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**CASE COMMENT: JAISHRI LAXMANRAO PATIL V. THE CHIEF
MINISTER AND ORS.**

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ABSTRACT

Recently a five-judge constitutional bench of the Supreme Court (SC) delivered detailed judgment in the case of Jaishri Laxmanrao Patil vs Chief Minister, on the scope of reservation permissible under the Constitution for citizens from Socially and Educationally Backward Classes (SEBCs). Further, the bench struck down Maharashtra State Reservation for Socially and Educationally Backward Classes (SEBC) Act, 2018 which extends reservation to the Maratha community in public education and employment exceeding the limit which is prescribed in Indra Sawhney v. Union of India.

This case comment analyzes the case of Jaishri Laxmanrao Patil vs Chief Minister. The case comment talks about the background and what is the reasoning behind this judgment and whether the judgment is according to the prevailing law and order.

In the course of this case comment author tries to answer questions like what is the reasoning behind the disapproval of the findings of the Justice M G Gaikwad Commission report and whether State has the power to declare a class socially and economically backward.

KEYWORDS

Reservation, Backward Class, Maratha, Indra Sawhney, Gaikwad Commission

INTRODUCTION

A Supreme Court (SC) five-judge bench led by Justice Ashok Bhushan, handed down its decision on 5 may 2021, in the contentious 'Maratha reservations issue', declaring it

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unconstitutional.² The SC judgment has dismissed the former Bombay High Court judgment, given on 27th June 2019 which had upheld the grant of reservation to Marathas at 12-13% in government schools and jobs in the state. Further, they collectively decided that Indra Sawhney judgment of 1992 need not be revised in this issue.³ The bench noted that a separate reservation for the Marathas, if granted, would cross 50% limit and would infringe the fundamental rights under art(s) 14⁴ & 21⁵.

The reservation system in India had originated due to the age-old caste system in India. In layman language, the essence of reservation is to reserve access to seats in educational institutions, government jobs, and legislatures for certain sections of the population. This is generally called positive discrimination or affirmative action. In 1882, William Hunter and Jyotirao Phule originally conceptualized a caste-based reservation system.⁶

The reservation system that lives today, in its true sense, was introduced in 1933 when British Prime Minister Ramsay Macdonald presented the 'Communal Award'.⁵

BACKGROUND

History: The Marathas, a historically agrarian community which constitutes 32% of the population, made calls for reservation following an agrarian crisis. The increased wage gap had led to economic instability which gravely concerned the lower middle and middle class.

Beginning: A Public Interest Litigation (PIL) was filed by Jaishri Laxmanrao, against the judgment of the Bombay high court decision which provided for 16% reservation to the Maratha community under the Backward Classes Commission. The petitioner pleaded that this reservation to the Maratha community bypasses the 50% ceiling on reservations which was set in Indra Sawhney judgment, violating articles 14,16 and 21.

Mumbai High Court Judgment: Judgment was passed based on the findings of the M.G.

²V. Venkatesan, *Maratha Quota Case: SC Declares Reservation Over 50% as Unconstitutional*, THE WIRE (May 5, 2021), <https://thewire.in/law/maratha-quota-case-sc-declares-reservation-over-50-as-unconstitutional>.

³ Krishnadas Rajagopal, *Supreme Court declares Maratha quota law unconstitutional*, THE HINDU (MAY 05, 2021, 11:02 IST), <https://www.thehindu.com/news/national/sc-declares-maratha-quota-law-unconstitutional/article34487043.ece>

⁴ INDIA CONST. art. 14

⁵ INDIA CONST. art. 21

⁶ MEDIUM, <https://medium.com/vanicademy/reservation-in-india-cbee269b1870#:~:text=William%20Hunter%20and%20Jyotirao%20Phule%20in%201882%20originally,British%20Prime-Minister%20Ramsay%20Macdonald%20presented%20the%20E2%80%98Communal%20Award%20E2%80%99> (last visited on July 1, 2021)

Gaikwad Commission report⁷ of 2018. Bombay High Court says that the nine-member Maharashtra State Backward Class Commission headed by Justice M.G. Gaikwad, in its 1,035-page report submitted to the State is the most reliable one on the subject, and highlights the community's educational backwardness. The 2 Judge Coram in High Court concluded that the Maratha community had lost its self-esteem which can only be remedied by giving them reservations under the Socially and Educationally Backward Classes (SEBC) community. Following the aforementioned, the bench granted 16% reservations for the Marathas against which a motion/appeal was raised in the Hon'ble SC.

JUDICIAL SCRUTINY OF RESERVATION: The first significant decision of the Supreme Court (SC) on the subject of reservation is *The State of Madras v. Smt. Champakam Dorairajan* (1951)⁸ case, which had led to the First Amendment to the Constitution. In this case, SC had pointed out that reservations were granted in favour of backward classes regarding employment under the State under Article 16(4), no such provision was made in Article 15⁹. In response to the Supreme Court's decision in the case, Parliament amended Art.15 by introducing Clause (4). The SC in the case of *Indira Sawhney v. Union of India* (1992)¹⁰ examined the scope and extent of Article 16(4)¹¹. According to the Court, the creamy layer of OBCs should be excluded from the list of reservation beneficiaries, there should be no reservation in promotions, and the overall reserved quota should not exceed 50 percent. The Parliament responded by passing the 77th Constitutional Amendment Act which added Article 16(4A)¹². The article awards power on the state to reserve seats in favor of SC and ST in promotions in Public Services if the communities are not appropriately represented in public employment. The Supreme Court in *M. Nagaraj v. Union Of India* (2006)¹³ case while upholding the constitutional validity of Art 16(4A) held that any such reservation policy to be constitutionally valid shall have to meet the following three constitutional requirements- firstly SC and ST communities should be socially and educationally backward; secondly, SC and ST communities should not be adequately

⁷ Sonam Saigal, *Gaikwad report on Maratha quota most reliable*, THE HINDU (March 14, 2019 00:51 IST), <https://www.thehindu.com/news/cities/mumbai/gaikwad-report-on-maratha-quota-most-reliable/article26525963.ece>

⁸ *State of Madras v. Chamakam Dorairajan*, AIR 1951 SC 226

⁹ INDIA CONST. art. 15

¹⁰ *Indira Sawhney v. Union of India*, 1992 Supp (3) SCC 217

¹¹ INDIA CONST. art. 16(4)

¹² INDIA CONST. art. 16(4A)

¹³ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212

represented in public employment; and last, such reservation policy should not alter the overall performance in the administration.

Supreme Court in the case of *Jarnail Singh vs. Lachhmi Narain Gupta* (2018)¹⁴, considered that reservation in promotions doesn't need a collection of quantifiable data on the backwardness of the Scheduled Castes and Scheduled Tribes. The Court held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in the promotion of SC/ST individuals who belong to the creamy layer of their community.

RELEVANT PROVISIONS

Article 14: This article gives Indian citizens "equality before the law". According to this article, the State cannot deny anyone equal protection and security of the statutory provisions of our country when such a person is inside the boundaries on basis of religion, race, caste, sex, or place of birth.

Article 15(1) and (2)¹⁵: It provides for the state to not discriminate against anyone based on religion, caste, sex, color, or place of birth.

Article 15 (4)¹⁶: It was added by the Constitution (First Amendment) Act, 1951 and empowers the State to create specific provisions for the advancement of educationally and socially backward castes and/or classes.

Article 16¹⁷: It refers to equality of opportunity in the matter of government jobs.

Article 16(1)¹⁸: It gives equality of opportunity for every citizen in matters relating to employment or appointment to any office under the State.

Article 16(2)¹⁹: It states that there can't be any discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence, or any of them.

Article 16(4) and 16(4A): These articles provide for the grounds for positive discrimination or affirmative action. Article 16 (4) says that the State may take positive action in favor of appointments or posts for backward classes which, in the opinion of the State, are not adequately represented. Article 16 (4A) says that the state can make any provision for reservation in matters of promotion in favor of the Scheduled Castes and the Scheduled Tribes

¹⁴ *Jarnail Singh v. Lachhmi Narain Gupta*, 2018 SCC OnLine SC 1641

¹⁵ INDIA CONST. art. 15(1) &(2)

¹⁶ INDIA CONST. art. 15(4)

¹⁷ INDIA CONST. art. 16

¹⁸ INDIA CONST. art. 16(1)

¹⁹ INDIA CONST. art. 16(2)

if they are not adequately represented in the services under the State.

Article 338²⁰: It provides for the President's powers and responsibilities regarding declaration of reservations for the ST and SC communities.

Article 342A²¹: This gives the President power, that after considering the Governor's opinion, the president may declare reservations in any state or union territory in India by issuing a public notification.

Indra Sawhney v. Union of India: It is also known as the Mandal Commission case and has provided India with a 50% ceiling on reservations.²² In this case, the court upheld the 27% reservation criteria for the SEBC but under the condition that the poor sections of the SEBC are given preference.²³ Additionally, the court struck down the provision that allowed the economically backward people belonging to the higher caste 10% reservation.

SEBC Act, 2018²⁴: This Act aimed to provide reservation of seats in admission to educational institutions and reservation of posts for appointments in public services and posts under the State, to Socially and Educationally Backward Classes of Citizens (SEBC) in the State of Maharashtra for their advancement.

ISSUES

1. Whether the State Govt. has the power to recognize Socially and Educationally Backward Classes (SEBC)?
2. Can the 50% limit set by the SC in the Indra Sawhney case be exceeded?
3. Can the reservation be considered under the principle of exceptional circumstance?

JUDGMENT

Regarding the first issue, the SC held that the State Government does not have the power to recognize an SEBC. This right is particular to the President of India according to the Constitution (102nd Amendment) Act.²⁵ Under this amendment, two articles were inserted, Art.

²⁰ INDIA CONST. art. 338

²¹ INDIA CONST. art. 342A

²² Shoaib Daniyal, *Explainer: Why is caste-based reservation in India capped at 50%?*, scroll.in (July 1st 2021), <https://scroll.in/article/890512/explainer-why-is-caste-based-reservation-in-india-capped-at-50>.

²³ V Venkatesan, *Maratha Reservations: Why SC's Verdict May Still Open the Door to Further Litigation*, THE WIRE (MAY 7, 2021), <https://thewire.in/law/maratha-reservations-why-scs-verdict-may-still-open-the-door-to-further-litigation>.

²⁴ Maharashtra Act LXII 2018

²⁵ 102nd Constitutional Amendment Act 2018

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338B²⁶ and Art. 342A²⁷. The aforementioned articles leave the state with no authorization to recognize any SEBC. The power of the state to make reservations in favour of any community comes under the ambit of articles 15 & 16. In the present case, the right of the State is absent. Ashok Bhushan, the head of the panel in the present case decided that the strength of the Maharashtra State Commission Report based on the MC Gaikwad's Report has not given a case of exceptional circumstances or an extraordinary situation to come under the ambit of Indra Sawhney.

The SC in the 2nd issue upheld the precedent of the Indra Sawhney judgment and re-emphasized the purpose of its exceptions. Justice Ashok Bhushan and Justice Jeevan Reddy opined that even though the 50% ceiling on reservations can be breached in "exceptional circumstances", the Marathas do not fall in the same and reservation granted by the Bombay HC is invalid under the Sawhney judgment.

Additionally, the judges expressed that the reservations coming under articles 15(4) and 16(4) are still subject to the 50% limit, further asserting the violative nature of the High Court judgments which provided the Marathas with 12% and 13% educational and occupational reservation. They also rejected to revisit the Indra Sawhney Judgement with a larger bench, stating the lack of compelling arguments against it.

The five-judge Constitution bench unanimously concluded in the last issue that the Gaikwad report did not provide grounds to justify that the Maratha community is socially and economically isolated, which invalidates them for reservation under "exceptional conditions". Justice Bhushan and Justice Nazeer have noted that "The Marathas are in the mainstream of national life. They are socially and politically dominant class". Taking all these factors into consideration the court declared that the Maratha community's reservation does not fall under the "exceptional circumstances" stated in the Indra Sawhney judgment. Additionally, Justice Bhushan also stated that "We are of the considered opinion that neither the Gaikwad Commission's report nor the judgment of the high court has presented out an extraordinary circumstance in the case of the Maratha where the ceiling of 50% can be exceeded".

ANALYSIS

1. Whether the State government has the right to recognize a socially and economically backward class?

²⁶ INDIA CONST. art. 338B

²⁷ INDIA CONST. art. 342A

The cabinet had passed the Maharashtra SEBC Act in 2018, validating the recommendations of the Gaikwad Commission Report.²⁸ After this act was passed, the Bombay High Court ordered in favor of 16% reservations for the Maratha community. This Act was questioned in a writ filed in the case of Sanjeet Shukla v. The State of Maharashtra²⁹ doubts the merit of the report. The petitioner had pleaded that the Marathas are a powerful community, and many hold positions of power in government services, co-operatives, etc. This writ had further contested that the constitutional provisions of the 102nd Amendment Act were not followed. Following the judgment, this act is now revoked and therefore invalid. Shri Divan, a senior counsel in the present case³⁰, commented on the 102nd Amendment and stated that with the centralized nature of the process, the 2018 Act is flawed. The Supreme Court had rejected the plea for the inclusion of the Marathas into the central list of the backward class commission. The bench reasoned that the Marathas were a socially and economically dominant and prestigious community. This proves that the demand for reservation for such a community is baseless. This concludes that the Marathas are not a backward class, and the State does not have the authority to recognize a socially and economically backward class.

2. Can the 50% limit set by the SC in the Indra Sawhney case be exceeded?

The constitutional bench framed 6 questions to be addressed during the SC hearings, one of them pertained to the issue of whether the 12% and 13% reservations for the Maratha community (in addition to the 50% reservation) granted by the high court was legitimate under the precedent set by the court during Indra Sawhney. In the Sawhney case, the apex court affirmed the 50% limit for reservations and included that there could be probable exceptions to this limit. These exceptions are only applicable to people coming from isolated areas of India, away from the national mainstream, which may affect their socioeconomic standard compared to the rest of the country, and the Maratha community cannot be considered “exceptional” since they are a socially and politically dominant community.

The High Court granted the Maratha community reservations based on the Gaikwad committee’s report which termed the community as a ‘backward class’ and recommended excess reservations. The High Court failed to recognize the violation under Indra Sawhney and

²⁸ *Maratha Reservation Bill Passed by Maharashtra Cabinet; Fadnavis Government to Create New ‘SEBC’ Category*, (last visited on July 1, 2021)

²⁹ *Sanjeet Shukla v The State of Maharashtra Civil Appeal 3124 of 2020*

³⁰ *Due process not followed in Maratha quota law*, THE HINDI (March 17, 2021),

<https://www.thehindu.com/news/national/due-process-not-followed-in-maratha-quota-law/article34087149.ece>

justified their provisions for the Maratha community under article 14, this justification was struck down by the SC after deliberating that it does not elude the 50% limit nor the principle of reasonability.

Moreover, the court rejected to revisit the Sawhney judgment's 50 % limit with a larger bench of justices and stated that it is a good law that seeks to have a measure of balance and ensures the viability of the principle of equality. The court conceded that the Sawhney case is a result of thorough contemplation and was passed without any serious opposition. Its prescribed limit has been used in about ten high court cases to strike down numerous laws and four Supreme Court rulings have also sustained the case, which further proves its integrity.

3. Can the reservation be considered under the principle of exceptional circumstance?

Continuing to the Indra Sawhney case discussions, the Justices held that the probable conditions given in the Indra Sawhney case are not given as a list of directives, but as "tests". These tests give a measure for identifying eligibility for reservations and classifying communities as socially, economically, and geographically isolated. For example, communities hailing from "far-flung" areas are geographically isolated and communities that remain beyond the mainstream of the nation.

It was held that the Gaikwad committee report did not justify the Maratha community's "exceptional reservation" under any of these tests. The report instead focused on under-representation in the government sector, stating that only 11.86% of A-grade public servants are Marathas, meanwhile they make up for 33 % of the state population, failing to recognize that reservation cannot be doled out based on population size. Senior Counsel Divan argued that the Gaikwad commission was also deficient in recognizing the political and social dominance of the class; he also stated that "The Marathas are not backward in any constitutional sense" this statement was further solidified by the fact that the Gaikwad report tried to justify the exceptional backwardness of the community by giving examples of conservative Maratha practices such as No widow re-marriage and a communal distaste towards inter-caste marriage. Another reason for the disqualification of Maratha reservation under "exceptional circumstances" is that the 50% limit of the Indra Sawhney case has over time developed a strong precedent for dealing with reservation-related cases and has only a few exceptions such as reservations to Panchayats in certain exceptional areas of the country to protect tribal interests.

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CONCLUSION/COMMENT

The judgment in the opinion of the author was proper according to the prevailing law and order. The author favors the verdict, based on the facts of the case, the arguments laid down in the SC, and the decision passed by the 5-judge panel. The issues raised in this case were accurately and concisely address by the verdict. The bench made some strong comments which the authors are in favor of. "Can we accept no backward caste has moved forward?" are some of the statements on which the bench unanimously agreed on. The panel also showed interest in the complete removal of reservations in India and the resultant removal of inequality existing. The authors are in favour of this nature of the discussion.

After all, the students are at receiving end and this verdict gives the deserving student the best deserving seat in their respective college and institutes. In conclusion, since there was no exceptional circumstance prevalent in the case, the Maratha reservations are removed.

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