

The Reservation Policy in India and the Maratha Reservation

Prithviraj D Chavan

Assi Pro.

Yashwantrao Chavan Law college, Pune

Introduction:

The Maharashtra State Reservation for Socially and Educationally Backward Classes (SEBC) Act of 2018 was recently declared unlawful by a five-judge Supreme Court Constitution Bench. This Maratha reservation law gives the Maratha community preference in admissions and government positions. However, the implementation of this reservation increased the State's quota limit to more than 50%. The Supreme Court also ruled that this law does not meet the definition of "extraordinary circumstances" as defined in the Indra Sawhney case.¹

Earlier this year, the Supreme Court mentioned that it would reassess the Mandal case's 50 percent reservation cap (Also known as Indra Sawhney case). However, the court stated in its recent decision that the 50 percent reservation cap does not need to be revisited. The Mandal case's arbitrary 50 percent ceiling is now constitutionally recognised, according to the court.

What is the Maratha reservation policy?

The Maharashtra government instituted the Maharashtra State Backward Class Commission, which is chaired by Justice M.G. Gaikwad, there were nine members in that commission. In 2018, the commission recommended reservation for Marathas.

The Maharashtra government enacted a legislation in 2018 that gives the Maratha community 16 percent reservation in jobs and education. The Maratha community was

classified as a socially and educationally backward class by the law (SEBC). However, the Maratha reservation, on the other hand, went beyond the 50 percent limit set in the Indra Sawhney case.

In the Bombay High Court, the law was challenged. The Bombay High Court affirmed the Act's constitutionality. However, the Bombay High Court decreased the Maratha reservation to 12% in school and 13% in employment (Instead of 16 percent)

An appeal, however, was filed before the Supreme Court. The Supreme Court ruled in that instance that the reservations were unlawful.

About the Maratha reservation case judgment:

The case addressed a few fundamental issues regarding India's reservation policy.

• Reconsidering the Indra Sawhney decision:

Few state governments contended that the 50% reserve ceiling established in the Indra Sawhney decision was unreasonable. Earlier in the hearing on the Maratha reservation petition, the Supreme Court suggested that the Mandal case verdict would be revisited. However, the court decided that the arbitrary 50 percent limit is now constitutionally accepted. As a result, the court determined that the Mandal case's 50 percent cap does not need to be reassessed.

• Maratha legislation was not an exceptional circumstance:

According to the court, neither the Maharashtra State Backward Commission report nor the High Court verdict acknowledged the case of exceeding the 50% cap. Furthermore, the court ruled that the Marathas are the dominant forward class and are fully integrated into national life. As a result, this reservation is ineligible for extraordinary circumstances.

• State power to proclaim a community backward:

o The Supreme Court unanimously upheld the constitutionality of the 102nd Amendment Act, 2018.

o Furthermore, the court ruled that the 102nd Constitutional Amendment deprived states authority to identify Socially and Educationally Backward Classes (SEBCs).

o It signifies that only the Centre has the authority to identify SEBC and add them on the Central List.

o The states could only make recommendations to the President or statutory commissions for the addition, exclusion, or alteration of castes and communities on the SEBC List.

o This brings into doubt the legality of other states' laws, such as reservation laws in Haryana, Tamil Nadu, and so on.

· The court also held that the special reservation violates Article 14(Right to equality) and Article 21(due process of law)

Other judicial interventions related to reservation policy

1. Smt.ChampakamDorairajan vs. State of Madras (1951) case:

The court ruled in this case that caste-based reservations violate provisions of Art 15 (1) of the Constitution (1). Article 15(1) prohibits the state from discriminating against citizens solely on the grounds of religion, race, caste, sex, or place of birth, or any combination of these factors.¹

As a result, the First Constitutional Amendment was enacted. Article 15 was amended by the Parliament to contain reservation provisions under Art 15 (4).

2. In M R Balaji vs State of Mysore case 1963 and Devadasan v Union of India case 1964:

In these cases, the court held that the efficiency of public administration is essential. Further the court asked the government to maintain the reservation to 50%.²

3.In Case of Indra Sawhney vs. Union of India (1992):

In this case, the court ruled that the total reserve should not exceed 50% unless there are special circumstances. In addition, the Court ruled that the creamy layer among OBCs should

be removed from the reservation. Aside from that, the Court ruled that no reservations should be made in promotions.³

However, the government introduced the 77th Constitutional Amendment Act (CAA) to give reservations in promotion for SCs and STs (Article 16(4A)).

4.In M. Nagaraj vs. Union of India, 2006:

The court upheld the 77th CAA in this case. However, the court also stated that certain requirements must be maintained in such reservation. Such as ,

o The reservation policy shall not have an impact on overall administrative efficiency.

o Reservation is only relevant when the SCs and STs are underrepresented in public employment.⁴

Reservation in India:

1. In 1978, the President appointed a backwards class commission chaired by B. P. Mandal under the power granted by Article 340. The Commission recommended a 27 percent quota for the Other Backward Classes in government posts (OBCs). As 52 percent of the country's population consisted of OBCs.

2. In 1990, the government accepted and implemented the Mandal Commission's recommendations. As a result, India's reservation rate increased to 49.5%.

22.5% reservation for SCs and STs (7.5% for STs, 15% for SCs)

27% reservation for the OBCs

3. In 1991, the government made provisions for the reservation of 10% of jobs among higher caste persons for economically weaker sections (EWS). The supreme court, however, invalidated this provision in the Indra Sawhney or Mandal case. In addition, the case allows for a total reservation of up to 50 percent. However, the case also held that in extraordinary instances, reservations can exceed 50%.

4. In India, the government provided a 10% reservation for the EWS by the 103rd Constitution Amendment Act of 2019. Articles

15 and 16 were also altered as a result of the Act.

As a result, now the overall reservation currently stands at 59.5 percent. Few state governments go above and beyond the 59.5 percent reservation.⁵

The Maratha Reservation Judgement's Implications:

1. The implication of the 102nd Constitutional Amendment Act:

As the judgment upheld the constitutional validity of the 102nd Amendment Act, the President alone has the power to notify backward classes from now on. Apart from that, the Central List will now be the "only list" for the SEBC. This means that the Centre alone is empowered to identify SEBC from now on. But now By bringing a 127th Constitutional Amendment Bill, the Centre will give back the states the power to decide about reservations for Other Backward Classes (OBCs) in state government jobs and higher educational institutions.⁶

The purpose of the Bill is to overturn the ruling of May 5, 2021, in the case of Dr.JaishriLaxmanrao Patil v. Chief Minister in which a 5-judge Constitution Bench of the Supreme Court ruled that only the President can declare a community an OBC, upon recommendation by the National Commission for Backward Classes (NCBC). On the review petition filed by the Centre, the judgment was upheld early this July.The draft Bill prepared by the Ministry of Social Justice and Empowerment seeks to add a clarification clause in Article 342A which says that states are given the power to identify and include OBCs or socially and educationally backward classes in their respective lists. By law, the amendment is not in conflict with the Apex Court's decision.Two new clauses were added to backward classes in their respective lists. By law, the amendment is not in Article 342A in the 102nd Constitution Amendment, the first clause provides the President with the power to declare backward classes in consultation with the state Governor. Another clause (2) was added which

provided that Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class.⁷

2. The 103rd Amendment's constitutional validity:

This amendment provides for a 10% reservation for the EWS in government positions and educational institutions from the unreserved category. The Maratha reservation judgement specified a 50 percent reservation cap. But after the enactment of the 103rd Amendment Act, the total reservation now stands at 59.5 percent. This is a clear violation of the Indra Sawhney judgement.⁸

3. The constitutional validity of States reservation laws

The judgement mentions that the States can only make suggestions to the President or the statutory commissions. But several states have enacted various local reservation laws. Their constitutional validity was in question after the Maratha reservation judgement. States having such laws include,

The Tamil Nadu Backward Classes, SCs and STs Act, 1993: By this Act, the Tamil Nadu government provided 69 percent of reservations in educational institutions and jobs in the state government. The State further got the ascent of President and placed this law in Schedule IX of the Constitution.⁹

As the Law placed itself in the Ninth Schedule, it could not be challenged in court for the violation of fundamental rights. However, the Court in the I R Coelho v State of Tamil Nadu case held that the Laws in Ninth Schedule can be challenged for the violation of the basic structure of the Constitution. The Supreme court is yet to decide the case of Tamil Nadu reservation law.¹⁰

Haryana and Chhattisgarh have also passed laws providing reservations in excess of the 50 percent reservation mark. These laws also challenged in the Supreme Court.¹¹

o Apart from these legislations, there are

many protests from various parts of India demanding special reservations above the 50 percent limit. Few examples are,

- o Patels in Gujarat,
- o Jats in Haryana,
- o Kapus in Andhra Pradesh

Suggestions:

1. As mentioned in the judgment of Dr. Jaishree Laxmanrao Patil Vs Chief Minister, Maharashtra, the National Backward Classes Commission must publish a fresh list of SEBCs, both for states and the central list. Till the publication, the existing lists operating in all states and union territories can continue.¹²

2. The government has to subclassify the Backward Classes like in Tamil Nadu, Andhra Pradesh, West Bengal etc. This will provide the benefit to intended beneficiaries. Since the government has already appointed Justice G Rohini Panel on Sub-categorisation of OBCs. The Panel has to fast pace the sub-classification process.¹³

3. The government has to remove the well-off sections from the reservation policy. The government can achieve this by moving away from reservation based on a citizen's conditions rather than community-based reservations.

Conclusion:

Thus, the government has to understand that the reservation policy is a temporary measure in the direction of social inclusion. The government can achieve it through Social inclusion by better education policies to backward communities, enhancing the skill development of backward communities, not by providing more reservations. So, providing more and more reservation gradually is itself not a permanent solution and therefore its need to rethinking about reservation policies.

1. AIR 1951 Mad 120, (1950) IIMLJ 404

2. AIR 1963 S.C. 643, and 1964 AIR 179, 1964 SCR (4) 680

3. AIR 1993 SC 477, 1992 Supp 2 SCR 454

4 AIR 2007 SC 71

5 <https://blog.forumias.com/maratha-reservatioion>.

6 <https://theanalysis.org.in/2021/05/06/understanding-the-maratha-reservation-judgment-what-did-the-supreme-court-observe/>

7 <https://blog.ipleaders.in/power-of-states-to-list-obcs-with-respect-to-102nd-constitutional-amendment>.

8 <https://libertatem.in/law/supreme-court/constitutional-validity-of-103rd-amendment-challenged-in-supreme-court/>

9 The Tamil Nadu Backward Classes, SCs and STs Act, 1993

10 (2007) 2 SCC 1: AIR 2007 SC 861

11 <https://blog.forumias.com/maratha-reservatioion>.

12 Dr. Jishri Laxmanrao Patil, ... vs The Chief Minister Of State Of ... on 27 June, 2019 (indiankanoon.org)

13 <https://blog.forumias.com/maratha-reservatioion>

