

Case Name	Valsamma Paul v Cochin University & Ors; Kerala Public Service Commission v Dr Kanjamma Alex & Anor
Topic	Affirmative action provision inapplicable to woman without the requisite disadvantaged background
Category	EQUALITY - affirmative action; WOMEN - affirmative action;
Tribunal	Supreme Court
Country	India (Asia)
Case Date	04 Jan 1996
Judge(s)	K Ramaswamy J, B L Hansaria J

The appellant, born into a designated 'forward class', was married to a member of a 'backward class'. Articles 15(4) and 16(4) of the Constitution provide that a State may, despite the guarantees of non-discrimination (Art 15) and equality of opportunity (Art 16), make special provision for backward classes of citizens, including the reservation of appointments or posts in their favour. On the basis of her marriage, the appellant applied for and was appointed to a lecturer position with the respondent university which was 'reserved' for members of a backward class. The appointment was successfully challenged by another candidate who argued that the appellant was not a member of the class. The Full Bench of the Kerala High Court held that the appellant was ineligible for the reserved position because she did not, by marriage, assume the status of her husband's class. The appellant obtained special leave to argue, *inter alia*, that the constitutional guarantees of non-discrimination and equality of opportunity entitled her to apply for the position.

In dismissing the appeal, it was held that:

1. Affirmative action is necessary to assist those suffering from a legacy of social and economic inequality to attain equal protection of the law.
2. A member of the class to which the appellant's husband belongs is prima facie entitled to invoke the affirmative action provision in the Constitution provided the class is not already adequately represented in the public service of the State.
3. Secularism is the cornerstone of an egalitarian and forward looking society which the Constitution endeavours to establish. Secularism provides a sense of security to the followers of all religions and ensures full civil liberties, constitutional rights and equal opportunities.
4. India has ratified the **Convention on the Elimination of all Forms of Discrimination Against Women** and its principles are enforceable by operation of the Protection of Human Rights Act 1993.
5. Due recognition of **women's** need for social mobility and integration necessitates accepting, therefore, that upon marriage, a wife acquires the same status as her husband and that of his caste. However, a person claiming the benefit of affirmative action by virtue of marriage into a backward class must demonstrate that they too have experienced disadvantages caused by educational, social and cultural backwardness.
6. The affirmative action provision is not applicable where a woman belonging to a backward class by marriage has in actual fact had an 'advantageous start' in life by previously belonging to a forward class.

Lawyers	For the Appellant: K M K Nair and R Sathish, Advocates For the State of Kerala: S A Syed, Advocate For the Cochin University for Intervenor: C N Sreekumar, G Prakesh and Navin Prakash, Advocates
Citations	(1996) 3 SCC 545; AIR 1996 SC 1011; [1996] 3 CHRLD 314