to them, while giving 16% reservation to 71 castes/communities mentioned in Block- A.

5. That on 08.04.2011, Haryana Government issued notification No. 311 SW (2) for reconstitution of new Backward Class Commission in Haryana as follows:

" The Governor of Haryana hereby reconstitutes the Haryana Backward Classes Commission for entertaining, examining and recommending upon receiving requests of Jats, Jat Sikhs, Rors, Tyagis, and Bishnois or any other caste(s) for inclusion in the list of Other Backward Classes of the State, from time-to-time, and hear complaints of over-inclusion or under-inclusion of any Backward Classes in such a list."

"i) Justice K.C.Gupta (Retd.) Chairman
Punjab & Haryana High Court 61,
Sector 9, Panchkula.

ii) Shri Jai Singh Bishnoi Member

 # 487, Krishna Nagar, Hisar.

iii) Shri Som Dutt, Advocate Member

 # 607, Sector 13, Urban Estate, Kurukshetra.

Above commission known as Justice K. C. Gupta Commission tendered its report and recommendations to Haryana Government on 12.12.2012. This Commission recommended 10% reservation in public employment and educational institutions to five castes namely 1. Jat, 2. Jat Sikhs, 3. Bishnoi, 4. Ror, 5. Tyagi in additional to 27% reservations being given to Block-A, Blok-B backward classes of Haryana by declaring these five castes as Special Backward Classes. Report of Justice K. C. Gupta Commission is attached hereto as **Annexure P-3.**

6. That as per the report and recommendation of Justice K. C. Gupta Commission, respondents issued the notification no. 59 SW(1)-2013 dated 24th January 2013 vide which five classes of peoples namely 1. Bishnoi 2. Jat 3. Jat Sikh 4. Ror 5. Tyagi residing in the Haryana State, have been declared as Special Backward Classes & 10% reservation in jobs under Government/Government Undertaking and Local Bodies as well as in educational institutions has been given to them as Special Backward Classes. The true copy of the notification dated 24.1.2013 is annexed herewith as **Annexure P-4**. Community of Mulla Jats/Muslim Jats residing in the State of Haryana were included in the list of Special Backward Classes vides notification No.770 SW(1)-2013 dated 10.10.2013 increasing number of castes in Special Backward Class category to Six. Copy of notification dated 10.10.2013 is attached hereto as **Annexure P-5.**

On 23.9.2013 , the respondents have issued another Notification ***No.-733SW(1)-2013T*** vide which reservation to ***economically Backward persons*** belonging to ***General Category*** *has been provided to the extent of :-*

i) ***10 percent*** *in jobs in Government, Government undertakings and in Local Bodies in direct recruitment to* ***Class III and Class IV posts****;*

ii) ***4 percent*** *in Jobs in Government, Government undertakings and in Local Bodies in direct recruitment to* ***Class I and Class II posts****;*

iii) ***10 percent*** *in admission in Government and Government aided educational institutions has been provided for.*

The true copy of the notification dated 23.9.2013 is annexed herewith as **Annexure P-6**.

7. That the reservations provided under notifications Annexure P-3, P-4 & P-5 were challenged in this Hon'ble High Court in PIL bearing CWP-2441-2014. True Copy of amended writ petition of CWP-2441-2014 (PIL) alongwith written statement of the state of Haryana is attached hereto as **Annexure P-7(colly).**

During the pendency of CWP-2441-2014 (PIL) in this Hon'ble High Court, a case for inclusion of "Jat Community" of Haryana in Central List of Other Backward Classes was rejected by National Commission of Backward Classes (NCBC) vides its report dated 26.02.2014. National Backward Class Commission in its report stated that "Jat community" of Haryana is not socially and educationally backward community. National

Backward Class Commission also rejected the Justice K. C. Gupta Commission Report in view of various irregularities and discrepancies in it. Report dated 26.02.2014 of National Backward Class Commission is attached hereto as **Annexure P-8.**

On 04.03.2014, Government of India included the "Jat" community of Haryana and 8 other states in Central List of Other Backward Classes against the advice and report of National Backward Class Commission dated 26.02.2014. Government of India included "Jat" community of Haryana in central list of OBC against the advice of NCBC by relying Justice K. C. Gupta Commission Report. This inclusion of "Jat community" of Haryana and other 8 states in Central List of OBC was challenged in Hon'ble Supreme Court of India by various organizations and individuals. On 17.03.2015, Hon'ble Supreme Court of India set aside the notification of Government of India regarding inclusion of Jat community of 9 states in Central List of Other Backward Classes and upheld the report dated 26.02.2014 of National Backward Class Commission. Judgment dated 17.03.2015 of Hon'ble Supreme Court of India in case titled, **"Ram Singh & Ors Verus Union of India"** is attached hereto as **Annexure P-9.** Review petitions against judgment dated 17.03.2015 of Hon'ble Supreme Court of India in case Ram Singh & Ors (supra) were filed by Union of India and other effected parties and same were dismissed by Hon'ble Supreme Court of India vide order dated 21.07.2015, copy of which is attached hereto as **Annexure P-10.**

After the dismissal of review petition against judgment of Ram Singh & Ors (supra) by Hon'ble Supreme Court of India, this Hon'ble High Court restrained State of Haryana from providing reservations to Special

Backward Classes vides notification Annexure P-4 vide its order dated 27.07.2015 in CWP-9132-2015, CWP-2441-2014 (PIL) and connected petitions. Copy of order dated 27.07.2015 in CWP-9132-2015 and CWP-2441-2014 are attached hereto as **Annexure P-11 & P-12.** Order dated 27.07.2015 in CWP-9132-2015 is being reproduced as follow:

"CWP No.9132 of 2015

Ved Prakash and another

Vs.

State of Haryana and others

Present: Mr. R.K. Chopra, Sr. Advocate with

Mr. Pawan Kumar, Advocate for the petitioners.

Mr. Baldev Raj Mahajan, Advocate General, Haryana with Mr. Lokesh Sinhal, Addl. A.G., Haryana.

Mr. Rajiv Atma Ram, Senior Advocate with

Mr. Sube Sharma, Advocate for respondent No.3.

****

Written statement has been filed on behalf of respondents No. 1 and 2 in Court today. The same is taken on record and a copy thereof has been supplied to learned counsel for the petitioners.

We have heard learned counsel for the parties on the prayer of staying the operation of the impugned notifications dated 24.01.2013 (Annexure P-2) and 28.02.2013 (Annexure P-3).

Undisputedly, the impugned reservation in favour of five classes of people, namely Bishnoi, Jat, Jat-Sikh, Ror and Tyagi residing in Haryana State has been made by the State of Haryana on the basis of Justice K.C. Gupta Commission's report. The said report was not accepted by Hon'ble the Supreme Court while giving judgment in Ram Singh and others

Vs. Union of India, 2015(3) Scale 570, whereby reservation of Jat community in the Central List of Other Backward Classes, has been set aside.

Keeping in view the said judgment and the fact that Justice K.C. Gupta Commission's report, on the basis of which the impugned reservation has been made by the State of Haryana, was not accepted, and also keeping in view the dismissal of review application by the Supreme Court, we restrain the State of Haryana to give any employment in the Government service and admission in educational institution on the basis of the impugned notifications.

Admitted.

To be listed for regular hearing within one year.

(SATISH KUMAR MITTAL)
JUDGE
(HARINDER SINGH SIDHU)
JUDGE
27.07.2015"

8. That after setting aside of reservation to Jat Community in Centre by Hon'ble Supreme Court of India and passing of stay order by this Hon'ble High Court against reservation to Special Backward Classes in Haryana, leaders and people of Jat community demanded reservation for their community by unconstitutional procedures and threatened government of agitations and movements. On 12.02.2016, unlawful agitations were started by "JAT" community in Haryana at Mayyar (Hisar) in Haryana by blocking railway tracks and its took a dreadful shape later on view occurrence of large scale arson, vandalism and looting by protestors/agitators in the name of agitation for "Jat Reservation". By 23rd February 2015, public and private

properties worth many thousand crores were burnt and destroyed by agitators in various parts of Haryana dominated by Jat community. Many innocent citizens were killed during this bloody and violent agitation and many agitators were killed by firing of military and paramilitary forces to control the situation and to maintain law and order. State government machinery was failed in all manners and military was called in state to bring the situation in control. Roads and railway tracks at many places in state were blockaded by agitators and protestors. More than 500 shops, petrol pumps, schools, shopping malls, car showrooms, banks and houses of public were looted and vandalized by agitators. Even the MUNAK CANAL supplying water to Delhi was taken over by agitators and same was damaged by protestors/miscreants. Military also was also having a tough time to control these agitators/miscreants of Jat Reservation Movement. Finally under pressure of Jat agitators, a meeting of Jat leaders running agitation was convened in Delhi with representative of State Government and Home Minister of India and unlawful demand of reservation was accepted by Government. Photos of various cities of Haryana describing arson, vandalism, damages and situations of public is being attached as **Annexure P-13 (colly).**

9. That due to aforementioned unlawful and violent agitations, unlawful pressure of "Jat Community", under influence of Jat leaders and "Jat" community and vested political interest, cabinet of Government of Haryana approved a bill for enacting of Act 2016 with unconstitutional provisions of Schedule-III in it by concealing the all the previous and pending proceedings/litigations occurred in relation to reservation given to Six castes of Schedule-III of Act 2016.

On 29.03.2016, Bill No. 15-HLA of 2016 named, "THE HARYANA BACKWARD CLASSES (RESERVATION IN SERVICES AND ADMISSION IN EDUCATIONAL INSTITUTIONS) BILL, 2016 containing aforementioned unconstitutional provisions was presented in assembly and was passed by assembly **without having any discussion on it** under pressure and threat of "Jat" community, their leaders and for vest political interest of politicians.

It is pertinent to mention here that only after passing of the bill for Act 2016, notification no. 59 SW (1)-2013, dated 24.01.2013 (Annexure P-4) and notification no. 770 SW (1)-2013, dated 10.10.2013 (Annexure P-5) vides which 10% reservation was being provided to Special Backward Classes (Jat, Jat Sikh, Ror, Bishnoi, Tyagi, Mulla Jat/Muslim Jat) in public services and educational institutions of Haryana **were withdrawn** by respondent no. 2 vide notification no. 365 SW(1)-2016 dated 31.03.2016. Copy of letter no. 22/149/2015/-1GSIII dated 01.04.2016 issued from office of respondent no. 1 in this regard is attached hereto as **Annexure P-14.**

Hon'ble Governor of Haryana approved and gave his assent to the bill and "Haryana Backward Classes (Reservation in Services and Admissions in Educational Institutions) Act, 2016 came into force on .

10. That the **Schedule-III** enacted for providing reservation to "Backward classes Block-C" in **Haryana Backward Classes (Reservation in Services and Admissions in Educational Institutions) Act, 2016** (Referred hereinafter as 'Act 2016') **(*Annexure P-1)*** is ultra vires, unconstitutional, contemptuous, arbitrary, null & void and is in violation of Article 15 (4) & 16 (4) of Constitution of India; Judgment given by

Hon'ble Supreme Court of India on 17.03.2015 in case **"Ram Singh & Ors Versus Union of India**"; **"Indira Sawhney (supra)"** and order dated 27.07.2015 passed by this Hon'ble High Court in CWP-2441-2014 (PIL), CWP-9132-2015 etc inter-alia on the following grounds:-

a) That the Hon'ble Supreme in "Ram Singh & Ors case" has rendered a finding of fact on the "Jat Caste" and "Justice K. C. Gupta Commission Report" that "Jat Caste" is not a socially and educationally backward community and Justice K. C. Gupta Commission Report can not be accepted for the reasons explained in NCBC Report dated 26.02.2014. The relevant paras of Ram Singh case are reproduced as under for kind consideration of this Hon'ble court:-

> *"10. on conclusion of the public hearings, which appear to have received what may at best be termed as a mixed response,* ***the NCBC submitted its advice/opinion/report dated 26.02.2014 to the Central Government stating that*** *the Jat Community had not fulfilled the criteria for inclusion in the Central List of OBCs. It observed that merely belonging to an agricultural community cannot confer* ***backward status*** *on the Jats. It suggested the need for a non-caste based identification of backward classes.* ***The NCBC found that the Jats were not socially backward****.* ***They were also not educationally backward. It similarly rejected the claim of inadequate representation in public employment, finding them adequately represented in armed forces, government services and educational institutions****.*

51. A very fundamental and basic test to determine the authority of the Government's decision in the matter would be to assume the advice of the NCBC against the inclusion of the Jats in the Central List of Other Backward Classes to be wrong and thereafter by examining, in that light, whether the decision of the Union Government to the contrary would pass the required scrutiny. Proceeding on that basis what is clear is that ***save and except the State Commission Report in the case of Haryana (Justice K.C. Gupta Commission Report) which was submitted in the year 2012,*** *all the other reports as well as the literature on the subject would be at least a decade old. The necessary data on which the exercise has to be made, as already observed by us, has to be contemporaneous.* ***Outdated statistics cannot provide accurate parameters for measuring backwardness for the purpose of inclusion in the list of Other Backward Classes****. This is because one may legitimately presume progressive advancement of all citizens on every front i.e. social, economic and education. Any other view would amount to retrograde governance. Yet, surprisingly the facts that stare at us indicate a governmental affirmation of such negative governance inasmuch as decade old decisions not to treat the Jats as backward, arrived at on due consideration of the existing ground realities, have been reopened, inspite of perceptible all round development of the nation. This is the basic fallacy inherent in the impugned governmental decision that has been challenged in the present proceedings. The percentage of the OBC population estimated at "not less than*

52%" (Indra Sawhney) certainly must have gone up considerably as over the last two decades there has been only inclusions in the Central as well as State OBC Lists and hardly any exclusion therefrom. This is certainly not what has been envisaged in our Constitutional Scheme.

52. In so far as the contemporaneous report for the State of Haryana is concerned, the discussion that has preceded indicate adequate and good reasons for the view taken by the NCBC in respect of the said Report and <u>not to accept the findings contained therein</u>. The same would hardly require any further reiteration.

54. The perception of a self-proclaimed socially backward class of citizens or even the perception of the "advanced classes" as to the social status of the "less fortunates" cannot continue to be a constitutionally permissible yardstick for determination of backwardness, both in the context of Articles 15(4) and 16(4) of the Constitution. Neither can any longer backwardness be a matter of determination on the basis of mathematical formulae evolved by taking into account social, economic and educational indicators. Determination of backwardness must also cease to be relative; possible wrong inclusions cannot be the basis for further inclusions but the gates would be opened only to permit entry of the most distressed. Any other inclusion would be a serious abdication of the constitutional duty of the State. Judged by the aforesaid standards we must hold ***that inclusion of the politically organized classes (such as Jats) in the list of backward classes mainly, if not solely, on the basis that on same***

parameters other groups who have fared better have been so included cannot be affirmed.

55. For the various reasons indicated above, we cannot agree with the view taken by the Union Government that Jats in the 9 (nine) States in question is a backward community so as to be entitled to inclusion in the Central Lists of Other Backward Classes for the States concerned. The view taken by the NCBC to the contrary is adequately supported by good and acceptable reasons which furnished a sound and reasonable basis for further consequential action on the part of the Union Government. In the above situation we cannot hold the notification dated 4.3.2014 to be justified. Accordingly the aforesaid notification bearing No. 63 dated 4.3.2014 including the Jats in the Central List of Other Backward Classes for the States of Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, NCT of Delhi, Bharatpur and Dholpur Districts of Rajasthan, Uttar Pradesh and Uttarakhand is set aside and quashed. The writ petitions are accordingly allowed

From the conclusions of the Hon'ble Supreme court, it is clear that two findings of facts have been rendered, one on the "Jat Caste" and another on "Justice K. C. Gupta Commission Report" that "Jat Caste" is not a socially and educationally backward community and Justice K. C. Gupta Commission Report can not be accepted. Review petition has also been dismissed vide order dated 21.07.2015 by the Hon'ble Supreme court. The said findings of facts are now final and binding on the state of Haryana as well as on the Haryana legislature. The said findings of facts can be changed/reversed only

by the Hon'ble Supreme Court in appropriate proceedings. By enactment of Schedule III, the said findings of facts have been reversed by the state legislature **which amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal.** A final judgment, once rendered, operates and remains in force until altered by the court in an appropriate proceeding. A unilateral legislation nullifying a judgment is constitutionally impermissible. Enacting Schedule-III of Act 2016 on the basis of same Justice K. C. Gupta Commission Report and more than 20 years old reports contrary to above judgment is nothing, but to nullify the judgment of Hon'ble Supreme Court and order dated 27.07.2015 of this Hon'ble High Court in CWP-2441-2014, CWP-9132-2015. The settled legal positions governing the present controversy are reproduced as under:-

> **S.R. Bhagwat v. The State of Mysore, (SC) 1995(Sup3) SCR 545**
>
> "11. Having given our anxious consideration to rival contentions we have reached the conclusion that the impugned provision of the Act, namely, Section 11 Sub-section (2) is clearly **ultra vires the powers of the State Legislature as it encroaches upon the judicial field and tries to over-rule the judicial decision binding between the parties and consequently the relevant sub-sections of section 4 which are also in challenge will have to be read down as indicated hereinafter in this judgment**. Before we advert to the relevant provisions of the impugned Karnataka Act it will be appropriate to keep in view the **settled legal position governing the present controversy.**

12. It is now well settled by a catena of decisions of this Court that **a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance over-rules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect**. We may only refer to **two of these judgments**.

17. xxxxxx

A mere look at sub-section (2) of Section 11 shows that the respondent, State of Karnataka, which was a party to the decision of the Division Bench of the High Court against **it had tried to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decrees and orders of any court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of sub-section (2) of Section 11. Such an attempt cannot be said to be a permissible legislative exercise. Section 11(2), therefore, must be held to be an attempt on the part of the State Legislature to legislatively over-rule binding decisions of competent courts against the State.** It is no doubt true that if any decision was rendered against the State of Karnataka which was pending in appeal and had not become final it could reply upon the relevant provisions of the Act which were given retrospective effect

by sub-section (2) of Section 11 of the Act for whatever such reliance was worth. But when such a decision had become final as in the present case when the High Court clearly directed respondent-State to give to the concerned petitioners deemed dates of promotions if they were otherwise found fit and in that eventuality to give all benefits consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment. **Once this decision had become final and the State of Karnataka had not thought it fit to challenge it before this Court presumably because in identical other matters this Court had upheld other decisions of the Karnataka High Court taking the same view, it passes one's comprehension how the legislative power can be pressed in service to undo binding effects of such mandamus. It is also pertinent to note that not only sub-section (2) of Section 11 seeks to bypass and over-ride the binding effect of the judgments but also seeks to empower the State to review such judgments and orders and pass fresh orders in accordance with provisions of the impugned Act. The respondent-State in the present case by enacting sub-section (2) of Section 11 of the impugned Act has clearly sought to nullify or abrogate the binding decision of the High Court and has encroached upon the judicial power entrusted to the various authorities functioning under the relevant statutes and the Constitution. Such an exercise of legislative power cannot be countenanced.**

G.C. Kanungo v. State of Orissa, JT 1995(4) SC 589

Similar views have been given in the case of **G.C. Kanungo v. State of Orissa, JT 1995(4) SC 589** by the Supreme Court speaking through Venkatachala, J., while considering the validity of Arbitration (Orissa Second Amendment) Act, 1991 which sought to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by the Act itself. Striking down the provisions as ultra vires and illegal Venkatachala, J., made the following observations in paragraph 28 of the Report:

> "Thus, the impugned 1991 Amendment Act seeks to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by that Act itself. **When, the awards** made under the 1984 Amendment Act by the Special Arbitration Tribunals in exercise of the State judicial power conferred upon them which cannot be regarded as those merged in rules of Court or judgments and decrees of Courts, **are sought to be nullified by 1991 Amendment Act**, it **admits of no doubt that legislative power of the State legislature is used by enacting impugned 1991 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, a judicial power.** [See Re: Cauvery Water Disputes Tribunals (1991) Supp. 2 SCR 497. From this, it follows that **the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of a basic**

feature of the Constitution - the Rule of Law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, **we have no option but to declare it as unconstitutional having regard to the well settled and undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it, but judicial power exercised by it encroaching upon the judicial power of the State vested in a judicial Tribunal as the Special Arbitration Tribunals under 1984 Amendment Act**. Moreover, where the arbitral awards sought to be nullified under the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under 1984 Amendment Act to decide arbitral disputes to which State was a party, it cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation."

S.T. Sadiq v. State of Kerala (S.C.) 2015(2) Scale 69

"12. It is settled law by a catena of decisions of this Court that the legislature cannot directly annul a judgment of a court. The

legislative function consists in "making" law [see: Article 245 of the Constitution] and not in "declaring" what the law shall be [see: Article 141 of the Constitution]. If the legislature were at liberty to annul judgments of courts, the ghost of bills of attainder will revisit us to enable legislatures to pass legislative judgments on matters which are inter-parties. Interestingly, in England, the last such bill of attainder passing a legislative judgment against a man called Fenwick was passed as far back as in 1696. A century later, the US Constitution expressly outlawed bills of attainder [see: Article 1 Section 9].

It is for this reason that our Constitution permits a legislature to make laws retrospectively which may alter the law as it stood when a decision was arrived at. It is in this limited circumstance that a legislature may alter the very basis of a decision given by a court, and if an appeal or other proceeding be pending, enable the Court to apply the law retrospectively so made which would then change the very basis of the earlier decision so that it would no longer hold good. However, if such is not the case then legislation which trenches upon the judicial power must necessarily be declared to be unconstitutional.

b) That it is also settled that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. The said law has been laid down by the Constitution Bench of Hon'ble Supreme Court in the

case of **Cauvery Water Disputes Tribunal 1993 Supp.(1) SCC 96 (II) i**n paragraph 76 in the following words as under:-

> "The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. **Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal**."

Similar views have been expressed by the Hon'ble Division Bench of this Hon'ble High Court in **Charanjit Singh v. State of Punjab (P&H)(D.B.) :2015(3) S.C.T. 699 in the following words as under:-**

> "There is no gain saying that under the separation of power doctrine under our Constitution, the competent Legislature possesses the Legislative **power to cure the defect or remove the lacuna in law** (which includes subordinate legislation or an executive decision carrying force of law) and **in this process, the judgment of the Court can be rendered ineffective. Such a legislative exercise does not amount to sitting over the decision of the Court as an Appellate Authority nor it amounts to over-ruling the Court verdict**."

Here views expressed by the Hon'ble Supreme Court in **State of Tamil Nadu v. State of Kerala (SC): 2014(6) Scale 380: 2015(7) R.C.R. (Civil) 34 are also worthy to note:-**

"149. It is true that safety of dam is an aspect which can change from time to time in different circumstances but then the circumstances have to be shown based on which it becomes necessary to make departure from the earlier finding. It is always open to any of the parties to approach the court and apply for re-assessing the safety aspect ***but absent change in circumstances, factual determination in the earlier proceedings even on the questions such as safety of dam binds the parties***. ***If the circumstances have changed which necessitates a re-look on the aspect of safety, the Court itself may exercise its discretion to reopen such case but legislative abrogation of judgment for even the very best of reasons and genuine concern for public safety does not clothe the legislature to rescind the judgment of the court by a legislation.***

Moreover, as per the judgment of the Hon'ble supreme court in **Shri Prithvi Cotton Mills Ltd. and Anr. v. Broach Borough Municipality and ors., 1969 (2) SCC 283**, nullification of a judgment without removal of its legal basis is one of the categories of usurpation. A judgment on a question of fact cannot be nullified so also the effect of judgment, which enforces a legal right.

In the present case, as in between 17.03.2015, when the judgment was rendered by Hon'ble Supreme Court in case Ram Singh & Ors (supra), 27.07.2015 when the order was passed by this Hon'ble High Court in CWP-2441-2014, CWP-9132-2015 and 29.03.2016 when Act 2016 was passed by Haryana State legislature, **no new facts emerged nor there was any change in**

circumstances except occurrence of violent agitation mentioned above. **Haryana Government and Haryana State Legislature did not have a single piece of information of fact before it concerning backwardness of six castes mentioned in Schedule-III of Act 2016 or any other matter or material contradicting or even doubting the finding of fact of the Hon'ble Supreme Court judgment dated 17.03.2015. Under such circumstances,** legislative exercise of enacting Schedule-III of Act 2016 amounts to sitting over the decision of the Court as an Appellate Authority and consequently amounts to over-ruling the Court verdict given in Ram Singh Case. The said action is contrary to the basic structure of the constitution and as such Schedule-III of Act 2016 is liable tobe quashed.

c) That as already observed above, on setting aside of reservation to Jat Community in Centre by Hon'ble Supreme Court of India in Ram Singh case after recording of a finding of fact qua Jat community and on passing of stay order by this Hon'ble High Court against reservation to Special Backward Classes in Haryana, leaders and people of self declared Backward class as also observed by the Supreme court , known as Jat community, demanded reservation for their community by unconstitutional procedures and threatened government of agitations and movements. On **12.02.2016**, unlawful agitations were started by "JAT" community in Haryana at Mayyar (Hisar) in Haryana by blocking railway tracks and its took a dreadful shape later on view occurrence of large scale arson, vandalism and looting by protestors/agitators in the name of agitation for "Jat Reservation". By 23rd February 2015, public and private properties worth many thousand crores were burnt and

destroyed by agitators in various parts of Haryana dominated by Jat community. Many innocent citizens were killed during this bloody and violent agitation and many agitators were killed by firing of military and paramilitary forces to control the situation and to maintain law and order. State government machinery was failed in all manners and military was called in state to bring the situation in control. Roads and railway tracks at many places in state were blockaded by agitators and protestors. More than 500 shops, petrol pumps, schools, shopping malls, car showrooms, banks and houses of public were looted and vandalized by agitators. Even the MUNAK CANAL supplying water to Delhi was taken over by agitators and same was damaged by protestors/miscreants. Military also was also having a tough time to control these agitators/miscreants of Jat Reservation Movement. Finally under pressure of Jat agitators, a meeting of Jat leaders running agitation was convened in Delhi with representative of State Government and Home Minister of India and unlawful demand of reservation was accepted by Government. Due to aforementioned unlawful and violent agitations, unlawful pressure of "Jat Community", under influence of Jat leaders and "Jat" community and vested political interest, cabinet of Government of Haryana approved a bill for enacting of Act 2016 with unconstitutional provisions of Schedule-III in it by concealing all the previous and pending proceedings/litigations occurred in relation to reservation given to Six castes of Schedule-III of Act 2016. **On 29.03.2016**, Bill No. 15-HLA of 2016 named, "THE HARYANA BACKWARD CLASSES (RESERVATION IN SERVICES AND ADMISSION IN EDUCATIONAL INSTITUTIONS) BILL, 2016 containing

aforementioned unconstitutional provisions was presented in assembly and was passed by assembly **without having any discussion on it** under pressure and threat of "Jat" community, their leaders and for vest political interest of politicians. Hon'ble Governor of Haryana approved and gave his assent to the bill and now "Haryana Backward Classes (Reservation in Services and Admissions in Educational Institutions) Act, 2016 has come into force. Within 1 ½ month, every thing happened. The haste with which schedule III of 2016 Act was enacted and the finding of fact recorded by the Hon'ble Supreme Court was over-ruled and the surrounding circumstances of the enactment of the said schedule tantamounts to interference with the judicial process also amounts to usurpation of judicial power. In this regards, the observations in the Privy Council judgment in **Don John Francis Douglas Liyanage and Ors. v. The Queen, 1966 (1) All E.R. 650**, is worthy to note wherein it is observed that "*interference with the judicial process in a pending matter also amounts to usurpation of judicial power. In both categories of usurpation, the answer would depend on facts of each case after considering the legal effect of the law on a judgment or a judicial proceeding. The true purpose of the legislation, the haste with which it was enacted, and the surrounding circumstances, are relevant circumstances*."

d) That as observed above, the creation of impugned schedule-III in 'Act, 2016' and providing of reservation to six castes under Backward Classes Block-C on the basis of Justice (Retd) K. C. Gupta Commission Report and other previous reports by legislation is in direct contravention of the judgment of Hon'ble Supreme Court

of India and order of this Hon'ble Court because all these commission reports have been not accepted by Hon'ble Supreme Court of India in case "**Ram Singh & Ors (supra)**" and matter has already been determined by Hon'ble Supreme Court in its judgment dated 17.03.2015, order dated 21.07.2015 in review petition after hearing the matter and on the basis of report of a expert body NCBC, constituted under the provisions of NCBC Act, 1993. Under such circumstances, Provisions of impugned Schedule-III of Act 2016 are inconsistent and irreconcilable with judgment of Hon'ble Supreme Court of India in Ram Singh & Ors (supra) and order dated 27.07.2015 of this Hon'ble High Court in CWP-2441-2014, CWP-9132-2015 and both of these cannot stand together. The provision of providing reservations to same six castes of Special Backward Class under Schedule-III of Act 2016 during the pendency of the case CWP-9132-2015, CWP-2441-2014 by which State of Haryana is restrained from providing reservations to these six castes on the basis of judgment given by Hon'ble Supreme Court of India, shows the true purpose of the legislation, and the clear intention to defy and act as a judicial authority sitting in appeal over the judgment of Hon'ble Supreme Court and order of this Hon'ble High Court. **The said conduct tantamount to usurping the judicial power which** infringes the doctrine of separation of powers and rule of law. In this regard, the law laid down by the Hon'ble Supreme Court in **State of Tamil Nadu v. State of Kerala (SC): 2014(6) Scale 380: 2015(7) R.C.R. (Civil) 34**

> "151. **The question whether or not the legislature has usurped the judicial power or enacted a law in breach of separation of powers principle would depend on facts of**

each case after considering the real effect of law on a judgment or a judicial proceeding. One of the tests for determining whether a judgment is nullified is to see whether the law and the judgment are inconsistent and irreconcilable so that both cannot stand together. In what we have already discussed above, it is abundantly clear that on the one hand ***there is a finding of fact determined by this Court on hearing the parties on the basis of the evidence/materials placed on record in the judgment of this Court in Mullaperiyar Environmental Protection Forum v. Union of India and Ors., (2006) 3 SCC 643*** and on the other in 2006 (Amendment) Act, the Kerala legislature has declared the dam being an endangered one and fixed the water level in the dam at 136 ft. **If the judgment of this Court in Mullaperiyar Environmental Protection Forum v. Union of India and Ors., (2006) 3 SCC 643 and the 2006 (Amendment) Act are placed side by side insofar as safety of the Mullaperiyar dam for raising the water level from 136 ft. to 142 ft. is concerned,** it is obvious that the judgment of this Court and the law enacted by Kerala State legislature **cannot stand together and they are irreconcilable and inconsistent**. **The impugned law is a classic case of nullification of a judgment simpliciter, as in the judgment of this Court the question of safety of dam was determined on the basis of materials placed before it** and not on the interpretation of any existing law and there was no occasion for the legislature to amend the law by altering the basis on which the judgment was founded. **When the**

impugned law is not a validation law, there is no question of the legislature removing the defect, as the Court has not found any vice in the existing law and declared such law to be bad."

e) That the creation of impugned schedule-III in 'Act, 2016 is not a validation act, but, a mere device to defy, obstruct and nullify the judgment of Hon'ble Supreme Court and order of this Hon'ble Court and constitutionally interfere with, restrict or extinguish the legal rights of public at large as upheld by Hon'ble Supreme Court. A Legislature cannot by mere declaration and enactments overrule and nullify a judicial decision. The direct object and effect of the impugned Schedule III in Act 2016 is to overturn the judgment of Hon'ble Supreme Court and order of this Hon'ble Court.

f) That the impugned schedule-III created in 'Act, 2016' by legislation for providing reservation to Backward Classes, violates the rule of law and the federal structure and the separation of power under the Constitution. The Haryana State Legislature has taken the law in its own hands after the declaration of law by Hon'ble Supreme Court of India in case "Ram Singh & Ors (supra)" & order dated 27.07.2015 passed by this Hon'ble High Court in CWP-2441-2014 (PIL) & CWP-9132-2015. Haryana Government having participated in the adjudicatory process before this Hon'ble High Court in CWP-2441-2014 (PIL) & CWP-9132-2015 cannot become a Judge in its own cause and seek to reverse the decision of Hon'ble Supreme Court and order of this Court because it has gone against it.

g) That since the matter regarding granting reservations to six castes mentioned in Schedule-III of Act 2016 was pending before this Hon'ble High Court in CWP-2441-2014, the decision on that question can be rendered only by the court and not by the legislature or the executive. The legislature cannot decide that the backwardness of six castes mentioned in impugned Schedule-III of Act 2016 when the very issue had been adjudicated upon by the Hon'ble Supreme Court and sub-judice before this Hon'ble High Court. Hence, creation of Schedule-III in Act 2016 is not legislation; it is the exercise of "despotic discretion" and offends the rule of law and the principle of separation of powers. When a fact that Jat community is not a backward caste and that Justice K C Gupta Commission Report can not be accepted has been adjudicated upon, there is no power in the legislature or executive to sit in judgment upon a decision on a disputed question of fact and substitute its own "legislative judgment" for that Court.

h) That a plain and simple judicial decision on fact cannot be altered by a legislative decision by employing doctrines or principles such as 'public interest doctrine'. The Constitutional principle that the legislature can render judicial decision ineffective by enacting validating law within its legislative field fundamentally altering or changing its character has no application where a judicial decision has been rendered by recording a finding of fact. Under the pretence of power, the legislature cannot neutralize the effect of the judgment given after ascertainment of fact by means of evidence/materials. A decision which disposes of the matter by giving findings upon the facts is not open to change by legislature. A final judgment, once

rendered, operates and remains in force until altered by the court in appropriate proceedings.

i) That as already observed, Impugned Schedule-III of Act 2016 with the singular aim to overrule the Supreme Court judgment is impermissible. The doctrine of separation of powers within our Constitutional frame-work does not vest the Legislature with any Judicial Power; hence, impugned Schedule-III of Act 2016 created by Haryana Legislature against Apex Court Judgment is totally unconstitutional. Legislature can fill-up the lacunae or cure the defect in a Statute where the matter is still pending adjudication either before the High Courts or the Hon'ble Supreme Court but where the matter has attained finality, there vests no legislative power to take away the effect of or reverse such judgment. In this way, impugned Schedule-III of Act 2016 is completely arbitrary and thus violative of Article 14, 15 (4), 16 (4) of the Constitution as it provides reservations to six castes in public services and educational institutions of Haryana on the basis of Justice K C Gupta Commission Report that has not been accepted by Apex Court and specific finding by Hon'ble Apex Court that Jat community is not a socially and educationally backward class.

j) That as per the "Act 2016', Act 2016 has been enacted for providing reservation in services and admission in educational institutions to persons belonging to Backward Classes in the State of Haryana and for matter connected therewith or incidental thereto. As per the "act 2016', classes which fulfill the criteria of Article 15 (4), 15 (5) and 16 (4) of constitution of India (i.e. Socially, Educationally

and Economically Backward Classes) are only entitled to take benefit of reservation in services and admission in educational institutions. Parameters for identification of these backward classes were identified by “Mandal Commission” and these were approved by Hon’ble Supreme Court of India while passing judgment in case of **Indira Sawhney (supra).**

As per section 2(b) of ‘act 2016’ Backward Classes has been defined as: *“**Backward Classes**” means such classes of citizens as specified in Schedule-I, II or III.*

As per ‘act 2016’, under **Schedule-III,** a new class named ‘**Backward Classes Block-C**’ has been created in an unconstitutional manner and Six castes namely, 1. Jat, 2. Jat Sikh, 3. Ror, 4. Bishnoi, 5. Tyagi, 6. Mulla Jat/Muslim Jat has been included in it. These Six castes have been declared backward classes in an unconstitutional manner in ACT 2016 without any base and in violation of article 15 (4), 16 (4), judgment given by Hon’ble Supreme Court of India in case **“Ram Singh & Ors Versus Union of India**”, **“Indira Sawhney (supra)”** and order dated 27.07.2015 passed by this Hon’ble High Court in **CWP-2441-2014 (PIL), CWP-9132-2015** and connected petitions. Creation of Schedule-III and Backward Classes Block-C for aforementioned six castes is unconstitutional and is in violation of article 15(4) and 16 (4) of the Constitution of India and has been created under political pressure and for political gains infringing the fundamental right of public at large. For entry of any caste in Backward Class, it has to be socially, educationally and economically backward as per conditioned/parameters mentioned in Mandal Commission. For

inclusion of a caste in backward class **valid recommendation of Backward Class Commission is mandatory** as law laid down by Hon’ble Supreme Court in case **Indira Sawhney (supra).**

It is also pertinent to mention here that all above six castes entered under SCHEDULE-III of act ‘2016’ were earlier notified as SPECIAL BACKWARD CLASSES vides notifications **Annexure P-4 & P-5** by respondents on the basis and recommendations of Justice K. C. Gupta Commission Report **(Annexure P-3).** Hon'ble Supreme Court of India while giving judgment in **“Ram Singh and others Vs. Union of India, 2015(3) Scale 570”** did not accept this report and set aside the reservation granted to Jat community in central list of Other Backward Classes.

In para no. 52 of judgment in case **Ram Singh & Ors (supra),** it is clearly mentioned that “Justice K. C. Gupta Commission report” has been rejected by “National Backward Class Commission” on the basis of adequate and good reasons. Para is reproduced as follows:

> ***“52. In so far as the contemporaneous report for the State of Haryana is concerned, the discussion that has preceded indicate adequate and good reasons for the view taken by the NCBC in respect of the said Report and not to accept the findings contained therein. The same would hardly require any further reiteration.”***

Hon’ble Supreme Court of India dismissed all review petitions filed against its judgment dated 17.03.2015 in **“Ram Singh (supra)”**

vides order dated 21.07.2015 (Annexure P-10). After dismissal of these review petitions, this Hon'ble High Court passed order dated 27.07.2015 in CWP-9132-2015 & CWP-2441-2014 by which respondents were restrained to give any employment in the Government service and admission in educational institution on the basis of the impugned notifications (Annexure P-4 & P-5).

Now without having any further Socio-educational-economic data of these six castes and valid recommendation of backward class commission, reservation has been again granted to same castes by creation of new Backward Class Block-C under SCHEDULE-III of Act, 2016. Backward Class Block-C under Schedule-III has been declared "Backward Classes" under section 2 (b) of Act 2016 in an unconstitutional manner in violation of article 15(4), 16(4). *Fact of rejection of Justice K. C. Gupta Report by Hon'ble Supreme Court, setting aside the reservation to Jat community from central list of other backward classes and staying of reservation to Same six castes falling under Schedule-III of act 2016 has been* ***concealed*** *by cabinet and respondents in bill brought before assembly for enactment of 'Act 2016' in an illegal and contemptuous manner.*

For declaration of any class as "Backward Class", it is necessary to test the conditions of that class as per indicators and parameters recommend by Mandal Commission, however, no such exercise has been done by respondents prior declaration of Six castes under SCHEDULE-III as Backward Classes Block-C and "Backward Classes" under section 2(b) of Act 2016. Bill for Act 2016 have mentioned regarding recommendations of Justice Gurnam Singh

Commission of 1990 and Second Backward Class Commission which were constituted more than 20 years before. As per Judgment in case "Ram Singh & Ors (supra)" it has been clearly upheld by Hon'ble Supreme Court that the necessary data on which the exercise has to be made for identification of backward class has to be contemporaneous and Outdated statistics cannot provide accurate parameters for measuring backwardness for the purpose of inclusion in the list of Other Backward Classes. Para no. 51 of judgment is reproduced as follows:

> *"51. A very fundamental and basic test to determine the authority of the Government's decision in the matter would be to assume the advice of the NCBC against the inclusion of the Jats in the Central List of Other Backward Classes to be wrong and thereafter by examining, in that light, whether the decision of the Union Government to the contrary would pass the required scrutiny. Proceeding on that basis what is clear is that save and except the State Commission Report in the case of Haryana (Justice K.C. Gupta Commission Report) which was submitted in the year 2012, all the other reports as well as the literature on the subject would be at least a decade old.* ***The necessary data on which the exercise has to be made, as already observed by us, has to be contemporaneous. Outdated statistics cannot provide accurate parameters for measuring backwardness for the purpose of inclusion in the list of Other Backward Classes****. This is because one may legitimately presume progressive advancement of all citizens on every front i.e. social, economic and education. Any other view would amount to*

retrograde governance. Yet, surprisingly the facts that stare at us indicate a governmental affirmation of such negative governance inasmuch as decade old decisions not to treat the Jats as backward, arrived at on due consideration of the existing ground realities, have been reopened, inspite of perceptible all round development of the nation. This is the basic fallacy inherent in the impugned governmental decision that has been challenged in the present proceedings. The percentage of the OBC population estimated at "not less than 52%" (Indra Sawhney) certainly must have gone up considerably as over the last two decades there has been only inclusions in the Central as well as State OBC Lists and hardly any exclusion therefrom. This is certainly not what has been envisaged in our Constitutional Scheme."

Section 13 (Review of Schedule) of Act 2016 also kept provisions of revision of schedule i.e. conditions of classes changes within ten years, hence, Report or recommendations of Justice Gurnam Singh Commission of 1990 **has not legal value for creating** "Schedule-III / Backward Class Block-C" for Six castes in year 2016.

Creation of Schedule-III and Backward Class Block-C in Act 2016 for Six castes namely 1. Bishnoi 2. Jat 3. Jat Sikh 4. Ror 5. Tyagi, 6. Mulla Jats/Muslim Jats residing in the Haryana State do not satisfy certain objectives, social and other criteria which has to be satisfied before any group or class of citizens could be treated as backward. Backward Class Block-C for these six caste has been created due to violent agitations from the persons belonging to Jat Samaj,

consequently, under their pressure the State Government, without exercise of objectives which are condition precedent for granting reservations under Article 15 (4), 16(4), has been wrongly granted 10% reservation to above Six castes in public employment as well as in Educational Institutions vide Schedule-III for political reasons without satisfying the relevant criteria . The exercise of such power for collateral reasons is nothing but a clear cut case of misuse of power by political executives which amounts to fraud on power as held by the Hon'ble Supreme Court in **Indra Sawhney case** which is reproduced as under :-

> *"With respect to the argument of abuse of power by the political executive, we may say that there is adequate safeguard against misuse by the political executive of the power under Article 16(4) in the provision itself. Any determination of backwardness is not a subjective exercise nor a matter of subjective satisfaction. As held herein - as also by earlier judgments - the exercise is an objective one. Certain objective social and other criteria has to be satisfied before any group or class of citizens could be treated as backward. If the executive includes, for collateral reasons, groups or classes not satisfying the relevant criteria, it would be a clear case of fraud on power."*

A similar view has been taken by the hon'ble supreme court in **M.Nagaraj case** in the following words as under:-

> *"Clause (1) of Article 16 cannot prevent the State from taking cognizance of the compelling interests of backward classes in the society. Clauses (1) and (4) of Article 16 are restatements*

of the principle of equality under Article 14. Clause (4) of Article 16 refers to affirmative action by way of reservation. Clause (4) of Article 16, however, states that the appropriate Government is free to provide for reservation in cases where it is satisfied on the basis of quantifiable data that backward class is inadequately represented in the services. Therefore, in every case where the State decides to provide for reservation there must exist two circumstances, namely, 'backwardness' and 'inadequacy of representation'. As stated above equity, justice and efficiency are variable factors. These factors are context-specific. There is no fixed yardstick to identify and measure these three factors, it will depend on the facts and circumstances of each case. These are the limitations on the mode of the exercise of power by the State. None of these limitations have been removed by the impugned amendments. If the concerned State fails to identify and measure backwardness, inadequacy and overall administrative efficiency then in that event the provision for reservation would be invalid."

In this manner Schedule-III created for Backward Classes Block-C for six castes 1. Jat, 2. Jat Sikhs, 3. Bishnoi, 4. Ror, 5. Tyagi, 6. Mulla Jat/Muslim Jats in 'Act 2016' and inclusion of schedule-III in definition under section 2 (b) of this act is ultra vires and unconstitutional and shall be struck off from Act 2016 and section 2(b) of 'Act 2016' and other parts of ACT 2016 shall be amended/ accordingly by consequence of striking off Schedule-III ACT 2016, such that Schedule-III and Backward Classes Block-C were not added in Act 2016.

k) That by after providing reservations to “Backward Classes Block-C” under Schedule-III of Act 2016 (*Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State*) total reservation in state will reach up to 70%, exceeding the ceiling limit of 50% imposed by Hon’ble Supreme Court of India in case **Indira Sawhney (supra).** Instruction letter providing details of reservations being given in public service and educational institution in Haryana issued from office of respondent no. 1 is attached hereto as **Annexure P-15.**

As per reservations provided under Schedule-I, Schedule-II, Schedule-III of Act 2016 and other reservations under force in State of Haryana, followings reservation will be there in Haryana in Educational Institutions and public employment after implementation of instructions of Annexure P-14.

(i) ***Direct recruitment in Class-I & II posts***

Sr. No.	**Category**	**Quantum of Reservation**
(a)	Schedule Castes	20%
(b)	Backward Classes Block-A	11%
(c)	Backward Classes Block-B	6%
(d)	**Backward Classes Block-C**	**6%**
(e)	Economically Backward Persons	5%
(f)	Ex Serviceman	5%
(g)	Freedom Fighters and their Children	2%
	Total	55%

(ii) Direct recruitment in Class-III & IV posts

Sr. No.	**Category**	**Quantum of Reservation**
(a)	Schedule Castes	20%
(b)	Backward Classes Block-A	16%
(c)	Backward Classes Block-B	11%
(d)	**Backward Classes Block-C**	**10%**
(e)	Economically Backward Persons	10%
	Total	**67%**

(iii) Admission in Government / Government aided educational / technical / Professional institutions

Sr. No.	**Category**	**Quantum of Reservation**
(a)	Schedule Castes	20%
(b)	Backward Classes Block-A	16%
(c)	Backward Classes Block-B	11%
(d)	**Backward Classes Block-C**	**10%**
(e)	Economically Backward Persons	10%
(f)	Physically Handicapped	3%
	Total	**70%**

Above provisions have exceeded 50% reservation ceiling limit as fixed by the Hon'ble Apex Court in the case of **Indra Sawhney & Ors. vs. Union of India & Ors. (AIR 1993 SC 477) & M. Nagaraj & Ors vs. Union of India & Ors 2006 (8) SCC 212.** Law laid down by the Hon'ble apex court in case of **Indra Sawhney AIR 1993 SC**

477 is reproduced as under for the kind consideration of this hon'ble court:-

"(4) Reservation being extreme form of protective measure or affirmative action it should be confined to minority of seats. Even though the Constitution does not lay down any specific bar but the constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation, of any manner, not to exceed 50%".

"94A. We must, however, point out that Clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State Legislatures in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16 should also be exercised in a fair manner and within reasonably limits - and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50% of the appointments or posts, barring certain extra-ordinary situations as explained hereinafter. From this

point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in Narayan Rao v. State 1987 A.P.53, striking down the enhancement of reservation from 25% to 44% for O.B.Cs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%.

It needs no emphasis to say that the principle aim of Article 14 and 16 is equality and equality of opportunity and that Clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in Article 14.

The provision under Article 16(4) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in Clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent Assembly, set out in para 28). No other member of the Constituent Assembly suggested otherwise. It is, thus clear that reservation of a majority of seats was never envisaged by the

founding fathers. Nor are we satisfied that the present context requires us to depart from that concept.

From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%"

In the case of **M. Nagaraj & Ors. v/s UOI & Ors** also it has been held by apex court that:-

> *"We reiterate that the ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse".*

Reservation, in admission in educational institutions, of 70% which is not permitted by Art. 15(4) and the laws laid down by the Hon'ble Supreme Court as mentioned above. Therefore, the reservation of 70% made by respondents is plainly inconsistent with the concept of the special provision authorized by Art. 15(4). The action of the respondents in enacting Schedule-III/Backward Class Block-C is nothing but a fraud on the Constitutional power conferred on the State by Art. 15 (4) as held by the hon'ble Supreme Court in **M. R. Balaji and Others vs State Of** Mysore **1963 AIR 649, 1962 SCR Supl. (1) 439 which is reproduced as under:-**

> *"A special provision contemplated by Art. 15(4) like reservation of posts and appointments contemplated by Art.*

16(4 must be within reasonable limits. The interests of weaker sections of society which are, a first charge on the states and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Art. 15(4). In this matter again.. we arc reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case. In this particular case it is remarkable that when the State issued its order on July 10, 1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be in the larger interests of the State. What happened between July 10, 1961, and July 31, 1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Art. 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the

community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations. Therefore, ***we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Art. 15 (4).*** *The petitioners contend that having regard to the infirmities in the impugned order, action of the State in issuing the* ***said order amounts to a fraud on the Constitutional*** *power conferred on the State by Art. 15(4). This argument is well-founded, and must be upheld. When it is said about an executive action that it is a fraud on the Constitution, it does not necessarily mean that the action is actuated by mala fides. An executive action which is patently and plainly outside the limits of the constitutional authority conferred on the State in that behalf is struck down as being ultra, vires the State's authority. If, on the other hand, the executive action does not patently or overtly transgress the authority conferred on it by the Constitution, but the transgression is covert or latent, the said action is struck down as being a fraud on the relevant constitutional power. It is in this connection that courts often consider the substance of the matter and not its form and in ascertaining the substance of the matter, the appearance or the cloak, or the veil of the executive action is carefully scrutinized and if it appears that notwithstanding the appearance, the cloak or the veil of the executive action, in substance and in truth the constitutional power has been transgressed, the impugned action is struck down as a fraud on the Constitution. We have already noticed that the*

impugned order in the present case has categorised the Backward Classes on the sole basis of caste which, in our opinion, is not 'permitted by Art. 15(4); and we have also held that the reservation of 68% made by the impugned order is plainly inconsistent with the concept of the special provision authorised by Art. 15(4). Therefore, it follows that the impugned order is a fraud on the Constitutional power conferred on the State by Art. 15 (4).”

l) That at the cost of repetition, as per the decision of the Supreme Court in the case of **S.V. Joshi vs. State of Karnataka & Ors. 2 (2012) 7 SCC 41** it is submitted that once there is some quantifiable data, it is open to the State to provide for reservations in excess of 50%. In the case of **S.V. Joshi (supra)** a three Judge Bench of the Supreme Court considered the reservations made in 1994 by the States of Tamil Nadu & Karnataka in excess of 50% both in the matter of admissions to educational institutions and in the matter of recruitment in public services by the relevant legislation / order. The Supreme Court noted the subsequent constitutional amendments and the decisions in **M. Nagaraj (supra) and Ashok Kumar Thakur vs. Union of India1** (2008) 6 SCC 1 and observed that in the above decisions, inter alia, it has been laid down that if the State wants to exceed 50% reservation, then it is required to base its decision on the quantifiable data. In the cases before the Supreme Court, this exercise was not done. The Court held that while reviewing the relevant statutory provisions, the State Government shall keep in mind the decisions of the Supreme Court in **M. Nagaraj (supra) pertaining to reservations in public employment**

and Ashok Kumar Thakur (supra) pertaining to reservation of seats in educational institutions.

Though Article 15 enables the State to provide for reservation of seats in educational institutions for the benefit of backward classes, the Article by itself does not provide for or recognise ceiling limit on percentage of reservations, that is, what is the maximum number of seats which the State can reserve for backward classes. But, as per the law laid down by a nine Judge Bench of the Supreme Court in **Indra Sawhney case** read with the decision of a five Judge Constitution Bench of the Supreme Court in **Ashok Kumar Thakur vs. Union of India**:

For State Owned and Aided Institutions

(a) The principle that constitutional reservations ought not to exceed ceiling limit of 50% is a binding rule and not a mere rule of prudence.

(b) However, in extraordinary situations and for extraordinary reasons, the percentage of reservations may exceed the ceiling limit of 50%.

(c) But every excess over 50% will have to be justified on valid grounds, which grounds will have to be specifically made out by the State and will be amenable to judicial review.

Reservations in Public Employment

(i) Article 16 by itself recognises "ceiling limit of 50% reservations" through insertion of clause (4B) in Article 16 of the Constitution (Eighty first Amendment) Act, 2000, after the decisions of the Supreme Court in Indra Sawhney case rendered in the year 1992, and in R. K. Sabharwal & Ors. vs. State of Punjab & Ors.1

(ii) As per the law laid down by a Constitution Bench of the Supreme Court in **M. Nagaraj v. Union of India** (2006) 8 SCC 212 and another Constitution Bench as recently as on 15 July 2014 in **Rohtas Bhankhar vs. Union of India** (2014) 8 SCC 872, the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse. Even if the State has compelling reasons for providing reservations (backwardness of the concerned class, inadequacy of representation of such class in public employment and overall administrative efficiency), the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50%.

(iii) The mandate in M. Nagaraj case has been reiterated by a three Judge Bench of the Supreme Court in **S.V. Joshi vs. State of Karnataka & Ors**, the following need to be noted:

(a) **S.V. Joshi case** was not merely concerned with reservation of posts/vacancies in public employment but also with reservation of seats in educational institutions.

(b) In **S.V. Joshi case**, the Supreme Court did not purport to modify the law laid down in M. Nagaraj case, but specifically directed the State to follow the law laid down in M. Nagaraj case, and referred to the principles laid down therein regarding inter alia, **collection of quantifiable data**.

(c) In M. Nagaraj case, the Supreme Court directed the concerned State to show compelling reasons in the form of quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance of Article 335 for maintaining administrative efficiency. Thus, the direction in M. Nagraj case regarding collection of quantifiable data was with reference to showing backwardness of the class and inadequacy of representation of that class in public employment for the purpose of justifying the extent of reservations in favour of that class even within 50 percent ceiling limit of reservations.

(d) Moreover, as recently as on 15 July 2014 in **Rohtas Bhankhar vs. Union of India** (2014) 8 SCC 872, another Constitution Bench of the Supreme Court has reiterated the conclusions recorded in M. Nagaraj vs. Union of India (supra).

(iv) For the aforesaid reasons, it is obvious that in matters of reservations of appointments/posts in public services, after the constitutional amendments in the year 2000, the Supreme Court has laid down a constitutional mandate that "the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% ….." In view of the law laid down by the Supreme Court in such emphatic terms, no exceptions are permitted.

11. That as held in Indra Sawhney v. Union of India and Others, JT 1999 (9) SC 557 : 2000 (1) SCC 168, the legislative declaration of fact in schedule III in 2016 Act that Jats is a backward community is not beyond judicial scrutiny and it is open to the court to examine the true facts.

12. That the present matter is fully covered by the judgments given in **"Ram Singh & Ors (supra)", Shri Prithvi Common Mills Limited and another v. Broach Barough Municipality and others, (1969) 2 SCC 283**, till the recent decision in State of **Tamil Nadu v. State of Kerala, AIR 2014 SC 2407**, popularly known as **Mullaperiyas Dam case** and then followed by the latest judgment in **S.T. Sadiq v. State of Kerala, 2015 (2) SCALE 69.Indra Sawney (supra) and M. Nagaraj (supra)** and State has also crossed its reservation above ceiling limit of 50% without any special reasons.

13. That all the above mentioned illegal and unconstitutional actions have been committed by respondents only for political reasons and under pressure by misusing the executive power conferred by Constitution of India infringing the Fundamental Rights of public at large. Vested political interest of respondents and illegal pressure of Jat community only has forced respondents to act against law and Constitution of India thereby infringing the fundamental rights of public defeating the rule of law.

14. That the following law points are involved in the present writ petition for kind consideration of this Hon'ble Court:-

i. Whether the creation of impugned schedule-III in 'Act, 2016' and providing of reservation to six castes under Backward Classes Block-C is unconstitutional and ultra vires?

ii. Whether the Judgment dated 17.03.2015 passed by Hon'ble Supreme Court in WP(C) No. 278/2014, Ram Singh & Ors (supra) and order dated 27.07.2015 by this Hon'ble High Court in CWP-2441-2014; CWP-9132-2015 can be nullified by a legislation made by the Haryana State Legislature?

iii. Whether identification of six castes declared Backward classes Block-C under Schedule-III of Act 2016 has been made as per provisions laid down in article 15 (4), 16 (4) of Constitution of India and as per Criteria laid down in judgment of case Indira Sawhney (supra)?

iv. Whether inclusion of six castes mentioned in Schedule-III as Backward classes Block-C in Act 2016 without recommendation of a valid commission report and without following the criteria laid down in judgment Indira Sawhney (supra), Ram Singh & Ors (supra) is lawful?

v. Whether identification and selection of six castes declared Backward classes Block-C under Schedule-III of Act 2016 is permissible outside article 15 (4), 16 (4) of Constitution of India and judgment given in case Indira Sawhney (supra) in present circumstances?

vi. Whether the backward classes can be identified with reference to any Commission report that has not been accepted by Hon'ble Supreme Court of India?

vii. Whether any caste can be declared backward class if it is not socially, educationally and economically backward?

viii. Whether any caste not found backward class by Hon’ble Supreme Court of India can be approved as backward class by state cabinet without any valid data of that caste?

ix. Whether the backward classes can be identified with reference to a report older than 20 years?

x. Whether the 'means' test has been applied in the course of identification of Backward Classes Block-C under Schedule-III of Act 2016? And if the answer is yes, whether such a test has been done as per law? Whether the power exercised by State government for exceeding reservations above ceiling limit of 50% is as per exception laid down by Hon'ble Apex Court in Indra Sawhney's case (supra)?

xi. Whether certain extraordinary situations were available or not, in the facts and circumstances of the present case for which 50% ceiling limit of reservation was breached?

xii. Whether there is infringement of the Fundamental Rights of citizens on enforcement of Schedule-III of Act 2016?

xiii. Whether there are substantial questions of law of public importance?

15. That So far as merits of the case are concerned, the Hon'ble Apex Court in Indra Sawhney's case (supra), has laid down criteria for identification of backward classes. Respondents have not carried any exercise prescribed by Mandal Commission and in judgment of Indira Sawhney (supra) prior declaring six castes (1. Jat, 2.Jat Sikhs, 3.Bishnoi, 4.Ror, 5.Tyagi and 6.Mulla Jats/Muslim Jats) as Backward Class Block-C under Schedule-III of Act 2016. This Hon’ble High Court had restrained

respondents from providing reservations to all these six castes (1. Jat, 2.Jat Sikhs, 3.Bishnoi, 4.Ror, 5.Tyagi and 6.Mulla Jats/Muslim Jats falling under Special Backward Classes vide annexure P-4, P-5) vide order dated 27.07.2015 in CWP-9132-2015, CWP-2441-2014 in view of judgment given by Hon'ble Supreme Court of India in case **Ram Singh & Ors (supra)** by which reservation to Jat community in central list of other backward classes was set aside and Justice K. C. Gupta Commission Report was rejected. Bill for Act 2016 containing Schedule-III containing six castes (1. Jat, 2.Jat Sikhs, 3.Bishnoi, 4.Ror, 5.Tyagi and 6.Mulla Jats/Muslim Jats) as Backward Class Block-C has been passed on 29.03.2016, when Special Backward Class notification (Annexure P-4, P-5) for these same six castes was under stay by this Hon'ble High as mentioned above and these Special Backward Classes notifications were withdrawn by respondent no. 2 only on 31.03.2016 as per letter dated 01.04.2016 (Annexure P-14) issued from office of respondent no. 1. Hence only a name of class has been changed (From Special Backward Class to Backward Classes Block-C) of these six castes for providing reservations to them under pressure and concealing the facts in the bill of Act 2016, which is a fraud and fundamental rights of public at large is being infringed by this fraud of respondents. The question, whether the State Government has exercised its power while exceeding ceiling limit of 50%, while providing reservation to Backward Classes Block-C under Schedule-III of Act 2016, as per exception laid down by Hon'ble Apex Court in Indra Sawhney's case (supra).

Prima facie, there are substantial questions of law (mentioned in the above para) of public importance and also relating to interpretation of constitutional provisions are involved in the present writ petition. As the ingredients for grant of stay i.e. **prima facie case, balance of convenience**

and irreparable injury are, prima facie, present in the case in favour of public/petitioner. Therefore, the operation and effect of the impugned Schedule-III providing reservation to Backward Classes Block-C in Act 2016 may kindly be stayed till the disposal of the present petition. It is pertinent to mention that if reservation is being given/continued to six castes falling under Backward Classes Block-C of Act 2016 and is not stayed immediately then the situation will becomes irretrievable and the refusal of injunction will adversely affect the interest of general public at large and will cause irreparable loss which cannot be compensated otherwise.

16. That the petitioner has filed CWP-2441-2014 (PIL) challenging notifications Annexure P-4, P-5 and P-6 in this Hon'ble High Court and matter is pending as per order dated 27.07.2015 Annexure P-11 & P-12. As No other case has been filed by petitioner in any court of India for same cause of action.

17. That there is no other alternative remedy available to the petitioner except to invoke the extra ordinary jurisdiction of this Hon'ble High Court by way of the present petition, under Articles 226/227 of the Constitution of India.

It is, therefore, respectfully prayed that the records of the case be persued and after perusal of the same this Hon'ble Court may be pleased to:-

i) Issuance of an appropriate writ, order or direction especially in nature of certiorari for quashing the **Schedule-III** framed for providing reservation to "Backward classes Block-C" in **Haryana Backward Classes (Reservation in Services and**

Admissions in Educational Institutions) Act, 2016 (Referred hereinafter as 'Act 2016') **(*Annexure P-1) as*** being contrary to the **basic structure of the constitution,** ultra vires, contemptuous, arbitrary, null & void as by enacting the schedule III , the findings of facts have been reversed by the state legislature **which amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal and also amounts to over-ruling the Court verdict as held by the Hon'ble Supreme Court in** a catena of decisions starting from **Shri Prithvi Common Mills Limited and another v. Broach Barough Municipality and others, (1969) 2 SCC 283**, till the recent decision in State of **Tamil Nadu v. State of Kerala, AIR 2014 SC 2407**, popularly known as **Mullaperiyas Dam case** and then followed by the latest judgment in **S.T. Sadiq v. State of Kerala, 2015 (2) SCALE 69.** A final judgment, once rendered, operates and remains in force until altered by the court in an appropriate proceeding. A unilateral legislation nullifying a judgment is constitutionally impermissible. Enacting Schedule-III of Act 2016 on the basis of same Justice K. C. Gupta Commission Report, as in between 17.03.2015, when the judgment was rendered by Hon'ble Supreme Court in case Ram Singh & Ors (supra), 27.07.2015 when the order was passed by this Hon'ble High Court in CWP-2441-2014, CWP-9132-2015 and 29.03.2016 when Act 2016 was passed by Haryana State legislature, **no new facts emerged nor there was any change in circumstances except occurrence of violent agitation and threat of repetition of more violent agitation**. **Haryana Government and Haryana State Legislature did not have a single piece of information of fact before it concerning backwardness of six castes mentioned in Schedule-III of Act 2016 or any other matter or material contradicting or even doubting the finding of fact of the Hon'ble Supreme Court judgment dated 17.03.2015. Under such circumstances,** legislative exercise of enacting Schedule-III of Act 2016 amounts to sitting over the decision of the Court as an

Appellate Authority and consequently amounts to over-ruling the Court verdict given in Ram Singh Case. The said action not only is contrary to the **basic structure of the constitution**, but also is in violation of Article 15 (4) & 16 (4) of Constitution of India; **“Indira Sawhney (supra)”** and order dated 27.07.2015 passed by this Hon’ble High Court in CWP-2441-2014 (PIL), CWP-9132-2015 etc by which Six castes, 1. Jat, 2. Jat Sikh, 3. Ror, 4. Bishnoi, 5. Tyagi, 6. Mulla Jat/Muslim Jat residing in the Haryana State has been declared as **Backward Classes Block “C**” without any valid report/recommendation of backward class commission & 10% reservation in jobs under Government/Government Undertaking and Local Bodies as well as in educational institutions, 6% in Class I and II posts has been given to them, in exclusion to the already notified 27% reservation provided to Backward Classes (Block-A & B) & 10% to Economically Backward Persons**, resulting into exceeding the ceiling limit of 50% imposed by Hon’ble Supreme Court in case Indira Sawhney versus Union of India and** as such Schedule-III of Act 2016 is liable tobe quashed/struck down.

ii) Issue an appropriate writ, order or direction to struck off/delete provision of “Schedule-III” reservation in name of Backward Classes Block-C from Act 2016 and to alter **{Section 2(b), Schedule of Classes}** and other parts of the ‘Act 2016’ to incorporate the results of striking off/deletion of ***“Schedule-III” and name of “Backward Classes Block-C”*** as if Schedule-III was not added in Act 2016.

iii) It is further prayed that that during the pendency of the present writ petition, the operation and effect of aforesaid provisions of providing reservation to aforementioned Six castes/classes under **“Schedule-III/ Backward Classes Block -C”** of ‘the act, 2016’, which is infringing the Fundamental Rights of the petitioner and the public at large as enshrined in Articles 14, 15, 15(4), 16 & 16 (4) of the Constitution of India may kindly be stayed with immediate effect till the disposal of writ petition, in the interest of

justice, failing of which an irreparable loss shall occur to petitioner and public at large,

iv) and/or further for the issuance of such other appropriate order as this Hon'ble court may deem fit and proper in the facts and circumstances of the case and in the interest of justice and fair play.

v) Exempt the petitioner from filing the certified copies of Annexures.

vi) Dispense with the prior services of the notice upon the respondents.

vii) Award costs of the writ petition to the petitioner.

CHANDIGARH
DATED: 04.04.2016 PETITIONER

Through:

(MUKESH KUMAR VERMA) (GANESH KUMAR SHARMA)
ADVOCATES
COUNSELS FOR THE PETITIONER

<u>Verification:-</u>

Verified that the contents of the para 1 to 13 and 15 to 17 are true and correct to best of my knowledge and those of para 14 are based on legal opinion received from my counsel which are also believed to be true and correct. No part of it is false and nothing has been kept concealed there from.

CHANDIGARH
DATED: .04.2016 PETITIONER

In the High Court for the States of Punjab and Haryana at Chandigarh

C. W. P. No………………. of 2016

Murari Lal Gupta ………Petitioner

Versus

State of Haryana and others ………Respondents

Affidavit of Murari Lal Gupta S/o Sh. Sri Kishan Tola, aged 52 years, R/o Luhariwala road, Lohar Bazar, presently at House No. 2214, Sector-13, HUDA, Bhiwani.

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the deponent is filing the accompanying Writ Petition in this Hon'ble Court which is likely to succeed for the reasons mentioned therein.

2. That the instant Public Interest Litigation is being filed by the petitioner who has taken various issues pertaining to the people at large. The petitioner is a public spirited person having no private interest and he is lending his voice to the cause and concern of people at large in the state.

3. That the petitioner has no direct or indirect personal motive or interest involved in the case.

4. That the contents of the petition have been read over to the deponent which are true and correct to the knowledge of the deponent and no part of it is false and nothing relevant has been concealed therein.

Place: Chandigarh
Dated: Deponent

Verification:-

Verified that the contents of the above affidavit are true and correct to my knowledge and belief. No part of it is false and nothing relevant has been concealed therein.

Place: Chandigarh
Dated: Deponent