

Research Article

Constitutional and Legal Provisions Related to Reservation Policies for Village Panchayat Elections in Maharashtra

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Abstract

This paper examines the legal framework governing reservation policies in village panchayat elections within Maharashtra. The basis of these policies is enshrined in Article 243D of the Indian Constitution, which mandates that reservations be provided for Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion to their population within the panchayat area. This article also stipulates that at least one-third of all seats, including those reserved for SCs and STs, must be allocated for women. Furthermore, reserved seats must be rotated among different electoral wards to ensure broader participation, and the reservations for SCs and STs are subject to a time limit as specified in Article 334, which is currently set at 80 years. Additionally, state legislatures have the discretion to enact laws providing further reservations for "Other Backward Classes" (OBCs). In alignment with these constitutional principles, Maharashtra's Village Panchayat Act, 1959, extends the reservation policies by mandating a 27% reservation for OBCs on top of the existing SC/ST reservations. The state law also enhances women's representation by requiring a 50% reservation for women across all castes, surpassing the constitutional minimum. Candidates contesting reserved seats are required to produce caste validity certificates within six months of the election to avoid disqualification. The 73rd Constitutional Amendment was designed to bolster participation and leadership from marginalized communities in local governance, and the Supreme Court has affirmed the importance of these reservation policies in promoting political empowerment and democratic decentralization. Despite these advancements, several challenges persist. The stringent requirement for obtaining caste validity certificates within a limited timeframe can create barriers for candidates. Additionally, there is a risk of misuse if the reservation system is not properly implemented or monitored, potentially allowing individuals who do not genuinely belong to reserved categories to exploit the provisions.

Keywords

Constitution, Reservation, Policy, Law, Panchayat, Elections

1. Introduction

The 73rd constitutional amendment was an ambitious project to incorporate an inclusive democratic setup in local government machinery. A slew of provisions were incorporated by virtue of the amendment in order to effectuate the vision of autonomous and efficient growth of local democracy

from the grassroots level. A cursory glance at Part IX of the Constitution makes it clear that the various Articles serve a dual purpose, firstly, they set certain mandatory standards that local democratic institutions must adhere to as set by the Constitution, such as the duration and term of the Panchayat,

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reservation of seats, criteria for disqualification and so on. Secondly; they provide flexibility to various State Governments to formulate laws within this space to provide in detail what the Constitution only enables in a cursory manner. The power granted to the States to formulate such laws is also in furtherance of the State's competence to enact laws for local government under List II Entry 5 of the Seventh Schedule.

2. Structure of the Reservation Policy

The 73th Constitutional Amendment introduced several sweeping provisions to the Constitution which are contained in Part IX and IX-A. Some main features of Part IX and IX-A are:

1. Thirty-three per cent reservation of seats in favor of women in panchayats, both in terms of membership as well as chairmanship of the panchayats and in municipalities
2. Panchayats and municipalities have also been enabled to make regulations and levy some local taxes in accordance with the 11th Schedule.
3. The States have been empowered to give effect to this Part by enacting relevant laws. [1]

One such constitutional provision that performs a dual function is the Reservation of Seats under Article 243D. Article 243D ensures that there are certain mandates that the State legislatures must adhere to while ensuring equal participation from members of the backward classes while also giving State legislatures the freedom to formulate policies to bring such reservations into effect. The bare scheme of Article 243 runs as follows:

"Article 243D: Reservation of Seats

(1) Seats shall be reserved for—

- (a) the Scheduled Castes; and*
- (b) the Scheduled Tribes,*

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Sched-

uled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens."

[2]

From a reading of the Constitution, there are certain features of the reservation policy which are discernible of the composite goal of equal opportunity and effective participation. They are:

1. Proportionate representation for the Scheduled Castes and Scheduled Tribes
 2. Overall and Interlocking reservations for women
 3. Rotation of reserved seats among electoral wards
 4. Terminal clause for reservations
 5. State latitude in the reservation policy
1. *Proportionate representation for the Scheduled Castes and Scheduled Tribes*

Article 243D lays down the rudimentary framework for the do's and don'ts for bringing the reservation policy into effect. Herein, the constitutional mandate is clear, that reservations shall mandatorily be made available for persons belonging to the Scheduled Castes and Scheduled Tribes in the Panchayat election and that the percentage of their reservation would be proportionate to their respective populations in the Panchayat. The Constitution also makes it clear, that the reservations would not remain static but would rotate between different wards of the Panchayat to enable an opportunity for equal participation among members of backward castes from all constituencies. This policy of proportional representation for backward castes has also been extended to the position of Chairpersons of the Panchayats so that members of the Scheduled Castes and Scheduled Tribes have the unique opportunity of decision-making and coordination of various roles of other Panchayat members on a rotational basis.

2. Overall and Interlocking Reservations for Women

A distinguishing feature of the provisions for reservation in Article 243D is the policy that has been placed to ensure effective participation of women within lower rungs of democracy. The recognition of interlocking reservations or “quota within quota system” wherein women are provided a definite share of the reservations which are set in place for the persons of marginalized communities. The drafters of the constitutional amendment while realizing the heightened backwardness of women due to the dual grounds of gender bias and caste depravity have ensured that one third of all seats reserved for the Scheduled Castes and Scheduled Tribes be reserved for women. Moreover, the amendment also ensures that there is an overall reservation of one third seats or 33% reservation for women in all levels of the Panchayat reservation. This overall reservation would ensure that irrespective of caste or class, there are at least 33% women represented in the local democratic setup apart from the quota system for women within the existing backward classes. These provisions usually provide for a “no less than” clause for reservations which has been interpreted by the Courts to mean that in case the actual number of seats turns out to be a fraction, it must be rounded off into a whole number of seats in order to comply with the mandate of women’s representation. Furthermore, the overall reservation for women ensures that even general category women have an opportunity to contest and effectively participate in local democracies and can do so by an earmarking of seats in the respective wards of the Panchayat. The overall reservation of 33% for women is not only limited to the Panchayat seats but is also provided for the coveted position of the Chairperson of the Panchayat to ensure that leadership among women is fostered even at the helm of the Panchayat which would include a mixed cohort of men, women and persons from the backward classes.

3. Rotation of Reserved Seats Among Electoral Wards

Another notable feature of Article 243D is the mechanism of rotation of reserved seats in the Panchayat. Article 243D provides that the reservations put in place for persons of backward classes as well as women would not remain static to certain locations but will be rotated among different wards of the Gram Sabha. This measure is to ensure that even in wards that have lower populations of persons from backward classes, there is a leg up to compete and win elections by the means of reserved ward seats. This measure would also ensure that no seats in certain wards become strongholds for members from backward classes, the general category or women and that the most deprived from either of these wards would also have a fair chance of representing their community’s interests in a periodic fashion.

4. Terminal Clause for Reservations

The drafters in their wisdom have also provided a terminal clause for reservations for members of the backward classes in consonance with Article 334. Article 243D provides that the reservations for persons from the Scheduled Castes and Scheduled Tribes shall cease to have effect in accordance with

Article 334, which presently provides a time limit of eighty years. Pertinently, such a sunset clause for reservation has not been provided for women but only for members of the backward classes. A close look at Article 334, incorporated at the commencement of the Constitution would go to show that the framers had set an optimistic goal of ten years for the reservation policy for persons from the Scheduled Castes and Scheduled Tribes in the political sphere. However, as practical realities and the social milieu of India would go to show that equality among castes has not been realized in a time bound manner. Therefore, the Parliament has consistently made amendments to the Article 334 to give breathing room for the policy of affirmative action for members of the Scheduled Castes and Scheduled Tribes. Recently, the 104th Constitutional Amendment Act of 2019 increased the deadline from seventy years to eighty years which is set to expire in the year 2030. Very soon, these 80 years would also expire, however, the dream of equality and equal representation for marginalized communities remains a dream in progress.

5. State Latitude in the Reservation Policy

The constitutional scheme for reservation as already discussed sets certain mandatory standards when it comes to the proportion of reservation, who the predominant beneficiaries of such reservation would be and the framework for their effective participation. However, in alignment with giving latitude to states, Article 243D also provides that the State legislatures have the power to enable reservations for ‘backward class of citizens’ a term which was predominantly used to define the Other Backward Classes (OBCs). This provision is in line with giving states the power to enlarge and rather, mould reservation policies within states depending on the peculiar depravities of its people. A brief look at the Maharashtra Village Panchayat Act, 1959 would give a clearer picture on how the state of Maharashtra has furthered the reservation policy. The reservation policy for the panchayats of Maharashtra forms part of Section 10 of the Act which reads thus:

S. 10. Constitution of Panchayats.-

(1)...

(2)(a) *In the seats to be filled in by election in a Panchayat there shall be seats reserved for persons belonging to the Scheduled Castes, the Scheduled Tribes, Backward Class of Citizens and Women, as may be determined by the State Election Commission in the prescribed manner.*

(c) *the seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a panchayat shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in that panchayat as the population of the Scheduled Castes or, as the case may be, the Scheduled tribes, in that panchayat area bears to the total population of that area and such seats shall be allotted by rotation to different wards in a panchayat.*

Provided that, in a panchayat comprising entirely the Scheduled Areas, the seats to be reserved for the Scheduled

Tribes shall not be less than one-half of the total number of seats in the panchayat.

Provided further that, the reservation for the Scheduled Tribes in a panchayat falling only partially in the Scheduled Areas shall be in accordance with the provisions of clause (b).

(Provided also that) one-half of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes;

(d) the seats to be reserved for persons belonging to the category of Backward Class of citizens shall be 27 percent of the total number of seats to be filled in by election in a sub-section panchayat and such seats shall be allotted by rotation to different wards in a panchayat:

Provided that, in a panchayat comprising entirely the Scheduled Areas, the seats to be reserved for persons belonging to the Backward Class of citizens shall be 27 per cent of the seats remaining, if any, after reservation of the seats for the Scheduled Tribes and the Scheduled Castes:

Provided further that, the reservation for the persons belonging to the Backward Class of citizens in a panchayat falling only partially in the Scheduled Areas shall be as per the provisions of clause (c):

(Provided also that), one half of the total number of seats so reserved shall be reserved for women belonging to the category of Backward Class of citizens;

(e) one half (including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) of the total number of seats to be filled in by direct election in a panchayat shall be reserved for women and such seats shall be allotted by rotation to different wards in a panchayat.

(2-A) The reservation of seats (other than the reservation for women) under sub-section (2) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

...

S. 10-1A. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate:

Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes, or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

Provided that, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing the nomination paper but who has not

received the validity certificate on the date of filing of the nomination paper shall submit along with the nomination paper,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing the nomination paper but who has not received the validity certificate on the date of filing of the nomination paper shall submit, along with the nomination paper,-

(ii) an undertaking that he shall submit, within a period of six months from the date of his election, the validity certificate issued by the Scrutiny Committee; Provided further that, if the person fails to produce the validity certificate within a period of six months from the date of his election, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.” (emphasis supplied) [3]

The provision follows most of the constitutional mandates when it comes to providing proportionate reservation for members of the Scheduled Castes and Scheduled Tribes and the rotation of reserved seats in wards. These provisions are also *pari materia* in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 thereby making reservations a uniform pattern across local democratic institutions in Maharashtra. However, the state law in Gram Panchayats as well as Panchayat Samitis and Nagar Panchayats also deviates from the Constitution in the following respects.

a. Delegation of Powers to the State Election Commission (SEC)

The State legislature has delegated the powers of division of wards, the number of seats to be allocated to such wards and the rotation of seats in such wards to the State Election Commission to further the SEC's role in conducting the elections under Article 243K.

3. Section. 10 of The Maharashtra Village Panchayat Act

b. Scheme of Reservations

The State law expands the reservation policy in two aspects. Firstly, it mandates the provision of a 27% reservation for the Backward Class of Citizens which is defined under Section 2 (2) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and also under the Maharashtra Village Panchayat Act, 1959 as those classes declared by the State Government to be other backward classes and *Vimukta Jatis* and *Nomadic Tribes*. The state law provides that this reservation shall be in addition to the reservation for members of the Scheduled Castes and Scheduled Tribes. Additionally, the scheme of reservation varies if the gram sabha is comprised entirely of scheduled areas. In such areas, at least one half of the total number of seats is reserved for members of the Scheduled Tribes and over and above this fifty percent, 27% is reserved for members of the backward classes. [4]

c. Reservations for Women

While the state legislature follows the dual pattern of overall reservations along with interlocking reservations, it also applies these concepts squarely to members of the

backward classes and for increasing women's participation in the scheduled areas. It has been held that the "*rationale behind imposing an upper ceiling of 50% in reservations for higher education and public employment cannot be readily extended to the domain of political representation at the Panchayat level in Scheduled Areas. This approach of providing proportionate representation is likely to be less effective in the context of reservations for Panchayats in Scheduled Areas. One reason for this is the inherent difference between the nature of benefits that [sic] accrue from access to education and employment on one hand and political participation on the other hand. In the context of Scheduled Areas, there is a compelling need to safeguard the interests of tribal communities with immediate effect by giving them an effective voice in local self-Government.*"¹ Moreover, the state law has mandated a 50% reservation for women across all caste lines which is over and above the minimum guarantee of 33% as provided in the Constitution.

d. Certification of caste validity

The wide net of reservations in gram panchayat elections comes with the catch of having to mandatorily produce the Caste Scrutiny and Validity Certificate within six months of being elected. Failure to produce these two documents within the mandatory time frame leads to an automatic vacation of office and that too in a retrospective manner, i. e., from the day the candidate was elected. [5]

3. Intent of the Reservation Policy

The 73rd Constitutional Amendment was introduced to put an end to the malady of irregular elections, prolonged super-sessions and inefficient representation of members from the Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources. The Parliament felt it essential that to make local democracy holistic, there had to be a framework put in place to ensure participation and leadership from communities who have hereditarily been deprived from such pivotal roles. Thus, it should come as no surprise that the Article 243-D [1] of the Constitution providing for reservations to backward communities in the Panchayat and Chairperson roles came to be challenged before a constitution bench in the case of *K Krishna Murthy v Union of India*² from all sections of society. In the face of myriad objections to the minimum guarantee of reservations for women and proportionate representation of members of the other backward communities, the Court decisively upheld the reservation policy under the Constitution. While doing so, the Court held that the principles of 'creamy layer' that were derived under Articles 15 (4) and 16 (4) for reservations in public education and employment cannot be mechanically applied in situations of political representation. The Court remarked that the parameters to judge the effects of educa-

tional and occupational backwardness would be different from political representation which is more commonly based on canvassing support based on ideology and caste lines. In this regard political representation and empowerment through affirmative action are a different means to secure equality as compared to economic and educational upliftment. The Court in this regard holds thus:

53. In this respect, we are in partial agreement with one of the submissions made by Shri M. Rama Jois that the nature of disadvantages which restrict access to education and employment cannot be readily equated with disadvantages in the realm of political representation. To be sure, backwardness in the social and economic sense does not necessarily imply political backwardness. However, the petitioner's emphasis on the distinction between 'selection' (in case of education and employment) and 'election' (in case of political representation) does not adequately reflect the complexities involved. It is of course undeniable that in determining who can get access to education and employment, due regard must be given to considerations of merit and efficiency which can be measured in an objective manner. Hence, admissions to educational institutions and the recruitment to government jobs is ordinarily done through methods such as examinations, interviews or assessment of past performance. Since it is felt that applicants belonging to the SC/ST/OBC categories among others are at a disadvantage when they compete through these methods, a level-playing field is sought to be created by way of conferring reservation benefits.

54. In the domain of political participation, there can be no objective parameters to determine who is more likely to get elected to representative institutions at any level. The choices of voters are not guided by an objective assessment of a candidate's merit and efficiency. Instead, they are shaped by subjective factors such as the candidate's ability to canvass support, past service record, professed ideology and affiliations to organised groups among others. In this context, it is quite possible that candidates belonging to the SC/ST/OBC categories could demonstrate these subjective qualities and win elections against candidates from the relatively better-off groups. However, such a scenario cannot be presumed in all circumstances. It is quite conceivable that in some localized settings, backwardness in the social and economic sense can also act as a barrier to effective political participation and representation. When it comes to creating a level-playing field for the purpose of elections to local bodies, backwardness in the social and economic sense can indeed be one of the criteria for conferring reservation benefit.³

The Court upheld the reservation policy in local government institutions on the grounds that it immediately furthers the goal of political emancipation whereby the individuals from deprived communities could represent their peoples' interests and also encourages democratic decentralization by

1 M. R. Balaji v. State of Mysore, AIR 1963 SC 649
2 (2010) 7 SCC 202.

3 Id., para 53 & 54.

providing autonomy to local institutions. The observations in that regard by the constitution bench read thus:

55. *It must be kept in mind that there is also an inherent difference between the nature of benefits that accrue from access to education and employment on one hand and political representation at the grassroots level on the other hand. While access to higher education and public employment increases the likelihood of the socio-economic upliftment of the individual beneficiaries, participation in local-self-government is intended as a more immediate measure of empowerment for the community that the elected representative belongs to.*

56. *The objectives of democratic decentralization are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of society. In this sense, reservations in local self-government are intended to directly benefit the community as a whole, rather than just the elected representatives. It is for this very reason that there cannot be an exclusion of the 'creamy layer' in the context of political representation. There are bound to be disparities in the socio-economic status of persons within the groups that are the intended beneficiaries of reservation policies. While the exclusion of the 'creamy layer' may be feasible as well as desirable in the context of reservations for education and employment, the same principle cannot be extended to the context of local self-government.*

57. *At the level of panchayats, the empowerment of the elected individual is only a means for pursuing the larger end of advancing the interests of weaker sections. Hence, it would be counter-intuitive to exclude the relatively better-off persons among the intended beneficiaries from the reservation benefits that are designed to ensure diversity in the composition of local bodies. It is quite likely that such persons may be better equipped to represent and protect the interests of their respective communities.....*

79. *The petitioners have asked us to reconsider the precedents wherein the rights of political participation have been characterised as statutory rights. It has been argued that in view of the standard of reasonableness, fairness and non-discrimination required of governmental action under Article 21 of the Constitution, there is a case for invalidating the restrictions that have been placed on these rights as a consequence of reservations in local self-government. We do not agree with this contention.*

80. *In this case, we are dealing with an affirmative action measure and hence the test of proportionality is a far more appropriate standard for exercising judicial review. It cannot be denied that the reservation of chairperson posts in favour of candidates belonging to the Scheduled Castes, Scheduled Tribes and women does restrict the rights of political participation of persons from the unreserved categories to a certain extent. However, we feel that the test of reasonable classification is met in view of the legitimate governmental objective of safeguarding the interests of*

weaker sections by ensuring their adequate representation as well as empowerment in local self-government institutions. The position has been eloquently explained in the respondents' submissions, wherein it has been stated that 'the asymmetries of power require that the Chairperson should belong to the disadvantaged community so that the agenda of such Panchayats is not hijacked for majoritarian reasons (emphasis supplied).'⁴

4. Obstacles in the Reservation Policy

There have been certain hurdles in the path to interpreting the provisions of reservation for members of backward classes in local democratic institutions. These hurdles can be categorized as issues arising out of the manner of implementation of the reservation policy. [6] A review of case law under the said provision would show that there are three prominent hurdles that prolong the outcomes of the reservation policy. They are as under:

1. On the failure to produce caste validity documents

The Full Bench of the Bombay High Court had the occasion to decide whether the time period to produce the caste documents under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (*pari materia* to the Maharashtra village Panchayat Act) was mandatory in the case of *Anant Ulhalkar v Chief Election Commissioner and Ors.*⁵ the relevant observations of the full bench in that regard are as follows:

37. *Applying the aforesaid tests and having due regard to the terms of the provisions, in our considered opinion, the stipulation as to time in the two provisos to Section 9A, is required to be construed as mandatory for several reasons. Firstly, the legislature has repeatedly used the expression "shall" when it comes to the requirement of producing Validity Certificate within the stipulated period and when it comes to providing consequences for breach; Secondly, the legislature in the form of second proviso to Section 9A has provided in no uncertain terms the consequences for failure to produce the Validity Certificate within the stipulated period; Thirdly, the provision which permits a person to contest without producing Validity Certificate along with nomination papers, is in the nature of exemption or concession. Such exemption or concession is conditional. One of the conditions prescribed is production of Validity Certificate within the stipulated period. Such a condition will have to be strictly construed, otherwise, the conditional exemption will be availed, but the condition will be breached. Fourthly, a directory construction would render significant portions of Section 9A redundant and unworkable. Fifthly, the individual hardship or trauma is quite irrelevant when the statutory provision is plain, clear and unambiguous. Such individual hardship or trauma is in fact*

⁴ Id., para 55-57 & 79-80.

⁵ 2017 (1) Mh LJ 431.

inevitable even when the provision is construed as directory. Sixthly, the principle in *Dattatraya Moreswar Pangarkar (supra)* is inapplicable where consequences of breach are statutorily provided. Seventhly, the reasoning in *Gulve* not only renders significant portions of the provision redundant, but results in rewriting the provision itself, which is impermissible.

40. The words and expressions employed by the legislature in enacting Section 9A are plain, clear and unambiguous. In such a situation, the words and expressions employed, themselves, declare the intention of the legislature. There is no necessity to apply any other aids or interpretation. The marginal notes, the legislative history and even the statement of objects and reasons suggest that the general rule in such matters is that the person desirous of contesting to a reserved seat must submit along with his nomination papers, both, the caste certificate and the Validity Certificate. Only in certain specified cases, exemption or concession is granted from the production of Validity Certificate along with nomination papers, provided such person furnishes an undertaking that he shall produce the Validity Certificate within six months from the date of election. Perhaps, in order that there remains no ambiguity as to the consequence of failure to produce such Validity Certificate within the stipulated period, the legislature, by means of the second proviso to Section 9A has made it clear that the failure will entail retrospective termination of the election and disqualification for being a Councillor. When words and expressions employed by the legislature are plain, clear and unambiguous, the Courts are bound to give effect to the meaning, irrespective of the consequences (emphasis supplied).⁶

The Court observed that the intent behind such reservation policies, was to provide the benefit of representation to those communities and candidates that needed it the most. The Court was of the firm opinion, that giving a go-by to the time frame placed under the Act would ensure that fraudsters and imposters could take advantage of their wrong by remaining in power and more importantly, reduce the available benefits to the communities that need it the most. The Court also came to the conclusion that a validity certificate even if obtained and produced after the timeframe of six months, will not be able to reactivate the candidature of a person who has already stood disqualified because of non-production of documents. This judgment of the Bombay High Court came to be upheld by the Supreme Court while supplementing that considering the plain and simple language of the Act the provision was followed with the automatic and grave consequence of retrospective disqualification over and above the use of the words "shall" which would by itself indicate that the provision is mandatory.

The Full Bench of the Bombay High Court in its decision, seeks to ensure that the benefit of reservations percolate to those are at the receiving end of society's deprivation and

discrimination. However, the Bench in its judgment categorically holds that individual hardship is an irrelevant consideration when the law is clear and self-explanatory. This view, it is humbly submitted, fails to consider the additional hardships that members of backward castes face while having to prove their 'backwardness'. This includes gathering documents, filling forms and having assistance and knowledge to navigate the entire process. This hurdle is navigated best from the case study in *Vishwanath Gahininath Thore v Collector/Addn Collector Ahmednagar*. In the facts of the case, the members of the Scheduled Tribes submitted an undertaking to produce the caste validity certificate while they were filing their nomination papers. The candidates were elected on 6 August 2015 and received their validity certificates around October 2015. However, due to the fact they were illiterate and ignorant of the law, they did not know that the certificates had to be submitted. The Additional District Collector, taking a sympathetic view of the realities of the candidates took the view that they ought not to be disqualified. However, the High Court in revision took the view that in light of the Full Bench decision, equitable and sympathetic considerations can play no role in deciding such disqualifications. It is submitted that this view needs a rethink especially when it seeks to disenfranchise those members whom the provisions are intended to benefit.⁷

Secondly, the intent behind the decision of *Anant Uthalkar*, although laudable, fails to consider the practical realities of delay in administrative bureaucracy when it comes to finalization and authentication of documents. For instance, in *Kamal Kailas Giri v State of Maharashtra and Ors*, the petitioner-candidate was elected to the Panchayat on 7 August 2015, however, she received her Caste Validity Certificate only on 4 April 2016 from the Scrutiny Committee. Due to the mandatory nature of the provision, she was disqualified by relying on the ratio of the full bench judgment although there was no specific finding that the candidate herself did not approach the Committee on time or delayed the scrutiny process deliberately. In such a situation, bona fide candidates lose a chance to represent their communities just because they are unable to navigate the administrative minefield in India. It cannot be overlooked that such a mandatory criterion only affects members who avail of reservations, therefore, the impact of disenfranchisement would only affect the backward castes and thus could thwart the attempt at empowering participative and inclusive democratic institutions. On a practical note, this ruling also meant that various elected candidates would throng the High Courts to seek a mandamus directing the Competent Authorities to process and handover the certificates on time. To remedy this ill-effect, the State came out with an Ordinance in the year 2019 which nullified the automatic disqualification in case the elected candidate was able to show that the documents were submitted to the Competent Authority within the time period set in the ordinance itself.⁸

⁷ AIR ONLINE 2018 BOM 860.

⁸ Padmakar Manoharrao Ugile v. State of Maharashtra and Others, 2019 SCC

⁶ Id., para 37 & 40.

This ensured that a lot of the hurdles that were placed in the lap of members of the backward castes were cured by the state. In fact, the Bombay High Court in its recent decision of *Savita v State of Maharashtra*⁹ ruled that in order to streamline the process of production of documents, it was necessary that candidates applied to the Scrutiny Committee for the caste validity certificate six months prior to filling the nomination forms. This would ensure that the authority can complete the verification process within six months and can submit the relevant documents either during the filing of nomination papers or as soon as they are elected.

2. *The division of wards and the rotation of seats*

The principle of reservation by rotation is a pragmatic solution to further the goal of substantive equality and participation since it firstly ensures that reservation does not become entrenched to certain pockets of the gram sabha and secondly, it ensures that even in areas where there are miniscule members from the backward castes and backward classes of citizens, there is an adequate opportunity for members from such communities to get their interests heard and voiced among majoritarian communities. This task of reserving wards by rotation has been left to the Election Commission which notifies reserved wards before every election. In certain cases before the High Court, the Notifications of the Election Commission were challenged on the ground that they did not follow the principle of rotation and ended up reserving seats in the same ward consecutively. For instance, in *Bhausheh Mahadev Tupe v State of Maharashtra and Ors.*,¹⁰ the decision to reserve a specific Ward (No. 5) in the Gram panchayat of Urali Kanchan for the Scheduled Castes consecutively for two terms was challenged by an open category candidate. His submission was that the authorities had failed to follow the principle of reservation by rotation as provided in the Rules and had therefore deprived general category candidates from contesting from the said Ward. The Court while dispelling these conditions, firstly held that while in the first term, two seats in the said ward was reserved, in the second term, only one seat was reserved. Secondly, the Court was of the opinion that the reservations for members of the Scheduled Castes follows the dominant principle of proportionate representation and since the population of Scheduled caste members in the Ward was around 47%, reserving 1 seat for their benefit was a proportionate measure. The Court finally remarked that in the entire Gram panchayat, only three wards had a significant Scheduled Caste population, and the quota of 3 Scheduled Caste members was to be divided among the three wards. Since the Ward under challenge had the highest population of 13 members in need of reservation, the Court held that there was no perversity in reserving one seat for a Scheduled Caste member in the Ward for two terms. In another decision, the Bombay High Court has ruled that the decision to reserve the same ward for Scheduled Tribe candidates was taken with the

intent that the ward has the highest tribal population cannot be assailed since it was taken with the goal of proportionate representation in mind.¹¹ The Court there ruled that, if the principle of rotation were to be followed strictly, then those people would not get reservation where they need it the most.

There seems to be a disconnect between the two goals of proportionate representation and rotational reservation. It must be noted that both goals are to be pursued simultaneously to make local democracy meaningful. Therefore, it is doubted whether the principle of rotational reservation is not sacrificed at the altar when the principle of proportionate representation is given an upper hand. For instance, when seats are constantly reserved in areas with higher tribal populations, it concentrates power in the hands of the most powerful among the tribal population. Alternatively, in areas with lesser tribal populations, there is never an opportunity for guaranteed candidature, since the proportionate principle would ensure that these wards continue to be de-reserved. Therefore, there needs to be a synergy between these two goals to ensure the greatest advantage to the most disadvantaged.

3. *Reservations for backward classes*

The 27% reservation for backward classes opened a floodgate of litigation before the Supreme Court in the case of *Vikas Kishanrao Gawali v State of Maharashtra*¹² on the ground that since it was an additional reservation, which was over and above the existing reservations it would breach the ceiling limit of 50% reservations set in stone by the landmark judgment of *Indra Sawhney v Union of India*¹³. Even in the judgment of *K Krishna Murthy* as discussed above, the OBC reservations had been attacked on the ground that it breached the 50% ceiling limit. The Court while earlier stating that principles of Articles 15 (4) and 16 (4) could not be mechanically imposed on Article 243, ended up accepting the 50% threshold set by Indra Sawhny in the context of the very same articles. Along with the ceiling limit, *K Krishna Murthy* also advocated that since political backwardness is an independent concept, states must give due regard to independent statistics to determine backwardness and not solely rely on data driven by social and economic indicators used in the past. The Court in *K Krishna*.

Murthy also reiterated that the ceiling limit of 50% ought not to be breached unless there are exceptional circumstances in scheduled areas or special states. The Court ruled that the 50% limit is the norm when it comes to providing reservations to all communities deprived within which the horizontal reservations for women would intersect, keeping the overall percentage of reservations intact. In this context the position of law as laid down by the Supreme Court in *K Krishna Murthy* can be summarized as under:

65. *Shri Rajeev Dhavan had contended that since the context of local self-government is different from education and employment, the 50% ceiling for vertical reservations*

OnLine Bom 4663.

9 2020 (3) Mh LJ 833.

10 2020 SCC Online Bom 10451.

11 Ganpat Bajirao Jagtap v. District Collector and Others, 2020 SCC OnLine Bom 8589.

12 (2021) 6 SCC 73.

13 (1992) Supp 3 SCC 217.

which was prescribed in *Indra Sawhney* (*supra.*), cannot be blindly imported since that case dealt with reservations in government jobs. It was further contended that the same decision had recognised the need for exceptional treatment in some circumstances, which is evident from the following words (at Paras. 809, 810):

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

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being put off the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

66. Admittedly, reservations in excess of 50% do exist in some exceptional cases, when it comes to the domain of political representation. For instance, the Legislative Assemblies of the States of Arunachal Pradesh, Nagaland, Meghalaya, Mizoram and Sikkim have reservations that are far in excess of the 50% limit. However, such a position is the outcome of exceptional considerations in relation to these areas. Similarly, vertical reservations in excess of 50% are permissible in the composition of local self-government institutions located in the Fifth Schedule Areas.

67. In the recent decision reported as *Union of India v. Rakesh Kumar*, (2010) 1 SCALE 281, this Court has explained why it may be necessary to provide reservations in favour of Scheduled Tribes that exceed 50% of the seats in panchayats located in Scheduled Areas. However, such exceptional considerations cannot be invoked when we are examining the quantum of reservations in favour of backward classes for the purpose of local bodies located in general areas. In such circumstances, the vertical reservations in favour of SC/ST/OBCs cannot exceed the upper limit of 50% when taken together. It is obvious that in order to adhere to this upper ceiling, some of the States may have to modify their legislations so as to reduce the quantum of the existing quotas in favour of OBCs (emphasis supplied).¹

The Court in *Vikas Kishanrao Gawali* on a fair reading of *K. Krishna Murthy* came to the conclusion that the reservation for the Other Backward classes cannot breach the 50% ceiling limit provided by *Indra Sawhney*.⁷ Furthermore, the Court set two additional criteria that has been mandated for reservations under Articles 15 (4) and 16 (4). These include collection and review of the statistical data of members from backward classes through an independent commission. The second criterion was specifying the proportion of reservation among different communities so as to not breach the ceiling limit of 50% reservations. While trying to save the mandatory 27% reservation from falling outside the constitutional mandate,

the Court held that the provision "shall" occurring in the statutes should be read as "may" in order to balance the interests of the deprived communities with the right to equality and opportunity of the general pool of candidates. The pertinent observations in that regard are as under:

8. On a fair reading of the exposition in the reported decision, what follows is that the reservation for OBCs is only a "statutory" dispensation to be provided by the State legislations unlike the "constitutional" reservation regarding SCs/STs which is linked to the proportion of population. As regards the State legislations providing for reservation of seats in respect of OBCs, it must ensure that in no case the aggregate vertical reservation in respect of SCs/STs/OBCs taken together should exceed 50 per cent of the seats in the concerned local bodies. In case, constitutional reservation provided for SCs and STs were to consume the entire 50 per cent of seats in the concerned local bodies and in some cases in scheduled area even beyond 50 per cent, in respect of such local bodies, the question of providing further reservation to OBCs would not arise at all. To put it differently, the quantum of reservation for OBCs ought to be local body specific and be so provisioned to ensure that it does not exceed the quantitative limitation of 50 per cent (aggregate) of vertical reservation of seats for SCs/STs/OBCs taken together.

9. Besides this inviolable quantitative limitation, the State Authorities are obliged to fulfil other preconditions before reserving seats for OBCs in the local bodies. The foremost requirement is to collate adequate materials or documents that could help in identification of backward classes for the purpose of reservation by conducting a contemporaneous rigorous empirical inquiry into the nature and implications of backwardness in the concerned local bodies through an independent dedicated Commission established for that purpose. Thus, the State legislations cannot simply provide uniform and rigid quantum of reservation of seats for OBCs in the local bodies across the State that too without a proper enquiry into the nature and implications of backwardness by an independent Commission about the imperativeness of such reservation. Further, it cannot be a static arrangement. It must be reviewed from time to time so as not to violate the principle of overbreadth of such reservation (which in itself is a relative concept and is dynamic). Besides, it must be confined only to the extent it is proportionate and within the quantitative limitation as is predicated by the Constitution Bench of this Court.

...

12. As a matter of fact, no material is forthcoming as to on what basis the quantum of reservation for OBCs was fixed at 27 per cent,

when it was inserted by way of amendment in 1994. Indeed, when the amendment was effected in 1994, there was no guideline in existence regarding the modality of fixing the limits of reserved seats for OBCs as noted in the decision of the Constitution Bench in *K. Krishna Murthy* (*supra.*). After

that decision, however, it was imperative for the State to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of backwardness and on the basis of recommendations of that Commission take follow up steps including to amend the existing statutory dispensation, such as to amend Section 12 (2) (c) of the 1961 Act. There is nothing on record that such a dedicated Commission had been set up until now. On the other hand, the stand taken by the State Government on affidavit, before this Court, would reveal that requisite information for undertaking such empirical inquiry has not been made available to it by the Union of India. In light of that stand of the State Government, it is unfathomable as to how the respondents can justify the notifications issued by the State Election Commission to reserve seats for OBCs in the concerned local bodies in respect of which elections have been held in the year December 2019/January 2020, which notifications have been challenged by way of present writ petitions. This Court had allowed the elections to proceed subject to the outcome of the present writ petitions.

13. Be that as it may, it is indisputable that the triple test/conditions required to be complied by the State before reserving seats in the local bodies for OBCs has not been done so far. To wit, (1) to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua local bodies, within the State; (2) to specify the proportion of reservation required to be provisioned local body wise in light of recommendations of the Commission, so as not to fall foul of over breadth; and (3) in any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In a given local body, the space for providing such reservation in favour of OBCs may be available at the time of issuing election programme (notifications). However, that could be notified only upon fulfilling the aforementioned preconditions. Admittedly, the first step of establishing dedicated Commission to undertake rigorous empirical inquiry itself remains a mirage. To put it differently, it will not be open to respondents to justify the reservation for OBCs without fulfilling the triple test, referred to above (emphasis supplied). [7]

Thus, the Court read down the mandatory 27% reservations for backward classes which meant that several successful candidates had to vacate their seats in light of the judgment of the Court. The Court mandated triple test for OBC reservation in *Vikas Kishanrao Gawli* was also recently affirmed by the Supreme Court in the case of *Rahul Ramesh Wagh v State of Maharashtra* to conduct local elections in Maharashtra in a timebound manner. [8]

5. Conclusion

Although the apex Court has harmonized the conflicting

interests of some trying to expand the scope of reservation policies with those trying to include newer backward communities into the fold of reservation for their adequate representation, [4] it remains to be seen whether reservations would go beyond the single ground of caste-based backwardness. The triple test suggested by *Indra Sawhny* and all subsequent judgments do not state that reservations for backward classes must solely be based on caste or factors relating to caste. [4] Newer forms of deprivation, such as those arising out of disability or arising out of gender orientation have already been recognized as plausible grounds to provide reservation in the education and employment sector. However, it still needs to be seen if state legislatures or even the Parliament would effect suitable amendments in the law to bring such communities within the fold of backward classes for a fuller and nuanced version of substantive equality.

Abbreviations

OBC Other Backward Classes

Author Contributions

Dnyaneshwar Pralhadrao Kendre is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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