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## Case Comment: Dr. Jaishri Laxmanrao Patil v. The Chief Minister & Anr.

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### INTRODUCTION

On May 5, 2021, the Supreme Court handed down its decision in the contentious Maratha reservations issue, declaring it unconstitutional.<sup>1</sup> The five-judge panel, led by Ashok Bhushan, unanimously decided that the Indra Sawhney decision from 1992 need not be revised in this case.<sup>2</sup> The bench ruled that a separate reservation for the Marathas goes beyond the 50% limit and violates art(s) 14<sup>3</sup> & 21<sup>4</sup>.

The SC judgment has revoked the previous Bombay High Court verdict on 27<sup>th</sup> June 2019 which upheld the grant of reservation to Marathas at 12-13% in government schools and jobs in the

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<sup>1</sup> Anesha Mathur, 'Violates right to equality: Supreme Court strikes down Maratha reservation in jobs, education' (*India Today*, 5 May 2021) <<https://www.indiatoday.in/india/story/reservation-for-maratha-community-struck-down-by-supreme-court-1798992-2021-05-05>> accessed 06 May 2021

<sup>2</sup> Krishnadas Rajagopal, 'Supreme Court declares Maratha quota law unconstitutional' (*The Hindu*, 5 May 2021) <<https://www.thehindu.com/news/national/sc-declares-maratha-quota-law-unconstitutional/article34487043.ece>> accessed 06 May 2021

<sup>3</sup> Constitution of India, art 14

<sup>4</sup> Constitution of India, art 21

state.<sup>5</sup> The Bombay HC judgment was passed on the recommendations of the SBEC and the Gaikwad Commission report.<sup>6</sup>

## BACKGROUND

**Commencement:** The petitioner of the case, Jaishri Laxmanrao, filed a P. I. L. against the HC judgment that provided the Maratha community with 16% reservation under the Backward Classes Commission. He pleaded that providing reservation to the Marathas and bypassing the 50% cap on the reservation is in violation to the art(s) 14, 16, and 21.

**History:** The Marathas, a historically agrarian community that constitutes 32% of the population made demands for reservation following the subsequent agrarian crisis. This increased wage gap led to financial instability which gravely affected the lower middle and middle class.

**The High Court's Judgment:** Base on the findings of the M.G. Gaikwad Commission<sup>7</sup> report in 2018, 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 SEBC community. Following this, the bench granted 16% reservations for the Marathas against which a motion/appeal was raised in the hon'ble SC.

### *Supreme Court Proceedings*

The process was started to give reservation of opportunities to be present and even voice opinions or working various fields such as the legislatures, govt. jobs, etc., reservation in India was introduced post-independence. Following the recommendations of the Mandal

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<sup>5</sup> '10 per cent reservation for economically backward general category: All that you need to know' (*India Today*, 7 January 2019) <<https://www.indiatoday.in/india/story/10-per-cent-reservation-for-economically-backward-general-category-all-that-you-need-to-know-1425306-2019-01-07>> accessed 06 May 2021

<sup>6</sup> Sonam Saigal, 'Bombay High Court upholds reservation for Maratha community' (*The Hindu*, 27 June 2019) <<https://www.thehindu.com/news/national/other-states/bombay-high-court-upholds-reservation-for-maratha-community/article28180208.ece>> accessed 06 May 2021

<sup>7</sup> Sonam Saigal, 'Gaikwad report on Maratha quota most reliable' (*The Hindu*, 14 March 2019) <<https://www.thehindu.com/news/cities/mumbai/gaikwad-report-on-maratha-quota-most-reliable/article26525963.ece>> accessed 06 May 2021

Commission in 1990,<sup>8</sup> reservations also extended to the SEBC in India. In addition, 2019 also introduced 10% reservation for the economically weaker students from upper caste backgrounds.<sup>9</sup>

Reservations are a government initiative that is supported through constitutional provisions. Under Art. 16(4)<sup>10</sup>, the necessity of power flows towards the concept that there should be ample opportunities to all the classes. Throughout history, ‘upper castes’ have exploited these disadvantaged sections of society. Thus, following independence, this form of positive discrimination was introduced to correct the historical injustice that occurred. Art. 15(4)<sup>11</sup> gives the authorities the power to produce special provisions for the promotion of their interests and welfare of these disadvantaged sections. These sections include SCs, STs, OBCs, and EWS. As laid down in *Indra Sawhney v Union of India*<sup>12</sup> the SC restricted reservations for education at 50%.<sup>13</sup> This cap was introduced in 1992 in the case of caste-based reservation.<sup>14</sup>

## RELEVANT PROVISIONS

- **SEBC Act, 2018**<sup>15</sup>: “This Act aimed to provide reservation of seats for admission in 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.”

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<sup>8</sup> Revathi Krishnan, ‘30 years since Mandal Commission recommendations – how it began and its impact today’ (*The Print*, 7 August 2020) <<https://theprint.in/theprint-essential/30-years-since-mandal-commission-recommendations-how-it-began-and-its-impact-today/477260/>> accessed 07 May 2021

<sup>9</sup> PTI, ‘10% reservation for economically weak in general category comes into force’ (*Economic Times*, 14 January 2019) <[https://economictimes.indiatimes.com/news/politics-and-nation/10-reservation-for-economically-weak-in-general-category-comes-into-force/articleshow/67527553.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/10-reservation-for-economically-weak-in-general-category-comes-into-force/articleshow/67527553.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)> accessed 07 May 2021

<sup>10</sup> Constitution of India, art 16(4)

<sup>11</sup> Constitution of India, art 15(4)

<sup>12</sup> *Indra Sawhney v Union of India* AIR 1993 SC 477

<sup>13</sup> Sonam (n 6)

<sup>14</sup> Sonam (n 7)

<sup>15</sup> Maharashtra Act LXII 2018

- **Article 14:** This Act provides Indian citizens with “equality before the law”. According to the act, The State cannot deny anyone the equal protections and securities of the statutory provisions of our country when such a person is inside the boundaries.
- **Article 16:** This Act provides citizens with the equality of opportunity in matters of public employment.
- **Article 16(4):** “Nothing in this article shall prevent the State from making any provision for the reservation of 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 under the State.”
- **Article 15:** This Act prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
- **Article 15(4):** “Nothing in this article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes.”
- **Article 338:** This Act emphasizes the President’s powers and responsibilities about the issue of declaring reservations for the ST and SC communities.
- **Article 342A:** According to this article, the President, after considering the Governor’s opinion, may declare reservations in any state or union territory in India by issuing a public notification.
- **Indra Sawhney v. Union of India**<sup>16</sup>: This landmark case is also known as the Mandal Commission case and has provided India with a 50% ceiling cap on reservations.<sup>17</sup> 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.<sup>18</sup> Additionally, the court struck down the provision that allowed the economically backward people belonging to the higher caste 10% reservation.

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<sup>16</sup> Constitution of India, art 16(4)

<sup>17</sup> Shoaib Daniyal, ‘Explainer: Why is caste-based reservation in India capped at 50%?’ (*Scroll.in*, 21 August 2018) <<https://scroll.in/article/890512/explainer-why-is-caste-based-reservation-in-india-capped-at-50>> accessed 08 May 2021

<sup>18</sup> V Venkatesan, ‘Maratha Reservations: Why SC’s Verdict May Still Open the Door to Further Litigation’ (*The Wire*, 7 May 2021) <<https://thewire.in/law/maratha-reservations-why-scs-verdict-may-still-open-the-door-to-further-litigation>> accessed 08 May 2021

## ISSUES

1. Whether the State Govt. has the power to recognize a SEBC?
2. Can the 50% limit set by the SC in the Indra Sawhney case be exceeded?
3. Can the reservation fall under the principle of exceptional conditions?

## JUDGMENT

Concerning the first issue, the SC held that the State Government does not have the power to recognize a SEBC. This right is exclusive to the President of India according to the constitutional 102<sup>nd</sup> Amendment Act.<sup>19</sup> Under this amendment, two articles were inserted Art. 338B<sup>20</sup> and Art. 342A<sup>21</sup>. This section leaves the state with no authority to recognize any SEBC. The power of the state to make reservations in favour of any community fall under the ambit of Articles 15 & 16.<sup>22</sup> In the present case, the power of the state is absent.

Ashok Bhushan, the head panel in the present case concluded that the strength of the Maharashtra State Commission Report based on the MC Gaikwad's Report<sup>23</sup> has not made a case of exceptional circumstances or an extraordinary situation to fall under the ambit of Indra Sawhney.

The SC in the 2<sup>nd</sup> issue upheld the precedent of the Indra Sawhney judgment and reiterated the purpose of its exceptions. The judges (J Ashok Bhushan and J Jeevan Reddy) opined that even though the 50% ceiling cap on reservations can be breached in "exceptional circumstances", the Marathas do not fall into the said exceptional category and the reservation granted by the Bombay HC is invalid under the Sawhney judgment.

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<sup>19</sup> 102<sup>nd</sup> Constitutional Amendment Act 2018

<sup>20</sup> Constitution of India, art 338(b)

<sup>21</sup> Constitution of India, art 342(a)

<sup>22</sup> Constitution of India

<sup>23</sup> Maharashtra (n 15)

Additionally, the judges expressed that the reservations coming under Articles 15(4)<sup>24</sup> and 16(4)<sup>25</sup> 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 refused 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 secluded, which disqualifies them for reservation under “exceptional conditions”. The two justices (Justice Bhushan and Justice Nazeer) observed that “The Marathas are in the mainstream of national life. It is not even disputed that the Marathas are a politically and socially 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. Justice Bhushan also stated, “We are of the considered opinion that neither the Gaikwad Commission’s report nor the judgment of the high court has made out an extraordinary situation 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?

The cabinet had passed the Maharashtra SEBC Act in 2018, validating the recommendations of the Gaikwad Commission Report<sup>26</sup>. After this act was passed, the Bombay High Court ruled in favour 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 Maharashtra*<sup>27</sup> questioning the merit of the report. The petitioner had pleaded that the Marathas are a powerful community, and

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<sup>24</sup> PTI (n 9)

<sup>25</sup> Revathi (n 8)

<sup>26</sup> ‘Maratha Reservation Bill Passed by Maharashtra Cabinet; Fadnavis Government to Create New ‘SEBC’ Category’ (*India.com*, 18 November 2018) <<https://www.india.com/news/india/maratha-reservation-bill-passed-devendra-fadnavis-government-to-create-new-sebc-category-3435386/>> accessed 09 May 2021

<sup>27</sup> *Sanjeet Shukla v The State of Maharashtra* Civil Appeal 3124 of 2020

many Marathas hold positions of power in government services, Co-operatives, etc. The writ had also contested that the constitutional provisions of the 102<sup>nd</sup> Amendment<sup>28</sup> were not followed. Following the judgment, this Act is now revoked and hence void. Shri Divan a senior counsel in the present case,<sup>29</sup> commented on the 102<sup>nd</sup> 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 classes commission. The bench concluded that the Marathas were a socially advanced and prestigious community. This proves that the demand for reservation for a prestigious community like the Marathas 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 valid under the precedent set by the court during Indra Sawhney.<sup>30</sup> 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 secluded 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 politically and socially 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

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<sup>28</sup> 102<sup>nd</sup> Constitutional Amendment Act 2018

<sup>29</sup> ‘Due process not followed in Maratha quota law’ (*The Hindu*, 17 March 2021)

<<https://www.thehindu.com/news/national/due-process-not-followed-in-maratha-quota-law/article34087149.ece>> accessed 09 May 2021

<sup>30</sup> Constitution of India, art 16(4)

and 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.

Furthermore, the court refused 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 decisions have also sustained the case, which further proves its integrity.

### **3. Can the reservation fall under the principle of exceptional conditions?**

Adding to the Indra Sawhney case<sup>31</sup> discussions, the justices held that the probable circumstances given in the Indra Sawhney case are not provided as a list of directives, but as "tests". These tests provide a measure for detecting eligibility for reservations and classifying communities as socially, economically, and geographically secluded. For example, communities hailing from "far-flung" areas are geographically secluded and communities that remain beyond the mainstream of the nation.

It was held that the Gaikwad committee report<sup>32</sup> 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<sup>33</sup> that the Gaikwad commission<sup>34</sup> 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

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<sup>31</sup> Constitution of India, art 16(4)

<sup>32</sup> Maharashtra (n 15)

<sup>33</sup> Constitution of India, art 16(4)

<sup>34</sup> Maharashtra (n 15)

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.

## CONCLUSION

Based on the facts of the case, the arguments laid down in the SC, and the decision passed by the 5-judge panel, the authors are in favour of the verdict laid down in this case. This verdict accurately addresses all the points of the issue clearly and concisely. The bench made several strong statements which the authors are in favor of. ‘Can we accept that no backward class has moved forward’ were some of the statements that the panel unanimously agreed on? The panel also expressed interest in the complete removal of reservations in India and the resultant removal of inequality existing. Though no concrete statements were made in this manner, the authors are in favor of this nature of the discussion.

This judgment is most likely to impact children who are seeking admission into the colleges in Maharashtra. Often meritorious students are at the receiving end of the reservations introduced. They are likely to lose their deserved seat in the best colleges due to the nature of the reservations present. Thus, since there was no exceptional circumstance prevalent in this case, the Maratha reservations are revoked.