
Aren't 'Article 370 of the Constitution of India' and the Presidential Orders purported to be dependent on it, just as relevant as the Criminal Law (Amendment) Act, 1938? – A succinct inspection.

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ABSTRACT

Even 67 years after India's Independence, the country's statute book has been still bearing the burden of a law which provides for punishment to those who dissuade people from taking part in a war in which the "British Empire" is involved. The Criminal Law (Amendment) Act, 1938, framed just before the World War-II that started a year later, is one of the 73 obsolete laws recommended by the Law Commission for repeal, in 2014. Article 370 of the Constitution of India has been universally agreed to violate fundamental rights guaranteed in Part III of the Constitution and proven it to be ultra virus the basic structure of the Constitution of India. The politicians of Jammu and Kashmir are credited with carrying this 'Human Rights violative law' 60 years after it was scheduled to be repealed. They cry foul to even a debate on its uses, due to the fact that it is the largest mechanism of perpetuating political fraud by allowing the executive to perform the functions of the legislative- a classic violation of the 'Separation of Power' doctrine. This research paper will inspect the same in reference to a recent controversial court judgement that has shaken the faith of the Indian people generally and Indians of Jammu and Kashmir in particular.

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INTRODUCTION

Today Article 370 is just as relevant as some yet effective laws, for instance: ‘in Connecticut, a pickle is not officially a pickle unless it bounces’² or ‘in Ohio, it is illegal to get a fish drunk’³; or yet another good one is ‘in New Jersey, it is illegal to wear a bulletproof vest while committing a murder’⁴.

BELLIGERENT ASPECT

Now, it is universally acknowledged that the article was inserted because Jammu and Kashmir was invaded by Pakistan⁵, which meant that it could not form a Constituent Assembly in the State like was happening in all other States of India.⁶ It was also emphasized by the honourable Mr. Ayyangar, that the article was expressly temporary,⁷ which would not be required after the Constituent Assembly was constituted, which would mean that the administration had stabilised itself. If still retained even after the Constituent Assembly had completed its task then it

would entail modifications. The Constituent Assembly, rather thought it unnecessary to bother with the Article 370 and thereby the redundant Article came into the category of other temporary articles of the Constitution of India, which were to be repealed approximately ten years from inception.

Article 370 was expressly introduced, without debate in the Constituent Assembly as a provision that needed to stay on the statute book as long as unusual conditions (namely war) prevailed in the State. India came to a crucial juncture when a ceasefire came into effect, to either omit the article or continue with its existence on the presupposition that a ‘State of War’ is still existing between India and Pakistan.

The unfortunate truth, even though we don’t want to acknowledge it is that belligerent operations by Pakistan have still not ceased against the territory of India, which comprises the regions of Gilgit, Baltistan, Mirpur, Muzaffarabad, Kotli, Poonch, parts of (Kashmir, Jammu and Ladakh). As far as a ‘State of War’ still exists, it is legitimate for India to carry out retortion, reprisals and other defensive measures, that India commits human rights violation in not doing. One day India will have to make an account to the tortured people in POJK for its inertia in taking military action to redeem its people.

That was as far as the military part is concerned. Now, let us inspect the legislative, executive, political, and judicial aspects of the problem when it comes to the crown State of India.

2. See Crazy Connecticut laws. More details of the same can be found at www.dumblaws.com/laws/united-states/connecticut last referred on 18/12/2015 at 18:10.

³ More details of the same can be found at uberfacts.tumblr.com/post/14071083485 last referred on 17/12/2015 at 18:30.

⁴ See These Crazy Laws from around the world... More details of the same can be found at www.cluesarena.com/crazy-laws/4 last referred on 17/12/2015 at 18:22.

⁵ See the BBC reports for the same. More details can be found at news.bbc.co.uk/.../2002/india_pakistan/timeline/1947 last referred on 17/12/2015 at 18:00

⁶ For more details see ikashmir.net/historicaldocuments/index.html last referred on 18/12/2015 at 18:00

⁷ See book by the Authopr entitled ‘Article 370: Evolving Clarity Beyond the Conundrum’.

POLITICAL ASPECT

Few Jammu and Kashmir politicians beg for autonomy⁸ so that Jammu and Kashmir loses any shred of accountability⁹, which is already in tatters. But if the politicians were legal experts (instead of power experts) they would know that Jammu and Kashmir can have no autonomy as long as it is bound by Article 370. The article reiterates Jammu and Kashmir's allegiance to India, by expressly enforcing Article 1 of the Constitution of India. For the uninitiated, Article 1 makes Jammu and Kashmir an integral part of India. Since India has politicians of diverse education levels, allowing rather ill-advised forays into politics, many of them swear by Article 370 and claim that the Article guarantees autonomy or special status, which is opposed to the implied spirit and express words of the article¹⁰.

The words autonomy and special status are conspicuous by their absence, which, politicians who are educated enough to read the article would find out. Further, since Article 370 was declared to expressly be a temporary article, political lobbying is the only means to keep it on the statute book, way past its expiration date. It has immense benefit for politicians to take undue advantage of the unsuspecting people of Jammu and Kashmir and in the larger picture – India. That could explain why politicians who have a penchant for power

and money, vehemently object to even a discussion in its pros and cons¹¹.

That is the political aspect of the study. Let us inspect the legislative aspect of the article.

LEGISLATIVE ASPECT

It is presumed that all laws that are in keeping with Human Rights protection and natural justice ought to be retained and all that go against fundamentally just principles warrant repeal.¹² This is the fundamental premise on which all judicial systems of civilized nations work. Now, the question when it comes to India, is whether it is a civilized nation or not. To answer in the affirmative would mean a serious inspection of the likes of the following cases.

JUDICIAL ASPECT

There is a recent case under the jurisdiction of the High Court of Jammu and Kashmir

Ashok Kumar and others Versus State of J&K and others¹³

¹¹ See 'Article 370: Time to call Omar Abdullah's Bluff. More details of the same are available at www.niticentral.com/2014/05/17/article-370-time-to-call-omar-abdullahs-bluff last referred on 18/12/2015 at 18:43

¹² See the Geneva Conventions and The Hague.

¹³ Date of Order – 09/10/2015.

SWP no.1290/2014, MP no.1685/2014
c/w SWP no.2777/2013, MP no.4089/2013
SWP no.1694/2006, MP no.4023/2010, 2119/2006
APSWP no.131-E/2004
SWP no.1006/2005, MP no.1114/2005
SWP no.1639/2003, MP no.1746/2003
SWP no.1497/2004
SWP no.1854/2004, MP no.1942/2004
SWP no.1619/2006, MP no.2010/2006
SWP No.213/2001, MP no.254/2001
SWP no.1583/2014 MP no.2093/2014
SWP no.1271/2014, MP no.1655/2014
SWP no.1816/2000,

⁸ See the reports of Zee at zeenews.india.com/news/jammu-and-kashmir/national last referred on 18/12/2015 at 18:30

⁹ See Article 370: The Untold Story. More details available at www.indiandefencereview.com/news/article-370-the-untold-story last referred on 15/06/2015 at 12:00

¹⁰ See Bare Text of Constitution of India to realise that there is no autonomy or special status given by article 370.

This case is amusing, and here's why:

The issues before the Court were whether reservation in matters of public employment should be allowed for S.C. and S.T category people in Jammu and Kashmir, as a welfare measure that is applied constitutionally to the rest of India.

Three provisions are in question at issue. Section 6 of the Jammu and Kashmir Reservation Act as well as sections 9 and 34 of the Jammu and Kashmir Reservation Rules.

They read as follows:

[Section 9- Jammu and Kashmir Rules] –

Reservation in Promotion

The available vacancies to the extent specified hereinafter shall be reserved in any service, class, category or grade carrying a pay scale the maximum of which does not exceed the pay scale of the post of Deputy Secretary to Government, for promotion from amongst the persons belonging to the Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes:-

- (i) Scheduled Castes (SC) 4%
- (ii) Scheduled Tribes (ST) 5%
- (iii) Socially and Educationally Backward Classes:
 - (a) Resident of Backward Area (RBA) 10%
 - (b) Actual Line of Control 2%
 - (c) Weak and Under Privileged Classes 1% (Social Castes)

Rule 10 of the Jammu and Kashmir Rules 2005, prescribes “Roster for Promotions”. The Roster is intended to give effect to the reservations provided under Section 6 of the Reservation Act read with Rule 9 of Reservation of Rules. Rule 34 extends the reservation in promotions contemplated under Section 6 of the Reservation Act and Rule 9 of Reservation Rules, to promotions made on

ad hoc basis. Section 6 of Reservation Act together with the Rules 9, 10 and 34 of Reservation Rules, therefore, embody a scheme for reservation in promotions.

The Hon'ble Justice Massodi stated that “the Court may not assume role of an appellate authority to look into and examine sufficiency of the material/data collected by the State to justify reservation”; which statement indirectly surmised that the judges of Jammu and Kashmir may not perform judicial review of executive action.

It is ironic that Jammu and Kashmir is afforded the luxury of retaining inhuman laws and declaring unconstitutional – welfare regulation, based simply on the fact that the executive has been performing the role of the Parliament for the last 65 years; and that this violation of the basic feature of ‘Separation of Power on which our great democracy is based’ should perpetuate without interruption. If anyone objects to the illegality of the functioning or propositions for justice they will be termed as fundamentalists. Interestingly, in Jammu and Kashmir, if you object to a terrorist being shot then you are a patriot and if you object to the jihadi terrorism activities, by supporting army control over a terrorist infested area then you are a bigot. There, in Jammu and Kashmir, maybe it is due to the altitude, maybe due to the political games being monopolised for decades by a family dynasty of certain people, there is a reverse logic that applies. All the laws that are considered as welfare legislation in the rest of India, lauded internationally as socially progressive, are considered ultra vires in Jammu and Kashmir. This case was no different.

In the abovementioned case, the learned Senior Advocate,¹⁴ insisted that Jammu and Kashmir under the Indian Constitutional Scheme has status and powers, not available to any other States in the Union. He safely neglected to call the status 'special' because that would be a misnomer. While admitting that Jammu and Kashmir acceded to the Union of India in the exact same way as all other States of the Indian Union, the learned advocate contradicted himself by saying simultaneously that the it surrendered some powers in favour of the Union and not vice-versa; that while in case of other States, powers available and exercised are what have been conceded by the Union, in case of Jammu and Kashmir, powers are retained by it, except what have been surrendered to the Union. These are legally impossible propositions.

All those who study law are acquainted with the fact that when a certain nation is called a Union, there is only one system followed; that is for the Union to surrender certain of its powers in favour of the States. In a Federation the States surrender certain powers on favour of the Centre. Therefore it impossible to contend in the same sentence that India is a Union; that all the States of the Indian Union signed a common instrument of accession and that Jammu and Kashmir despite acceding to India in the exact same way as the other States in India thereby becoming an integral part of the Union of India, surrendered certain powers to the Union. It is tantamount to negating his own argument in the same sentence, which only suits non-legal politicians who engage in mindless vote bank jargon.¹⁵

¹⁴ (advancing arguments in lead case)

¹⁵ In support of this futile argument the learned Advocate relies on Article 370 of the Constitution. An elaborate reference is also made to Constitution (Application to Jammu and Kashmir) Order, 1954, that,

The learned Senior Advocate admitted that Jammu and Kashmir became a part of India by signing the Instrument of Accession; yet argued that Jammu and Kashmir State while acceding to the Union of India did not merge with it. He buttressed his argument by relying on Article 370, which itself acknowledges through Clause (1) sub clause (c), that Jammu and Kashmir shall be an integral part of the territory of India.

As per Article 16 of the Indian Constitution there should be no discrimination and assured equality in matters of public employment under the Union of India or any of its territories. It was argued by the learned advocate that contravening the principles laid down in this article is permissible because as he insisted - in view of the express embargo placed on application of amendment to a provision of the Constitution to Jammu and Kashmir, by proviso to Clause II, Article 368 of the Constitution, except in accordance with mode and manner laid down therein, Clause (4A) and Clause (4B) to Article 16, would not be applicable to Jammu and Kashmir in as much as it is not applied to the State by a Presidential order, under Article 370(1) of the Constitution. It is necessary to mention here that Article 16 (4A) and (4B) read as follows:

Article 16 ¹⁶[(4A) : Nothing in this article shall prevent the State from making any provision of reservation ¹⁷{in matters of promotion, with consequential seniority, to any class} or classes

according to learned advocate, lays down foundation of relationship between State and Union, and maps out the areas that the State has conceded to Union and therefore, fall within its realm.

¹⁶ Inserted by the Constitution (Seventy-seventh Amendment) Act, 1995, sec.2, (w.e.f. 17-6-1995).

¹⁷ Substituted by the Constitution (Eighty-fifth Amendment) Act, 2001, sec.2, for "in matters of promotion to any class" (w.r.e.f. 17-6-1995).

of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State] Article 16¹⁸[(4B) Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.]

In answer to the contentions of the above said learned senior advocate, the learned Senior Additional Advocate General disputed petitioners' claim that Section 6 of the Reservation Act 2004 had been enacted and Rules 9 and 34 of the Reservation Rules 2005, have been made, without any background study. Learned counsel insisted that only after the State Government was satisfied that Reserved Categories on the basis of available data are not adequately represented at different levels in Government employment, that it made a provision for reservation in promotions. Insisting that reservation made would neither discourage, disregard or dampen merit, the learned Senior Additional Advocate General pointed out that the reservation under the present legal framework is restricted up to the level of Deputy Secretary or the post with equivalent grade, whereafter the promotion is made purely on basis of merit and seniority,

without any reservation in favour of any of the Reserved Categories.

After this, the learned Senior Advocate appearing for private respondents, per contra, insisted that as State of Jammu and Kashmir in terms of Article 1 Constitution of India is part of the territory of India, amendments made to Constitution of India from time to time would be *ipso facto* applicable to Jammu and Kashmir also, and at least, there should be no doubt about automatic application of amendment to a Constitutional provision that has already been applied to the State. For instance, since Article 16 of the Constitution stands already applied by the Constitution (Application to Jammu and Kashmir) Order 1954, subsequent amendment to Article 16 by adding Clause (4A) in Clause (4B) would be applicable to the State even in absence of a Presidential order under Article 370 of the Constitution.

UNFORTUNATE DILEMMA

From the above arguments it can be inferred even by a non-lawyer that the point raised last about Article 16 by the learned Senior Advocate appearing for private respondents, is so obvious to any rational mind. It is not a legal technicality or ambiguity. But if this was realised by the politicians of Jammu and Kashmir, there would be no need to institute a case because there would be no dispute to begin with. This is just one of the many disputes over the laws and constitutional application in Jammu and Kashmir that is not hinged in legislative ambiguity but in the conflict of interests of those in the corridors of power. Speaking about Article 370 to the common man in India, will divulge that they do not understand the first thing about the Article. They just know that it is controversial from the myriad political statements in that direction. What makes it controversial is what keeps it

¹⁸ Inserted by the Constitution (Eighty-first Amendment) Act, 2000, sec.2, (w.e.f. 09-06-2000).

alive. All laws that feed the politicians pockets are the most hard to repeal; this is a well established fact.

Till date, not a single politician of Jammu and Kashmir or any other part of India has even briefly stated in any political rally, at least one of the plus points of retaining the article in the statute books. Whenever there is a case of how the laws in Jammu and Kashmir are ultra virus the basic human rights laws, the defence is that the law may very well violate human rights because it is in accordance with Article 370. But according to international court judgements, any law which contravenes Human Rights is not maintainable; it must be struck down. Article 370 is also allowed to contravene quite many features of the basic structure of the Constitution of India. It should be struck down on that ground alone¹⁹.

Furthermore isn't it ironic that every time any case comes up regarding a law being discriminatory or unfair, the judiciary is made to hear lengthy pleadings which include the Instrument of Accession and the process of integration of Jammu and Kashmir with the Union of India way back in 1947? The abovementioned case was regarding reservation in matters of promotion; is it fair or unfair. This did not call for a debate on the integration of the State with India and the like. Why can't any law be judged in 'Jammu and Kashmir' part of India on the basis of purely its merits without giving it loopholes based on the fact that Article 370 allows morally questionable laws to exist despite being blatantly unjust. It is unjust, prima facie to retain a temporary provision like Article 370 even a day past 1956, when the Constitution of

Jammu and Kashmir was completed, which reiterated that the State is and always will be an integral part of India making it on par with all other States of the Union.

One supremely important detail that is conveniently forgotten by all arguments regarding the Constitutional application to Jammu and Kashmir is the following (which rendered article 370 redundant):

Proclamation for the State of Jammu and Kashmir

Dated the 25th November, 1949.

Whereas with the inauguration of the new Constitution for the Whole of India now being framed by the Constituent Assembly of India., the Government of India Act, 1935, which now governs the constitutional relationship between this State and the Dominion of India will stand repealed ;

And WHEREAS, in the best interest of this State , which is closely linked with the rest of India by a community of interests in the economic political and other fields, it is desirable that the constitutional relationship established between this State and the Dominion of India , should be continued as between this State and the contemplated Union of India ; and the Constitution of India as drafted by the Constituent Assembly of India, which includes duly appointed representatives of this State, provides a suitable basis for doing so;

I now hereby declare and direct—

That the Constitution of India shortly to be adopted by the Constituent Assembly of India shall in so far it is applicable to the State of Jammu & Kashmir, govern the constitutional

¹⁹ As per *Keshawanand Bharti versus State of Kerala*, 1973.

relationship between this State and contemplated Union of India and shall be enforced in this State by me, my heirs and successors in accordance with the tenor of its provisions;

That the provisions of the said Constitution shall, as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith which are at present in force in this State.

KARAN SINGH

Yuvraj

Regent of Jammu & Kashmir

C. GANESAN. Deputy Secretary

Contrary to claims made by Kashmiri separatists and their sympathizers, there is no legal ambiguity about the accession of Jammu and Kashmir to the Union of India. At the time of independence in 1947, the 554 principalities that formed the Indian dominion had the option to join India or the newly formed Pakistan. The principality of Jammu and Kashmir was invaded by Pakistan to force its king Maharaja Hari Singh to join Pakistan. On 26th October, 1947, the king signed the Instrument of Accession offering to accede to India, which offer was accepted on 27th October by Lord Mountbatten absolutely. It was made clear to the Princes, by Lord Mountbatten, that the Instrument of Accession would be in standard form for all the States of India. It was further clarified that there could not be any conditional accession. The accession once signed would mean that a State became absolutely integrated into the territory of India. Jinnah further insisted that no plebiscite or referendum be carried out in any State; since it was the ruler's prerogative to sign the Instrument of Accession to either India or Pakistan. The accession of Jammu and Kashmir to India was supported and

ratified by Sheikh Mohammed Abdullah the leader of National Conference. Due to India being under siege from Pakistan, while Pakistanis committed mass loot, rape and murder on the J&K people, a temporary legislative arrangement (enshrined in article 370 of the Indian Constitution) was made.

ABSOLUTE FACTS

Certain facts are irrefutable when it comes to Jammu and Kashmir

1. The Instrument of Accession was signed in common format by all the Princes of the States, therefore they who signed the instrument would be at par i.e. their position (legally and constitutionally) would be the same.
2. This is the reason why Jammu and Kashmir was entered into the Constitution of India as one of the Part B States with ordinary position and not distinct position or special position.
3. The Union of India surrendered some of its powers to the States as is the legal system in any Union government. The States did not surrender any rights or powers to the Union; they derived rights and powers from the Union.
4. The Union of India comprises of territories which include Jammu and Kashmir, even those aggressively invaded and forcefully occupied till date by Pakistan on a hostile basis.
5. Every law or instrument that ratifies Article 1 of the Constitution of India affirms that Jammu and Kashmir is an integral part of India just like any other State. The Constitution of Jammu and Kashmir and the Article 370 of the Constitution of India expressly pledge allegiance to India by expressly declaring Jammu and Kashmir to be an integral territory of the Union of India.

6. Out of the 554 or so Princely States, approximately 550 acceded to India.
7. The Union Government of India decided to allow all the Princely States to frame a Constitution for their States to apply the principles of the Constitution of India to their States.
8. Therefore Jammu and Kashmir is not the only State of India, with a State Constitution. For convenience of the Constituent Assemblies of the States they all agreed to implement the Constitution of India in their States as it was; they made no changes.
9. Jammu and Kashmir would have done the same, had it not been a war-torn region looted and raped by Pakistan.
10. Therefore Jammu and Kashmir was discriminated against and did not get all the facilities that were availed by other States of India. In fact Hasrat Mohani objected to this discrimination when article 370 was being introduced, but he was not allowed to continue his debate, on the pretext of paucity of time.
11. In fact the President of the Constituent Assembly had instructed that no new articles would be considered for insertion, due to it being the final stage of discussion of only clauses and not entire articles. He somehow, allowed the motion for introduction of this undebated article at the urging of Mr. Ayyangar who was prompted by Mr. Abdullah and Pt. Nehru.
12. Legend has it that the Law Minister – Dr. Ambedkar was requested to introduce the article and make a motion for its insertion but he refused on grounds that it was not legally sound.
13. Innumerable cases and judgments have proved that the Article goes against the fundamental rights and the basic

structure doctrine of the Constitution of India.

The recurrent debate that raised its unrequited head in this case, which had there been any legality to the retention of Article 370, there would have been no need for, is as follows :

Controversy involved in writ petitions is multi-dimensional. It raises a number of questions, required to be dealt with to settle the controversy.

i) Why was Constituent Assembly convened and separate Constitution framed for the State, when none of the Princely States that acceded to Dominion of India, did go for such exercise.

ii) Why are not all the provisions of Constitution, like other States, applicable to the State and so are the amendments made to the Constitution from time to time.

iii) Whether after accession of the State to Dominion of India and after the State in terms of Article 1 of the Constitution, became part of India and was included in 1st Schedule to the Constitution, amendment to a provisions of the Constitution applied to the State, is to *ipso facto* apply to the State?

iv) Whether Article 370, being a temporary provision, lost its force once Constitution of the State was framed by its Constituent Assembly and therefore, can no more be used by the President to modify a provision of the Constitution in its application to the State?

v) Whether expressions “exceptions and modifications” in Sub clause (d) Clause (1) of Article 370 of the Constitution, limit power of the President to minor changes or alterations in the provision of Constitution on their

application to the State and not to “amend” such provision- add to, omit or abrogate such provision?

and like questions are intertwined with the controversy and required to be answered for just disposal of the writ petitions on hand. The duty, to deal with the matter in detail and consider all the aspects of controversy, assumes importance because of reference of the matter to a larger Bench.

CONCLUSION:

In the abovementioned case the High Court of Jammu and Kashmir was faced with the question of whether section 6 of the Jammu and Kashmir Reservation Act 2004 and section 9 and 34 of the Jammu and Kashmir Reservation Rules 2005 are good in law. Being that the sections all pertain to reservation in matters of public employment, the Court was required to bear in mind while rendering judgement that the Clause (4) of Article 16 of the Constitution of India, leaves room for a provision, providing reservation in appointments or posts, in favour of any backward class of citizens, which, in the opinion of the State, is not adequately represented in the services of the State. Clause (4) Article 16 is not an exception to Clause (1), Article 16 but illustrative of classification permissible under Clause (1) Article 16, that as already pointed out has inherent in it, provision for reasonable classification. Clause (4) of Article 16, gives an instance where classification may be made. Clauses (1), (4) or Article 16, therefore, as held by the Supreme Court, operate in the same field and are to be harmoniously read.²⁰

The Court proceeded to observe:- Neither the Constitution nor the law prescribe the procedure or method of identification of backward classes.

In view of this the court could probably have elected under the principle of judicial activism to prescribe a method or procedure for such identification and urged the State to take up the same, but that is not the way of Jammu and Kashmir.

In this part of India the fundamental question can never be whether human rights protection or welfare initiatives by any civilised State warrant the need for reservation in respect of backward people; but whether the welfare legislation is inkeeping with an obsolete law like Article 370. If it is not inkeeping, then it should in all fairness violate human rights, because to oppose human rights violation by questioning Article 370 would be tantamount to ‘Right Wing Politics’.

²⁰ The reasonable classification contemplated under Clause (1), Article 16, and reservation provided under Clause (4), Article 16 as laid down in Indra Sawhney and

ors. Versus Union of India, 1992 Supp (3) SCC 210 is restricted to initial appointment/direct recruitment.