

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 175 OF 2018

Dr. Jishri Laxmnarao Patil,]
Member the Indian Constitutionalist]
Council, Age 39 years, Occu : Advocate,]
Having office at C/o 109/18,]
Esplanade Mansion, M. G. Road,]
Mumbai 400023. ...Petitioner]..**Petitioner.**

Versus

1. The Chief Minister]
of State of Maharashtra, Mantralaya,]
Mumbai - 400 032.]
]
2. the Chief Secretary,]
State of Maharashtra, Mantralaya,]
Mumbai - 400 032.]..**Respondents.**

WITH

CIVIL APPLICATION NO. 6 OF 2019
IN
PUBLIC INTEREST LITIGATION NO. 175 OF 2018

Gawande Sachin Sominath.]
Age 32 years, Occ : Social Activist,]
R/o Plot No. 64, Lane No. 7, Gajanan Nagar]
Garkheda Parisar, Aurangabad.]..**Applicant.**

IN THE MATTER BETWEEN

Dr. Jishri Laxmnarao Patil,]
Member the Indian Constitutionalist]
Council, Age 39 years, Occu : Advocate,]
Having office at C/o 109/18,]
Esplanade Mansion, M. G. Road,]
Mumbai 400023.]..**Petitioner.**

Versus

1. **The Chief Minister**]
of State of Maharashtra, Mantralaya,]
Mumbai – 400 032.]
2. **The Chief Secretary,**]
State of Maharashtra, Mantralaya,]
Mumbai – 400 032.]
3. **Anandrao S. Kate,**]
Address at Shoop no. 12]
Building no. 26, A,]
Lullbhai Compound,]
mumbai-400043]
4. **Akhil Bhartiya Maratha]
Mahasangh,**]
Reg. No. 669/A,]
Though. Dilip B Jagatap]
ts Office at.5, Navalkar]
Lane Prarthana Samaj]
Girgaon, Mumbai-04]
5. **Vilas A. Sudrik,**]
265, “Shri Ganesh Chalwal,]
Juie Aunty Compound]
Santosh Nagar, Gaorgaon (E)]
Mumbai-64]
6. **Ashok Patil**]
A/G/001, Mehdoot Co-op Society,]
Mahada Vasahat Thane, 4000606]
7. **Dr. Kanchan Patil-Vadgaon**]
B-502, Silverstar Residency Sector-18]
Kamote, Panvel-410206]
8. **Subhash Balu Salekar,**]
At 32/2, Shri. Ganesh Soc,]
Hanuman Nagar, B. Park]
Site Vikroli (W) Mumbai-799]

9. **Pandurang D. Shelakar**]
53 Dhulgaon, at Post Dhulgaon]
Tal. Yeola Dist. Nashik 401]
10. **Nitesh Narayan Rane,**]
Bungalow Pion Estate Juhu]
Tara Road, Santacruz, (W)]
Mumbai- 54]
11. **Lakshaman M. Misal,**]
Yashwant Complex A. Wing]
Room No. 508 Near shankwshwar]
Vidyalaya Road, Dombivali Thane, 43.]
12. **Pravin A Nikam**]
Plot No. 28 Sulbha Nagar,]
Yeola , Tal Yeola Dist Nashik]
13. **Vipul C. Mane**]
61,/402, MHB Colony]
Dindsohhi Magar, Malad]
Mumbai-97]
14. **Vinod L. Pokharkar**]
3, plot no. 21 Skylark Society]
Sector 15, Koparkhairne,]
Navi Mumbai-43,]
15. **Dilip M. Patil**]
244/9, Laxmi Narayan Nagar]
Murkh Saink Vasahat]
Kolhapur, 416006]
16. **Sandip P. Pol,**]
Krashnai 2/7, Market Yard]
Satara 15001]
17. **Vivek R. Kurade,**]
Ashtavinayak colony]
Vidyanagar Karad, Dist Satara,]

- 18. Vinod S. Sable**]
602 A, Wing, Nikanth Nityanand Road,]
Panvel Navi Mumbai 410106]
- 19. Krishna B. Naik**]
601, D. Annanya Dr, Raikar Marg,]
Mahim, Mumbai- 16]
- 20. Ankush S. Kadam**]
SS-3, Room No. 724 Sec-18]
Kopar Khairane, Navi Mumbai]
- 21. Santosh P. Raijadhav,**]
15, Satyam Shivam CHS OPP.]
HP Petrol Pump Badlapur East Thane]
- 22. Shahed Ali Ansari**]
B-96, 9th Floor, Mithal Tower B Wing,]
Nariman Point, Mumbai-40023]
- 23. Akhil Maratha Federation**]
Reg No. MH/MUM//2379-2015]
GBBD Thr. Shri. Shashikant Pawar,]
Navalkar Lane, Prathana Samaj,]
Girgaon Mumbai -04,]
- 24. Maharashtra Public Service**]
Commission (MPSC)]
Main office 5th 7th 8th Floor,]
Cooprej Telephone Exchange building,]
MahatrshiKarve Marg,]
Mumbai-400023]
- 25. Gawande Sachin Sominath,**]
Age: 32 years, Occu: Social Activist]
R/o: Plot No.64, Lane No.7,]
Gajanan Nagar,]
Garkheda Parisar Aurangabad]...**RESPONDENTS**

WITH

CIVIL APPLICATION NO. 7 OF 2019
IN
PUBLIC INTEREST LITIGATION NO. 175 OF 2018

Ravindra s/o Bhanudas Kale.]
 Age 39 years, Occu : Social activist]
 R/o : Plot No. 64, Lane no. 7, Gajanan]
 Nagar, GarkhedaParisar, Aurangabad.]..**Applicant.**

IN THE MATTER BETWEEN

Dr. Jishri Laxmnarao Patil,]
 Member the Indian Constitutionalist]
 Council, Age 39 years, Occu : Advocate,]
 Having office at C/o 109/18,]
 Esplanade Mansion, M. G. Road,]
 Mumbai 400023.]..**Petitioner.**

Versus

- 1. The Chief Minister**]
 of State of Maharashtra, Mantralaya,]
 Mumbai - 400 032.]
- 2. The Chief Secretary,**]
 State of Maharashtra, Mantralaya,]
 Mumbai - 400 032.]
- 3. Anandrao S. Kate,**]
 Address at Shoop no. 12]
 Building no. 26, A,]
 Lullbhai Compound, Munkurd,]
 mumbai-400043]
- 4. Akhil Bhartiya Maratha**]
Mahasangh,]
 Reg. No. 669/A,]
 Though. Dilip B Jagatap]
 Its Office at.5, Navalkar]
 Lane Prarthana Samaj]
 Girgaon, Mumbai-04]

5. **Vilas A. Sudrik,**]
265, "Shri Ganesh Chawal,]
Juie Aunty Compound]
Santosh Nagar, Gaorgaon (E)]
Mumbai-64]
6. **Ashok Patil**]
A/G/001, Mehdoor Co-op Society,]
Mahada Vasahat Thane, 4000606]
7. **Dr. Kanchan Patil-Vadgaon**]
B-502, Silverstar Residency Sector-18]
Kamote, Panvel-410206]
8. **Subhash Balu Salekar,**]
At 32/2, Shri. Ganesh Soc,]
Hanuman Nagar, B. Park]
Site Vikroli (W) Mumbai-799]
9. **Pandurang D. Shelakar**]
53 Dhulgaon, at Post Dhulgaon]
Tal. Yeola Dist. Nashik 401]
10. **Nitesh Narayan Rane,**]
Bungalow Pion Estate Juhu]
Tara Road, Santacruz, (W)]
Mumbai- 54]
11. **Lakshaman M. Misal,**]
Yashwant Complex A. Wing]
Room No. 508 Near shankwshwar]
Vidyalaya Road, Dombivali Thane, 43.]
12. **Pravin A Nikam**]
Plot No. 28 Sulbha Nagar,]
Yeola , Tal Yeola Dist Nashik]
13. **Vipul C. Mane**]
61,/402, MHB Colony]
Dindsohi Magar, Malad]
Mumbai-97]

14. **Vinod L. Pokharkar**]
3, plot no. 21 Skylark Society]
Sector 15, Koparkhairne,]
Navi Mumbai-43,]
]
15. **Dilip M. Patil**]
244/9, Laxmi Narayan Nagar]
Murkh Saink Vasahat]
Kolhapur, 416006]
]
16. **Sandip P. Pol,**]
Krashnai 2/7, Market Yard]
Satara 15001]
]
17. **Vivek R. Kurade,**]
Ashtavinayak colony]
Vidyanagar Karad, Dist Satara,]
]
18. **Vinod S. Sable**]
602 A, Wing, Nikanth Nityanand Road,]
Panvel Navi Mumbai 410106]
]
19. **Krishna B. Naik**]
601, D. Annanya Dr, Raikar Marg,]
Mahim, Mumbai- 16]
]
20. **Ankush S. Kadam**]
SS-3, Room No. 724 Sec-18]
Kopar Khairane, Navi Mumbai]
]
21. **Santosh P. Raijadhav,**]
15, Satyam Shivam CHS OPP.]
HP Petrol Pump Badlapur East Thane]
]
22. **Shahed Ali Ansari**]
B-96, 9th Floor, Mithal Tower B Wing,]
Nariman Point, Mumbai-40023]
]
23. **Akhil Maratha Federation**]
Reg No. MH/MUM//2379-2015]
GBBD Thr. Shri. Shashikant Pawar,]
Navalkar Lane, Prathana Samaj,]
Girgaon Mumbai -04,]

24. Maharashtra Public Service

Commission (MPSC)
Main office 5th 7th 8th Floor,
Cooperage Telephone Exchange
building,
MahatrshiKarve Marg,
Mumbai-400023

25. Ravindra s/o Bhanudas Kale.

Age 39 years, Occu : Social activist
R/o : Plot No. 64, Lane no. 7, Gajanan
Nagar, GarkhedaParisar, Aurangabad.

RESPONDENTS

**WITH
CIVIL APPLICATION NO. 8 OF 2019
IN
PUBLIC INTEREST LITIGATION NO. 175 OF 2018**

Ramesh Shekhnath Kere.

Age 40 years, Occu : Social activist
R/o : New Hanuman Nagar, Galli No.4,
Plot No. 94,GarkhedaParisar, Aurangabad.

Applicant.**IN THE MATTER BETWEEN****Dr. Jishri Laxmnarao Patil,**

Member the Indian Constitutionalist
Council, Age 39 years, Occu : Advocate,
Having office at C/o 109/18,
Esplanade Mansion, M. G. Road,
Mumbai 400023.

Petitioner.*Versus***1. The Chief Minister**

of State of Maharashtra, Mantralaya,
Mumbai - 400 032.

2. The Chief Secretary,

State of Maharashtra, Mantralaya,
Mumbai - 400 032.

3. **Anandrao S. Kate,**
Address at Shoop no. 12
Building no. 26, A,
Lullbhai Compound, Munkurd,
mumbai-400043
4. **Akhil Bhartiya Maratha
Mahasangh,**
Reg. No. 669/A,
Though. Dilip B Jagatap
Its Office at.5, Navalkar
Lane Prarthana Samaj
Girgaon, Mumbai-04
5. **Vilas A. Sudrik,**
265, "Shri Ganesh Chawal,
Juie Aunty Compound
Santosh Nagar, Gaorgaon (E)
Mumbai-64
6. **Ashok Patil**
A/G/001, Mehdoor Co-op Society,
Mahada Vasahat Thane, 4000606
7. **Dr. Kanchan Patil-Vadgaon**
B-502, Silverstar Residency Sector-18
Kamote, Panvel-410206
8. **Subhash Balu Salekar,**
At 32/2, Shri. Ganesh Soc,
Hanuman Nagar, B. Park
Site Vikroli (W) Mumbai-799
9. **Pandurang D. Shelakar**
53 Dhulgaon, at Post Dhulgaon
Tal. Yeola Dist. Nashik 401
10. **Nitesh Narayan Rane,**
Bungalow Pion Estate Juhu
Tara Road, Santacruz, (W)
Mumbai- 54

11. **Lakshaman M. Misal,**]
Yashwant Complex A. Wing]
Room No. 508 Near shankwshwar]
Vidyalaya Road, Dombivali Thane, 43.]
12. **Pravin A Nikam**]
Plot No. 28 Sulbha Nagar,]
Yeola , Tal Yeola Dist Nashik]
13. **Vipul C. Mane**]
61,/402, MHB Colony]
Dindsohhi Magar, Malad]
Mumbai-97]
14. **Vinod L. Pokharkar**]
3, plot no. 21 Skylark Society]
Sector 15, Koparkhairne,]
Navi Mumbai-43,]
15. **Dilip M. Patil**]
244/9, Laxmi Narayan Nagar]
Murkh Saink Vasahat]
Kolhapur, 416006]
16. **Sandip P. Pol,**]
Krashnai 2/7, Market Yard]
Satara 15001]
17. **Vivek R. Kurade,**]
Ashtavinayak colony]
Vidyanagar Karad, Dist Satara,]
18. **Vinod S. Sable**]
602 A, Wing, Nikanth Nityanand Road,]
Panvel Navi Mumbai 410106]
19. **Krishna B. Naik**]
601, D. Annanya Dr, Raikar Marg,]
Mahim, Mumbai- 16]
20. **Ankush S. Kadam**]
SS-3, Room No. 724 Sec-18]
Kopar Khairane, Navi Mumbai]

- 21. Santosh P. Raijadhav,**]
 15, Satyam Shivam CHS OPP.]
 HP Petrol Pump Badlapur East Thane]
]
- 22. Shahed Ali Ansari**]
 B-96, 9th Floor, Mithal Tower B Wing,]
 Nariman Point, Mumbai-40023]
]
- 23. Akhil Maratha Federation**]
 Reg No. MH/MUM//2379-2015]
 GBBD Thr. Shri. Shashikant Pawar,]
 Navalkar Lane, Prathana Samaj,]
 Girgaon Mumbai -04,]
]
- 24. Maharashtra Public Service**]
 Commission (MPSC)]
 Main office 5th 7th 8th Floor,]
 Cooprej Telephone Exchange building,]
 MahatrshiKarve Marg,]
 Mumbai-400023]
]
- 25. Ramesh Shekhnath Kere.**]
 Age 40 years, Occu : Social activist]]
 R/o : New Hanuman Nagar,]
 Galli No.4, Plot No. 94,]
 GarkhedaParisar, Aurangabad.]..RESPONDENTS.

WITH

CIVIL APPLICATION NO. 17 OF 2019

IN

PUBLIC INTEREST LITIGATION NO. 175 OF 2018

Shri Haribhai Rathod,]
 Age 65 years, Occu :]
 R/at A-201, Banjara Hills, near Ashok Nagar]]
 Police Station, Mulund (W),]..Intervener.

IN THE MATTER BETWEEN

Dr. Jaishri Laxmnarao Patil,]
 Member the Indian Constitutionalist]
 Council, Age 39 years, Occu : Advocate,]
 Having office at C/o 109/18,]
 Esplanade Mansion, M. G. Road,]
 Mumbai 400023.]..**Petitioner.**

Versus

- 1. The Chief Minister**]
 of State of Maharashtra, Mantralaya,]
 Mumbai - 400 032.]
- 2. The Chief Secretary,**]
 State of Maharashtra, Mantralaya,]
 Mumbai - 400 032.]..**Respondents.**

WITH**WIRT PETITION NO. 937 OF 2017**

Sayed Saleem Syed Ali.]
 Age : 55 years, Occu : Ex-MLA (Beed)]
 R/o Bundalpura, Beed, Tq.&Dist Beed.]]..**Petitioner.**

Versus

- 1. The State of Maharashtra**]
 Through the Secretary,]
 General Administration Department,]
 Mantralaya, Mumbai- 400032.]
 (Copy to be served on G.P.,]
 High Court of Judicature of Bombay)]
- 2. Minority Development**]
Department,]
 Through its Secretary,]
 Government of Maharashtra,]
 Mantralaya, Mumbai - 400032.]

- 3. Social Justice and Special Assistance Department,**]
 Through its Secretary,]
 Government of Maharashtra,]
 Mantralaya Mumbai - 400032.]..Respondents.

**WITH
 CIVIL APPLICATION NO. 11 OF 2019
 IN
 WRIT PETITION NO. 937 OF 2017**

Sayed Saleem Syed Ali.]
 Age : 55 years, Occu : Ex-MLA (Beed)]
 R/o Bundalpura, Beed, Tq.&Dist Beed.]]..Applicant.

In the matter between :-
Sayed Saleem Syed Ali.]
 Age : 55 years, Occu : Ex-MLA (Beed)]
 R/o Bundalpura, Beed, Tq.&Dist Beed.]]..Petitioner.

Versus

- 1. The State of Maharashtra**]
 Through the Secretary,]
 General Administration Department,]
 Mantralaya, Mumbai- 400032.]
 (Copy to be served on G.P.,]
 High Court of Judicature of Bombay)]
- 2. Minority Development Department,**]
 Through its Secretary,]
 Government of Maharashtra,]
 Mantralaya, Mumbai - 400032.]
- 3. Social Justice and Special Assistance Department,**]
 Through its Secretary,]
 Government of Maharashtra,]
 Mantralaya, Extension Building,]
 Mumbai - 400032.]..Respondents.

WITH
WRIT PETITION NO.1208 OF 2019

Syed Saleem Syed Ali	]	
R/o. Bundalpura, Beed,	]	
Taluka & Dist-Beed	]	...Petitioner

Versus

1. The State of Maharashtra	]	
through the Secretary,	]	
General Administration Department,	]	
Mantralaya, Mumbai-400 032.	]	
	]	
2. Minority Development Department	]	
through its Secretary,	]	
Government of Maharashtra,	]	
Mantralaya, Mumbai-400 032.	]	
	]	
3. Social Justice and Special Assistance Department,	]	
Through its Secretary,	]	
Government of Maharashtra	]	
Mantralaya, Extension Building,	]	
Mumbai- 400 032.	]	...Respondents.

WITH
WRIT PETITION NO.2126 OF 2019

Rajesh A. Takale	]	
R/o: Panan Co-operative Housing Society,	]	
Ambegaon, Pathar Bharti Vidyapeeth,	]	
Survey No.28/21/1, Pune-411 046.	]	...Petitioner

Versus

The State of Maharashtra	]	
Through its Chief Secretary,	]	
Mantralaya, Mumbai - 431 032.	]	...Respondent.

WITH
WRIT PETITION NO.2668 OF 2019

Vaibhav Dhondiram Kadam	]	
R/at-Ganesh Plaza, Burud Lane, Yeola,	]	
Tal.Yeola, Dist-Nashik, Pin-423401	]	...Petitioner

Versus

The State of Maharashtra	]	
Through its Chief Secretary,	]	
Mantralaya, Mumbai-431 032	]	...Respondent

WITH
WRIT PETITION NO.3846 OF 2019

- | | | | |
|-----------|--|---|--|
| 1. | Mohammad Sayeed Noori |] | |
| | Shafi Ahmed R/o Mugal House, |] | |
| | Ali Umer Street Pydhonie, Mandvi, |] | |
| | B.P. Lane, Mumbai-400 003. |] | |
| | |] | |
| 2. | Mohammad Khaleel Lur |] | |
| | Rehman Noori Siddique |] | |
| | R/at, 23, 2 nd Floor, 4A6 Haji |] | |
| | Yusuf Manzil Abdullah Mansion, |] | |
| | 3 rd Sankli Street, Madan Pura, |] | |
| | Mumbai Central, Mumbai-400008 |] | |
| | |] | |
| 3. | Sayed Jameel Jaimiyan |] | |
| | R/o Janimiya Husain Syed Qasre Garib] |] | |
| | Nawaz House No.3-1-10510 |] | |
| | K.G.N. Road, Dukkhi Nagar, Old Jalna |] | |
| | Qasre Garib, Nawaz, Jalna-431203 |] | |
| | |] | |
| 4. | Mohammed Farid Amir Shaikh |] | |
| | S/o Mohammed Amir Shaikh |] | |
| | O/at Qarmar Apartment, |] | |
| | Ground Floor, Shop No.1, |] | |
| | Behind Massah Bakery, Naya Nagar, |] | |
| | Mira Road, District-Thane. |] | |

5. **Zahid Hussain Mohammad**]
Ramzan Ansari]
R/o. 4359, Lane No.4, Near Imam]
Ahmad Raza Chowk,]
Islampura Deopur, Jaihind Colony,]
Dhule]
]]
6. **Ansari Hamid Akhtar Akhtar**]
Mohd.]
Sadique, R/o Plot No.42, MHADA]
Plot, Noor Bag. MIG, Malegaon,]
Nashik, Malegaon-03]
]]
7. **Khatib Mukhimoddin Hamidoddin**]
R/o. Roza Moholla, Kaij Beed.]...**Petitioners**

Versus

1. **The State of Maharashtra**]
Through its Chief Secretary,]
G.A.D. Mantralaya, Mumbai.]
]]
2. **The Secretary,**]
Minorities Development Department,]
Government of Maharashtra,]
Mantralaya, Mumbai-400032.]
]]
3. **The Secretary,**]
Social Justice and Special Asst. Dept.,]
Government of Maharashtra]
Mantralaya, Extension Building,]
Mumbai-400 032]
]]
4. **Maharashtra State Backward**]
Class Commission, Pune.]
]]
5. **Maharashtra Public Services**]
Commission]
Through its Secretary,]
51/2, 7th & 8th Floor, M.K.Marg]
Telephone Nigam Building,]
Cooperage, Mumbai-400 021.]

- 6. Union of India**]
 Through its Joint Secretary,]
 Ministry of Social Justice &]
 Empowerment]
 (Department of Social Justice &]
 Empowerment), New Delhi]
**7. National Commission for Socially]
 & Educationally Backward]
 Classes Through its Secretary,]
 New Delhi.]...Respondents.**

**WITH
 WRIT PETITION NO. 10755 OF 2017**

- 1. Mrunal Dhole Patil**]
 Age 33 years, Occu: Social Work,]
 R/o Shivneri, Mantrki Park,]
 Kotharud, Pune - 411038]
2. Mahadev R Andhale.]
 Age 63 years, Occu: Advocate,]
 Presently R/o Shivneri, Mantrki Park,]
 Kotharud, Pune - 411038]..Petitioners.

Versus

- 1. The State of Maharashtra**]
 Through its Principal Secretary,]
 Social Justice and Special]
 Assistance Department,]
 Mantralaya, Mumbai - 32.]
**2. Shri. Sambhaji Baburao Mhase-,]
 Patil** (Former high court judge)]
 and Chairman of the Commission]
3. Dr. Sajerao Baburao Nimase,]
**4. Prof. Shri. Chandrashekhar]
 Bhagwantrao Deshpande,**]

- | | | |
|-----|---------------------------------------|------------------------|
| 5. | Prof. Rajabhau Narayan Karape, |] |
| 6. | Dr. Bhushan Vasantrao Kardile, |] |
| 7. | Dattatray Dagadu Balsaraf, |] |
| 8. | Dr. Suvarna Tukaram Raval, |] |
| 9. | Dr. Pramod Govindrao Yeole, |] |
| 10. | Dr. Sudhir Devmanrao Thakare, |] |
| |] | |
| 11. | Shri. Rohidas Vithal Jadhav, |] |
| | No. 2 to 11 all having their |] |
| | office address at Maharashtra |] |
| | State Commission for Backward, |] |
| | Class, 305, 3 rd Floor, |] |
| | New Administrative Building, |] |
| | Opp, Council Hall, Pune - 411001 |] |
| | | ...Respondents. |

WITH

WRIT PETITION NO. 11368 OF 2016

Jamiat Ulama-I-Hind.	]
Through its president of Maharashtra Unit	]
-Shri. Siddiqui Nadim Abdul Mustaqim,	]
Age 45 years, Occu: Business and	]
Agriculture, R/o: 77-7, Ziandulabedin Bldg,	]
Ibrahim Rahmatullah Rd, Bhendi Bazar,	]
Mumbai - 3	]
	...Petitioner

Versus

- | | |
|------------------------------------|---|
| 1. The State of Maharashtra |] |
| Through its Chief Secretary, |] |
| General Administration Department, |] |
| Mantralaya, Mumbai. |] |
| |] |

2. **The Secretary,**]
 Minorities Development Department,]
 Government of Maharashtra,]
 Mantralaya, Mumbai - 400032.]
]
3. **the Secretary,**]
 Social Justice and Spl. Assistance]
 Department,]
 Government of Maharashtra,]
 Mantralaya, Mumbai - 400032.]
]
4. **Maharashtra State Backward**]
Class Commission,Pune.]..Respondents.

WITH
PUBLIC INTEREST LITIGATION NO. 19 OF 2019

KAILAS KHANDBAHALE]
 Age: 30 Years; Occ.: Researcher]
 and social worker;]
 Residing at House No. 27,]
 Trimbak Road Shivaji Chowk,]
 Mahirawani, Tal & Dist. Nashik - 412213]...Petitioner.

Versus

1. **The State of Maharashtra,**]
 Through its Chief Secretary,]
 Mantralaya, Mumbai - 431032.]
]
2. **The Principal Secretary,** Social]
 Justice and Special Assistance]
 Dep. Government of Maharashtra]
 Mantralaya, Hutatma Rajguru]
 Chowk, Madam Cama road,]
 Nariman Point, Mumbai - 32.]...Respondents.

WITH

PUBLIC INTEREST LITIGATION NO.105 OF 2015

Shri.Anil Shankar Thanekar]
R/at 801, jai Bholenath Niwas,]
Ganesh Nagar, Shivai Nagar,]
Pokhran Road, Thane-400 606.]...**Petitioner**

Versus

1. The Chief Minister,]
State of Maharashtra, Mantralaya,]
Mumbai- 400 032.]
2. The Chief Secretary]
State of Maharashtra, Mantralaya,]
Mumbai - 400 032.]...**Respondents**

WITH

CIVIL APPLICATION NO.130 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.105 OF 2015

Muslim Satyashodhak Mandal]
O/At Plot No.6, Budhani Estate,]
Kondwa (Budruk), Pune-411 048]...**Applicant/
Intervener**

IN THE MATTER OF :

Shri.Anil Shankar Thanekar]
Room No.2, Hamam House, Fort, Mumbai.]

Versus

Hon. Chief Minister, M.S. & Ors.,]
Mantralaya, Mumbai.]...**Respondent**

WITH

**CIVIL APPLICATION NO.131 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.105 OF 2015**

Akhil Bhartiya Maratha Mahasangha	]	
Through its Secretary	]	
Reajendra Namdeo Kondhare	]	
Add : Prataprao Mane Sabhagraha,	]	
5, Navalkar Lane, Prarthana Samaj,	]	
Mumbai-400 004.	]	...Applicant/ Intervener

IN THE MATTER OF :

Shri.Anil Shankar Thanekar	]	...Petitioner
<i>Versus</i>		
1. The Chief Minster,	]	
State of Maharashtra,	]	
Mantralaya, Mumbai-32.	]	
2. The Chief Secretary,	]	
State of Maharashtra,	]	
Mantralaya, Mumbai-32.	]	...Respondents

WITH

**CIVIL APPLICATION NO.17 OF 2017
IN
PUBLIC INTEREST LITIGATION NO.105 OF 2015**

Mr.Aziz Abbas Pathan	]	
R/at 9, Golden Park, Shankar Nagar,	]	
Takli Road, Dwarika Nashik	]	...Applicant/ Intervener

IN THE MATTER OF :

Shri.Anil Shankar Thanekar	]	...Petitioner
<i>Versus</i>		
1. The Chief Minster,	]	
State of Maharashtra,	]	
Mantralaya, Mumbai-32.	]	

2. **The Chief Secretary,**]
 State of Maharashtra,]
 Mantralaya, Mumbai-32.]...**Respondents**

WITH

CIVIL APPLICATION NO.18 OF 2017
IN
PUBLIC INTEREST LITIGATION NO.105 OF 2015

- P.A. Inamdar]
 R/o.963, Nana Peth Pune-411 002.]...**Applicant/
 Intervener**

IN THE MATTER OF :

- Shri.Anil Shankar Thanekar**]...**Petitioner**
Versus

1. **The Chief Minister,**]
 State of Maharashtra,]
 Mantralaya, Mumbai-32.]
2. **The Chief Secretary,**]
 State of Maharashtra,]
 Mantralaya, Mumbai-32.]...**Respondents**

WITH

CIVIL APPLICATION NO.15 OF 2017
IN
PUBLIC INTEREST LITIGATION NO.105 OF 2015

1. **Afsarullah Abdul Waheed Usmani]**
 R/at, A-101 Aziza Mahal, Amrut Nagar]
 Opp. Nasim Bagh Shadi Mahal Hall,]
 Mumbrai, Thane-400612]
2. **Shabbir Gulam Gaus Deshmukh]**
 R/at 13, Bhimabai Kapse Bldg.,]
 Quresh Nagar, Kurla (E),]
 Mumbai-400 070]...**Applicants/**

IN THE MATTER OF :**Shri.Anil Shankar Thanekar****]...Petitioner***Versus*

1. The Chief Minster,
State of Maharashtra,
Mantralaya, Mumbai-32.

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2. The Chief Secretary,
State of Maharashtra,
Mantralaya, Mumbai-32.

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]...Respondents**WITH****CIVIL APPLICATION NO.16 OF 2017****IN****PUBLIC INTEREST LITIGATION NO.105 OF 2015**

The Minority Welfare Organisation **]**
Dhule, O/at 40 Gaon Road, Avishkar Colony,
Plot No.35, Anum Palace, Dhule **]**
Maharashtra-424001 **]**

**]...Applicant/
Intervener****IN THE MATTER OF :****Shri.Anil Shankar Thanekar****]...Petitioner***Versus*

1. The Chief Minster,
State of Maharashtra,
Mantralaya, Mumbai-32.

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2. The Chief Secretary,
State of Maharashtra,
Mantralaya, Mumbai-32.

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]...Respondents

**WITH
CIVIL APPLICATION NO.20 OF 2017
IN**

PUBLIC INTEREST LITIGATION NO.105 OF 2015

Mr.Asif Shaikh Rasheed	]	
O/at 747, MHB Colony,	]	
Malegaon, Maharashtra	]	...Applicant/ Intervener

IN THE MATTER OF :

Shri.Anil Shankar Thanekar		...Petitioner
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Versus

- | | | | |
|-----------|-----------------------------|---|-----------------------|
| 1. | The Chief Minster, |] | |
| | State of Maharashtra, |] | |
| | Mantralaya, Mumbai-32. |] | |
| | |] | |
| 2. | The Chief Secretary, |] | |
| | State of Maharashtra, |] | |
| | Mantralaya, Mumbai-32. |] | ...Respondents |

**WITH
CIVIL APPLICATION NO.19 OF 2017
IN**

PUBLIC INTEREST LITIGATION NO.105 OF 2015

- | | | | |
|-----------|---------------------------------------|---|--|
| 1. | Maratha_Muslim Aarakshan Kruti |] | |
| | Samiti Maharashtra, Aurangabad |] | |
| | Through its Secretary, |] | |
| | Shri.Rajendra S/o Dashrathrao |] | |
| | Datey Patil,R/at N-11, C-1-4/6, |] | |
| | Patilwadi,Gajanan Nagar, HUDCO, |] | |
| | Aurangabad-431 001. |] | |
| | District-Aurangabad |] | |
| | |] | |
| 2. | Shri.Shaikh Masood Shaikh |] | |
| | Maheboob |] | |
| | Vice President of Maratha-Muslim |] | |
| | Aarakshan Kruti Samiti Maharashtra, |] | |
| | Aurangabad, R/o.Plot No.178/B, |] | |
| | Near Teen Mandir, Aref Colony, |] | |
| | Aurangabad-431 001. |] | |

- 3. Shri.Kishor Ganpatrao Chavan**
 Vice President of Maratha-Muslim
 Aarakshan Kruti Samiti Maharashtra
 Aurangabad, R/o. House No.4-5-81,
 Bamboo Market, Jadhav Mandi,
 Aurangabad-431 001.
 Dist-Auragabad

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]...**Applicant/
 Intervener**

IN THE MATTER OF :
Shri.Anil Shankar Thanekar

]
]...**Petitioner**

Versus

- 1. The Chief Minster,**
 State of Maharashtra,
 Mantralaya, Mumbai-32.
- 2. The Chief Secretary,**
 State of Maharashtra,
 Mantralaya, Mumbai-32.

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]...**Respondents**

WITH

CIVIL APPLICATION NO.78 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.105 OF 2015

- 1. The State of Maharashtra**
 Through Chief Secretary
 to the Government, Mantralaya
 Mumbai
- 2. The Principal Secretary**
 to the Government
 Social Justice & Special Asst. Dept.,
 Mantralaya, Mumbai.

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]...**Applicants**

IN THE MATTER OF :

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|---|---|-----------------------|
| 1. Shri.Anil Shankar Thanekar |] | |
| |] | |
| 2. Shri.Sanjeet Shukla |] | |
| 197/8, Kamal Kunj, R.G. Shulka Marg, |] | |
| Sion East, Mumbai- 400 022 |] | ...Petitioner |
| <i>Versus</i> | | |
| 1. The State of Maharashtra |] | |
| through Chief Secretary to the |] | |
| Government Mantralaya, Mumbai. |] | |
| |] | |
| 2. The Principal Secretary to the Government |] | |
| Social Justice and Special Asst.Dept. |] | |
| Mantralaya, Mumbai. |] | ...Respondents |

WITH

CIVIL APPLICATION NO.79 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.105 OF 2015

- | | | |
|---------------------------------------|---|----------------------|
| 1. The State of Maharashtra |] | |
| Through Chief Secretary |] | |
| to the Government, Mantralaya |] | |
| Mumbai |] | |
| |] | |
| 2. The Principal Secretary |] | |
| to the Government |] | |
| Social Justice & Special Asst. Dept., |] | |
| Mantralaya, Mumbai. |] | ...Applicants |

IN THE MATTER OF :

- | | | |
|--------------------------------------|---|----------------------|
| 1. Shri.Anil Shankar Thanekar |] | |
| |] | |
| 2. Shri.Sanjeet Shukla |] | ...Petitioner |
| <i>Versus</i> | | |
| 1. The State of Maharashtra |] | |
| through Chief Secretary to the |] | |
| Government Mantralaya, Mumbai. |] | |
| |] | |

- 2. The Principal Secretary to the Government**]
 Social Justice and Special Asst. Dept.]
 Mantralaya, Mumbai.]...**Respondents**

WITH

CIVIL APPLICATION NO.59 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.105 OF 2015

- Sarjerao Tayappa Patil]...**Applicant/
Intervener**

IN THE MATTER OF :

- 1. Shri.Anil Shankar Thanekar**]...**Petitioner**

Versus

- 1. Chief Minister**]
 State of Maharashtra, Mantralay,]
 Mumbai-400 032.]
2. Chief Secretary]
 State of Maharashtra,]
 Mantralay, Mumbai-400 032.]...**Respondents**

WITH

PUBLIC INTEREST LITIGATION NO.126 OF 2019

- Rajaram Tukaram Kharat**]
 R/at: Room No.301,]
 Jai Sainath Co-operative Housing Society,]
 Mohanand Nagar, Manjarli Road,]
 Badlapur (W), Dist-Thane]...**Petitioner**

Versus

- 1. The State of Maharashtra**]
 through the Principal Secretary,]
 Social Justice Dept., Mantralaya,]
 Mumbai-400 032.]

2. The Maharashtra State Backward]
Class Commission, Mumbai-400 032.]...Respondents

WITH

CIVIL APPLICATION NO.129 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.126 OF 2019

Akhil Bhartiya Maratha Mahasangha]
 Through its Secretary]
 Rajendra Namdeo Kondhare,]
 Add: Prataprao Mane Sabhagraha,]
 5, Navalkar Lane, Prarthana Samaj,]
 Mumbai-400 004]...**Applicant/**
Intervener

IN THE MATTER BETWEEN :
Rajaram Tukaram Kharat]...Petitioner

Versus

1. The State of Maharashtra]
 through the Principal Secretary,]
 Social Justice Dept., Mantralaya,]
 Mumba-400 032.]
2. The Maharashtra State Backward]
Class Commission, Mumbai-400 032.]...Respondents

WITH

CIVIL APPLICATION NO.135 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.126 OF 2019

P.A. Inamdar]
 R/o.963, Nana Peth, Pune-411 002] ...**Applicant/**
Intervener

IN THE MATTER BETWEEN :**Rajaram Tukaram Kharat**

]...Petitioner

*Versus***1. The State of Maharashtra**

]

through the Principal Secretary,
Social Justice Dept., Mantralaya,
Mumba-400 032.

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2. The Maharashtra State Backward

]

Class Commission, Mumbai-400 032.]...Respondents**WITH****PUBLIC INTEREST LITIGATION NO.140 OF 2014****Ketan Tirodkar**

]

402, Vasantkunj, Dr.Ambedkar Road,
Hindu Colony, Dadar East,
Mumbai-400 014

]

]

]...**Petitioner***Versus***State of Maharashtra**

]

Via Hon'ble Chief Minister,
Mantralaya, Mumbai-400 032.

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]...Respondent

WITH**CIVIL APPLICATION NO.109 OF 2014****IN****PUBLIC INTEREST LITIGATION NO.140 OF 2014****Shiv Sangram**

]

R/at 41, North Kasaba, Solapur-413 007

]

Through

]

a) Shri Vinayakrao T. Mete

]

National President

]

R/at C/703, Venus Building,

]

Bhakti Park, Wadala, Mumbai-400 037]

b) Shri.Dnyaneshwar Bhambre]
 General Secretary]
 R/at Daul, Tal-Sindkheda]
 Dhule-413 007.]...Applicant

IN THE MATTER OF :

Shri.Ketan Tirodkar]...Petitioner
Versus
State of Maharashtra]...Respondent

WITH
CIVIL APPLICATION NO.110 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Maratha Hithvardhak Sangh]
 O/at : Dist-Satara Through its Secretary,]
 Shri.D.T. Pawar]...Applicant/
 Intervener

IN THE MATTER OF :
Shri.Ketan Tirodkar]...Petitioner
Versus
State of Maharashtra]...Respondent

WITH
CIVIL APPLICATION NO.122 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Shri.Naresh Govind Vaze]
 Matruchhaya Building Room No.2,]
 Property No.81/1 Behind Vedant Tower,]
 Tulinj Nallasopara (E), Pin-401209]...Applicant/
 Intervener

IN THE MATTER OF :
Shri.Ketan Tirodkar]...Petitioner
Versus
State of Maharashtra]...Respondent

WITH
CIVIL APPLICATION NO.138 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Akhil Bhartiya Maratha Mahasangha]
 Through its Secretary]
 Rajendra Namdeo Kondhare]
 Add: Prataprao Mane Sabhagraha,]
 5, Navalkar Lane, Prathana Samaj]
 Mumbai - 400 004.]...Applicant/
 Intervener

IN THE MATTER BETWEEN:

Shri.Ketan Tirodkar]...Petitioner
Versus
State of Maharashtra]...Respondent

WITH
CIVIL APPLICATION NO.139 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

P.A. Inamdar]
 Age 69 years, Occupation : Business]
 & Social Worker, r/o : 963, Nana peth,]
 Maharashtra Pune 411002]...Applicant/
 Intervener

IN THE MATTER BETWEEN:

Shri.Ketan Tirodkar]...Petitioner
Versus
State of Maharashtra]...Respondent

WITH
CIVIL APPLICATION NO.144 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Ketan Tirodkar]
 402, Vasantkunj, Dr.Ambedkar Road,]
 Hindu Colony, Dadar East,]..**Applicant/**
 Mumbai-400 014] **Petitioner**

Versus

State of Maharashtra	]	
Via Hon'ble Chief Minister,	]	
Mantralaya, Mumbai-400 032.	]	...Respondent

WITH
CIVIL APPLICATION NO.22 OF 2015
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Maratha Swaraj Sangh Maharashtra	]	
O/at Harishikesh, Near Datta Sai Mandir,	]	
100 Feet Road, Sangli, Dist-Sangli.	]	
Through its President	]	
Shri.Mahadev D. Salunkhe	]	...Applicant/ Intervener
<u>IN THE MATTER BETWEEN:</u>		
Shri.Ketan Tirodkar	]	...Petitioner
<i>Versus</i>		
State of Maharashtra	]	...Respondent.

WITH
CIVIL APPLICATION NO.23 OF 2015
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Shri.Naresh Govind Vaze	]	
Matruchhaya Building, Room No.2,	]	
Property No.81/1, Behind Vedant Tower,	]	
Tulinj Nallasopara-401209	]	...Applicant/ Intervener
<u>IN THE MATTER BETWEEN:</u>		
Shri.Ketan Tirodkar	]	...Petitioner
<i>Versus</i>		
State of Maharashtra	]	...Respondent

WITH

CIVIL APPLICATION NO.112 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Shri.Vinod Narayan Patil	]	
R/at 'Devigigi, G-20,	]	
Town Centre, CIDCO, Aurangabad.	]	]...Applicant/Intv.
<u>IN THE MATTER BETWEEN:</u>		
Shri.Ketan Tirodkar	]	]...Petitioner
<i>Versus</i>		
State of Maharashtra	]	]...Respondent

WITH
CIVIL APPLICATION NO.113 OF 2016
WITH
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Shri.Vinod Narayan Patil	]	
Age 36 years, Occu : Business, r/at	]	
Devgiri, G-20, town Centre,	]	
CIDCO, Aurangabad.	]	]... Applicant/ Intervener
<u>IN THE MATTER BETWEEN :</u>		
Shri.Ketan Tirodkar	]	]...Petitioner
<i>Versus</i>		
State of Maharashtra	]	]...Respondent

WITH
CIVIL APPLICATION (ST) NO.21408 OF 2018
IN
PUBLIC INTEREST LITIGATION NO.140 OF 2014

Shri Ketan Tirodkar		]...Applicant/ Intervener
<u>IN THE MATTER BETWEEN:</u>		
Shri.Ketan Tirodkar	]	]...Petitioner
<i>Versus</i>		
State of Maharashtra	]	]...Respondent

**WITH
PUBLIC INTEREST LITIGATION NO.149 OF 2014**

The Indian Constitutionalist Council]
Through its Secretary,]
Dr.Laxmanrao Kisanrao Patil]
C/o 109/18, Esplanade Mansion,]
Mahatma Gandhi Road, Mumbai-23.]...**Petitioner**

Versus

1. The Chief Minister of]
State of Maharashtra]
Mantralaya, Mumbai-32]
]]
2. The Chief Secretary]
State of Maharashtra, Mantralaya]
Mumbai-32.]...**Respondents**

**WITH
CIVIL APPLICATION NO.121 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.149 OF 2014**

Maratha Hithvardhak Sangh]
O/At Powai Naka, Satara]
Through its President Shri.D.K. Pawar]...**Applicant/
Intervener**

IN THE MATTER between :

The Indian Constitutionalist Council]
Through its Secretary]
Dr.Laxmanrao Kisanrao Patil]
C/o 109/18, Esplanade Mansion,]
Mahatma Gandhi Road, Mumbai-23.]...**Petitioner**

Versus

1. The Chief Minister of]
State of Maharashtra]
Mantralaya, Mumbai-32]

- 2. The Chief Secretary**]
 State of Maharashtra, Mantralaya]
 Mumbai-32.]...**Respondents**

WITH

CIVIL APPLICATION NO.140 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.149 OF 2014

Akhil Bhartiya Maratha Mahasangha]
 through its Secretary Rajendra Namdeo]
 Kondhare, Add: Prataprao Mane Sabhagraha]
 5, Navalkar Lane, Prathana Samaj]
 Mumbai-400 004.]..Applicant/
 Intervener.

IN THE MATTER between :

The Indian Constitutionalist Council]
 Through its Secretary]
 Dr.Laxmanrao Kisanrao Patil]
 C/o 109/18, Esplanade Mansion,]
 Mahatma Gandhi Road, Mumbai-23.]...Petitioner

Versus

- 1. The Chief Minister of**]
 State of Maharashtra]
 Mantralaya, Mumbai-32]
2. The Chief Secretary]
 State of Maharashtra, Mantralaya]
 Mumbai-32.]...**Respondents**

WITH

CIVIL APPLICATION NO.141 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.149 OF 2014

Mr.Shahed Ali Inayat Ali Ansari]
R/at 302, Appaji Dham Building II,]
Shree Complex, Adharwadi Jail Road,]
Kalayn (W).]..Applicant/
Intervener

IN THE MATTER between :
The Indian Constitutionalist Council]
Through its Secretary]
Dr.Laxmanrao Kisanrao Patil]
C/o 109/18, Esplanade Mansion,]
Mahatma Gandhi Road, Mumbai-23.]...Petitioner

Versus

1. The Chief Minster of]
State of Maharashtra]
Mantralaya, Mumbai-32]
]]
2. The Chief Secretary]
State of Maharashtra, Mantralaya]
Mumbai-32.]...Respondents

WITH
CIVIL APPLICATION NO.141 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.149 OF 2014

Mr.Shivaji Hindurao Patil]
R/at Deval Complex Opp. Hotel Chinar,]
Vishrambag, Sangli.]...Applicant/
Intervener

IN THE MATTER between :
The Indian Constitutionalist Council]
Through its Secretary]
Dr.Laxmanrao Kisanrao Patil]
C/o 109/18, Esplanade Mansion,]
Mahatma Gandhi Road, Mumbai-23.]...Petitioner

Versus

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|---|----------------------------|------------------------------|
| <p>1. The Chief Minister of
State of Maharashtra
Mantralaya, Mumbai-32</p> | <p>]
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]</p> | |
| <p>2. The Chief Secretary
State of Maharashtra, Mantralaya
Mumbai-32.</p> | <p>]
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]</p> | <p>...Respondents</p> |

**WITH
PUBLIC INTEREST LITIGATION NO. 181 OF 2018**

Dilip Madhukar Patil, Age 54 years, Occu : business, Resding at 244/9, Laxminarayan Nagar Gur Market Yard, Karveer, Kolhapur, Maharashtra 416005	]]]]]	...Petitioner.
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Versus

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| <p>1. The State of Maharashtra
Through its Chief Secretary,
Mantralaya, Mumbai-32</p> | <p>]
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| <p>2. The Principal Secretary
Social Justice and Spl. Assitance deptt]
Government of Maharashtra,
Hutatma Rajguru Chowk,
Madam Cama Road, Nariman Point,
Mumbai-32.</p> | <p>]
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]</p> | <p>...Respondents</p> |

**WITH
PUBLIC INTEREST LITIGATION NO. 185 OF 2018**

Dr. Sudhir Ranade, Secretary, Vishwa Hindu parishad, Kokan Division, Residing at , 203, Arihant Tower, Shivaji Nagar, Navpada, Thane (west), Thane 400602	]]]]]	...Petitioner.
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Versus

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|--|-----------------------|
| 1. The State of Maharashtra |] |
| |] |
| 2. The Additional Chief Secretary |] |
| Admin Reform O&M Minority Dev. |] |
| Government of Maharashtra, |] |
| Hutatma Rajguru Chowk, |] |
| Madam Cama Road, Nariman Point, |] |
| Mumbai-32. |] |
| |] |
| 3. Minorities Development Department, |] |
| room No. 701, 708, 714 and 715, |] |
| 7 th Floor, Mantralaya, Hutatma |] |
| Rajguru Chowk, Madam Cama Road |] |
| Nariman Point, Mumbai-32. |] |
| |] |
| 4. The Secretary |] |
| Social Justice & Spl. Assistance, |] |
| Government of Maharashtra, |] |
| Hutatma Rajguru Chowk, |] |
| Madam Cama Road, Nariman Point, |] |
| Mumbai-32. |] |
| | ...Respondents |

**WITH
CIVIL APPLICATION No. 143 OF 2014
IN
PUBLIC INTEREST LITIGATION NO. 185 OF 2018**

P. A. Inamdar,	]
Age 69 years, Occu : Business	]
and Social worker, R/o : 963, Nana Peth,	]..Applicant/
Pune-411002 Maharashtra	] Intervener.

IN THE MATTER Between

Dr. Sudhir Ranade,	]
Secretary, Vishwa Hindu parishad,	]
Kokan Division, Residing at , 203, Arihant	]
Tower, Shivaji Nagar, Navpada,	]
Thane (west), Thane 400602	...Petitioner.

Versus

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|----|--|-----------------|
| 1. | The State of Maharashtra |] |
| | |] |
| 2. | The Additional Chief Secretary |] |
| | Admin Reform O&M Minority Dev. |] |
| | Government of Maharashtra, |] |
| | Hutatma Rajguru Chowk, |] |
| | Madam Cama Road, Nariman Point, |] |
| | Mumbai-32. |] |
| | |] |
| 3. | Minorities Development Department, |] |
| | room No. 701, 708, 714 and 715, |] |
| | 7 th Floor, Mantralaya, Hutatma |] |
| | Rajguru Chowk, Madam Cama Road |] |
| | Nariman Point, Mumbai-32. |] |
| | |] |
| 4. | The Secretary |] |
| | Social Justice & Spl. Assistance, |] |
| | Government of Maharashtra, |] |
| | Hutatma Rajguru Chowk, |] |
| | Madam Cama Road, Nariman Point, |] |
| | Mumbai-32. |] |
| | |]...Respondents |

WITH

PUBLIC INTEREST LITIGATION NO.201 OF 2014

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|----|-------------------------------------|---|
| 1. | Save Democracy Foundation |] |
| | Through its Chief Coordinator |] |
| | Mr.Sanjay Sonawani, R/o.Pune |] |
| | |] |
| 2. | Shri.Mrunal Dhole-Patil Both having |] |
| | office at Shivneri, Mantri Park, |] |
| | Kothrud, Pune-38. |] |
| | |] |
| 3. | Comrade Gowardhan Gholap |] |
| | R/o. "Vishw Prabha", Dehade Ves Rd, |] |
| | Wambori, Taluka-Rahuri, |] |
| | Dist-Ahmednagar |] |

4. Mr.Mahadev R. Andhale]
 R/o. Plot No.35, Lane No.5,]
 Ambika Nagar, Mukundwadi]
 Aurangabad.]...**Petitioners.**

Versus

- 1. State of Maharashtra**]
 Through its Chief Secretary,]
 Govt. of Maharashtra]
 Mantralaya, Mumbai-32]
2. Principal Secretary]
 Social Justice & Special Asst. Dept.]
 Govt. of Maharashtra, Mantralaya,]
 Mumbai-32.]
3. Advocate General]
 Govt. of Maharashtra]
 O/at High Court, Annex Building,]
 Fort, Mumbai-400 001]...**Respondents.**

**WITH
 CIVIL APPLICATION NO.45 OF 2017
 IN
 PUBLIC INTEREST LITIGATION NO.201 OF 2014**

IN THE MATTER BETWEEN :

Prof. Dr.S.M. Dahiwale]
 Age : 73 years,]
 Occu : Professor and Head (Retd),]
 Department of Sociology]
 University of Pune R/o. D-/A-4,]
 Clarion Park,, Aundh, Pune-411 007] **...Applicant**
 (Proposed Intervener)

AND

1. Save Democracy Foundation]
 A registered NGO,]
 Through its Chief Coordinator]
 Mr.Sanjay Sonawani, Age 51 Years,]
 R/o.Pune, Office-R/o Pune Dist, Pune]

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| |] |
| 2. Shri.Mrunal Dhole-Patil Both having |] |
| Age 30 years, Occu : Social Worker |] |
| Both having office at Shivneri, |] |
| Mantri Park, Kothrud, Pune-38. |] |
| |] |
| 3. Comrade Gowardhan Gholap |] |
| Age 55 yrs, Occu:Business & |] |
| Social Work (Member-Communist |] |
| Party of India) R/o. "Vishw Prabha", |] |
| Dehade Ves Rd, Wambori, Tal-Rahuri, |] |
| Dist-Ahmednagar |] |
| |] |
| 4. Mr.Mahadev R. Andhale |] |
| Age 62 years, Occu : Advocate, |] |
| High court, Bench at Aurangabad, |] |
| R/o. Plot No.35, Lane No.5, |] |
| Ambika Nagar, Mukundwadi |] |
| Aurangabad. |] |
| | ...Petitioners. |

Versus

- | | |
|--------------------------------------|------------------------|
| 1. State of Maharashtra |] |
| Through its Chief Secretary, |] |
| Govt. of Maharashtra |] |
| Mantralaya, Mumbai-32 |] |
| |] |
| 2. Principal Secretary |] |
| Social Justice & Special Asst. Dept. |] |
| Govt. of Maharashtra, Mantralaya, |] |
| Mumbai-32. |] |
| |] |
| 3. Advocate General |] |
| Govt. of Maharashtra |] |
| O/at High Court, Annex Building, |] |
| Fort, Mumbai-400 001 |] |
| | ...Respondents. |

WITH
CIVIL APPLICATION NO. 46 OF 2017
IN
PUBLIC INTEREST LITIGATION NO.201 OF 2014

IN THE MATTER BETWEEN :

1. Prof. R. Raosaheb Kasabe,]
Age 75 yrs, Occu ; Pensioner/]
Social Worker, R/o Nashik naka,]
Nashik, Dist Nashik,]
]
2. Prof. Dr. D K. Gosavi, Age 72 years,]
Occu ; Pensioner/ Social Worker,]
R/o Nashik naka, Nashik, Dist Nashik,]
]
3. Laxman Gaikwad, Age 65 yrs,]
Occu : Writer, R/o Nashik naka,]
Nashik,]

].Applicants.

(Proposed Intervener)

AND

1. Save Democracy Foundation]
A registered NGO,]
Through its Chief Coordinator]
Mr.Sanjay Sonawani, Age 51 Years,]
R/o.Pune, Office-R/o Pune Dist, Pune]
]
2. Shri.Mrunal Dhole-Patil Both having]
Age 30 years, Occu : Social Worker]
Both having office at Shivneri,]
Mantri Park, Kothrud, Pune-38.]
]
3. Comrade Gowardhan Gholap]
Age 55 yrs, Occu:Business &]
Social Work (Member-Communist]
Party of India) R/o. "Vishw Prabha",]
Dehade Ves Rd, Wambori, Tal-Rahuri,]
Dist-Ahmednagar]
]
4. Mr.Mahadev R. Andhale]
Age 62 years, Occu : Advocate,]
High court, Bench at Aurangabad,]
R/o. Plot No.35, Lane No.5,]
Ambika Nagar, Mukundwadi]
Aurangabad.]

].Petitioners.*Versus*

- | | |
|--|-----------------------|
| 1. State of Maharashtra
Through its Chief Secretary,
Govt. of Maharashtra
Mantralaya, Mumbai-32 |]
]
]
]
] |
| 2. Principal Secretary
Social Justice & Special Asst. Dept.
Govt. of Maharashtra, Mantralaya,
Mumbai-32. |]
]
]
]
] |
| 3. Advocate General
Govt. of Maharashtra
O/at High Court, Annex Building,
Fort, Mumbai-400 001 |]
]
]
]
] |
- ...Respondents.**

WITH

PUBLIC INTEREST LITIGATION NO.209 OF 2014
WITH
CIVIL APPLICATION NO.28 OF 2015
IN
PUBLIC INTEREST LITIGATION NO.209 OF 2014

Shri.Dilip Prabhakar Aloni R/at: 501, Cirrus-B, Cosmos Paradise, Devdaya Nagar Thane (W)-400 606	]]]]
--	------------------

...Petitioner

Versus

- | | |
|---|-----------------------|
| 1. State of Maharashtra
Through The Chief Secretary,
State Govt. of Maharashtra
Mantralaya, Mumbai-32 |]
]
]
]
] |
| 2. Social Justice&Special Asst. Dept.]
State Government of Maharashtra
Through its Secretary,
Social Justice & Welfare Dept.,
Mantralaya, Mumbai-32. |]
]
]
]
] |

- | | |
|--|-----------------------|
| 3. Minority Development Dept., |] |
| State Govt. of Maharashtra |] |
| Through Secretary, |] |
| Minority Development Dept, |] |
| Mantralaya, Mumbai-32. |] |
| |] |
| 4. Maharashtra State Commission |] |
| For Backward Classes Through |] |
| Secretary of the said Commission, |] |
| Mantralaya, Mumbai-32 |] |
| |] |
| 5. Maharashtra State Minorities |] |
| Commission Through Secretary |] |
| of the said Commission |] |
| Mantralaya, Mumbai-32. |] |
| | ...Respondents |

WITH

PUBLIC INTEREST LITIGATION (ST) NO.1914 OF 2019

- | | |
|------------------------------------|-----------------------|
| 1. Mr.Mahadev R. Andhale |] |
| R/o. Nerul Sector, 22 |] |
| Thane Belapur Road, New Bombay |] |
| |] |
| 2. Kamalakar Sukhdeo Darode |] |
| @ Darwade |] |
| Krishna Apartment, Sector-6, |] |
| Kamothe, Navi Mumbai-400 209 |] |
| | ...Petitioners |

Versus

- | | |
|---------------------------------------|----------|
| 1. State of Maharashtra |] |
| Through The Chief Secretary, |] |
| State Govt. of Maharashtra |] |
| Mantralaya, Mumbai-32 |] |
| |] |
| 2. Principal Secretary |] |
| Social Justice & Special Asst. Dept., |] |
| Government of Maharashtra, |] |
| Mantralaya, Mumbai. |] |
| |] |

- 3. Advocate General**]
Govt. of Maharashtra,]
O/at High Court, Annex Building,]
Fort, Mumbai-400 001.]...Respondents

WITH

PUBLIC INTEREST LITIGATION (ST) NO.36115 OF 2018

- Ajinath Tulsiram Kadam**]
S.No.48/2, Kranti Nagar Near,]
Anand Park Bus Stop,]
Wadgaon Sheri, Pune-411 014] ...Petitioner

Versus

- 1. State of Maharashtra**]
Through The Chief Secretary,]
State Govt. of Maharashtra]
Mantralaya, Mumbai-32]
]
- 2. The Principal Secretary**]
Social Justice & Special Asst. Dept]
State Government of Maharashtra]
Mantralaya, Mumbai-32.]
- 3. The National Commission for**]
Backward Classes, Trikoot-1,]
Bhikaji Cama Place,]
RK Puram, New Delhi-110066.]
]
- 4. The Maharashtra State Backward**]
Classes Commission, 3rd Floor, 307,]
New Administrative Building,]
Opp. Council Hall, Pune-411001]...Respondents

**ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LD.) NO. 4100 OF 2018**

Shri.Sanjeet Shukla	]	
of Mumbai an adult Indian Inhabitant,	]	
Authorized Representative of	]	
Youth For Equality, residing at 197/8	]	
Kamal Kunj, R. G. Shukla Marg,	]	
Sion (East), Mumbai – 400 022.	]	...Petitioner.

Versus

The State of Maharashtra	]	
Through Government Pleader,	]	
Original Side, High Court Bombay.	]	..Respondent.

**WITH
NOTICE OF MOTION (LD.) NO. 739 OF 2018
IN
WRIT PETITION (LD.) NO. 4100 OF 2018**

Shri.Sanjeet Shukla	]	
of Mumbai an adult Indian Inhabitant,	]	
Authorized Representative of	]	
Youth For Equality, residing at 197/8	]	
Kamal Kunj, R. G. Shukla Marg,	]	
Sion (East), Mumbai – 400 022.	]	...Applicant.

IN THE MATTER BETWEEN:-

Shri.Sanjeet Shukla	]	
of Mumbai an adult Indian Inhabitant,	]	
Authorized Representative of	]	
Youth For Equality, residing at 197/8	]	
Kamal Kunj, R. G. Shukla Marg,	]	
Sion (East), Mumbai – 400 022.	]	...Petitioner.

Versus

The State of Maharashtra	]	
Through Government Pleader,	]	
Original Side, High Court Bombay.	]	..Respondent.

**WITH
CHAMBER SUMMONS (LD.) NO. 42 OF 2019
IN**

WRIT PETITION (LD.) NO. 4100 OF 2018

Prafull Pratap Pawar,]
Age : 51 years, Occupation : Social Worker]
and Journalist, Residing at Flat No. 4,]
Plot No. 47B, Neera Mohan Society,]
Sector 3, Shree Nagar,]
Thane (West) 400604]...**Applicant.**

IN THE MATTER BETWEEN:-

Shri.Sanjeet Shukla]
of Mumbai an adult Indian Inhabitant,]
Authorized Representative of]
Youth For Equality, residing at 197/8]
Kamal Kunj, R. G. Shukla Marg,]
Sion (East), Mumbai - 400 022.]...**Petitioner.**

Versus

The State of Maharashtra]
Through Government Pleader,]
Original Side, High Court Bombay.]..**Respondent.**

**WITH
CHAMBER SUMMONS (LD.) NO. 41 OF 2019
IN**

WRIT PETITION (LD.) NO. 4100 OF 2018

Vaibhav Dhodiram Kadam,]
Age : 29 years, Occupation : Advocate]
An Adult, Indain Inhabitant,]
Residing at Ganesh Plaza, BURUD Lane,]
Yeola, Taluka : Yeola,]
District Nashik, Pin 423401.]...**Applicant.**

IN THE MATTER BETWEEN:-

Shri.Sanjeet Shukla]
of Mumbai an adult Indian Inhabitant,]
Authorized Representative of]
Youth For Equality, residing at 197/8]
Kamal Kunj, R. G. Shukla Marg,]
Sion (East), Mumbai – 400 022.]...**Petitioner.**

Versus

The State of Maharashtra]
Through Government Pleader,]
Original Side, High Court Bombay.]..**Respondent.**

**WITH
NOTICE OF MOTION (LD.) NO. 67 OF 2019
IN
WRIT PETITION (LD.) NO. 4100 OF 2018**

Shri.Sanjeet Shukla]
of Mumbai an adult Indian Inhabitant,]
Authorized Representative of]
Youth For Equality, residing at 197/8]
Kamal Kunj, R. G. Shukla Marg,]
Sion (East), Mumbai – 400 022.]...**Applicant.**

IN THE MATTER BETWEEN:-

Shri.Sanjeet Shukla]
of Mumbai an adult Indian Inhabitant,]
Authorized Representative of]
Youth For Equality, residing at 197/8]
Kamal Kunj, R. G. Shukla Marg,]
Sion (East), Mumbai – 400 022.]...**Petitioner.**

Versus

The State of Maharashtra]
Through Government Pleader,]
Original Side, High Court Bombay.]..**Respondent.**

WITH

CHAMBER SUMMONS (LD.) NO. 59 OF 2019
IN

WRIT PETITION (LD.) NO. 4100 OF 2018

Balasaheb Asaram Sarate,]
Age 51 years, Occu : Professor,]
Add : Flat No. 702, Valle Vista Apartment,]
Bawdhan, Pune -411028.]...**Applicant.**

IN THE MATTER BETWEEN:-

Shri.Sanjeet Shukla]
of Mumbai an adult Indian Inhabitant,]
Authorized Representative of]
Youth For Equality, residing at 197/8]
Kamal Kunj, R. G. Shukla Marg,]
Sion (East), Mumbai - 400 022.]...**Petitioner.**

Versus

The State of Maharashtra]
Through Government Pleader,]
Original Side, High Court Bombay.]..**Respondent.**

WITH
WRIT PETITION (LD.) NO. 4128 OF 2018

1. **DR. Uday Govindraaj Dhople,**]
an adult, Indian inhabitant,]
residing at A/304/305, Yogi Paradise,]
Yogi Nagar, Borivali West,]
Mumbai-400092]
]
2. **Dr. Girish Thakur Dewnanym,**]
Indian Inhabitant, Residing at 501,]
Ross Queen, 15th Road,]
Khar, Mumbai - 400052.]...**Petitioners.**

Versus

1. **The State of Maharashtra**]
Through its Chief Secretary,]
State of Maharashtra, Mantralya,]
Mumbai.]

2. **Competent Authority,**]
 Commissioner, State Common]
 Entrance Test, Address : State]
 Common Entrance Test Cell,]
 New Excelsior Cinema Building,]
 8th Floor, A. K. Nayak Marg,]
 Fort, Mumbai , Maharashtra-400001.]..**Respondents.**

WITH
NOTICE OF MOTION NO. 17 OF 2019
IN
WRIT PETITION (LD.) NO. 4128 OF 2018

1. **DR. Uday Govindraaj Dhople,**]
 an adult, Indian inhabitant,]
 residing at A/304/305, Yogi Paradise,]
 Yogi Nagar, Borivali West,]
 Mumbai-400092]
]
 2. **Dr. Girish Thakur Dewnanym,**]
 aged about 51 years,]
 Indian Inhabitant, Residing at 501,]
 Ross Queen, 15th Road,]
 Khar, Mumbai – 400052.]...**Applicants.**

IN THE MATTER BETWEEN :-

1. **Dr. Uday Govindraaj Dhople,**]
 an adult, Indian inhabitant,]
 residing at A/304/305, Yogi Paradise,]
 Yogi Nagar, Borivali West,]
 Mumbai-400092]
]
 2. **Dr. Girish Thakur Dewnanym,**]
 aged about 51 years,]
 Indian Inhabitant, Residing at 501,]
 Ross Queen, 15th Road,]
 Khar, Mumbai – 400052.]...**Petitioners.**

Versus

1. The State of Maharashtra	]
Through its Chief Secretary,	]
State of Maharashtra, Mantralaya,	]
Mumbai.	]
2. Competent Authority,	]
Commissioner, State Common	]
Entrance Test, Address : State	]
Common Entrance Test Cell,	]
New Excelsior Cinema Building,	]
8 th Floor, A. K. Nayak Marg,	]
Fort, Mumbai , Maharashtra-400001.	]
..Respondents.	]

WITH
NOTICE OF MOTION NO. 565 OF 2018
IN

WRIT PETITION (LD.) NO. 4128 OF 2018

1.	DR. Uday Govindraaj Dhople, an adult, Indian inhabitant, residing at A/304/305, Yogi Paradise, Yogi Nagar, Borivali West, Mumbai-400092	]	
2.	Dr. Girish Thakur Dewnanyam, Indian Inhabitant, Residing at 501, Ross Queen, 15 th Road, Khar, Mumbai - 400052.	]	..Applicants/ Petitioners.

Versus

1. The State of Maharashtra	]
Through its Chief Secretary,	]
State of Maharashtra, Mantralya,	]
Mumbai.	]
	]
2. Competent Authority,	]
Commissioner, State Common	]
Entrance Test, Address : State	]
Common Entrance Test Cell,	]
New Excelsior Cinema Building,	]
8 th Floor, A. K. Nayak Marg,	]
Fort, Mumbai , Maharashtra-400001.	]
	..Respondents.

**WITH
CHAMBER SUMMONS NO. 1 OF 2019
IN
WRIT PETITION (LD.) NO. 4128 OF 2018**

Kashinath Jaggannath Thakur,]
Age : 38 years, Occu : Advocate and]
Social Worker, Address : Koletiwadi,]
Post Nagothane, Tal : Pen]
District : Raigad - 402106.]..**Applicant.**

IN THE MATTER BETWEEN :-

- 1. DR. Uday Govindraj Dhople,**]
an adult, Indian inhabitant,]
residing at A/304/305, Yogi Paradise,]
Yogi Nagar, Borivali West,]
Mumbai-400092]
]
- 2. Dr. Girish Thakur Dewnanym,**]
aged about 51 years,]
Indian Inhabitant, Residing at 501,]
Ross Queen, 15th Road,]
Khar, Mumbai - 400052.]...**Petitioners.**

Versus

- 1. The State of Maharashtra**]
Through its Chief Secretary,]
State of Maharashtra, Mantralya,]
Mumbai.]
]
- 2. Competent Authority,**]
Commissioner, State Common]
Entrance Test, Address : State]
Common Entrance Test Cell,]
New Excelsior Cinema Building,]
8th Floor, A. K. Nayak Marg,]
Fort, Mumbai , Maharashtra-400001.]..**Respondents.**

WITH

CHAMBER SUMMONS (Ld.) NO. 58 OF 2019

IN

WRIT PETITION (LD.) NO. 4128 OF 2018

Balasaheb Asaram Sarate,]
Age 51 years, Occu : Professor,]
Add : Flat No. 702, Valle Vista Apartment,]
Bawdhan, Pune -411028.]...**Applicant.**

IN THE MATTER BETWEEN :-

1. **DR. Uday Govindraaj Dhople,**]
an adult, Indian inhabitant,]
residing at A/304/305, Yogi Paradise,]
Yogi Nagar, Borivali West,]
Mumbai-400092]
]
2. **Dr. Girish Thakur Dewnanym,**]
aged about 51 years,]
Indian Inhabitant, Residing at 501,]
Ross Queen, 15th Road,]
Khar, Mumbai – 400052.]...**Petitioners.**

Versus

1. **The State of Maharashtra**]
Through its Chief Secretary,]
State of Maharashtra, Mantralya,]
Mumbai.]
]
2. **Competent Authority,**]
Commissioner, State Common]
Entrance Test, Address : State]
Common Entrance Test Cell,]
New Excelsior Cinema Building,]
8th Floor, A. K. Nayak Marg,]
Fort, Mumbai , Maharashtra-400001.]..**Respondents.**

WITH

WRIT PETITION NO.3151 OF 2014

Shri.Sanjeet Shukla]
 Advocate, Bombay High Court,]
 Authorized Representative of]
 Youth For Equality]
 P-91, South Extension, Part-II,]
 New Delhi-110 049]...**Petitioner**

Versus

1. The State of Maharashtra]
 G. P. High Court Bombay.]
2. The Secretary]
 Minorities Development Department]
 Government of Maharashtra]
 Mantralaya, Mumbai-400 032]
3. The Secretary]
 Social Justice & Special Assistant]
 Department, Government of]
 Maharashtra, Mantralaya,]
 Extension Bldg., Mumbai-400 032.]
4. Maharashtra State Reserve]
 Backward Class Commission, Mumbai]...**Respondents**

WITH
CHAMBER SUMMONS NO.225 OF 2016
IN

WRIT PETITION NO.3151 OF 2014

Shri. Kishore Jagannathrao Shitole]
 Resident of Senanager, Beed Bypass,]
 Aurangabad - 431010]...**Intervener**
/Applicant

IN THE MATTER BETWEEN :-

Shri.Sanjeet Shukla]
 Advocate, Bombay High Court,]
 Authorized Representative of]
 Youth For Equality, P-91, South Extn]
 Part-II, New Delhi-110 049]...**Petitioner**

1.	The State of Maharashtra	]
	G. P. High Court Bombay.	]
		]
2.	The Secretary	]
	Minorities Development Department	]
	Government of Maharashtra	]
	Mantralaya, Mumbai-400 032	]
		]
3.	The Secretary	]
	Social Justice & Special Assistant	]
	Department, Government of	]
	Maharashtra, Mantralaya,	]
	Extension Bldg., Mumbai-400 032.	]
		]
4.	Maharashtra State Reserve	]
	Backward Class Commission, Mumbai]...Respondents	

Sambhaji Bajaba Thokal]
R/o : B-14, Shivshakti Mumbai Co-Op]
Housing Society Ltd., Sec-17, Vashi,]
Navi Mumbai - 400 703]...**Applicant**
(Intervener)

Shri.Sanjeet Shukla	]
Advocate, Bombay High Court,	]
Authorized Representative of	]
Youth For Equality	]
P-91, South Extension, Part-II,	]
New Delhi-110 049	...Petitioner

patil-sachin.

1. **The State of Maharashtra**]
G. P. High Court Bombay.]
2. **The Secretary**]
Minorities Development Department]
Government of Maharashtra]
Mantralaya, Mumbai-400 032]
3. **The Secretary**]
Social Justice & Special Assistant]
Department, Government of]
Maharashtra, Mantralaya,]
Extension Bldg., Mumbai-400 032.]
4. **Maharashtra State Reserve**]
Backward Class Commission, Mumbai]...**Respondents**

WITH

CHAMBER SUMMONS NO.32 OF 2017

IN

WRIT PETITION NO. 3151 OF 2014

Akhil Maratha Federation]

a charitable trust registered under]
the provisions of the Maharashtra Public]
Trusts Act, 1950 and having its registered]
office address at :]
5, Navalkar Lane, Prarthana Samaj,]
Mumbai – 400 004]

**]...Applicant
(Intervener)**

IN THE MATTER BETWEEN :-

Shri.Sanjeet Shukla]
Advocate, Bombay High Court,]
Authorized Representative of]
Youth For Equality]
P-91, South Extension, Part-II,]
New Delhi-110 049]

]...Petitioner

Versus

1. **The State of Maharashtra**]
G. P. High Court Bombay.]
2. **The Secretary**]
Minorities Development Department]
Government of Maharashtra]
Mantralaya, Mumbai-400 032]
3. **The Secretary**]
Social Justice & Special Assistant]
Department, Government of]
Maharashtra, Mantralaya,]
Extension Bldg., Mumbai-400 032.]
4. **Maharashtra State Reserve**]
Backward Class Commission, Mumbai]...**Respondents**

AND

Akhil Maratha Federation]
A charitable trust registered under the]
provisions of the Maharashtra Public Trusts]
Act, 1950 and having its registered office]
address at : 5, Navalkar Lane,]
Prarthana Samaj, Mumbai - 400 004]...**Proposed**
Respondent

WITH
WRIT PETITION (LD.) NO. 4269 OF 2018

Vishnuji p. Mishra]
of Mumbai an adult Indian Inhabitant,]
Residing at Bldg. No.29, 1st floor,]
Plot No. 290, Owners Colony, GTB Nagar,]
Sion Koliwada, Mumbai - 400 037.]..**Petitioner.**

Versus

The State of Maharashtra]
Through G. P. Original Side]
High Court Bombay.]..**Respondent**

**WITH
PUBLIC INTEREST LITIGATION NO.06 OF 2019**

- | | | |
|----|--------------------------------------|-----------------------|
| 1. | Doodhnath Vishveshwar Saroj |] |
| | Add: 22/23, Liberty Shopping Center, |] |
| | Hill Road, Bandra West, Mumbai-50. |] |
| | |] |
| 2. | Ameen Mustafa Idrisi |] |
| | Add: Gala No.2, Sangam Society, |] |
| | Pandit Lal Tiwari Road, |] |
| | Kandivali (W), Mumbai-67 |] |
| | | ...Petitioners |

Versus

- | | | |
|----|------------------------------------|-----------------------|
| 1. | State of Maharashtra |] |
| | Through Government Pleader, |] |
| | PWD, Annexe Building, |] |
| | Behind High Court Building, |] |
| | Fort, Mumbai. |] |
| | |] |
| 2. | Union of India |] |
| | Through Joint Secretary, |] |
| | Ministry of law & Justice, |] |
| | Aykar Bhawan, M.K. Road, |] |
| | Marine Lines, Mumbai-21. |] |
| | |] |
| 3. | Chief Secretary, |] |
| | 4 th Floor, Mantralaya, |] |
| | M.V. Karve Marg, Backbay, |] |
| | Mumbai-400 021. |] |
| | | ...Respondents |

**WITH
PUBLIC INTEREST LITIGATION NO.969 OF 2019**

- | | | |
|----|------------------------------------|-----------------------|
| 1. | Dr.Roshani Sanjay Manek |] |
| | R/at C-3003, Ashford Royale Tower, |] |
| | S Samuel Street, Link Road, |] |
| | Nahur-West, Bhandup-West, |] |
| | Mumbai-400 078 |] |
| | |] |
| 2. | Mrs.Varsha Sanjay Manek |] |
| | R/at C-3003, Ashford Royale Tower, |] |
| | Link Road, Nahur-West, |] |
| | Bhandup(W),Mumbai-400 078 |] |
| | | ...Petitioners |

Versus

- | | |
|---|-------------------------|
| 1. State of Maharashtra |] |
| Through its Chief Secretary, |] |
| State of Maharashtra, |] |
| Mantralaya, Mumbai. |] |
| |] |
| 2. Competent Authority |] |
| Commissioner, State Common |] |
| Entrance Test Add: State Common |] |
| Entrance Test Cell, New Excelsior |] |
| Cinema Building, 8 th Floor, |] |
| A.K. Nayak Marg, Fort, Mumbai |] |
| Maharashtra-400 001. |]...Respondents. |

Appearances in Appellate Side matters :

Mr. Gunratan Sadavarte a/w Mr.Arun D. Nagarjun,Mr.Anil D.Sabale, Mr.Siddhart J.Bhosale and Mr. Ankush Govindrao Gavale for petitioner in PIL No. 175 of 2018 and PIL No.149/2014

Mr. Y. H. Muchhala, Sr. Adv, I/by Mr. Musaddique Momin, Tauseef Sayyed for the Petitioner in W.P.No.937/2017 and W.P. No.1208/2019

Mr. Ashish Gaikwad a/w. Bhavana R. Khichi, Prabhakar Ranshur for the Petitioner in WPST.No.2126/2019. And for R.Nos.14, 25 AND 28 in PIL No.175/2018.

Mr. Ranjeet Thorat, Sr. Adv. A/w. Firoz Barucha I/by. Rajesh A Tekale for the Petitioner in WPST.No.2668/2019.

Mr. S.B.Talekar I/by. M/s.Talekar and Associates for the Petitioners in W.P.No. 11368/2016 and WPST.No.3846/2019.

Mr. J.G.Ardwad(Reddy) a/w.Mr.Arvind Aswani for the Petitioner in PIL NO. 201/2014 and WPST. No.10755/2017.

Mr. Rajesh A. Tekale a/w.Mr. Ramesh Dube Patil a/w Ankur Pahade, Vivek Joshi, Khushbu Marwadi and Prasad Dube Patil I/ by Jay and Co. for Petitioner in PIL.No.19/2019 and Respondent no.3 in PIL/175/18.

Mr. Ashish Mehta for the Petitioner in PIL.No.105/2015.

Mr. Santosh Parad for the Petitioner in PIL.No.126/2009

Ms. Aparna D. Vhatkar for the Petitioner in PIL.No.140/2014

Mr. Prasad Dhakephalkar, Sr. Adv. I/by. Mr. Abhijit Patil for the Petitioner in PIL.No.181/2018 and Respondent No.23 in PIL. No. 175/2018.

Mr. C. N. Chavan for the Petitioner in PIL.No.185/2014.

Mr. D.P. Aloni in person in PIL.No.209/2014.

Mr. Rahul Agrawal for the Petitioner in PILST.No.1914/2019.

Mr. Rafique Dada, Sr. Advocate alongwith Mr. Mihir Desai, Sr. Adv. a/w. Mr. Ashish Gaikwad i/by. Ms. Pooja Thorat a/w Ms. Bhavana Khichi for petitioner in PILST No. 36115/2018.

Mr. Mukul Rohatgi, Special Counsel, Mr. Paramjeet Singh Patwalia, Special Counsel, Mr. Nishant Katneshwarkar, Special Counsel, Mr. V. A. Thorat, Senior Counsel, Mr. A. Y. Sakhare, Senior Counsel, Smt. G. R. Shastri, Addl. G.P, Mr. P. P. Kakade, AGP, Mr. Vaibhav Sugdare, Ms. Prachi Tatake, Mr. Akshay Shinde, B Panel AGP and Rohan S. Mirpur, Deepak Salvi, Ms. Misha Rohatgi, Ms. Harshika Varma, for the Respondent-State

Mr. Vineet Naik, Sr. Adv. A/w. Sukand Kulkarni, Ashish Gaikwad i/by. Mr. Sandeep Dere for Respondent No.28 in PIL/175/18.

Mr. Rajiv Chavan, Sr. Adv. a/w Priyanka Chavan, Anupama Pawar, Sumangala Yadav and Rajesh Tekale I/by. Sachin Pawar for for respondent no.15 in PIL/175/18.

Mr. Yogesh P. Morbale a/w. Abhijit Tambe, Chalak for the Applicant in CAI.Nos.06/2019 and 07/2019 in PIL.No.175/2018.

Mr. Nasir Mohammed for the Applicant in CAI.No.08/2019 in PIL.No.175/2018.

Mr.Ashish Gaikwad a/w. Bhavana R. Khichi, Prabhakar Ranshur for R.Nos.14, 25 AND 28 in PIL No.175/2018 and for the Petitioner in WPST.No.2126/2019.

Ms. Vijayalaxmi Khopade for the Applicant in CAI.No.17/2019.

Mr. A.A.Siddiqui for the Applicant in CAI. No.16/2017 in PIL. No. 105/2015.

Mr. Parag Vyas for UOI in PIL No.126/2009.

Mr. Nilesh Wable for Respondent No. 4 in PIL.No.175/2018.

Mr. D. W. Bhosale for respondent no.5 in PIL/175/18.

Mr.A.R.Singh a/w. S.R.Singh for Respondent No. 6 (UOI).

Mr. Rameshwar N. Gite a/w. Ankit Chaturvedi, Rohit Gorade, Avanti Inamdar for respondent no.7 in PIL/175/18.

Mr. V. P. Patil I/by Vaibhav Kadam for respondent no.9 in PIL/175/18.

Mr. Gajanan Shinde a/w Sambhaji Kharatmol for Respondent No. 10 in PIL/175/18.

Mr. Abhijit Desai a/w.Ms. Divya Parab for respondent No.11 in PIL/175/18.

Mr. Sanjeev B. Dere a/w. Suchita Pawar for Respondent No.12 in PIL.No.175/2018.

Mr. Sachin Pawar for Respondent No. 13 in PIL.No.175/2018.

Mr. Jitendra P. Patil for Respondent No.18 in PIL.No.175/2018.

Mr.Dilip Shinde for Respondent No.20 in PIL.No.175/2018.

Mr. Sandeep Salunke for respondent no.21 in PIL/175/18.

Mr. Satish Mane Shinde a/w V. M. Thorat, Ms.Pooja Thorat and Patil for Respondent no.23 in PIL/175/18.

Mr. Vitthal Ghumde I/by. Rajan Gaikwad for Respondent No.26 in PIL.No.175/2018.

Mr.Sachin D. Kadam for Respondent No.29 in PIL No.175/2018.

Mr.S.D.Rupwate for Respondent No.30 in PIL.No.175/2018.

Ms.Leena Patil a/w. Mr.Akshay R. Kapadia for Respondent No.31.

Mr. Sanjeev R.Singh a/w. Jyoti S. Agrawal for Respondent No.1 in PIL.No.19/2019 and W.P.No.3846/2019.

Appearances in Original Side matters :

Mr. Arvind Datar, Sr. Adv. and Mr. Pradeep Sancheti, Sr. Advocate a/w Mr. Darshit Jain, Mr.Prathamesh Kamat, Kanchan Dube and Neha Yadav, Pallavi Bali I/by Mr. Ashish U. Mishra for petitioner in WPL/4100/18 and W.P.(OS) No.3151/2014.

Mr. S.G.Anney, Sr.Adv. A/w. Pooja Patil, Premlal Krishnan, Sankalp Anantwar, Anurag Mankar, Rishi Alwa, Dinesh Bhatia, I/by. M/s. Pan India Legal Services LLP for Petitioners in WPL.No.4128/2018 and NMW Nos.565/2018, 17/2019, 45/2019.

Mr. Ejaj Naqvi for the Petitioner in PIL.(OS)No.06/2019

Mr. S.T. Manek for the Petitioner in WPL 969/2019

Mr. Ramesh Dube Patil a/w Ankur Pahade, Vivek Joshi, Khushbu Marwadi and Prasad Dube Patil I/by Jay and Co. for Applicant/Intervenor in CHSW.NO.01/2019.

Mr. Mukul Rohatgi, Special Counsel, Mr. Paramjeet Singh Patwalia, Special Counsel, Mr. Nishant Katneshwarkar, Special Counsel, Mr. V. A. Thorat, Senior Counsel, Mr. A. Y. Sakhare, Senior Counsel, Smt. G. R. Shastri, Addl. G.P, Mr. P. P. Kakade, AGP, Mr. Vaibhav Sugdare, Ms. Prachi Tatake, Mr. Akshay Shinde, B Panel AGP and Rohan S.Mirpury, Deepak Salvi, Ms.Misha Rohatgi, Ms. Harshika Varma, for the Respondent-State.

Mr. V. M. Thorat a/w. P. V. Thorat, Anukul Seth, Aditya Bhagat for Applicant in CHSWL.No.58/2018 and CHSWL.NO59/2019.

Mr. Rajiv Chavan, Sr. Advocate a/w Priyanka Chavan, Anupama Pawar, Sumangala Yadav and Rajesh Tekale I/by Sachin Pawar for Applicant/Intervenor in CHSWL.No.41/2019 in WPL. No.4100/2018.

**Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

Reserved on : 26th March 2019

Pronounced on : 27th June 2019

JUDGMENT [Per Ranjit More, J.]

1 Every democracy is challenged by the complex task of providing social justice to sections that have been traditionally discriminated against, while ensuring that such affirmative action does not hinder opportunities offered to the rest of the population. The caste system deeply embodied in Indian society is accused of widespread discrimination on basis of descent and birth. Successive Governments have sought to redress this inequity through policy of affirmative action, which is perceived as policies formulated with a view to increase opportunities for the disadvantaged class. The Constitution itself has endeavored to rectify discrimination against group of people often loosely referred to as “Other

Backward Class” through Articles 15, 16, 335 and 340. The absence of precise definition of this term, resulted in development of a method to identify them and determine who exactly comprised the Other Backward Class. This vexatious issue persisted since the Constitution came into force and has perplexed the Indian Judicial System since long. At times, this issue has inflamed this country and coined a new terminology of 'Reverse discrimination'.

Seven decades since the enactment of the Constitution, alas this issue of identification of the Backward classes and the power of State to have recourse to the enabling provision under Article 15(4) and 16(4) still continues to be a contentious issue. The Maratha community, perceived as a dominant community in the State of Maharashtra indulged into state wide agitations staking their demand for reservation and privileges under the Constitution and it reached its peak in the year 2017-2018. The community carried out massive marches, where 15 to 20 lakh persons participated and it is reported that 57 marches were held across the State between August 2016 to December 2016. After the community took to the streets, the State brought an Ordinance for the first time in the year 2014 granting

reservation to the said community in jobs and in the field of education. The said Ordinance was then translated into an Act No.I of 2015, which was brought before this Court and the enactment conferring the benefit on the community came to be stayed. The State Government then set up a backward class Commission to ascertain the social and educational status of the community. Though the community is politically well represented, the various reports including the report of the Committee headed by Justice Gaikwad Commission suggest that huge chunks of Maratha is still deprived of basic facilities. The report of research study carried out by Gokhale Institute of Economics disclose that 40% of the total farmers who committed suicide were Marathas and this report is a reflection of the agrarian crisis in the State and since most of the Marathas are agriculturists, it brings forth the financial distress faced by the community. In the backdrop of the said scenario, the youth of this community is looking towards reservation as a solution to their progress and march towards cities and that is the reason why the community joined hands to track their demand. Amidst this scenario, the State Government declared 72,000 Government jobs open and this declaration was met with allegations and counter allegations,

giving rise to a political debate and the issue of reservation to Maratha is kept alive and has been brought before us through these bunch of petitions. The State witnessed mixed reaction to the claim of Marathas which came to be objected by the Other Backward Classes as they are anxious that their share is being eaten up by the newly created class and again, there are open category candidates who are apprehensive that merit would receive a set back. The emergent situation makes us think whether we have lost the battle of annihilation of castes proposed by our founding fathers. Our whole anxiety as a Constitutional Court is to assure a social harmony as perceived by the Constitution. We are duty bound to act impartially, uninfluenced by the outside forces and make a fair decision within the framework of the Constitution and the existing laws and that is what we propose to do while dealing with the flaring issue in the State as on today.

2 The present batch of writ petitions pose a challenge to the Maharashtra State Reservation for Seats for Admission in Educational Institutions in the State and for appointments in the public services and posts under the State (for Socially and Educationally Backward Classes) SEBC Act, 2018 i.e.

Maharashtra Act No.LXII of 2018 (for short 'SEBC Act'). Since common issues are involved in this batch of petitions and some of the petitions assailing the Constitutional validity of the enactment as well as its provisions and other writ petitions seeking implementation of the said Act, we have clubbed all the writ petitions, heard them together and they are being decided by this common judgment. The grounds of challenge raised in the petitions assailing the validity of the enactment are more or less similar. We would, however, make a reference to the factual aspects involved in three lead petitions and make a reference to the question of law involved in all the writ petitions in a cumulative manner.

We would first refer to the Public Interest Litigation No.175 of 2018 filed by Dr. Jishri Laxmanrao Patil, Member Indian Constitutionalist Council. The petitioner in the said petition is a practicing Advocate and Member of a non profitable organization known as 'Indian Constitutionalist Council' having its office in Mumbai. The said petition is instituted by her with the claim that she does not have any personal interest in the matter but since the said enactment, according to the petitioner, is a fraud played on the Constitution of this country, by hiking the reservation

available in the State of Maharashtra from 52% to 68% and thereby crossing the barrier of the ceiling limit of 50% imposed by the Hon'ble Apex Court in case of ***Indra Sawhney Versus Union of India***¹. The petition proceeds to state that the quota which is reserved for the Maratha community affects the seats in general pool of candidates and therefore, it is claimed that it does not identify itself as a reservation under Articles 15 and 16 of the Constitution. The said reservation is also clamped as nothing but a desperate attempt by the political parties to appease the vote bank. The petition proceeds to state that the said enactment is a culmination of long pending demand for reservation by Marathas and this is done without enough supportive data so as to justify an extra ordinary situation. The petitioner has placed reliance on the judgment of the Rajasthan High Court whereby 5% reservation was conferred on *Gujjars* and four other castes and the Rajasthan High Court was pleased to quash the Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of appointments and post in services under the State Act, 2015) and according to the petition, the Hon'ble Apex Court, by its

1 1992(3) SCC 217

order dated 13th November 2017 was pleased to restrain the State Government from taking any action or decision on the administrative side or in any manner, conferring the benefit of reservation which will have the result of crossing the total reservation beyond 50%.

During the pendency of the petition before this Court, subsequent events occurred resulting into enlarging the scope of petition and a relief came to be sought to quash and set aside the reservation of Maratha community in the advertisement published by Maharashtra Public Service Commission on 10th December 2018 bearing Advertisement No.50 of 2018. Further, a relief is also sought to quash and set aside the Government Resolution dated 5th December 2018 issued by the General Administrative Department (GAD) fixing the roster point of SEBC reservation i.e. Maratha Reservation in the public services. The present PIL, therefore, seeks a relief of issuance of writ in the nature of mandamus to stop the discrimination of the open category/open pool candidates at the hands of State of Maharashtra (to the extent of 68%) which amounts to breach of Article 14, 16, 21 of the Constitution of India.

While the petition was pending, several applications for Intervention came to be instituted in the said writ petition seeking relief of impleading the applicants as party respondent as the applicants sought to justify the impugned enactment by the State legislature. On 10th December 2018, this Court was pleased to allow the applications for intervention as the learned counsel appearing for the petitioner had conveyed his No Objection. The petitioner was directed to add all the applicants as party respondents and to serve the copy of PIL on the newly added respondents to the said applicants. As a result, all the applicants/intervenors supporting the impugned legislation are impleaded as party respondents from respondent no.3 to respondent no.31. The Chief Minister of State of Maharashtra and the Chief Secretary of State of Maharashtra are also respondents in the said petition.

3 The second lead petition to which we would make a reference with Writ Petition (L) No.4128 of 2018 filed by Dr.Uday Govindraaj Dhople and others. The said petition is filed in representative capacity on behalf of all similarly situated medical students/medical aspirants who are adversely

affected by the impugned SEBC Act of 2018. The said writ petition *inter alia*, seek quashment of the SEBC Act, 2018 after examining its validity, legality and propriety. In the alternative, a writ in the nature of certiorari as prayer for, for quashing and setting aside Section 2(j), section 3(2) and section 3(4), Section 4, Section 5 and Section 9(2), 10, 12 of the impugned Act after examining its legality and propriety.

A bold statement is made in the petition to the effect that the reservation system has become a tool of convenience for politicians and government in power to secure their vote bank. The petition proceeds to state that the Maratha community was never treated as a backward community and on earlier occasions, their claim was rejected. the Mandal Commission rejected the said demand. The said petition places heavy reliance on the judgment of the Hon'ble Apex court in case of ***M.R.Balaji and others Vs. State of Mysore***,² where the Apex Court had laid down the permissible and legitimate limit in reservation and held that special provisions improperly made under Article 15(4) and under Article 16(4) beyond the permissible and legitimate limits would be liable to be challenged as fraud on the Constitution

² AIR 1963 SC 649

and it was clarified that Article 15(4) is an enabling provision, it does not impose an obligation but merely leaves it to the discretion of the appropriate government to take suitable action, if necessary. It is alleged that the Maratha community has been agitating for reservation since past several years and it is only on account of the public pressure mounting on the government, the reservation is provided by the impugned enactment.

4 The grievance set out in the petition is about the medical profession and how adversely the impugned enactment is going to affect the future of young medical aspirants. Reservation contemplated under the enactment, according to the petitioner, has reduced the number of seats falling in the kitty of open category candidates and the petition proceeds to give the statistics. It is also alleged that the chance of open category student securing a seat in Post Graduation is minimized by the 16% reservation for Maratha community and the impugned enactment seriously prejudices the chances of the open candidates in all fields of education as well as service.

The further ground of challenge is that the SEBC Act was passed presumably based on the recommendations of Justice Gaikwad Commission Report. However, the said report is not based on any empirical data and severe criticism is hurled about the inadequacy of the data base and absence of disclosure of target group to examine and conclude that Maratha community is socially and educationally backward. The scathing criticism further proceeds to state that a community which was found not to be socially or educationally backward for over 60 years, is now declared so, without any change in circumstances. The petition also alleges non-application of mind to an important aspect as to which communities or class or group of citizens would constitute the SEBC and the Commission has ignored all other castes and have addressed itself only to the social and educational backwardness of Maratha community. Such an approach is, therefore, questioned as arbitrary and discriminatory and the SEBC Act is assailed as a colourable piece of legislation. It is also alleged that the enabling provisions enumerated in the Constitution under Article 15(4) and 16(4) empowers the State to identify and recognize the compelling interest and confer assistance to the socially and educationally backward class of

citizens and these enabling provisions have to be exercised with great caution, keeping in mind the efficiency which is held to be constitutional limitation on the discretion of the State in making reservation as indicated by Article 335. It is also alleged that on pure assumption, without any empirical data, the population of Maratha in the State of Maharashtra is estimated as 32% though the 2001 census or 2011 census do not give any figures of Maratha population and therefore, according to the petition, there is no data available with the respondents to indicate inadequate access of education or inadequate representation in the services to this community due to backwardness.

5 The impugned enactment is alleged to have an effect of stratifying the society of class based on communal line and the said legislation is further frowned upon as this can never be the intention or scope of equality clause or of the special provisions for advancement of socially and educationally backward class of citizens. The impugned provisions of the SEBC Act, 2018 are also alleged to be violative of basic structure and fundamental values of Constitution articulated in the preamble and encapsulated in

Article 14, 16 and 19. Creation of separate class of Maratha community outside the OBC class and then bestowing them with special and separate benefits apart from the OBC class is also severely criticized in the petition. A concession is offered to the effect that if at all the State has reached the verifiable and justified conclusion that Maratha community is in fact, socially and educationally backward, then, in that case at the highest, they would form part of the Other Backward Class instead of providing a separate reservation.

Chamber Summons No.1 of 2019 is moved in the Writ Petition by one Kashinath Jagannath Thakur, who is an Advocate by profession and also a social worker belonging to Maratha community. Relief is sought to implead him as party respondent. Further, there is also a Chamber Summons moved by Balasaheb A. Sarate, who claims to be a researcher of Maratha reservation and a professor of Economics and also a social worker. He supports the impugned enactment and seeks impleadment as a party respondent in the said writ petition.

6 The third lead petition which poses an extensive challenge to the findings of the backward class commission

and its report which is the basis of the impugned legislation, is Writ Petition No.4100 of 2018 filed by one Sanjeet Shukla, an authorized representative of the organization known as 'Youth for Equality' which claims to be a constitute of professionals and young persons working in different organizations. It is the same petitioner who had filed a **Writ Petition No.3151 of 2014** challenging the ordinance promulgated by the Government of Maharashtra in the year 2014. The petition proceeds to state that a detailed interim order was passed by this Court on 14th November 2014 staying the operation and implementation of the ordinance dated 9th July 2014 and the Government Resolution providing for 16% reservation in favour of Maratha community. The petition proceeds to state that the said order was challenged by the State Government before the Hon'ble Apex Court in SLP which was dismissed by an order dated 18th December 2014. Thereafter, the State of Maharashtra had enacted the ESBC Act of 2014 which contained a provision of 16% reservation for the education and socially backward class in which Maratha community is included. Since the Ordinance and the new enactment were identical, the High Court on 7th April 2016 also stayed the operation and implementation of the ESBC Act of 2014. The

petition proceeds to state that thereafter the State Government issued a notification on 4th January 2017 constituting the Maharashtra State Backward Class Commission and on 4th May 2017, the Court recorded the said statement of the State Government. The Commission thereafter prepared a report and recommended reservation in favour of the Maratha community which is the foundation of the SEBC Act of 2018. The State Government tabled the bill for providing reservation to Maratha community before the State assembly on or about 29th November 2018 and it is alleged that the said Bill was passed without any discussion, despite the fact that the report by the Commission for Backward class was not shared or tabled before the State assembly. The State Government thereafter issued a notification stating that the Governor had approved the SEBC Act of 2018. It is alleged that the non-tabling of MSBCC's report violated Section 15 of the Maharashtra State Commission for Backward Classes Act, 2005. The said writ petition also formulates more or less the same grounds which we have reproduced above in the other two writ petitions. Certain additional grounds are formulated in the petition and one of the ground is that the impugned Act is passed without

complying with the requirements of the Constitution 102nd Amendment Act of 2018 and particularly without complying with clause (9) of Article 338-B and also there is no compliance with Article 342-A as no notification is issued by the President.

The petition further proceeds to state that Maratha community is a powerful community in the State of Maharashtra with proved dominance in Government Service, education, politics, sugar cooperatives etc, and in fact, in second Backward Class Commission Report dated 31st December 1980 (Mandal Commission Report), Maratha community has categorized the community as forward Hindu community. Similarly, the National Commission of Backward Class report dated 25th February 2000 categorized Maratha as socially advanced and prestigious community and not only this, the MSBCC (Bapat Commission Report) dated 25th July 2008 also rejected the demand of Maratha community to be included in the Other Backward Class. The petition proceeds to give the details in form of a table as to how many medical colleges in the State are owned by the stalwarts from Maratha community and the petition also contains a list of the Chief Ministers of the State of Maharashtra and a positive assertion

is made that most of the Chief Ministers of this State belong to Maratha community. The petition also contains a list of cooperative sugar factories being headed in the capacity as Chairman by the persons from Maratha community. The petitioner further makes a claim that Maharashtra Government does not have any data of the population of Marathas and therefore, they have been quoting inconsistent numbers. The estimate of Marathas to be 30% of the population as is the basis of the report, according to the petition, is evidently wrong when the established quantum of other sections of the population is taken into account. The claim of Maratha being a backward category is looked by the petitioner as a result of the regressive tactics adopted by the Maratha community by staging dharna and agitations with a demand of grant of reservation to them. The petition also give a detailed analysis of the report of the commission and alleges that the study carried out is patently unscientific and completely unreliable. The small sample size of 46,629 is objected to as a biased sample as out of the total number of families surveyed included 29,813 Maratha families and since 64% of the sample size is of Maratha community, the end result according to the petitioner, has to be in favour of

Maratha. Reliance is placed on the judgment of Rajasthan High Court in Writ Petition No.1645 of 2016 which had set aside the reservation of *Gujjar* and one of the ground being that the sample study did not follow the proportional formula and for a sample of a caste, the index of population was not taken into consideration. It is also alleged that the Commission has failed to carve out extra-ordinary condition of backwardness of the said community.

Apart from the three lead petitions which we have referred to above, there are several other writ petitions which pose more or less similar challenge on more or less similar grounds in these three writ petitions and we restrain ourselves from making reference to the said grounds as raised in the other petitions.

7 The State Government has filed affidavit responding to the challenge posed in the petitions and we would make reference to one such affidavit filed in Writ Petition (L) No.4100 of 2018. The said affidavit is filed by Shivaji Raghunath Daund working as Secretary, GAD dated 16th January 2018. The impugned enactment is justified to

be warranted by extra-ordinary circumstances which are set out in the affidavit to be :-

- (a) Gradual deterioration in educational and social backwardness of Marathas
- (b) Deterioration in income as well as desperation of families to survive,
- (c) Substantial backlog in services under the State.
- (d) Increase in the number of suicides as a result of form indebtness and shift to manual labour
- (e) Inability to raise standard of living as a result of adverse conditions.

The affidavit highlights the quantifiable data in relation to the population of Maratha and extensively deal with the features of the said MSBCC report. It also makes a reference to the history of the Maratha community and proceeds to state that the State Government had placed the summary of the report of the Commission along with its recommendations, before both the Houses of the legislature as contemplated under Section 15 of the MSBCC Act 2005. The affidavit also deals with the contention of the earlier ESBC Act 2014 and proceeds to state that as per Section

18(1) of the impugned Act, on and from the date of coming into force of the said enactment, the ESBC Act of 2014 and 2014 Ordinance is repealed by the legislature and the earlier petition No.3151 of 2014 is rendered infructuous and the interim order in effective. The affidavit also proceeds to highlight the methodology adopted by the Commission and the bulky exercise carried out with the assistance of five agencies and the Commission being assisted by the experts in analyzing the data i.e. Professor Ambadas Mohite - Senior Academic Consultant, YCMOU, Regional Centre, Amravati, Dr. Omprakash Jadhav, Assistant Statistics, Dr. Babasaheb Ambedkar University, Aurangabad and Dr. Sudhir Gavhane, Aurangabad. It also makes reference to the information provided to the Commission by various departments of the Government including the GAD, Social Justice and Special Assistance Department, Labour, Agriculture, School Education, Higher and Technical Education etc.

Detail affidavits in support of Chamber Summons are also filed by the applicants/newly added respondents. One such affidavit by Prakash Shankar Bhosale who belong to Maratha community highlights the history of the Maratha community. There are several affidavits filed in support of

the intervention application which highlights the status of the Maratha community, its historical background and also the present social status of the community.

8 We have carefully perused the writ petitions, affidavits, applications for interventions/chamber summons and supporting affidavits. After hearing the learned counsel appearing for the respective parties, we broadly capitulate the points for our consideration and we have proceeded to deal with the said points under the following major heads :

- (I) Arguments of the parties.
- (II) Conspectus of the matter including the legislative scheme of the impugned Enactment.
- (III) Whether the impugned Act of 2018 is constitutionally invalid on account of lack of legislative competence on the following sub-heads:-

- (a) The subsisting interim order passed by the Bombay High Court in ***Sanjeet Shukla vs. State of Maharashtra*** (WP 3151/2014) thereby granting stay to a similar enactment and ordinance of the State, which is pending for adjudication before this Court.
- (b) The 102nd (Constitution) Amendment, 2018 deprives the State legislature of its power to enact a

legislation determining the Socially and Educationally Backward Class and conferring the benefits on the said class in exercise of its enabling power under Article 15(4) and 16(4) of the Constitution.

- (C) The limitation of 50% set out by the Constitution bench in Indra Sawhney in form of constitutional principle do not permit reservation in excess of 50%.

(IV) Whether the State has been able to establish the social and educational backwardness and inadequacy of representation of the Maratha community in public employment on the basis of the report of MSBCC under the Chairmanship of Justice Gaikwad on the basis of quantifiable and contemporaneous data ?

(V) Scope of Judicial Review for interference in the findings, conclusions and recommendation of the MSBCC.

(VI) Whether the reservation carved out for Maratha community by the State Government in form of impugned legislation satisfies the parameters of reasonable classification under Article 14 of the Constitution ?

(VII) Whether the ceiling of 50% laid down by the Hon'ble Apex Court in case of Indra Sawhney vs. Union of India, is to be taken as a constitutional principle and deviation thereof violates the basic tenet of equality enshrined in the Constitution ?

(VIII) Whether the State is able to justify existence of exceptional circumstances or extra-ordinary situation to exceed the permissible limit of 50% within the scope of guiding principles laid down in Indra Sawhney ?

(IX) Whether in the backdrop of the findings, conclusions and recommendations of the MSBCC report, whether the State Government has justified exercise of its enabling power under Article 15(4) and 16(4) of the Constitution ?

(X) Summary of conclusions.

(I) - ARGUMENTS OF RESPECTIVE PARTIES

We have extensively heard the respective counsel appearing for the petitioners and we would make a brief reference to the submissions advanced by the learned counsel for the petitioners.

9 We have heard Dr. Sadavarte, learned counsel appearing for the petitioner in PIL No.175 of 2018. Apart from relying on the grounds mentioned in the writ petition, Shri Sadavarte has extensively advanced his submissions before us opposing the impugned legislation. He invited our attention to the judgment delivered by the Hon'ble Apex Court

patil-sachin.

in ***Abdul Khader and others vs State of Mysore***³. He would submit that the very basis of classification based on caste is the root of all the maladies and Shri Sadavarte would vociferously argue that after almost 7 decades, after coming into force of Indian Constitution, the democracy in this country, is totally based on caste politics and not on the intellectual leadership. He expresses that Maratha community has given 12 Chief Ministers to this State and in spite of this, it is unfortunate that the State of Maharashtra is categorizing this class as 'backward'. He would further submit that the present reservation is attempting to destroy the basic structure of the Constitution. Shri Sadavarte has also placed heavy reliance on the Division Bench judgment in form of an interim order in the earlier round of litigation when a similar attempt by the State Government to enact a similar legislation by providing 16% reservation to Maratha did not find favour with this Court and an interim stay was granted to the implementation of the ordinance and the enactment of 2014 which came to be upheld by the Supreme Court. Further, Shri Sadavarte would submit that the Division Bench had considered the arguments in extenso about the special

3 AIR 1953 SCC 355

circumstances which were sought to be put forth for classifying Marathas as socially and educationally backward and he would submit that the Court concluded that *prima facie* there was no case at all for classifying Marathas as socially and educationally backward classes by completely ignoring the reports made by the National Commission for backward classes and the Mandal Commission and also Justice Bapat Commission Report. On the issue as to whether *prima facie* case has been made out for justifying increase in percentage of reservations from 52% to 68% in education and in public employment, according to Shri Sadavarte, the Division Bench had categorically held that there is a ceiling limit of 50% on reservations under Article 15(4) and 16(4) and that is a binding rule and not a mere rule of prudence and this rule may be relaxed only in extra ordinary situations and for extra ordinary reasons. However, the Division Bench concluded that neither the Rane Committee nor the State Government had placed before it any material to justify the existence of any exceptional or extra ordinary circumstances so as to cross the ceiling and the burden which ought to have been discharged by the State was not discharged by it. On the other hand, it had categorically held that material on

record suggest that Maratha is a politically dominant class and there is no element of social oppression and/or social discrimination or atleast social segregation of this community. No attempt has been made on the part of the State to establish exceptional circumstances which prompted the State to exceed the ceiling of reservation by such a wide margin. Thus, according to Shri Sadavarte, the said order though in the nature of an interim order, still governs the field and when the Apex Court has refused to intervene, the exercise by the State to bring a new legislation with the same avowed object and this time through a fact finding submitted by a new commission i.e. Justice Gaikwad Commission cannot wipe out the observations made by the Division Bench. This, according to him, is no less than a fraud played on the Constitution. He would vehemently submit that the creation of new class under Section 2(j) of the SEBC Act 2018 is nothing but a misnomer, since it contemplate socially and educationally backward class which is nothing but the Other Backward Class. Shri Sadavarte further submits that the constitution of a new Commission is an eye-wash. He however, submits that with the Constitution coming into force and with two National Commissions and several State Backward Class Commission

being constituted, none of the commissions have identified Maratha as backward and rather the attempts by the community to categorize it as backward have failed. He submits that the Commission has misdirected itself by making wrong reference and it resulted into wrong conclusions. He is also extremely critical of the findings of the Commission which recorded that Maratha is a backward class and one instance to cite, he would submit that there is a report on suicide of farmers but he would categorically submit that there is data to demonstrate that it is not only the Maratha farmers who have committed suicide but since it is an agrarian crisis and Marathas happen to be the cultivators, resultantly, their number is high. He would also submit that the calculation of marks by the backward class commission and allotting 21.5 marks to Maratha community out of 25 marks so as to stake its claim of backwardness is also misleading. The said analysis according to Shri Sadavarte, is merely hypothetical. Apart from the judgment in case of Balaji, Shri Sadavarte has also placed reliance on the following judgments :

- 1) 1963 Supp. (1) SCR 439/AIR 1963 SC 649 M.R. Balaji

- 2) Order of Bombay High Court - Coram: Mohit Shah, CJ and M.S. Sonak, J. dated 14/11/2015 (Writ Petition NO.3151/2014)
- 3) Order of Bombay High Court-Coram: Mohit Shah, CJ and G.S. Kulkarni., J. dated 07/04/2015
- 4) (2006) 8 SC 212 M. Nagraj & Ors.
- 5) (2018) 10 SC 396 Jarnail Singh & Ors.
- 6) (1972) 1 SCC 660-The State of AP and Ors V/s.U.S.V. Balaram
- 7) (2005) 1 SCC 394 - E.V. Chinnaiah vs. State of Andhra Pradesh
- 8) (1992) Suppl (3) SCC 217-Indra Sawhney & Ors.
- 9) (2017) 10 SCC 706 - Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia.
- 10) State of Rajasthan Vs. Ganga Sahay Sharma
- 11) Dr. K.Krishna Murthy & ors Vs. Union of India & Anr Writ Petition (Civil) No.356 of 1994.

10 In support of the petitioners in W.P.No.4128/2018, we have heard learned Senior Counsel Shri Aney. He would assail the SEBC Act 2018 on the following legal reasons :-

- (1) Absence of legislative competence.
- (2) Impermissible classification
- (3) Violation of basic structure
- (4) Terms of reference and absence of relevant data.

Apart from the challenge to the vires of the Act, he has also mounted a challenge to Sections 2(j), 3(2), 3(4), 5, 9, 10 and 12 of the impugned Act. As far as the issue of legislative competence is concerned, Shri Aney would submit that legislative competency of a State legislature is not necessarily to be tested only by ascertaining whether the subject matter of legislation fall within the competence of a State legislature. He would submit that the subject enactment is in exercise of an enabling power conferred on the State under Article 15(4), 15(5) as well as Article 16(4), 16(4A) and 16(4B) of the Constitution. He would further submit that the 102nd Amendment introduced in the Constitution has inserted Article 338B and Article 342A. By insertion of Article 338B, a provision is introduced in the Constitution for establishment of National Commission for socially and educationally backward classes and the said Commission has received a constitutional status. Further, the said amendment is significant since it inserts Article 342A by which socially and educationally backward class is introduced in the Constitution. A definition of socially and educationally backward class is also provided under Article 366(26C). Shri Aney would submit that the Constitution now contains a provision as to who would be

comprising of a “socially or educationally backward class” and it is only through the mechanism of Section 342A, a person can be said to be deemed to be belonging to socially and educationally backward class in relation to a particular State. He would submit that this SEBC is now placed on par with Scheduled Caste and Scheduled Tribe and comparison of Article 341 and 342 with Article 342A would disclose that after insertion of the said Article in the Constitution with effect from 15th August 2018, this particular class will receive its recognition only in the manner set out in the Constitution i.e. Article 342A. According to him, the Constitution had recognized three classes for the purpose of extending benefits of reservation i.e. Scheduled Caste, Scheduled Tribe and Other Backward Classes of Citizens who are socially and educationally backward so far as Article 15 is concerned or who are not adequately represented in service under the State as far as Article 16 is concerned. By the impugned legislation, the State has created a fourth clause SEBC which is alien to the Constitution and after 102nd Amendment to the Constitution, a SEBC would be entitled to claim reservation only if he travels the path and gains an entry in the manner set out under Article 342A. By virtue of the said provision,

according to the learned senior counsel, the State has lost its legislative competency to enact on the said subject or to recognize and declare a person to be socially and educationally backward.

Shri Aney would submit that social and educational backwardness is but an aspect of backwardness and must fall within the OBC classification. Thus, according to him, the State legislature has exceeded its legislative competence inasmuch as its Constitution does not empower the State either by virtue of Article 15 or 16 to carve out a separate class outside the already existing socially and educationally backward class/Other Backward Class. The learned senior counsel would submit that if the State is of the opinion that Maratha community is in fact socially, culturally, economically and educationally backward, then, at the highest, it would be part of 'OBC' as intrinsically the object of special reservation to the SEBC as to ameliorate the social and educational backwardness, which is collectively to be found in the existing OBC category and therefore, according to him, it was not open for the legislation to provide for a special reservation by coining a new terminology known as SEBC and this amounts to unreasonable classification having no nexus to the object

sought to be achieved i.e. delivering benefits contemplated under Article 15(4) and 16(4). Apart from this ground, Shri Aney would press into service the most important facet of the matter i.e. by making a provision of 16% reservation for Maratha community, the reservation in State of Maharashtra has reached a mark as high as 68% and this is exceeding 50% as mandated by various judgments of the Apex Court and to that extent, the said reservation is unconstitutional. He would submit that right from the judgment of the Hon'ble Apex Court in case of **Balaji** (supra) till the latest judgment in relation to Jats in Rajasthan and Gujjars in Gujarat, the ceiling of 50% continues to exist and for a span of approximately 56 years, the position of law is settled and to dilute it, requires a strenuous effort and unless the small window provided in the judgment of *Indra Sawhney* i.e. extra ordinary situation and exceptional circumstances is satisfied, the enactment of the State is liable to be struck down as violating the mandate laid down by the Hon'ble Apex Court. He would further submit that it is axiomatic that the State with an intention to extend the benefits to Maratha community has enacted a legislation by captioning the said category as socially and educationally backward class, but leaving the class open only for one

community i.e. Maratha and this is nothing but practicing inequality. Shri Aney would submit that the basic structure of the Constitution, has, as its key stone the equality principle as enshrined in Article 14 and polity contemplated in the Constitution for the Indian Nation is a classless, casteless equal society and to achieve this objective, the Constitution has abolished caste system and treats all religion equally and all these aspects are very well picturised in the preamble itself. The learned senior counsel would claim that the said policy of reservation exclusively to Maratha community in excess of the ceiling limit prescribed by the Apex Court is anathema to the Constitution. He would further submit that the impugned act is an assault on the equality principle by attempting to stratify the society and by creating a new class of SEBC, it has destroyed the attempt of the Constitution makers to create a nation which he has described in Tagore's immortal words "Where the world has not been broken into fragments by narrow domestic walls". He would faintly refer to the report of the Commission and the terms of reference and absence of quantifiable data though he candidly submitted that the said issue would be in great depth dealt with by the learned senior counsel Shri Sancheti. He would

place reliance in case of ***State of Andhra Pradesh Vs. U.S.V. Balram***⁴, where it is held that the proper approach should be to see whether relevant data and material referred to in the report of the Commission justify its conclusions. As far as the individual provisions are concerned, the learned senior counsel has mounted his attack on Section 4 of the impugned Act being violative of Articles 13, 32, 226 and 227. Further, according to the learned senior counsel, the contradictory provisions of the impugned Act are evidenced from plain reading of Sections, 2, 3 and 5 on one hand, for the purpose of providing reservation the legislature seeks to extend the benefits available to SC/ST and OBC *vis-a-vis* the creamy layer distinction. However, for the purpose of section 5, the legislature seeks to hold SEBC Maratha community as a separate and distinct from OBC. Thus, according to the learned counsel, the State legislature has chosen to approbate and reprobate by framing provisions to only selectively benefits the Maratha community. He would also further assert that Section 2(j) which defines the term 'SEBC' is also violating the essence of Article 14 as the legislature is attempting to create a class of Marathas within the already existing class of

4 1972 (1) scc 660

OBC and has sought to bestow benefits upon this newly created class, over and above the benefits already conferred on the OBC and by artificially even creating a class, the legislature has further brought down number of seats/educational opportunities available to the open category. The provisions of Section 5 of the impugned enactment is canvassed as a colourable exercise of power as it indirectly increases the maximum cap of reservation and it is settled position of law that what cannot be done directly cannot be done indirectly. Shri Aney has placed on record the judgment delivered by the High Court of Gujarat at Ahmedabad in Public Interest Litigation No.108 of 2016 along with connected matters challenging the Gujarat Ordinance No.1 of 2016 providing for reservation of seats in educational institutions in the State and of appointments of post in services under the State in favour of economically weaker sections of unreserved categories. He has also placed reliance on a Division Bench Judgment of High Court of Judicature of Rajasthan at Jodhpur in ***Captain Gurvinder Singh Vs. State of Rajasthan*** (Criminal Writ Petition No.1645 of 2016) where the Rajasthan High Court dealt with a challenge to a notification dated 16th October 2015 issued by

the State and the Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in service under the State) Act of 2015). By the said Act of 2015, five castes, including Gujar caste, earlier falling in the category of OBC and getting benefit of reservation have been brought in the category of special backward class to provide 5% reservation exceeding the ceiling of 50%. The Division Bench of the Rajasthan High Court dealt with the report of the State Backward Class Commission and recorded perversity and inadequacy in the report and concluded that the extra ordinary circumstances enumerated to make out an exceptional case did not exist and the report was not based on quantifiable data. Resultantly, the report of the Commission and the Act of 2015 were struck down.

The learned senior counsel would thus urge this Court to deal with the situation sternly and submit that the Constitution makers surely did not visioned the country where merit would take a back seat. He would submit that the State legislation has hurt the constitutional fabric by creating stratas and if it was so desirous of bringing a new class apart from the caste and class, held entitled for reservation in Part-III of the

Constitution by inserting a new amendment in the Constitution. The learned Senior counsel in all fairness, would submit that he personally has no quarrel that the Maratha community requires protection. However, protection cannot be claimed by way of a right, as reservation according to him, is not a privilege and the privilege or concession can only be confined within the limits set out by the Constitution. He however, submits that there is no distinction drawn by the Commission as to what should be the reservation for employment and what would be the reservation for the purposes of education. No empirical data is produced so as to justify the said reservation and in this backdrop of the facts, the learned senior counsel would pose a question as to whether the findings of the Commission are germane and based on these findings, if the State has proceeded and enacted a legislation which violates the concept of equality enshrined in the Constitution, can it be sustained ?

11 The learned senior counsel Shri Datar representing the petitioner in Writ Petition No.4100 of 2019 also assails the impugned enactment on the ground of lack of legislative competence. He would elaborate that after the verdict of the

Constitution Bench judgment in ***Indra Sawhney vs. Union of India*** (supra) which is subsequently followed in a series of judgments, the 50% ceiling limit of reservation can be crossed only by the Parliament in exercise of its constituent power under Article 368 by amending the Constitution itself. To cite an example, he would submit that the constituent power was invoked and Article 16(4B) came to be inserted in the Constitution which enabled the 50% ceiling limit to be crossed for the Scheduled Caste/Scheduled Tribe category in implementing the carry-forward rule and subsequently this amendment was upheld in case of ***M. Nagaraj Vs. Union of India***⁵. Shri Datar would heavily rely on the observations of the Hon'ble Apex Court in Nagaraj (supra) where it has been held that it is not competent for the State to obliterate the constitutional requirement of ceiling limit of 50% and in case if it is breached, the structure of equality of opportunity in Article 16 would collapse. According to Shri Datar, this judgment is further affirmed by the Apex Court in case of ***Jarnail Singh v/s Lachhmi Narain Gupta***⁶. The learned counsel would also rely upon the speech of Dr. B.R. Ambedkar

⁵ 2006 (8) SCC 212.

⁶ 2018(10) SCC 396

in the constituent assembly where he had categorically voiced that reservation should be confined to a minority seat and the words of the founding fathers of the Constitution were relied upon by the Constitution Bench in **Indra Sawhney** (supra). He further submits that the extra ordinary situation contemplated by Indra Sawhney are confined only to “far-flung and remote areas where a particular class is out of main stream of national life”. He emphatically submits that no such situation is demonstrated by the State in enacting the said legislation where it has exceeded the limit of 50% and that too, by margin of 18%. He would also reiterate the arguments advanced by the learned senior counsel Shri Aney as to the effect of the 102nd Amendment to the Constitution whereby Article 342A has been inserted and the term “socially and educationally backward classes” finds a meaning assigned in the Constitution itself under Article 366 (26C) to mean such backward classes which are so deemed under Article 342A and according to him, the backward classes can now only be notified by the President and since this amendment has come into effect from 15th August 2018, declaration of any caste/class as SEBC without the presidential notification according to the learned counsel, is unconstitutional.

Shri Datar would submit that no doubt there is a presumption of constitutionality in favour of a statute. However, this presumption is not available if it can be shown that the law or the surrounding circumstances on which the classification is based, did not warrant such a classification and the statute has indulged itself into an invidious discrimination amongst citizens similarly situated. Shri Datar would also heavily rely on the earlier round of litigation instituted by the very same petitioner where the Ordinance was stayed by the High Court after a full fledged hearing and though it was a judgment delivered at interim stage, it contained detailed reasons and findings. He would further submit that though the observations are *prima facie* and tentative. It was not open to the State to pass an enactment without removing the basis of the judgment. He would emphasize that it is settled legal position of law that the legislature cannot overrule or reverse any judgment or order made in exercise of judicial power without removing the basis of the decision, and according to him, by now the position of law is no more *res integra* that legislative overruling of a decision is constitutionally impermissible. In order to substantiate his argument, he would place reliance on a

Constitution Bench judgment of the Apex Court in case of ***Cauvery Water Disputes Tribunal***⁷ and submits that this prohibition even applies to an interim order. As far as the report of the backward class commission is concerned, Shri Datar would submit that the identification of backward class can only be done based on objective social and other criteria and the Hon'ble Apex Court has approved of 11 criteria formulated by the Mandal Commission for identifying social and educational backwardness. To the contrary, he would submit that the Gaikwad Commission did not formulate any comprehensive and objective criteria to determine the backward stages of Maratha community, nor did it notify the criteria prior to collection of data which would have enabled effective participation by the citizens in the inquiry. He would thus criticize the methodology adopted by the Commission and submit that it suffered the back-leash of "fair and adequate individuals". It is further submitted that the Commission did not carry out comparative analysis and unlike Scheduled Caste/Scheduled Tribe reservation, 'backwardness' being a relative term, must be judged by the general level of advancement of the entire population and if the Marathas are

7 1993 (Supp) 1 SCC (II)

not backward from 1980 till 2012, they cannot suddenly become backward on the basis of a random study based on a minimal sample. Lastly, he would urge that there is no material to support inadequate representation for the Marathas and this could have been established only by producing quantifiable data. He also submits that inadequacy of representation cannot be a basis for treating Marathas as backward and he would also emphasize on the aspect of “efficiency in administration” and submit that requirement of Article 335 has been held to be equally applicable to backward class. He would request us to derive the analogy from the verdict of Hon'ble Apex Court in case of ***Ram Singh vs. Union of India***,⁸ 2015(4) SCC 697, where the Apex Court struck down reservation made for the Jat community and he request us to apply the same parameters laid down by the Highest Court for Maratha community. Conclusively, he would urge that the impugned enactment is a legislation meant for a specific community or class and it is nothing but a class legislation which is not permissible. Even for the sake of argument, if it is accepted that Maratha Community is socially and educationally backward, still, according to the learned

8 2015(4) SCC 697

counsel, there is no justification for creating a separate class exclusively means for this community and this according to him, has resulted in discrimination as against Other Backward Class and at the most, they will have to share the same compartment as the Other Backward Classes i.e. into 27 % category and mandated by Indra Sawhney (supra).

12 The learned counsel Shri Talekar appearing for the petitioner in Writ Petition No.3846 of 2019 has focussed his argument on the 102nd (Constitution) Amendment. He has placed on record the report of the Select Committee on the 123rd Amendment Bill 2017 and also the Rajya Sabha and Lok Sabha debates. Based on the said material, he submits that the said amendment introduced a National Commission of Backward Classes as a permanent commission and confers constitutional status on it. He would invite our attention to Article 338B and specifically sub-Article (5) which cast a duty on the commission to investigate and monitor all matters relating to safeguards provided for socially and educationally backward classes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.

He would place heavy reliance on sub-clause (7) of the newly inserted Article 338-B and submit that where the National Commission has conducted an inquiry and investigation in relation to any matter with which any State Government is concerned, a copy of such report is to be forwarded to the State Government which shall cause it to be lead before the legislature of the State along with the Memorandum explaining the action taken or proposed to be taken on the recommendation relating to the State and the reasons for non-acceptance, if any, of such recommendation. He would also emphasize that by virtue of sub-article (9), every State Government is duty bound to consult the Commission on all major policy matters affecting the socially and educationally backward classes. In the light of this provision introduced with effect from 15th August 2018, Shri Talekar would submit that it was not permissible for the State Legislature to confer the status of SEBC on Maratha in absence of consultation with the National Commission for backward class. According to him, insertion of Article 342-A into the Constitution has changed the entire spectrum and he would strenuously argue that the power to specify the social and educationally backward classes in relation to the State now vests only in the President

who may with respect to any State or Union territory, and if it is the State, in consultation with the Governor, by public notification specify such class and by virtue of sub-article (2), it is only the Parliament, who may by law include or exclude from the list of social and educationally backward classes. His submission is therefore, that without by-passing the said procedure, it is not competent for any State to enlist any class as SEBC and the present enactment completely ignores Article 342A. The consultation with the National Commission is also by-passed and according to him, the inclusion/exclusion of a particular caste is a major policy decision and in terms of Constitution of the National Commission for backward classes, under Article 338B, it was imperative for the State to consult the Commission.

As per Shri Talekar, the power is now conferred only on the President to make a list of SEBC and he would invite our attention to the Central list of OBCs prepared in the year 1992 prior to which only one State list of OBCs in Maharashtra was in existence. As per him, Article 342A is to be read to lead to the only possible inference that in case of State list, only the President is empowered to specify the SEBC in the said list subsequent to 15th August 2018 and it is only the

President who is empowered to include and exclude any class from the said list whereas as far as central list is concerned, according to Shri Talekar, it is the President who is empowered to specify by public notification, those persons who shall be for the purposes of constitution deemed to be “socially and educationally backward class” in relation to that State but in case of such a list, it is only the Parliament which is empowered to include or exclude and nobody else can undertake that exercise. Shri Talekar has relied upon the Debates and the amendments which were suggested to assist us in interpreting Article 342A in the aforesaid manner. He would emphatically argue that on coming into force of Article 342A, the power of the State Government stands eclipsed and it was not open for the State backward Class Commission to examine into backwardness of Maratha community and for this very reason, the enactment which is based on the said report, enacted by the State legislature also cannot survive. As far as the terminology “mean” introduced in Article 366(26C), he could place reliance on the judgment of ***Punjab Land Development and reclamation corporation Ltd, Chandigarh Vs. Presiding Officer, Labour Court***,⁹ which

9 1993 SCC 682

throws light on the interpretation of the term “mean”. He would also place reliance on the judgment of the Apex Court in case ***E.V. Chinnaiah vs. State of Andhra Pradesh***¹⁰. Shri Talekar has also placed on record the compilation of documents evidencing the consultation with the National Commission of Scheduled Tribes, whenever a Tribe is included or excluded from the Scheduled Tribe order and with the assistance of the said documents, he submits that it is mandatory to have consultation with the National Commission for backward classes which is now conferred a constitutional status by the recent amendment.

13 Apart from this, Shri Talekar has placed on record the reports of Justice Khatri Committee, Justice Bapat Committee and Rane Committee. The substratum of his argument based on this report is that the Khatri Committee and Bapat Committee did not find favour with Marathas as a backward class and the Rane Committee Report is subject matter of litigation before this Court. He would invite our attention to the terms of reference of the Commission and also to the questionnaire that was circulated seeking

¹⁰ 2005(1) SCC 394

response from the subject respondents and he would make a statement that the members of the Commission have recorded dissenting opinion. According to him, the entire exercise carried out by the State Government through the Commission was to satisfy the long pending of Maratha Community to be treated as 'backward' and it did not stop here, and the State Government conferred largesse on the said community in an undeserving manner by granting them reservation to the exclusion of OBCs, unmindful of the fact that the permissible limit of reservation is being exceeded. On the contrary, he submits that he represents the petitioner who belong to Muslim community which was held backward by Sacchar Committee and also by a subsequent committee under the Chairmanship of Mohd-UI-Fitr. An Ordinance was promulgated by the Governor in the year 2014 granting 5% reservation to the Muslim community but this ordinance was never converted into an enactment and was permitted to lapse. This according to him, reflects the approach of the State Government towards the Muslims - a minority community. Shri Talekar would, therefore, seek relief of striking down the enactment and for conferring reservation to the Muslim community in terms of the Ordinance which had lapsed.

14 We have also extensively heard the learned senior counsel Shri Pradeep Sancheti representing the petitioner in Writ Petition No.4100 of 2018. Shri Sancheti canvassed his argument to a limited issue i.e. Maharashtra State Backward Class Commission (Gaikwad Commission Report). He opened his argument by inviting our attention to the four earlier reports i.e. two National Commission Reports and two State Commission Reports and on the basis of the said reports, he would question the very propriety of the State Government to refer the claim of Maratha community to another State backward Class Commission. He had produced before us the comparative analysis of the said reports and highlighted the discrepancies in the present report specifically on the parameters of the sample, size and methodology adopted by the present Commission. Shri Sancheti would submit that for grant of reservation, three pre-requisites are to be examined and focused upon i.e. (i) backwardness (ii) inadequate representation and (iii) efficiency in administration and unless and until all these three pre-requisites are satisfied, there is no scope for any reservation. Shri Sancheti has invited attention to the terms of reference of the Commission which include to define 'extra-ordinary circumstances' or 'extra-ordinary

situations'. He would further submit that the data base for the MSEB's report and the sample size of 43,692 individuals amounts to less than 0.2% of the total population of the State of approximately 11.5 crore. This data base is minor in size and according to Shri Sancheti, would not lead to a quantifiable data for the purposes of determining the backwardness. More soever, he submits that more than 68% of persons surveyed are Maratha. The sample size, according to him, is also inadequate for the reason that survey was based mostly on rural population and only 950 urban families (2.6% of the sample) were surveyed. He is also critical of the fact that 1,95,000 representations were hypothetically considered as if 10 lakh people were surveyed and this is complete eyewash to suggest that the survey included 10 lakh people. He submits that when on earlier occasion, Mandal Commission had considered Maratha as 'forward', and the Bapat Commission had deemed it not fit to include Marathas in OBC, there is no sufficient material brought on record to justify categorization of Maratha as SEBC which is nothing but Other Backward Class. There is no explanation in the report of the Committee as to why the record and data earlier collected by the Commission is not referred to or what was a

distinguishing and distinct material available with this Commission.

Mr. Sancheti is also highly critical of the means of collection of data as the report proceeds to state that five organizations were entrusted the task of conducting the survey. On what basis the organizations have been selected and whether they are independent and not politically connected is also not established. These five agencies were nominated by the Government and surprisingly one Mr. Balasaheb Sarate from Aurangabad who is an intervenor supporting the Maratha reservation and who was in the forefront demanding such a reservation is one of the agencies who have been selected by the Government and with this factual background, Mr. Sancheti would pose a question about the impartiality and fairness of the survey being conducted by these agencies. Further, the Commission also did not follow proper procedure for publication invited suggestions before framing the parameters and those parameters framed by the MSBCC are not in synchronization with the parameters already formulated by Mandal Commission. On account of the fact that the sample size chosen is very small there is likelihood of huge variation according to Shri Sancheti and unless the

sample drawn covers the entire State and is of a reliable size, according to the learned counsel, it is bound to show highly variable statistics. According to Shri Sancheti, statistics is an unruly horse and unless controlled and guided with tight leash. He further submits that under the guise of new commission, an attempt is to circumvent the interim orders passed by this Court, knowing very well that the methodology adopted by Rane Committee and its finding did not find favour in the High Court. Shri Sancheti has also tendered before us the comparative analysis of the marking system adopted by the Bapat Commission, Mandal Commission and he also invited our attention to the various parameters in social backwardness, economic backwardness as well as educational backwardness which has resulted into no quantifiable data. Backwardness, per se, according to him, is not a ground for reservation but a quantifiable data collected and analyzed by objective methodology, can only lead to a claim for reservation. Further, according to him, the second most criteria and the tenet of granting reservation i.e. inadequate representation and the efficiency of administration (merit) has not been considered and analyzed at all by the Commission. Shri Sancheti is also not ready to accept the population of

Maratha derived by the Commission to be 30%, which according to him, is a completely flawed one. Mathematically, he submits that if the Scheduled Caste population is 13%, Scheduled Tribe population is 11%, population of OBC as per Mandal Commission is 52% and if Maratha is added to be 30%, it would take the total population to 116% to the exclusion of the other communities like Jains, Muslims, Christians, Sikhs etc. The Maratha population estimate of 30% of the Commission, according to Shri Sancheti, is completely arbitrary, unsubstantial and unreliable. The rural Maratha population is estimated by the report to be 26.6% and the report proceeds on the basis that Marathas are largely found in rural areas, yet the report concludes Maratha population as 30% even without surveying the urban population. Thus, the estimated population is highly hypothetical according to Shri Sancheti. The Commission has completely excluded the minority classes of citizens whose chunk of population is 10% and the other open classes which are not included in any reservation category which is approximately 5%.

15 Another aspect which Shri Sancheti has invited our attention, which according to him, of great relevance is the

dominance of Maratha community. He has placed reliance on the affidavits which would demonstrate that most of the Chief Ministers of this State belong to Maratha community who claims to be a backward community. Further, the affidavits placed on record in relation to the Chairman of Sugar Co-operatives, Management of Medical Colleges, Chairman of District Central Co-operative Bank, agricultural marketing boards, demonstrate that Maratha community was much part of the main stream and this aspect is completely overlooked by the commission. This was however, noted by the High Court in its interim order dated 11th November 2014 and was one of the predominant factor for arriving at a conclusion which was *prima facie* recorded by the Court that Maratha is not a backward community. Apart from this, the learned counsel submits that the earlier commissions i.e. Mandal Commission, Khatri Commission and Bapat Commission has found Maratha distinct from Kunbi caste and the findings recorded by these Commissions that these two castes is one and the same is an absurd finding. In any contingency, according to Shri Sancheti, no case for extra ordinary situation has been made out by the State and merely because there were agitations, can be no ground for creation of a separate

class. Based on the fallacious percentage of Maratha population, the MSBCC has suggested for 12 and 13% reservation to Marathas but the State Government adopted 16% reservation without any logic or basis. He submits that undue haste has been shown and after the report was signed on 13th November 2018, it was placed before the Cabinet on 18th November 2018 and 29th November 2018, the bill was passed by legislative assembly which was only in form of summary since the huge bulk of annexures were not even printed or considered by the officials of the State and the impugned enactment came into force on 30th November 2018. Another ground on which the reporters subjected to criticism by Shri Sancheti is that the Commission relied on experts for the analysis and inputs who appear to be from Maratha community and this included Professor Ambadas Mohite, Dr. Omprakash Jadhav, Dr. Sudhir Gavhane. It also relied upon three other experts who are from Maratha community and two of the agencies chosen for collecting data are headed by Marathas. Further, the allegation is also levelled that faulty method of awarding point was applied for Marathas in the survey and the MSBCC leased its premise on data analysis which is a mathematical impossibility and if this data analysis

is taken for any consideration, then all the communities in Maharashtra would qualify as backward, since as per the MSBCC criteria to be categorized as 12.5 marks and other open category has scored 19.5 marks in the same study as per the same criteria and in fact, they are also then entitled to be categorized as SEBC. Shri Sancheti would submit that it is evident that there is no case at all made out for backwardness in education or inadequate representation in employment and the quantifiable data collected by the Commission is neither sufficient nor credible to consider the case of backwardness of Marathas and no extra-ordinary situation/circumstances are established to justify separate 16% reservation by creating a separate class by exceeding 50% limit only on the premise that there would be unrest amongst OBC who are enjoying reservation for last three decades or more. For these aforesaid submissions, Shri Sancheti would pray for quashment of the impugned Act.

16 We have also heard the weighty arguments advanced by the learned senior counsel Shri. V.A. Thorat representing the State Government. In his articulately formulated arguments he invited our attention to the positive

concept of reservation which is a facet of affirmative action adopted by the Indian constitution. According to him it is an obligation cast on every State to safeguard the interest of deprived community, classes of citizen in order to achieve the object of equality. He has painstakingly invited us through the various provisions contained in the Indian constitution with a special emphasis on its preamble. According to the learned senior counsel the aim of any civilized society should be to secure dignity of every individual and according to him this is not possible without affording equality of status and opportunity. Shri Thorat would submit that the dignity of an individual is dented in direct proportion to his deprivation of the equal access to social means and when equal opportunity to grow is denied, the democratic foundation is shaken. He has invited our attention to the highlights of the said enactment in form of definition of “socially and educationally backward class” defined in Section 2(G). He would further submit that, Section 4(1)(a) & (b) provides for reservation of seats for admission in educational institutions and appointments in public services to the extent of 16% & Section 4(2) applies principle of Creamy Layer, thereby ensuring that the reservation would be available only to those

persons who are below the creamy layer. According to him, Section 7 of the enactment is inconsonance with the provisions of Article 16(4A) & 16(4B), the validity of which has been affirmed by the Hon'ble Apex Court in case of **Nagaraj Vs. Union of India**. He highlighted that the said enactment do no provide any political reservation. He has also invited our attention to the Bill accompanying the said enactment.

17 Learned counsel has dealt with the arguments on behalf of the petitioner assailing the constitutional validity of the impugned enactment, and in his distinctive style he has dealt by those arguments one by one. Learned counsel would submit that, the contention of petitioners that reservation beyond 50% is impermissible in view of Indra Sawhney (supra) and the judgment in case of Nagaraj (supra) and his compelling argument is that the petitioners have completely misread, misinterpreted and misapplied the said judgments. Shri. Thorat would assert that neither article 15 or 16 provides for any cap on the percentage of reservation, leave aside the cap of 50% and in fact article 15(4) and 16(4) are mere enabling provisions under which the State is under obligation as welfare State to have an affirmative action in respect of upliftment of

backward classes of citizen and to take possible measures for their advancement. According to the learned senior counsel after a long emerging debate by this time the position of law is settled that Article 15(4) and 16(4) are not exceptions to article 15(1) and article 16 (1) respectively, but they are enabling provisions. He would placed reliance on the judgment delivered by Justice Jeevan Reddy (majority) in the case of Indra Sawhney and the judgment of P.B. Sawant J. and S. Ratanvel Pandian J. (concurring). He would invite our attention to the passages of judgment in Indra Sawhney from the majority view and specifically paragraph 713 where reference is made to the seven judges judgment in case of **State of Kerala Vs. N.M. Thomas¹¹**. He rest his arguments on Paragraph 810 of the said judgment where it is categorically expressed that “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 county and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of there being out of main stream of national life and in view of condition peculiar to and characteristical to them, need to be

11 (1976) 2 SCC 310

treated in a different way, some relaxation in the strict rule may become imperative. In doing so, extreme caution is to be exercised and special case made out.” Relying on the said connote Shri. Thorat would submit that reference to the far-flung area is merely illustrative and not conclusive. He would also invite our attention to the concurring judgment, which resonates the majority view. He placed reliance on the following judgments to support his submission that limit of reservation up to 50% is not conclusive and static but flexible and depends on the facts and circumstances of each case and further depend on the compelling reasons of backwardness and inadequacy of representation to the weaker section. Those judgments are as follows:-

- i) K.C. Vasantkumar Vs. The State of Karnataka (1985) Supp. SCC 714.
- ii) State of Kerala Vs. N.M. Thomas (1976) 2 SCC 310.
- iii) M. Nagraj Vs. Union of India (2006) 8 SCC 212.
- iv) Ashok Kumar Thakur Vs. Union of India (2008) 6 SCC Page 1.
- v) E.V. Chinnaiah Vs. The State of Andhra Pradesh (2005) 1 SCC 394.
- vi) Jarnail Singh & ors. Vs. Lachhmi Narain Gupta (2018) 10 SC 396.
- vii) S.V Joshi Vs. The State of Karnataka (2012) 7 SCC Page 41.

18 Learned counsel Shri. Thorat in his eloquent style has analyzed the nine Judges Constitution bench judgment in Indra Sawhney (Supra) which according to him undisputedly leads to the conclusion that there is no constitutional bar to the reservation exceeding more than 50%. According to him, the judgment if read in its correct perspective and in benevolence of advancing the cause under Article 15 and 16 by the State, does not provide any fetter on the State's power to exceed reservation more than 50% in a deserving case. A caution, according to the learned counsel, is only of providing valid grounds in order to justify reservation in excess of 50%. He would emphatically submit that, before passing the impugned enactment prescribing 16% reservation for Maratha community by categorizing it as SEBC, all necessary safeguards have been taken into consideration and the State has justified the said enactment by bringing on record the exceptional and extraordinary circumstances necessitating the reservation in excess of 50%. He also rebutted the contention of other side that the impugned legislation is politically motivated and he would submit that, it is not open to attribute motives to the legislature.

19 Learned counsel also dealt with the argument of legislative competency advanced by Shri. Datar learned senior counsel and Shri. Talekar specifically in the backdrop of Article 342A being introduced by the 102nd Amendment which was brought into force on 15th August 2018. He would reason that the argument that after the amendment now only the parliament and/or the President can specify socially and educationally backward classes is a misconception. He would invite our attention to the statement of objects and reasons accompanying the 123rd Amendment Bill 2017 which proposed to create a National Commission for backward classes with the constitutional status at par with the National commission for Scheduled Caste and National Commission for Scheduled Tribes. Learned counsel would submit that historically there was a central list of other backward classes published by the Ministry of Welfare New Delhi dated 10th September 1993, which came to be amended from time to time and this central list relates to the reservation of 27% in civil posts and services under the Government of India in favour of other backward classes. In the light of this factual scenario learned counsel would submit that since there were two lists in existence, the State's power to identify the backward classes within its State

is not curtailed by the amendment and there is no bar on the power of the State to legislate providing reservation to the identified backward classes. He would make a reference to the report of Select Committee on the 123rd Amendment Bill 2017, which has been placed on record by the learned counsel Shri. Talekar. He would also invite our attention to the comments of the department of Social Justice and Empowerment in the compilation submitted by Shri. Talekar and he would vociferously spell out the intention in introducing 123rd Amendment Bill and he would advance the following prepositions in this regard:-

- A) Constitutional Amendment does not affect or alter the powers or functions of the State Backward Class Commission.
- B) The power of inclusion or exclusion of backward classes in State Backward Class list shall remain unchanged.
- C) Clause 9 of Article 338-B does not in any way interfere with the power of the State Government to prepare its own list. The classes included in the said backward list do not automatically come into the central list of OBC's.
- D) The summary of the report reveal that several amendments were rejected since it was a view of the Government of India that the amendment does not seek any

change in the power of the State or in the status of the State Backward Class Commission.

E) The terms 'list' clearly refers to the list to the services of Government of India and not to the State list.

Conclusively on this point, Shri Thorat would submit that the said insertion in the Constitution no way affects the legislative competence of the State legislature to bring an enactment identifying the socially and educationally backward classes within the State. and therefore it has not affected the legislative competence of the State. Shri. Thorat also dealt with the submission advanced by Shri. Datar to the effect that the impugned enactment nullifies the judgment in case of **Sanjeet Shukla Vs. The State of Maharashtra** (*supra*). His submission is to the effect that the said judgment is rendered at an interim stage on the basis of pleadings filed for interim relief and the observations are merely prima facie subject to the further orders. The reliance on the judgment of **Cauvery Water Dispute Tribunal**¹² according to Shri. Thorat is misconceived and according to him the observations were made in the peculiar facts and circumstances and therefore this judgment does not lay down general proposition of law.

¹² 1993)Supp (1)SCC 96,

He would on the other hand rely upon the judgment in the case of **Medical Council of India Vs. The State of Kerala (2018) SCC Online SC 1468**, to support his submission that the constitutional provision permit removal of defect in a judgment and any such removal by the statute cannot be said to nullify the judgment and/or overrule the same.

20 Learned senior counsel would further submit that the impugned enactment of 2018 is based on substantive quantifiable data collated by the MSBCC constituted under the Act of 2005 and this Commission, according to Shri. Thorat, was competent to look into the aspect of backwardness of any class of citizens and their inclusion or exclusion in the list of backward class. According to him, the Commission has threadbare examined the aspect of backwardness of Maratha community and only upon ascertaining quantifiable data and on considering exceptional or extraordinary situation, it has recommended inclusion of the community in the backward class. He would further submit that by undertaking the said exercise, the objection in Sanjeet Shukla raised about no quantifiable data being provided by the State stands removed and not there was no legal impediment in the enactment of

SEBC Act of 2018. Shri. Thorat would also dispel the contention of his rival that Commission's report is contrary to the earlier report of the Commission. He would submit that the Commission has appointed expert agencies of highest repute such as Gokhale Institute, Rambhau Mahalgi etc and has also obtained report from the Labour Commissioner about Mathadi's, Dabbewalas as well as several educational institutions, universities, APMC's etc. He would also submit that, the Commission has conducted an exhaustive research and analyzed resolutions of 784 Grampanchayats, and approximately 1,95,714 individual representations. It has also analyzed old and contemporaneous record related to social backwardness of Maratha and collected sample data of rural and urban areas collated by five agencies. It has examined the habitation, facilities, type of housing, provision for drinking water, availability of jobs, ratio of employment, literacy rate, percentage of admission in educational institutions at all levels, dropout percentage and ratio of graduates/degree holders. Shri. Thorat has also highlighted that the Commission has looked into the statistics demonstrating that 23.56% suicides are committed by Maratha farmers which is depictive of depravement of Maratha community. Shri. Thorat would

however disagree with the submissions of his rivals to the effect that Maratha and Kunbi are one and the same and he submit that some observations of the Commission dealing with the Maratha and Kunbi cannot be read in isolation so as to contend that Maratha should be included in Kunbi and he would request us to read the report as a whole so as to understand these recommendations on the basis of analysis made on voluminous material, reports, records etc. At the end of his submission, Shri. Thorat would deal with the contention of counsel for petitioners that the impugned Act violates the basic structure of the Constitution. He submit that, the said contention has no merit. The doctrine of violation of basic structure, according to Shri. Thorat applies to change brought by the constitutional amendment pursuant to Article 368 of the Constitution and he would submit that even otherwise there is no violation of basic constitutional tenets of equality so as to allege violation of basic structure and none of the axioms like secularism, federalism etc, have been violated by the impugned legislation. On the other hand, by the said enactment, the State has sought to take affirmative steps in favour of a disadvantaged section of society identified by the Commission to be socially and educationally backward. Shri.

Thorat would submit that, the concept of basic structure is evolved as a safeguard in exercise of constituent power and not legislative power, as exercise of legislative power is controlled by factors like legislative competence, violation of fundamental rights or other provisions of the Constitution and therefore, he would critically assail the submissions advanced by the learned counsel Shri. Datar and Shri. Aney. He would submit that there is always a presumption in favour of constitutionality and the burden to prove otherwise is on the person who alleges it. According to him, there is no serious challenge to the lack of legislative competence of the State in enacting the Act of 2018 except the argument in relation to article 342 A which he has already dealt with. He would place reliance on following judgments to contend that the scope of judicial review to interfere with the legislation is limited.

- i) Nayar Service Society Vs. Dr. T. Beermasthan & ors. (2009) 5 SCC Page 545.
- ii) Namit Sharma Vs. Union of India (2013) 1 SCC 745.
- iii) Benoy Viswam Vs. Union of India (2017) 7 SCC 59.
- iv) Vikramsingh Vs. Union of India (2015) 9 SCC 502.

21 The submission advanced by learned counsel Shri. Thorat is echoed by the learned senior counsel Shri. Mukul

Rohatgi. Learned senior counsel has taken us through the Constitution bench judgment in Indra Sawhney (supra) in great detail. He would submit that Justice Jeevan Reddy delivered the judgment for himself and three other Hon'ble Judges to form the majority view and Justice Pandian and Justice Sawant has taken a concurring view. According to Shri. Rohatgi, there is no bar imposed in the constitutional scheme regarding percentage to which the affirmative action by State should be scaled and therefore, the argument that there exists a ceiling of 50% is dubbed as baseless argument by Shri. Rohatgi. He would strenuously submit before us that the door is not completely shut by the majority view and a window is kept open, by way of illustration in a far-flung and remote areas, the population inhabiting those areas being out of main stream of national life, with conditions peculiar to and characterstical to them and it is in this situation inherent in the great diversity of this country, Justice Jeevan Reddy has expressed that some relaxation in the strict rule may become imperative. Learned counsel submit that it is no doubt true that this power and relaxation is to be exercised with extreme caution only when a special case is made out. He would thus submit that the situations contemplated for deviations are not

exhaustive but only illustrative and he would cite an example of transgender which have now gained status into the society by categorizing them as “Backward.” He would submit that, the Constitution of India which is an organic and living document involving dynamic concepts never intended truncating the power of State conferred under Article 15 (4) and 16 (4) which came to be introduced as special provisions. Shri. Rohatgi would also submit that the observation made in the judgment in case of **Nagraj** (supra), to the effect that in Indra Sawhney (supra) majority has held that the rule of 50% laid down in Balaji is binding rule and not a mere rule of prudence itself is not a correct analysis of the majority view in Indra Sawhney. He would submit that, Nagaraj (supra) was followed in S.V. Joshi (supra) where quantifiable data was directed to be collected before exceeding limit of 50%. As regards 102nd (Constitution) Amendment introducing Article 342 A, Shri. Rohatgi would assert that the said amendment is inserted w.e.f. 15th August 2018 and a socially and educationally backward class concept is inserted in the Constitution along with the definition contained in Article 366 (26 C). He would further submit that the distinction between the newly introduced Article and the Article 341 and 342 is

very apparent and sub clause 2 of Article 342 A enables the Parliament to include or exclude from the “central list” of a socially and educationally backward classes specified in notification issued under clause (1). In socially and educationally backward class, Shri. Rohatgi would submit that the words used in the clause should be read in reference to the context otherwise it would be leading to absurd result. He would rely on the judgment in case of **Printers (Mysore Ltd. & Anr) Vs. Assistant Commercial Tax Officer & ors.**¹³ to support his submission. He would also invite our attention to the historical background for introduction and conferment of benefits on the Other Backward Classes after the Mandal Commission's report and he further submit that identification of the backward classes was a regime left to the respective State since they are more acquainted and familiar with its population and their status. According to Shri. Rohatgi after the Mandal Commission report, a central list for respective State was prepared and this list continue to exist as on today apart from the list of Other Backward Classes prepared by the respective State. He would further submit that merely because the constitution is amended, the existence of list

13(1994) 2 SCC 434

prepared by the State is not wiped out automatically and particularly when the judgment in Indra Sawhney (supra) left it to the respective States to determine the backwardness of its citizens and even directed for constitution of Backward Class Commission for each State and this direction was implemented by all States by constituting backward class commissions to identify backwardness within its jurisdiction. In such circumstances he would submit that it would be premature to hold that Article 341 & 342 on one hand and Article 342 A on the other are analogous and intended to operate in the similar fashion.

22 Shri. Rohatgi was supported in his arguments by learned senior counsel Shri.Parmjeet Singh Patwalia and after inviting our attention to the constitutional framework contained in Article 15 (4) and 16 (4) he would submit that merely being placed in the list of backward class do not entitle a community to reap the benefits for reservation unless the State proactively decide to reserve certain percentage for those classes listed as backward. According to the counsel, the SEBC Act of 2018 carve out a quota for Maratha community by virtue of Section 4 and determination of their

social and educational backwardness is backed by the empirical study based on scientific methodology conducted by the Backward Class Commission constituted by the State in terms of direction issued in Indra Sawhney (supra). He would rely upon the parameters laid down by the Hon'ble Apex Court in identifying backward class and specifically social, economic and educational backwardness. He would also support Shri. Rohatgi and take his argument further in relation to article 342 A and submit that the said provision is prospective in operation and possibly when the power is so exercised, the issue about State legislature lacking competence can be examined, but according to him it is premature stage when the provision is not yet implemented and till then the power of the State to identify backward classes would remain unfettered. He would also place heavy reliance on the report of the MSBCC which record reasons for classification and also record a finding of the Maratha community being not adequately represented and in the words of Shri. Singh when the power of the State remains intact at this stage, it could be appropriately dealt with if the contingency contemplated under article 342 A occurs at a future point of time and the President notifies certain classes to be socially and

educationally backward.

23 Shri. Rafiq Dada, learned senior counsel has also advanced his submissions in support of the State legislation and has justified the State's stand that it possesses legislative competence to enact SEBC Act of 2018. He would strongly oppose the arguments of counsel for petitioners that reservation to the extent of 50% has to be read in Article 15 & 16 of the Constitution and that the same can be crossed only by Parliament in exercise of constituent power under Article 368. Shri. Dada would also snub the proposition of his opponent that 50% is the ceiling for reservation and on the other hand he would categorically submit that by the 103rd (Constitution) Amendment Act rule of 50% is nullified since now the reservation in favour of Economically Backward Classes (EWS) is sought to be introduced in the Constitution itself, bypassing the ceiling limit of 50%. Shri. Dada would submit that historically in Maharashtra two statutes are already in existence which provide for reservation, namely. Reservation in Public Services Act 2001 and Reservation in Private Professional Institutions Act 2006. He would submit that the National Commission for backward Class Act, 1993

was enacted by the Parliament and the Maharashtra State Backward Class Commission Act was enacted in 2005 by the Maharashtra legislature. He would submit that the National Commission of Backward Classes repeal Act 2018 cannot *ipso facto* repeal the MSBCC Act of 2005 and it in no way abridges the provisions of the Maharashtra Act of 2005. Shri. Dada would submit that the State has taken a decision to grant reservation in services in State based on its finding that Maratha community is not adequately represented in the services under the State and this conclusion is based on empirical data collected by the Backward Class Commission with an estimate of 30% of Maratha population in the State. Learned counsel would submit that in the matter of “Adequacy of representation” of a community, it is the opinion of the State that is material and this opinion cannot be substituted with the opinion/conclusion proposed by the petitioners. He would place reliance on the catena of judgment as the nature and scope of judicial review on the decision arrived at by the State which lay down the proposition of law that sufficiency of reasons for an executive action is not subject matter of judicial review. Shri. Dada would submit that, the Gaikwad report was duly examined by the State Government and it concurred with

its recommendations which are otherwise binding on the State. The Commission has dedicated entire chapter IX for the topic i.e. "Inadequacy of Maratha community in services under the State." Shri. Dada would place reliance on the judgment of Hon'ble Apex Court in **Ashoka Kumar Thakur Vs. Union of India**¹⁴. The Hon'ble Apex Court observed in the said judgment that the Parliament is invested with the power of legislation and it is deemed to have taken into consideration all the relevant circumstances while passing the legislation of this nature. On this ground the prayer to declare 27% reservation provided in the Act to be illegal or that the Act was liable to be struck down was rejected. In light of the said principle of law, Shri. Dada would submit that sufficiency of reason in formation of opinion by the State cannot be gone into by the Courts.

24 Shri. Dada has also canvassed that the scope of judicial review in respect of report such as that of Gaikwad report is limited and though the report is not completely beyond judicial scrutiny, he would submit that it is not open for the Courts to substitute their own opinion with the opinion

14 (2008) 6 SCC page 1

drawn by the body of experts. He further submit that the commission is statutory body, vested with wide ranging power including collection of data and identification of backward classes on basis thereof. The Court can only ascertain where there is relevant quantifiable data which is contemporaneous and that no irrelevant/ extraneous factors have been taken into consideration before arriving at a decision. He would submit that the court would not sit on the commission's report as the Appellate Court so as to re-appreciate the evidence or substitute its opinion. He would place reliance on the judgment expounding said provision in the case of **Barium Chemicals Ltd. Vs. Company Law Board**¹⁵. Shri Dada is also highly critical of the fact that the petitioners have proposed to substitute their own analysis and conclusion to that of Gaikwad report which is untenable in law and he would allege that petitioners have sought to draw their own conclusions and the understanding is faulty as they are comparing two or more different types of surveys. He would submit that the methodology adopted by Gaikwad Commission is elaborate, scientific, accurate and proper and it need not be compared with other earlier commissions. Heavy

15 (1966) Supp SCR 311

reliance was placed by Shri. Dada on the judgment in case of **Ram Singh Vs. Union of India**, 2015 (4) SCC 697.

He would asseverate that an overview of the functioning of Gaikwad commission would validate its credibility and would put the allegations to rest. He has painstakingly taken us through the report right from the terms of reference, the data collected by Commission through various agencies including Gramsabhas, Commissioner of Labour, Collector & Commissioners of Revenue, survey by NABARD, General Administration Department in respect of employees of Class-I and Class-IV. He would also invite our attention to the selection of areas of survey to the questionnaires and the data collated in tabular form. He also rebut the contention of the petitioners that the report is prepared with the sole ulterior motive of providing reservation to Maratha community and that it has overlooked the earlier report that had rejected the claim of this community. Shri. Dada would further submit that on collection and analysis of data when the Commission has identified Maratha as socially and educationally backward class, there is no restriction put on by the Constitution on making separate sub categories under broader SEBC's category on the basis of purpose of

reservation and benefits to be conferred. He would further submit that there are already six sub categories existing in the OBC reservation in the State.

Shri. Dada would also carve out “extraordinary situation and exceptional circumstances” in the State to provide reservation beyond 50% to SEBC category wherein Maratha community is included. He would list the said factors which have been taken cognizance of by Gaikwad commission to the following effect.

- (A) Farmers suicide an agricultural distress.
- (B) Daughters of farmers committing suicide.
- (C) Gokhale report and Government data on farmers suicide.
- (D) Fragmentation of land holding marginalized farmers.
- (E) No reason as to how from 1952 onwards reservation in favour of Maratha community disappeared.
- (F) Inclusion of Maratha community in list of backward class by Kalelkar commission and its exclusion from first list of OBC without any reason.
- (G) Earlier commissions discarding Maratha communities claim without support of any quantifiable data and the extraordinary circumstances deteriorating social status of the Maratha community of the said factors have been highlighted by Shri. Dada to the following effect.

- 1) Regional disparity elaborated by committee's like Dandekar committee 1992, Kelkar Committee 2013.
- 2) Non adherence to Nagpur pact and protection under Article 371 to Marathwada and Vidarbha Region.
- 3) Relatively more social and educational backwardness.
- 4) Non industrialized region.
- 5) Dependency on agriculture drought prone areas.
- 6) Largest proportion of farmers suicide in the region from Maratha community
- 7) Being ruled by Nizams of Hyderabad which remained underdeveloped and continues to be so.

25 According to Shri. Dada, different commissions have faltered in the manner of conducting inquiry and consequently representation of Maratha community for reservation was wrongly rejected. He would submit that SEBC Act 2018 also complies with the twin conditions, namely, classification being founded on intelligible differentia and the differentia having rational nexus with the object sought to be achieved. In support of his submissions he would place reliance on the judgment of Apex Court in the matter of **In Re Special Courts Bill**,¹⁶ wherein Hon'ble Apex Court has carved out the principles in relation to Article 14 and ruled that all

16 AIR 1979 SC 478

persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed and it is held that it is permissible for the State to create reasonable classification provided it is rational and not arbitrary, and based on some qualities or characteristics which are found in all the persons grouped together and not in others who have left out, but those qualities or characteristics must have reasonable relation to the object of legislation.

26 We have also heard the learned senior counsel Shri. Vineet Naik who represent Respondent No. 28 in PIL No. 175/2018, namely, Akhil Bhartiya Maratha Mahasangh registered as non governmental organization established with an object to identify the socio economic problems of Maratha community. Shri. Naik would advance his submissions on the 'extraordinary circumstances' carved out in judgment in Indra Sawhney (supra). He has taken us through all the earlier reports of Commission to dispel the submission of the petitioners and to deal with their arguments that on all earlier occasions the various commissions have declared Maratha as forward community. He would submit that, all the earlier commissions has erred in excluding the Maratha community

from reservation and this itself is an extraordinary circumstance. As far as Mandal commission is concerned, he submits that, it has fallen into grave and serious error in holding Maratha community as forward Hindu caste. He further submit that, census of India 1931 Volume VIII Part-II Bombay Presidency specifically record that Maratha community is a Hindu intermediate community and this is synonymous to backward classes as observed by the Hon'ble Apex Court in Indra Sawhney (supra). He would further refer to the report of NCBC where request was made to consider Maratha as a backward community based on the presumption that Maratha was a synonym of Kunbi in the central list of backward classes. According to the learned senior counsel, the report not only denies the request for inclusion of Maratha in central list of backward classes as synonym of Kunbi but travel a step ahead and declare Maratha as socially developed and prestigious community and this finding is without any basis, quantifiable data and/or any material on record. Learned counsel further makes a reference to Bapat commission report submitted in the year 2008. He submit that though in substance the report is in favour of inclusion of Maratha in OBC, final decision by way of voting speaks to the contrary. He

therefore invited our attention to the findings recorded by the individual members of the commission and according to him, three of the members have recorded their findings in favour of Maratha community and the dissent note of Shri. Devgaonkar, Shri. Deshpande and Shri. Laxman Gaikwad is in favour of inclusion of Maratha in SEBC and not to include them in OBC. According to him, this report does not consider any data of educational backwardness and inadequacy of representation in Government services. This Commission according to Shri. Naik is not a statutory Commission and hence its report is not binding. Further, he makes a reference to the Rane Committee which came to be appointed to study and procure the quantifiable data pertaining to the social, educational and economical backwardness of Maratha community and inadequacy of representation in the State public services. He would also place reliance on the Statement of Objects and Reasons (SOR) of the 2014 Ordinance as well as SEBC Act of 2015.

27 Shri. Naik has also highlighted the important facet of the Gaikwad Commission's report which spell out the extraordinary circumstances, namely, 'population quantum

vis-a-vis reservation percentage'. According to him the figures available on record would indicate that as per 2011 census, State population is around 11.24 crore out of which 3,68,83,000/- is the population of OBC's (VJNT, OBC, SBC). Further the Ministry of Social Justice and Empowerment has given State wise percentage of population of OBC in India and for Maharashtra which is 33.08%. If the SC, ST population is 22% then Gaikwad Commission has recorded that population of Maratha is 30%. Therefore, in terms of the population according to Shri. Naik if one makes out that almost 85% in the State is of backward classes and ceiling of 50% for this 85% population would be traversary of justice and would harm the spirit of the policy of reservation and this according to him has been rightly captured by the Commission as an extraordinary and exceptional circumstance emerging in the State warranting reservation of 16% in favour of Maratha community. Further, according to him, the quantifiable data collected by Gaikwad Commission as regards the State Public employment would disclose that 4.62% jobs per 100 youths are available and if the average recruitment per year is not more than 5%, 5% of the 4.62% jobs per 100 youths get translated into 0.23% i.e. almost less than 1 job per 100 youth

and now in this scenario if there is reservation of 50% in the matter of public employment it is further brought down to 0.12%, available for remaining 5% forward youth classes. This again according to Shri. Naik is an exceptional situation. Shri. Naik would vehemently argue that, Maratha have been erroneously kept out of the purview of reservation, which they otherwise deserve and they have agitated for their rights for a considerably long time. He would further submit that, comprehensive report compiled by Justice Gaikwad Commission is meritorious and trustworthy since it is backed by quantifiable data. He also placed reliance on the various reports relied upon by the Commission prepared by Gokhale Institute of Politics and Economics, Pune in the year 2016 reporting on farmers suicide, sugarcane cutters, Mathadi Hamal and Female domestic workers. These reports according to Shri. Naik are self eloquent and depict the poverty and the harshness faced by Maratha community. In absence of any avenues in State Public employment the Maratha community has preferred to work as Mathadi Hamal or sugarcane cutters since the holding size of the agricultural land of Maratha population is minimal and the data reveals that 12% of Marathas are landless and those holding below 5 Acres, the

percentage is almost 80%. He also drives a comparison of this community with Vanjari community which is already included in the list of De-Notified and Nomadic Tribe for the benefit of reservation. The report on farmers suicide according to Shri Naik also indicates suicide by farmers pertaining to this community as significantly high numbers and the reasons attributable are economic and social backwardness, debt, small/low yield lands. By drawing our attention to said reports, Shri Naik would submit that, Gaikwad Commission as rightly made a reference to the said reports apart from collecting quantifiable data and according to learned senior counsel the isolation of Maratha community for last 70 years is also an instance of extraordinary situation and exceptional circumstance which would justify the reservation being permitted to exceed the ceiling limit of 50%.

28 We have also heard the learned senior counsel Shri. Dhakephalkar who represent the petitioner in PIL No. 181/2018 which seeks direction to implement the reservation in favour of Maratha in the category of SEBC. Shri. Dhakephalkar would urge that the Commission has collected contemporaneous data by involving scientific method and he

stressed on the methodology of the Commission which involved supply of questionnaires, personal visits, collection of data in form of resolutions from Gram Panchayats etc. By comparing the data collected by Gaikwad Commission as against the data collected in case of **Ram Singh Vs. Union of India (supra)**, Shri. Dhakephalkar would submit that in Ram Singh's case in case of Jat reservation, eleven indicators broadly under three heads i.e. social, economical and educational were applied and these parameters were evolved on the basis of Mandal Commission report. However, Gaikwad Commission has in fact applied 25 parameters and reached at a conclusion by testing the social, educational and economical backwardness of Maratha community. Shri. Dhakephalkar would also argue on the similar lines as Shri. Naik and submit that the reservation of Maratha has to be proportionate to its population. He would submit that the backwardness of Maratha community is mostly on account of low social position of Maratha community in the traditional caste hierarchy of Hindu society and it is further aggravated by lack of educational advancement among major section of the community. However, inadequacy of representation in Government services and in the field of trade, commerce and

industry has further worsen their position in the social strata. Shri. Dhakephalkar has placed reliance on the observations of the Hon'ble Apex Court in the case of **State of Andhra Pradesh Vs. U.S.V Balaram**¹⁷ wherein Hon'ble Apex Court dealt with the criticism leveled that, the Commission had used personal knowledge for the purpose of characterizing particular group as backward and the Hon'ble Apex Court has observed that it is inevitable and there is nothing illegal or improper in doing so since the very object of the Commission in touring various areas and visits to huts and habitation is to find out the actual living condition. He would submit that the information should be gathered by the Commission openly and not in a clandestine manner and it is only on personal visit to the area, the accurate picture can be ascertained and the personal impression gathered by the members of the Commission have been utilized to augment various other material gathered and then it cannot be said that report of the Commission suffers from the vice that they imported personal knowledge. He also makes a reference to the research carried out by various institutions which is relied upon by the Commission which has been independently looked into the

17 AIR (1972) SC 1375

said report, applied its mind and then arrived at a conclusion. Shri. Dhakephalkar would focus on the methodology and the selection of subjects to arrive at a conclusion that the Maratha community is backward. He would also make a reference to the report of Professor Rajabhau Karpe Member of Maharashtra State Backward Commission who has carried out detail analysis of the Maratha community and assisted the Commission in arriving at a finding which is based on quantifiable data.

29 In support of the reservation in favour of Maratha, we have also heard learned senior counsel Shri. Arif Bookwala who has filed Chamber Summons in Writ Petition No. 4100/2018. Apart from raising objection to the locus of the petitioner and requesting the Court to not to entertain the petition since the basic ingredient of entertaining the petition namely the locus, cause of action and irreparable loss to the petitioner is not set out. Shri. Bookwala has attributed malafides to the organization of the petitioner and submit that, the said petition deserves to be rejected as it has made blatantly false statements. Shri. Bookwala has briefly invited our attention to the history of Maratha community including

the reservation provided to this community in 1902 and also recognition of this community as intermediate by the Government of Bombay. According to Shri. Bookwala, the resolution covered 228 intermediate communities and Maratha community is included at Serial No. 149. Learned senior counsel further make a reference to the Government Resolution dated 18th May 1959 conferring educational benefits and facilities to the families having annual income below Rs. 900/- and domiciled in the State of Maharashtra. According to him, Maratha community was entitled to the said benefit as it was purely based on economical criteria and this action of the State was in fact endorsed by the Hon'ble Apex Court in case of ***M.R. Balaji Vs. State of Mysore***. However, it was only subsequently this class was completely and conveniently forgotten for conferment of reservation benefits. Shri. Bookwala also make a reference to the Mandal Commission's report which was submitted on 13.12.1982 which did not consider the case of Maratha community on the contrary the Commission was depriving population quantum of OBC made a passing reference to the Maratha community as forward Hindu community without any basis and supporting data. Shri. Bookwala has placed on record the judgment of the

Indian Law Reports (Madras Series) in case of **Maharaj of Kolhapur Vs. S. Sundaram Ayyar and 15 others** which traced the history of Maratha community.

The learned senior counsel has also focused on the report of the Commission as an expert body and according to him, the composition of the Commission justified its existence since the expert in the field of social scientific research came to be involved. According to Shri. Bookwala, the Commission conducted sample survey in conformity with the pre-determined criteria which require objective study of the Maratha community with comparison to State averages. Public hearings were also conducted by the Commission in all regions of the State and it extended to 21 districts head quarters with pre-intimation of public news widely published in newspaper. According to Shri Bookwala, a Panel of experts prepared format of codification of data and that is how the Commission applied statistical tools and techniques and tabulated the data in graphical forms in consultation with the expert in the field. Learned senior counsel has distinguished the methodology adopted by Gaikwad Commission as against the earlier commissions and submit that the role of statistical experts in working of this Commission is of great significance.

The statistical expert sorted out the data on the parameters for final weightage and scaling and the statistical expert Dr. Sudhir Gavhane assisted the Commission in allotting the marks and the Officers from the Maharashtra State Statistical Department actually participated in codifying the said data. Learned senior counsel in substratum advances the submission that the report of the commission suffers from no lacunae and is full proof report assessing the data collected in a very scientific way. The said report is praised by the learned senior counsel in terms of its working, compliances and the clear understanding and approach to the issue.

The learned counsel would speculate the catastrophic situation if 35 Million population from one community is suddenly added to group of 20 million existing OBC's having about 300 castes and these communities would be left high and dry if such huge population is added to the existing OBC. He would submit that, the highest farmers suicide in the community reflects its plight and the extraordinary situation and exceptional circumstances would justify the exceeding of limit of 50% if at all it exists. He would also deal with the argument of his opponent that minuscule data was used by the Commission and that the Commission

did not follow terms of reference. He would also deal with the submission of his opponent on the finding of the Commission report point to point and concluded by submitting that the report of the Commission calls for no interference as the parameters of judicial review are not at all attracted to call for an interference in the said report.

30 We have heard the learned Senior Advocate Shri. A.Y. Sakhare assisted by Advocate Akshay Shinde and Advocate Rohan Mirpuray representing the State, who specifically focus on the report of the Maharashtra State Backward Classes Commission. Shri. Sakhare specifically responded to the submissions advanced by the learned senior counsel Shri. Sancheti. He would submit that the Constitution of India aims at achieving the social, economic and political justice and equality of status amongst all citizens. According to him the State is duty bound to secure adequate means of livelihood to all the citizens and to promote with special care the educational and economic interest of the weaker sections of the people and in particular of the scheduled castes and scheduled tribes and they need to be protected from social injustice and exploitation of all forms. Shri. Sakhare would

submit that the impugned legislation is thus to be looked at as an endeavour to provide opportunities to these weaker sections who are backward in the field of education and also in public employment. According to him, the legislation aims to bring these classes in the main stream of nation's life. He thereafter took us through the report in the backdrop of the catena of judgments delivered on the issue as to how backwardness of classes is to be identified. He placed reliance on the Judgment of Apex Court in **Indra Sawhney** and he also highlights the report of the Commission which is based on the analysis undertaken by the experts in the backdrop of voluminous material collected from the field. He submitted that the composition of the commission is not challenged nor there is any challenge to authenticity of data which inspires confidence. According to him, in terms of **Indra Sawhney**, the jurisdiction to determine as to who belongs to the backward class is best left to the discretion of the State and it is permissible for the State to appoint a Commission comprising of experts in the field and this Commission is empowered to derive a method for their identification and the discretion should be left to the expert body to determine the parameters as laid down by the authoritative judicial

pronouncements. He submitted that, the scope of judicial review in the decision of the commission is minuscule if the report is based on contemporaneous and quantifiable data. Shri. Sakhare invited our attention to historical background of the community and also to the reports of various Commissions constituted by the State and the two National Commissions and the manner in which the community was dealt. In this context, he submitted that the present Commission which is constituted initially under the Chairmanship of Justice S.B. Mhase (Retd.) and subsequently being replaced by Justice M.G. Gaikwad (Retd.) is in accordance with the provisions of the MSBCC Act, 2005. He would submit that the Chairman of the Commission has a wider experience and apart from this, the Commission comprised of Social Scientist Shri. Chandrashekhar Bhangwanrao Deshpande, who was earlier member of the MSBCC from 2004 to 2008 and 2008 to 2011. Further, the Commission also included Shri. Sudhir Deomanrao Thakre, who belongs to the Indian Administrative Service and his educational qualification was a part of the Commission. Further, it comprised of Dr. Sarjerao Bhaurao Nimase, Mr. Rohidas Vitthal Jadhav and Prof. Rajabhau Narayan Karape, experts in Modern Indian History, and the Peasant Movement

in Maharashtra. He would then invite our attention to the methodology and procedure adopted by the Commission which included the data collection through sample survey and purposive sampling. He would also invite our attention to the Common Questionnaire through which the data was collected by the Commission which extended to collection of information about status of the family, level of the education of family, the occupation of the family, type of residential accommodation of the family. The Questionnaire also focused on ascertaining the nature of social, Educational and Economic Status of persons including the age of marriage, remarriage of widow/widower etc. Shri. Sakhare also submitted that the Commission conducted public hearings in all parts of the State excluding the tribal Districts and total number of persons who were heard were 1,97,522. The Commission also received representations from individuals Grampanchayats, elected representatives independent organizations and called for opinion of experts. Apart from this, in order to ascertain the educational status of the community, information was called from the Directorate of Higher & Technical Education, Director of Medical Education and all Universities in the State of Maharashtra including Agricultural Universities. In order to

ascertain the status of employment, information was collected from State Government, Semi-Governmental and autonomous organizations. According to Shri. Sakhare, the Commission has kept in mind the principles set out by the Hon'ble Apex Court while interpreting Article 15 and 16 of the Constitution of India in order to fix the parameters to determine the social, educational and economic backwardness of the community and the Commission considered 26 contemporary parameters to ascertain social backwardness. According to Shri. Sakhare, the educational level of the community at different levels like the Primary Level, Secondary Level, Higher Secondary Level, UG/ PG Level and Technical Courses came to be examined. As far as economic backwardness is concerned, according to Shri. Sakhare, nine parameters were applied and after this detailed survey, the Commission has concluded that Maratha Community suffers from Economic Backwardness. He also invited our attention to the marking system adopted and the marks secured by the said class by applying the parameters of social, educational and economic backwardness. He would then submit that the Commission has arrived at a conclusion that the Maratha population is 30% in the State of Maharashtra and for the said principle, it has relied upon the

Population Census Report of 1931, the report of the Planning Department of the State which had undertaken survey of population of Marathas in the State in the year 2013-14 and came to the conclusion that Maratha Population is 32%. Reliance is also placed on the Census Report of 2011 and also the report of Social Justice Department of Government of India where the population of OBC is ascertained. According to him, the survey conducted by the Rural Development Department through Gokhale Institute of Economics and Politics, Pune which had undertaken caste wise census, except SC & ST population in Rural Maharashtra has been collected. Based on this data, the Committee then proceeded to ascertain the inadequate representation of this community in public employment and made recommendation on the quantum of reservation to be provided. After the thorough trail of the report of the commission, Shri. Sakhare would submit that the analysis of the report by the petitioner is completely misconstrued one. As far as sample is concerned, he would submit that the allegations that sample size is not representative of the entire State data is misleading statement and rather the commission indulged itself in the purposive sampling method and the data is weighed against

the State average. As far as the objection of non-inclusion of Mumbai city in the sample survey is concerned, he would submit that when urban area sample survey, one Municipal Corporation and one Municipal Council from each revenue division is decided on the basis where the Maratha Population has migrated and settled in Konkan Region and Thane was selected as the Municipal Corporation and therefore, Mumbai has not been included. Shri. Sakhare has submitted that the petitioner has no expertise and no basis for questioning the credibility of efficacy of the exercise undertaken by the distinguished experts in the field. He would reiterate that the Commission has also taken into account the usual argument about efficiency of the administration being affected to the said issue. Shri. Sakhare placed reliance on the following judgments of the Hon'ble Apex Court :

- (1) Bir Singh V. Delhi Jal Board & ors. (2018) SCC 312.
- (2) Ramsing V. Union of India (2015) 4 SCC 697.
- (3) State of Andhra Pradesh V. U.S.V. Balram (1972) 1 SCC 660.
- (4) Barium Chemicals v. Company Law Board (1966) Supp. SCR 311.
- (5) Ahmedabad Mill Owners' Association etc. v. Textile Labour Association & ors. AIR 1966 SC 497.

- 6) Basavaiah (Dr. V. Dr. H.L. Ramesh & Ors.(2010)
8 SCC 372.

The first two judgments are relied upon by him in support of the submission that if quantifiable data is collected, then the State can base its decision on it. The remaining judgments have been relied upon to support his submission of limited scope of the Judicial review to interfere in the finding of an expert body.

Shri. Sakhare has also placed on record the extract from the “Research Methodology Methods and Techniques by Shri. C.R. Kothari and Gaurav Garg as well as the extract from “Statistical Methods by Dr. S.P. Gupta” for Sampling Techniques and submit that the research methodology adopted by the Commission is based on scientific method and is guided by the well acclaimed standards of research methodology, which is based on empirical evidence, its consideration, critical scrutiny resulting into probabilistic predictions. The learned senior counsel has also placed heavy reliance on the “scientific analysis of the data of sample survey” conducted by five research institutions. He would submit that if Annexure 6 accompanying the report is perused, one would understand the methodology adopted by the

Commission and its conclusion. He would thus urge that the report of the commission calls for no interference.

31 Learned senior Advocate Shri. Mihir Desai also advanced his submission in PIL WP (St) No. 36115/2018, ***Ajinath Tulshiram Kadam Vs. The State of Maharashtra.*** He would advance more or less similar argument to those counsel who preceded him and argued in support of the legislation. He would place on record data overall literacy rate in Marathwada Region in 1901 and also the literacy rate of this community in 1911 which is based on the Maharashtra State Gazetteers Department and he also placed on record the report of the Gokhale Institute of Politics and Economics, Pune. He would submit that impugned Enactment which is piece of legislation which came to be enacted under Article 15 (4) and Article 16 (4) which needs to be upheld since it is based on relevant data in form of the report of the commission which is carved out extraordinary situation and exceptional circumstances to exceed reservation beyond 50% in the State.

32 We have heard Shri Tekale and Shri Gaikwad, learned Advocated representing respondent no.3 in PIL 175 of

2018. We have also heard Ms.Khopade representing intervenor Shri Haribhau Rathod in PIL No.175 of 2018. We have also extensively heard Advocate Patil, counsel for petitioner in WP No. 2126 of 2018 who has posed a challenge to Section 4(3) of the Act and would submit that the Backward Class Commission cannot create a separate class. Shri Gaikwad has traced the history of the community and its social placement in the community. He has attempted to justify the reservation provided to Maratha community which is declared as socially and educationally backward and he would submit that it is a fact that Maratha community was not able to advance and the Gaikwad Commission has now collected a quantifiable data in respect of the backwardness of this community. He would also submit that the benefit of reservation cannot be denied to this community merely on the basis of the bar created by the Supreme court and the exceptional circumstances warrant and justify the action of the State in providing 16% reservation to the said community. He has also placed on record the State/Union Territory wide percentage of population of OBC in India in the year 2011-12 in the form of the NSSO Report no. 563 (employment and unemployment) and according to him, the percentage of OBC

in Maharashtra is 33.8. He would justify the report of the Commission which has spelled out a case of inadequate representation. The statement made by Shri Tekale is, however, to the effect that the Maratha community is entitled to be included in the list of OBCs and the benefits availed to the OBCs should be extended to them.

(II) - CONSPECTUS OF THE MATTER

33 Before embarking upon the core issue involved in a group of petitions about the validity of the SEBC Act of 2018 thereby categorizing Marathas as 'Socially and Educationally Backward Class' and conferring 16% reservation in their favour, we would embark upon the history of this community in brief.

The facts brought before us in regard to the history of Maratha community is not seriously disputed by the parties and history of this community is reflected in the affidavit filed by the State Government as well as the affidavits filed by the intervenors supporting the impugned enactment. The MSBCC Commission has also extensively referred to the history of the community.

34 As per the “Tribes and Castes of the Central Provinces of India” by **R.V. Russell** of the Indian Civil service Superintendent of Ethnography, Central Provinces published by Macmillian & Co. Limited, Volume IV, Maratha is the military caste of southern India which manned the armies of Shivaji and of the Peshawa and other princess of the Maratha confederacy. In the Central Provinces, the Marathas numbered 34,000 persons in 1911 of whom Nagpur contained 9,000, Wardha 8,000. In Berar, their strength was 60,0000, the total of combined province being 94,000. The caste is found in large numbers in Bombay and Hyderabad and in 1901, the Indian census table shows a total of not less than five millions persons belonging to it.

Marathas are marathi speaking people found on the Deccan Plateau throughout the State of Maharashtra. The Marathas are a caste formed from military service and according to Russell, it seems probable that they sprang mainly from the peasant population of Kunbis, though at what period, they were formed into a separate caste has not yet been determined. This community are cultivators by profession and once upon a time, land owners. The early history of Marathas is a tale of rise and fall in the importance

of the dynasties ruling the various regions. Over the time, center of political influence shifted from South Godavari Basin to the Krishna Valley. From 1300s onwards, the Maratha territories held territories under Muslim Kings and paid tribute to them. Feuds among the local Muslim kingdoms and later confrontation with Mughal dynasty which was eager to extend its power to Deccan, allowed Maratha Chieftains to become independent. A successful revolt of Shivaji, a Maratha Prince who fought against Muslim Bijapur, overlords in the name of establishing Hindu Kingdom. The local Muslim rulers weakened by their fights with the Mughals succumbed to the guerrilla attacks of Shivaji's light infantry and cavalry. After the death of Shivaji, the Maratha ranks were split between the claimants to his throne and his son Shahu set up his capital at Satara and appointed Chief Minister with the title 'Peshwa'. The title and office became hereditary and in a short period of time, Peshwas became the leading Maratha dynasty themselves. The Peshwas rose to be a powerful military force supported by Maratha Confederacy and was assisted by loyal chieftains including the house of Bhonsla, Sindhia, Holkar and Gaikwad, etc. Peshwas extended their territories all the way North to Punjab and with the defeated Panipat battle in 1761,

their era diminished. In fighting among the confederacy members after the death of Peshwa led to the entry of East India Company into the succession disputes among the Marathas. The British fought three wars with Marathas. At the end of the third war in 1818, the British routed the Peshwas and abolished their position and directly incorporated vast areas of Maratha territory into the British Empire as a part of Bombay Presidency.

In 1960, the modern state of Bombay was divided into linguistic states of Maharashtra with Bombay as its capital and Gujarat.

35 The material placed before us disclose the term 'Maratha' is used in overlapping senses i.e. within the Marathi speaking region, it refers to single dominant Maratha caste or to the group of Maratha and Kunbi caste, outside Maharashtra, and it loosely designates the entire regional population whose dialect is Marathi. Broadly, 'Maratha' caste is a largely rural caste of peasant cultivators which formed the bulk of the Maharashtrian society together with other Kunbi peasant caste. According to Jeremy Black, British historian at the University of Exeter, 'Maratha caste is a coalescence of

peasants, shepherds, iron-workers etc. as a result of serving in military. By 19th Century, the term 'Maratha' gained entry under different captions in the British Administrative records. The 1901 census listed three groups of Maratha Kunbi caste – Maratha, Maratha-kunbis and Konkan Maratha. According to Steele, in the earlier 19th century, Kunbis, who were agriculturists and Marathas who claimed Rajput descendants and Kshatriya status were distinguished by their customs related to widow remarriage. The term 'Maratha' gradually came to denote an endogenous caste.

36 The linkage between Maratha and Kunbi has always been a matter of research and reveal that the Marathas and Kunbis have the same origin – although these two are treated as two different communities currently on a social level. The Kunbi origin of Maratha has been explained in detail by Professor Richard Eaton by University of Arizona and Professor Steward Gordon. The kunbis who served the Muslim rules, prospered, and overtime adopted different customs and started identifying as Maratha. Eaton cites an example of the Holkar family that originally belonged to the Dhangar (Shepherd) caste but was given a Maratha identity. The other

example is given by Professor Susanne Bayly of Cambridge University i.e. of Bhonslas who originated among the populations of the Deccan tiller plainsmen who were known by name 'kunbi' and 'Maratha'. Iravati Karve, Anthropologist, University of Pune has described how Maratha caste was generated from Kunbis who simply started calling themselves "Maratha". She asserts that Maratha, kunbi and Mali are the three main farming communities of Maharashtra - the difference being that, Marathas and kunbis were "dry farmers", whereas the Mali farmed throughout the year. Professor Cynthia Talbot from the University of Texas quotes "when a Kunbi prospers he becomes Maratha".

The allegation in the petition is to the effect that the Maratha community was a part of the core State politics of Maharashtra since its inception in 1960. The Indian National Congress was the preferred party of Maratha/Kunbi community and it enjoyed overwhelming support from the Maratha dominated sugar co-operatives and thousands of other co-operative organizations involved in rural agricultural economy of the State. This domination by the Maratha community of the co-operative institutions assisted it in gaining control over the rural economy, which enabled them

in turn to control the politics from village level upto the assembly. The economic superiority also assisted this group in setting up several private educational institutions. Resultantly, the State has many Maratha Chief Ministers, Ministers, Officials as well as leadership in local municipal councils and panchayats. It is out of context to mention that 10 out of 16 Chief Ministers of Maharashtra hailed from Maratha community.

The present position of the said caste is described by Russell in his compilation of "Tribes and Castes" in the following words :-

"The Marathas present be somewhat melancholy spectacle of an impoverished aristocratic class attempting to maintain some semblance of their former position, though they no longer have the means to do so. They flourished during the two or three centuries of almost continuous war and become a wealthy and powerful caste but they find difficulty in turning their hands to the arts of peace. Sir, R. Craddock writes of them in Nagpur :

..... A considerable of Government political pensioners are Marathas. Many of them own villages or hold tenant land, but as a rule they are extravagant in their living and several of the old Maratha nobility have fallen very much. The sons are brought upto no employment and daughters are married with lavish pomp and show. The native army does not attract them but few are educated well enough for dignified post in civil employment. It is a question whether their pride of race will give way before the necessity of earning their livelihood soon enough for them to maintain or regain their former position. The humbler members of the caste find their employment as petty

contractors or traders, private servants, government peons, sowers, and hangers-on in the retinue of the most important families”.

37 It is this Maratha community which is conferred with the privilege of being classified as 'socially and economically backward by the Gaikwad Commission constituted by the State of Maharashtra and the impugned enactment confers reservation of 16% to this community. The State Government and the respondents who support the reservation heavily rely on two notifications reserving seats in public employment, first one being issued in the year 1902 by Rajeshree Shahu Maharaj often referred to as the father of the concept of reservation in the country and it provided reservation to Maratha community as a backward class. In the resolution dated 23rd April 1942 issued by the then Government of India, about 228 communities were declared as intermediate and backward class and Maratha is included at Serial No.149 of the said list.

Subsequently, the Government of Bombay, Political and Service Department issued a resolution on 1st November 1950, thereby superseding the Government Resolution dated 23rd April 1942 and directing that existing classification of the communities in the State of Bombay into advanced,

patil-sachin.

intermediate and backward classes should be cancelled. After re-organization of the State, the Government of Bombay prepared a list of Other Backward Classes in Old Bombay State which was printed in the year 1959. In this list, the caste 'Kunbi-Tillori' appears at Sr.No.87. However, the Maratha caste did not find any place.

The Government of Maharashtra, Education and Social Welfare Department by its resolution dated 13th October 1967, prepared a list of backward classes pertaining to the whole State of Maratha and Kunbi appeared at Sr.No.83. The Government Circular dated 19th February 1986 contained a list of Other Backward Classes and Kunbi (Sub-Caste) Leva Kunbi, Leva Patil and Leva Patidar appeared at Sr.No.83.

38 The social status of this community was subject matter of assessment by the Backward Class Commissions constituted by the State. It also came to be scrutinized by the Second National Backward Class Commission i.e. Mandal Commission. As it is a well known fact that the First National Backward Class Commission popularly known as Kalelkar Commission which was appointed by the Central Government in view of demand of reservation in favour of the Other

Backward Classes in view of Article 340 of the Constitution based its report on caste and the Chairman of the Commission himself addressed a letter to the President of India fairly pleading for rejection of the report recommending the reservations and remedies based on caste would not be in the interest of justice. The Central Government was not satisfied with the said report in determining the criteria for identifying backward classes under Article 15(4). In the mean time, the Government of Maharashtra appointed a Committee under the Chairmanship of Shri B.D. Deshmukh who was directed to go into the question of reservation of seats and allied matters relating to recruitment of backward classes and Government services. The Second National Backward Class popularly known as Mandal Commission which was appointed in the year 1978 to determine the criteria for defining socially and educationally backward class identified 128 communities as 'backward' and 94 of them classified as 'most backward' but the Marathas came to be identified as 'forward'. The Special request made for inclusion of Marathas as synonym of 'Kunbi' in the Central list of backward classes was taken up for consideration and on 22nd February 2000, the Commission rendered its advise through the Central Government under

Section 9(1) of the NCBC Act and rejected the request on the ground that Maratha is not a synonym of Kunbi and it do not deserve to be included in the Central list of backward classes as the community is not socially backward but on the contrary, it is socially advanced and a prestigious community. The Khatri Commission was constituted in 1995 by the State of Maharashtra which submitted its report in absence of the President Shri Khatri but the Commission by majority view held that Marathas may not be included as 'Kunbis' in the list of Other Backward Classes but it opined that people who have entered as 'Kunbi-Maratha' or Maratha-Kunbi should get benefit of Kunbi caste and accordingly, certificates in their names should be issued. The Government of Maharashtra accepted the recommendation of the Commission by issuing Government Resolution on 1st June 2004. Resultantly, Maratha-Kunbi and Kunbi-Maratha in addition to the earlier recognized caste Kunbi (Leva Kunbi, Leva Patil and Leva Patidar) came to be recognized as Other Backward Classes. On 23rd August 2004, Bapat Commission came to be appointed to include Maratha community in Other Backward Class. The majority view of the Commission by 4 – 2 resolved on 25th July 2008 that it would not be proper to include Maratha

community in Other Backward Classes from the view point of principles of social justice and a negative report was submitted. After receipt of this report, the Government of Maharashtra constituted a Committee under the Chairmanship of Shri Narayan Rane, the then Minister (Industries Ports and Employment and Self Employment) to consider the report of the Bapat Commission and to make recommendations. The Committee concluded that the findings recorded by Bapat Commission were not based on quantifiable data and decided not to accept the 22nd Report of the Bapat Commission. It independently collected contemporary quantifiable data relating to the community and concluded and Maratha community is socially, educationally and economically backward. It requested the State to include Maratha community in Other Backward Class and to give separate 16% reservation on the basis of the population of Maratha i.e. the quantifiable data.

It is also to be noted that when the State enacted the Maharashtra State Public Services Act of 2001 and also the Maharashtra Private Professional Educational Institutions Act of 2006, it did not provide any reservation either in services or in the educational field to the said community. The

demand of Maratha community to provide reservation in public employment and in the field of education was on the rise and in light of the Rane Committee Report, which contained positive recommendation, the State took a policy decision and translated it into a legislation to provide 16% reservation to Maratha community without disturbing the existing reservation and this was extended to the educational institutions and to the posts in public services under the State. The Governor of Maharashtra on 9th July 2014 promulgated the Maharashtra State Reservation (of seats for admissions in educational institutions in the State and for appointments or posts in the public services under the State) for Educationally and Socially Backward Category (ESBC) Ordinance, 2014. This was replaced by ESBC Act of 2014 (Maharashtra Act No. I of 2015). The constitutional validity of the said ordinance and the enactment was assailed before this Court and by an order dated 7th April 2015, this Court was pleased to stay the implementation of the said Act.

39 Thereafter, a reference was made to the Maharashtra Backward Class Commission under the Chairmanship of Late Justice S.B. Mhase (Retd) by the State

Government on 4th January 2017 with the following terms of reference:-

- (1) Determine the contemporary criteria and parameters to be adopted in ascertaining the social, educational and economic backwardness of Marathas for extending the benefit of reservation under the constitutional provision keeping in focus the various judgments of the Courts, reservation laws and constitutional mandate.
- (2) Define the exceptional circumstances and extraordinary situation applied for the benefits of reservation in the contemporary scenario.
- (3) Scrutinize and inspect the quantifiable data and other information which the State has submitted to the Court to investigate backwardness of Maratha community
- (4) Determine the representation of Marathas in State/ Employment and ;
- (5) Ascertain the proportion of the population of Maratha community in the State by collecting the information available under various sources.

However, as the Commission was in progress, Justice S.B. Mhase expired and therefore, by notification dated 2nd November 2017, Justice Gaikwad (Retd) took over the reins of the Commission. The Commission was constituted in terms

of Act 2005 and comprised of 11 Members and included a Member Secretary. It comprised of Social Scientists, statisticians socialists, analyst to interpret the sample survey data and information and collate the findings with other temporary surveys undertaken in the State by the said departments, Government agencies, previously constituted constituents of the Maharashtra State Backward Class Commission, so as to analyse that the historical data, case studies and submit its report in terms of the reference. Commission submitted the report to the State Government on 15th November 2018 and it, *inter alia*, came to the conclusion that Maratha class of citizens in the State are socially, educationally and economically backward and are eligible to be included in the backward class category on the basis of their backwardness. The Commission considered the backwardness of this community qua its representation in public employment, presence in higher and technical, academic institutions as teachers and students and assessed its social status as well as educational and economic status through sample survey and by allocation of a weightage of marks.

40 Relying on the report of the Commission, Bill No. LXXVIII of 2018 to provide for reservation of seats for admissions in educational institutions in the State and for reservation of posts for appointments in public services was introduced. The Bill incorporated the recommendation of the Commission and we reproduce the same as under :

(A) Backwardness -

(1) Maratha class of citizens in the State are socially, Educationally and Economically Backward as the community obtained weightage of 21.5 marks out of the maximum 25.

(2) Maratha class of citizens are eligible to be included in the backward class category on the basis of their backwardness.

(B) Representations in public employment -

Representation of Marathas in the State Public Employment in Higher Grade of A, B, C and D is found to be inadequate not only as a proportion of their State population share of around 30% but also because of inadequacy in the number of graduates which is the minimum educational qualification for these grade of public posts.

(C) Presence in Higher and technical, academic institutions as teachers and students :-

(1) Presence of Maratha community in pursuant of academic career as professors and such others positions of academic excellence is very marginal. On an average 4.30% academic and teaching posts are occupied by persons of Maratha community which is having 30% population across the State.

(2) Lack of conventional degree level education in landing them in lowly labour oriented employment such as mathadis, hamals, dabewalas, etc.

(3) Low earning and livelihood engagements of seasonal requiring temporary or permanent migration to urban ghettos which impacts the smooth schooling and school attendance by their children.

(D) Computation of Maratha population :-

The average Maratha population proportion taking the base of various population censuses, a special survey taken up by the Planning Department of the State (32.14%), the special survey taken up by the Rural Development Department of the State Government, Social, Economic and Castes survey information of the Rural Development Department of the Government of India (27%) and the findings of sample survey of the Maharashtra State Backward Class Commission confirmed the average of 30% Maratha population against the total State population.

(E) Social Status of Marathas :-

(1) Around 76.86% of Maratha families have been found to be engaged in agriculture and agricultural labour for their livelihood.

(2) Around 65% of Marathas are in Government or Semi Government Services. Most of these positions are occupied in the Group-D State Services.

(3) Around 70% of the Maratha families are found to be residing in kachcha dwellings.

(4) Only 35.39% of the Maratha families have personal tap water connections.

(5) Around 31.79% of Maratha families are found to be relying on traditional sources of firewood, cow dung and agricultural wastage as the fuel for the cooking in domestic use.

(6) During the period 2013-18, a total of 2152 (23.56%) Maratha farmers have committed suicides as against the total farmers suicides 13.368.

(7) The impact of archaic social traits, practices, customs and traditions are still found to be prevalent amongst Maratha community.

(8) As to the perception towards different kind of backwardness, 73% Marathas feel that they have been infected by all the 3 types of backwardness i.e. social, educational and economic.

(9) The rampant migration of Marathas from rural to urban areas has been found to be picked up in last ten years as revealed from the survey of the Maharashtra State Backward Class Commission. A member from around 21% Maratha families have migrated to urban areas in search of livelihood landing them in labour intensive lowly occupations like Mathadi, Hamal, Dabbewala, Maid servant, Port workers etc. This clearly indicated the depleting social status of Marathas in Contemporary context.

(10) Status of a women in any community is most significant parameter of the social backwardness or forwardness of the social class. In this regard, persuasion of physical labour led activities or occupation or employment for livelihood earnings has been found to be most dominant component to gauge the social backwardness of the community. It found in the survey that 88.81% of Maratha women are involved in physical labour for earning livelihood, of course not including the physical domestic work they perform for the family.

Looking to the significance of this important parameter as to the female in the community engaged in physical labour for livelihood or wages or occupation or employment in assessing the social backwardness of the community, the Maharashtra State Backward Class Commission has allocated weightage of three marks to this parameter which has been specified to be at least 5% more of the State Average Percentage of female engaged in the physical labour.

(F) Educational Status of Marathas :-

The Maharashtra State Backward Class Commission has assessed and evaluated the educational status of Marathas through the sample survey and has allocated a weightage of 8 marks out of total 25 marks for the educational backwardness of the community. There are 13.42% illiterates, 35.31% primary educated, 432.79% H.S.C and S.S.C. 6.71% under graduates and

post graduates and 0.77% technical and professional qualified amongst Maratha community.

(G) Economical Status of Maratha :-

(1) Around 93% of Maratha families have an annual income of 1,00,000 which is much below the average income of middle class families. It reflects the subdued economic status of Maratha community.

(2) The percentage of Below Poverty Line (B.P.L) families amongst the Marathas as per survey has been found to be 37.28% against the State average of 24.2%.

(3) The percentage of landless and marginal farmers (lands ownership less than 2.5 acres) is found to be around 71% amongst the Maratha families whereas the percentage of big farmers holding about 10 acres of land is only 2.7%.

(H) Extra-ordinary situations and circumstances for crossing of 50% limit of reservations

(1) The Maharashtra State Backward Commission has come to the conclusion that an extra-ordinary situation has developed in the State with regard to the reservation allocation and the emerging extra-ordinary circumstances, particularly after having declared Maratha community with 30% proportion of the State population as a socially and educationally backward on the basis of the quantifiable data and its consequential entitlement to the Constitutional reservation benefits. The existing limit of 50% reservation for State Public Employment and the admissions to the State educational institutions will have to be reconsidered on the background of the extra ordinary situation and exceptional circumstances.

(2) After declaring Marathas a socially, educationally and economically backward class of the citizens, the total percentage of the state population entitled to the constitutional benefits and advantages as listed under the article 15(4) and the article 16(4) will be around 85%. This is a compelling extra-ordinary situation demanding extra-ordinary solution within the constitutional frame work.

Added to that, the judicial verdicts have categorically pronounced that the reservation policy frame and constitutional mandate as regards SCs and STs is so sacrosanct that there is no need of quantifiable data or its verification whatsoever. It has also to be in proportion to their population needing no distinction to be made as regards adequate vis-a-vis proportionate as to be done in case of reservations to other backward class of citizens. Therefore, the scenario that emerges would be to accommodate remaining 63% (85% - 22%) backward class population in remaining 29% reservation allocation as condition by the ceiling of 50%. This is an extraordinary situation and exceptional circumstances emerging in the State.

(3) As per the total census figures 4.62% jobs are available per 100 youth in public services. As the average recruitment per year is not more than 5% of the total job in the State, the availability ratio goes down to 0.23% less than 1 job per 100 eligible youth. If this job scenario is restricted in a manner that only 5% of 0.23% i.e. 0.12 jobs per recruitment year will be available to 95% population and remaining 0.12 jobs to a population of 5% unreserved class of forward citizenry youth is a mockery of the reservation principle in state public employment, a constitutionally treachery with the backward class of youth aspiring for public employment. This extra-ordinary situation warrants the enhancement of the reservation percentage beyond 50%.

(4) Keeping 50% ceiling intact but allowing more and more class of citizenry to be accommodated in 50%, rather only in 27% reservation quota is in a way favouring the miniscule forward class of the society to enjoy their age old social and educational dominance in perpetuity again at the cost of majority class of population.

(5) The Marathas are the most sufferers of not allowing the breach of 50% reservation limit on one hand and tagging them with the Forward Class of Citizens to face the unequal competition with them on the other hand. They, in fact, had been included in backward category before independence and till the year 1952 even after independence being included in Intermediate Caste Category, an old version of the new incarnation of Socially and Educationally Backward Class of Citizen (SEBC).

(6) While most of the other Caste groups then included in the intermediate caste category along with the Marathas or even those not finding place in the intermediate caste category then have been now included in the existing list of backward classes, the Marathas had been excluded without any reasoning and tagged with Forward Class of Citizens to face a stiff unequal competition. The consequences are there to see as much as the Marathas are not able to obtain adequate proportion of either the State Public Employment posts or adequate number of admission to the higher and technical educational institutions, most of them being concerned by the Forward Classes and even by the reserved category candidates competition for merit quota. Now, after a long gap, the deprived Maratha community is on the verge of getting re-included in the backward class category. However, the backward class communities already included in the OBC list, if abruptly asked to share their well-established entitlement of reservations with a 30% Marathas Citizenry, it would certainly be a catastrophic scenario creating an extra ordinary situation and exceptional circumstances which if not swiftly and judiciously addressed, may lead to unwarranted repercussions in the well set harmonious co-existence culture of the State.

Thus, an urgent need to give due justice to a duly recognized new backward class of citizenry; Marathas who have already been suffering a double jeopardy for decades and now expecting a justice and ensuring already included backward communities that they will not be deprived of their reservation advantages and benefits, is certainly an extra ordinary situation and has created exceptional circumstances which cannot be harmoniously resolved unless the ceiling of 50% imposed on the reservation is reconsidered. This is the only way available in the contemporary situation to harmoniously resolve the exceptional circumstances being faced by the State.

Based on above findings as well as other conclusions drawn by the said Commission, the Commission has recommended as under :-

(1) The Maratha Class of Citizens is declared as Socially and Educationally Backward Class of Citizens

(SEBC) and has inadequate representation in the services under the State.

(2) Maratha Class of Citizens having been declared Socially and Educationally Backward Class of Citizens are entitled to reservation benefits and advantages enshrined in the Article 15(4) and 16(4) of the Constitution of India.

(3) Looking to the exceptional circumstances and extra ordinary situations generated on declaring Maratha Class of Citizens as Socially and Educationally Backward and their consequential entitlement to the reservation benefits, the Government may take an appropriate decision within the constitutional provisions to address the emerging scenario in the State.

41 Report of the Commission formed the basis for the Bill which was accompanied with the Statements of Objects and Reasons (SOR) and it made reference to the enabling power of the State under Clause (4) of Article 15 of the Constitution which enabled the State to make any special provision for advancement of socially and educationally backward class of citizens and it also made reference to clause (5) of Article 15 which enabled the State to make special provisions by law for advancement of SEBC, insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State. It also made reference to clause (4) of Article 16 of the Constitution which enabled the

State to make provision for reservation of appointments of 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. After reproducing the conclusions derived by the Commission and making a reference to its recommendations, the Statements of Objects and Reasons proceeds to state as follows :

9. The Government of Maharashtra has considered the report, conclusions, findings and recommendations of the said Commission. On the basis of the exhaustive study of the said Commission on various aspects regarding the Marathas, like public employment, education, social status, economical status, ratio of population, living conditions, small size of land holdings by families, percentage of suicide of farmers in the State, type of works done for living, migration of families, etc., analysed by data, the Government is of opinion that:-

(a) the Maratha Community is socially and educationally backward and a backward class for the purposes of Article 15(4) and (5) and article 16(4), on the basis of quantifiable data showing backwardness, inadequacy in representation by the said commission :

(b) having regard to the exceptional circumstances and extraordinary situation generated on declaring Maratha as socially and educationally backward and their consequential entitlement to the reservations benefits and also having regard to the backward class communities already included in the OBC list, if abruptly asked to share their well established entitlement of reservation with a 30% of Maratha citizenry, it would be a

catastrophic scenario creating an extraordinary situation and exceptional circumstances, which if not swiftly and judiciously addressed, may lead to unwarranted repercussions in the well harmonious co-existence in the State, it is expedient to relax for the percentage of reservation by exceeding the limit of 50%, for advancement of them, without disturbing the existing fifty-two percent reservation currently applicable in the State, only for those who are not in creamy layer;

(c) it is expedient to provide for 16 per cent. of reservation to such category :

(d) It is expedient to make special provision, by law, for the advancement of any Socially and Educationally Backward Classes of citizens, in so far as admission to educational institutions, other than the minority educational institutions, is concerned but such special provisions shall not include the reservation of seats for election to the Village Panchayats, Panchayat Samitis, Zilla Prishadas, Municipal Councils, Municipal Corporations, etc;

(e) It is expedient to provide for reservation to such category in admissions to educational institutions including private educational institutions whether aided or unaided by the State, other than minority educational institutions referred to in clause (1) of article 30 of the Constitution; and in appointments in public services and posts under the State, excluding reservations in favour of Scheduled Tribes candidates in the Scheduled Areas of the State under Fifth Schedule to the Constitution of India, as per the notification issued on the 09th June 2014 in this behalf;

(f) by providing reservation to the Maratha community, the efficiency in administration will not be affected, since the Government is not diluting the standard of educational qualification for direct recruitment for this category and there will definitely be competition amongst them for such recruitment; and

(g) to enact a suitable law for the above purposes.

In view of the above, the State Government is of the opinion that the persons belonging to such category below the Creamy Layer need special help to advance further, in the contemporary period, so that they can move to a stage of equality with the advanced sections of the society, wherefrom they can proceed on their own.

10. The Bill seeks to achieve the above objectives.

42 Considering the report, conclusions, findings and recommendations and on examining various aspects pertaining to the Maratha community, including their participation in public employment and education, their social and economic status, ratio of population, living conditions, small size of land holdings by families, percentage of suicide of farmers in the State, migration of families etc, the Government formed an opinion which is reflected in the Statement of Objects and Reasons of the SEBC 2018 Act. The Bill was introduced by the State Government on 29th

November 2018 and it was unanimously passed by both the houses of the State legislature on 29th November 2018. On 30th November 2018, the Hon'ble Governor of Maharashtra accorded his assent to the Bill granting 16% reservation to Maratha community.

The question which falls for our consideration in the group of petitions listed before us is the identification of Maratha community as a 'Backward Class' and providing reservation of seats to the said class for admission in educational institutions and to the posts for appointments in public services by categorizing the community as “Socially and Educationally Backward Classes of Citizens”.

SALIENT FEATURES OF THE SEBC ACT, 2018

43 The Maharashtra Act referred to as SEBC Act 2018 is an enactment to provide reservation of seats for admission in educational institutions in the State and for reservation of posts for appointment in public service and the posts in the State to the socially and educationally backward classes of citizens (SEBC) in the State of Maharashtra for their advancement and for matters connected therewith or incidental thereto. The enactment contains the following definition :-

Section 2(i) and 2(j) reads thus :

(i) “reservation” means the reservation of seats, for admission in educational institutions and of posts for appointments in the public services and posts to the members of Socially and Educationally Backward Classes of Citizens (SEBC) in the State ;

(j) “Socially and Educationally Backward Classes of Citizens (SEBC)” includes the Maratha Community declared to be Educationally and Socially Backward Category (ESBC) in pursuance of the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments or posts in the public services under the State) for Educationally and Socially Backward Category (ESBC) Act, 2014.

Section 3 reads thus:

3. (1) This Act shall apply to all the direct recruitments, appointments made in public services and posts in the State except,—

- (a) the super specialized posts in Medical, Technical and Educational field ;
- (b) the posts to be filled by transfer or deputation ;
- (c) the temporary appointments of less than forty-five days duration;
- and
- (d) the post which is single (isolated) in any cadre or grade.

(2) This Act shall also apply, for admission in educational institutions including private educational institutions, whether aided or un-aided by the State, other than the minority educational institutions referred to in clause (1) of article 30 of the Constitution of India.

(3) The State Government shall, while entering into or renewing an agreement with any educational institution or any establishment for the grant of any aid as provided in the explanation to clauses (d) and (e) of section 2, respectively, incorporate a condition for compliance with the provisions of this Act, by such educational institution or establishment.

(4) For the removal of doubts it is hereby declared that nothing in this Act shall affect the reservation provided to the Other Backward Classes under the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 and the Maharashtra Private Professional Educational Institutions (Reservation of seats for admission for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes and Other Backward Classes) Act, 2006.

Crucial section is section 4 which reads thus

4. (1) Notwithstanding anything contained in any judgment, decree or order of any Court or other authority, and subject to the other provisions of this Act,-

(a) sixteen per cent. of the total seats in educational institutions including private educational institutions, whether aided or un-aided by the State, other than minority educational institutions referred to in clause (1) of article 30 of the Constitution of India ; and

(b) sixteen per cent. of the total appointments in direct recruitment in public services and posts under the State, shall be separately reserved for the Socially and Educationally Backward Classes (SEBC) including the Maratha Community :

Provided that, the above reservation shall not be applicable to the posts reserved in favour of the Scheduled Tribes candidates in the Scheduled Areas of the State under the Fifth Schedule to the Constitution of India as per the notification issued on the 9th June 2014 in this behalf.

(2) The principle of Creamy Layer shall be applicable for the purposes of reservation to the Socially and Educationally Backward Classes (SEBC) under this Act and reservation under this Act shall be available only to those persons who are below Creamy Layer.

Explanation.—For the purposes of this sub-section, the expression “Creamy Layer” means the person falling in the category of Creamy Layer as declared by the Government in the Social Justice and Special Assistance Department, by general or special orders issued in this behalf, from time to time.

Section 5 further declare that notwithstanding anything contained in Section 4, the claims of students or members belonging to SEBC, shall also be considered for allotment on unreserved seats and appointments in public services and posts which are to be filled on the basis of merit and whether a student or member belonging to such classes is selected on the basis of merit, the number of seats and appointments reserved for SEBC shall not, in any way, be affected. Section 7 provides for carrying forward of the reserved vacancies upto five years of direct recruitment and sub-section n(2) classifies that where the vacancy is carried forward, it shall not be counted against the quota of the vacancies reserved for the concerned classes of persons for the recruitment year to which it is carried forward. Section 8 casts a responsibility on the authorities of ensuring the compliance of the provisions of the Act and Section 9 imposes a penalty for acting in contravention or in a manner which would defeat the purpose of the Act. Section 16 provides for a Savings clause and reads

thus :-

16. (1) The provisions of this Act shall not apply to the cases in which selection process has already been initiated before the commencement of this Act, and such cases shall be dealt with in accordance with the provisions of law and the Government orders as they stood before such commencement.

Explanation.—For the purposes of this section, the selection process shall be deemed to have been initiated where, under the relevant service rules,—

- (i) recruitment is to be made on the basis of written test or interview only, and such written test or the interview, as the case may be, has started ; or
- (ii) recruitment is to be made on the basis of both, written test and interview and such written test has started.

(2) The provisions of this Act shall not apply to admissions in educational institutions and the cases in which the admission process has already been initiated before the commencement of this Act and such cases shall be dealt with in accordance with the provisions of law and the Government orders, as they stood before such commencement.

Explanation.—For the purposes of this section, the admission process shall be deemed to have initiated where,—

- (i) admission is to be made on the basis of any entrance test, and procedure for such entrance test has started ; or
- (ii) in case of admission to be made other than on the basis of entrance test, the last date for filling up the application form is lapsed.

Section 18 set out the provision of repeal and saving and it is declared that on commencement of the Act, the SEBC Act of

2014 shall stand repealed. This is coupled with the saving clause in form of sub-section (2).

44 This impugned Enactment is assailed before us.

(III) Whether the impugned Act of 2018 is constitutionally invalid on account of legislative competence on the following sub-heads:-

- (a) Subsisting interim order passed by the Bombay High Court in the writ petition filed by Sanjeet Shukla (WP No.3151 of 2014)***
- (b) Whether the 102nd Constitution Amendment deprives the State legislature of its power to enact a legislation determining the SEBC and conferring the benefits on the said community under its enabling power ?***
- (c) The limit of 50% laid down in Indra Sawhney being an accepted constitutional principle, reservation in excess of 50% can be provided only in exercise of the constituent power of the Parliament.***

45 There is a presumption in favour of the constitutionality of the enactment and burden to prove an enactment to be constitutionally invalid is on the person who attacks its validity.

Learned counsel for the petitioners have bifurcated the argument of legislative competency on the State

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legislature into three issues. The first issue being raised by Mr. Datar is that in the wake of the interim order passed by the Bombay High Court in case of Sanjit Shukla dealing with the reservation of Marathas and Muslim community in the year 2014 is a binding precedent and since the substratum of the judgment is not removed, the present enactment is in the teeth of the interim order. Shri Datar has placed reliance on the judgment in case of **Cauvery Water Disputes Tribunal (supra)** in support of his submission that even an interim order is binding and since the State has not removed the base of the judgment, the power which the State legislature has arrogated to itself overrides the binding precedent of this Court. Per contra, learned counsel Shri Thorat has submitted that Sanjeet Shukla is a judgment rendered at an interim stage on the basis of pleadings so filed for interim relief and the observations made by the Court are *prima facie*. The said judgment, according to Shri Thorat, is based on a *prima facie* observation and according to him, the power to legislate is distinct and separate from being *ultra vires* of the Constitution or otherwise invalid. He would submit that it is settled position of law that it is always permissible to remove a defect in a judgment and if such defect is removed, the statute

cannot be said to nullify a judgment or over-rule the same. He would place reliance on a judgment of the Hon'ble Apex Court in case of **Medical Council of India Vs. State of Kerala**¹⁸, to the effect that it is permissible under the Constitution to remove a defect in the judgment and legislature has a power to retrospectively amend the laws and remove the causes of ineffectiveness or invalidity on which the judgment is based.

46 We have carefully considered the said submissions of the respective counsel. We have noted that the State has, on earlier occasion, enacted a similar legislation, classifying the Maratha as Educationally and Socially Backward classes (ESBC) and the said enactment came to be assailed. The finding of this Court by way of an interim order dated 14th November 2014 is carefully scrutinized by us. The Division Bench headed by Justice Mohit Shah, (Chief Justice, as he was then), dealt with the issue whether Marathas can be considered as 'Backward classes' framed the following issues :-

Whether Marathas can be considered as 'backward classes' eligible to the benefits of reservation under Article

18 2018 SCC Online SC 1867

15 and 16 of the Constitution of India ? If Yes, whether there exists any exceptional circumstances or extra-ordinary reasons to grant reservation to the extent of 16% to the Marathas, thereby increasing existing percentage of reservation from 52% to 68%. The Court then expressed that if the first question is answered in the affirmative, then only the second question would arise. Since the matter was at the stage of interim relief, it will have to express prima facie view on both the questions. On the first issue, the Division Bench made reference to the second report of the Backward Class Commission (Mandal Report) which categorizes Maratha as a Forward Hindu Caste. It also made reference to the report of the National Commission for Backward Class dated 25th February 2000 which had specifically rejected the request for inclusion of Maratha caste in the Central list of backward classes as Marathas is socially advanced and prestigious community. It also made a reference to the Bapat Commission report. After making a reference to the report of the Commissions and several gazetteers, the Court also made a reference to the report of Rane Committee constituted by the Government Resolution dated 21st March 2013. The Division Bench noted several glaring flaws in the said report

and at the very same outset, commented that the very composition of the Committee was not certainly of the type which the Supreme Court had in contemplation as expressed in Indra Sawhney when it recommended establishment of a National and a State Backward Class Commission and secondly, it noted that the Rane Committee hurriedly conducted survey in just about 11 days and it did not consider the legal position laid down by the majority in Indra Sawhney that 50% is a binding rule and not merely a rule of prudence. The report of Rane Committee was also further criticized on the ground that the State will have to see that the reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% and the Committee had fallen in error in concluding that Maratha community is educationally and socially backward. Then, the Division Bench proceeded to answer the second point and concluded that there are no extra-ordinary situations or circumstances which would justify providing reservation in excess of 50%. Reference is also made by the Division Bench to S.V. Joshi's case (supra) which referred to quantifiable data being one of the essential pre-requisites in order to justify the reservation in excess of 50%. However, it also made a reference to the observation of

the Supreme Court, which after noting a decision of State of Karnataka and State of Tamil Nadu which was not based on quantifiable data stayed the implementation of reservation in excess of 50% and directed the State Government to place the quantifiable data before the respective State Backward Classes Commission for fresh consideration. With the aforesaid findings, the Division Bench stayed the impugned ordinance thereby reserving 16% seats for Maratha community.

It is no doubt true that the *prima facie* opinion was expressed by the Division Bench while pronouncing its verdict on 14th November 2014. However, at present, we are dealing with the SEBC Act, 2018 and the statements of objects and reasons make a reference to the interim order and that the State has decided to constitute a State Backward Class Commission to determine the contemporary criteria and parameters to be adopted in ascertaining the social, educational and economic backwardness of Maratha community for extending benefit of reservation under the Constitutional provision keeping in focus the various judgments of the Court, reservation laws and the constitutional mandate and also to define the exceptional and

extra-ordinary situation applied for the benefits of reservation in the contemporary scenario. The Commission was also directed to scrutinize and accept a quantifiable data which the State has submitted to the Court to investigate the backwardness of the community. In this backdrop of the reference, the Commission appointed panel of experts, social scientists, statisticians and sociologists from the Government and various universities to analyze and interpret the sample survey data and information and collate the findings with the other contemporary surveys undertaken by the State Departments, Government agencies, previously constituted Commissions. The Commission submitted its report to the Government on 15th November 2018 and it clearly referred to the backwardness of the Maratha community by taking into consideration various aspects i.e. their representation in public employment, presence of Maratha community in higher and technical, academic institutions as teachers and students and by determining its social status by applying the necessary indicators. It also determined the educational status and economical status of the Marathas and not only this, the Commission highlighted the extra-ordinary situations and circumstances for crossing the 50% limit of reservation after

recording a finding that the total percentage of Marathas in the State population being 30%, the backward classes constitute 85% of the population and this entire class is entitled for the benefits under Article 15(4) and 16(4) and this according to the Commission, is the existing compelling extra-ordinary situations demanding extra-ordinary solution within the constitutional framework. The Commission also analyzed the extra-ordinary situation where keeping 50% ceiling intact but allowing more and more class of citizenry to be accommodated in 50%, miniscule forward class of society to enjoy their social and educational dominance in perpetuity at the cost of majority class of population. Since the Commission in its exhaustive report based on quantifiable data and on scientific analysis of the said data, arrived at a conclusion that Maratha class of citizens is socially and educationally backward class of citizens and has inadequate representation in the services under the State, it is entitled for reservation enshrined in Article 15(4) and 16(4) of the Constitution. The State Government had before it a report of the Gaikwad Commission and its recommendations whereunder a detail study of the said community in the backdrop of the public employment sector, education sector, social and economic

status of the community, ratio of the population of the Maratha community, living condition of the community and based on this quantifiable data, reflecting backwardness and inadequacy in representation, it deemed it expedient to provide 16% reservation to such category by making a special provision for their advancement, both in the matter of admission to educational institutions and also for appointment in public services and posts under the State. At the same time, the State had also taken into consideration the aspect of efficiency of the administration and that it will not be affected, since the Government is not diluting the standard of educational qualification for direct recruitment for this category and there will be definitely competition amongst themselves for such recruitment and it would enact a suitable law for the aforesaid purpose. The Government has, therefore, arrived at a conclusion that the persons belonging to Maratha community below creamy layer needs special help to advance further in the contemporary period so that they can move to a stage of equality with advance sections of the society, wherefrom they can progress and proceed. This exercise undertaken by the State, after the interim order passed in the case of Sanjit Shukla justifies the SEBC Act of

2018. The State Government has thus, attempted to remove the basis of the judgment which earlier held that there was no quantifiable data before the State before categorizing Maratha community as a backward category and in absence of this data, the increase in proportion of reservation from 52% to 68% was found to be not justiciable. However, the State Government appointed a Commission, collected a quantifiable data, analyzed it in a scientific manner and when the Commission made its recommendation to the State Government to declare the Maratha community as socially and educationally backward and in this manner, the substratum of foundation of a judgment came to be removed and the legislature then enacted the impugned enactment and therefore, it cannot be said that it would be an encroachment upon judicial power since the legislature has not directly overruled or reversed a judicial dictum. In case of **Goa Foundation Vs. State of Goa**¹⁹ the Apex Court observed to the following extent :

“The principles on which first question would require to be answered are not in doubt. The power to invalidate a legislative or executive act lies with the Court. A judicial pronouncement, either declaratory or conferring rights on the citizens cannot be set at naught by a subsequent legislative act for that would amount to an encroachment on the judicial powers. However, the legislature would be competent to pass

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an amending or a validating act, if deemed fit, with retrospective effect removing the basis of the decision of the Court. Even in such a situation the courts may not approve a retrospective deprivation of accrued rights arising from a judgment by means of a subsequent legislation [Madan Mohan Pathak and Another vs. Union of India and Others[3]]. However, where the Court's judgment is purely declaratory, the courts will lean in support of the legislative power to remove the basis of a Court judgment even retrospectively, paving the way for a restoration of the status quo ante. Though the consequence may appear to be an exercise to overcome the judicial pronouncement it is so only at first blush; a closer scrutiny would confer legitimacy on such an exercise as the same is a normal adjunct of the legislative power. The whole exercise is one of viewing the different spheres of jurisdiction exercised by the two bodies i.e. the judiciary and the legislature. The balancing act, delicate as it is, to the constitutional scheme is guided by well defined values which have found succinct manifestation in the views of this Court in Bhaktwar Trust & Ors.(supra).

47 Further, in the case of **Medical Council of India vs. State of Kerala** (supra) by relying on the earlier precedents, the Apex Court has held that the legislature has the power to retrospectively amend the laws and remove the causes of ineffectiveness or invalidity on which the judgment is based and that would not be an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum. Thus, when the cause of ineffectiveness or invalidity is removed, it cannot be considered as an encroachment upon judicial power. The legislature has not declared the decision of the Court as erroneous or a nullity but it has rectified a defect in the law

which was noticed in the earlier enactment and which was highlighted while passing the interim order by this Court. As has been held by their Lordships :-

This plenary power to bring the statute in conformity with the legislative intent and correct the flaw pointed out by the court can have a curative and neutralizing effect. When such a correction is made, the purpose behind the same is not to overrule the decision of the court or encroach upon the judicial turf, but simply enact a fresh law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded. This does not amount to statutory overruling by the legislature. In this manner, the earlier decision of the court becomes non-existent and unenforceable for interpretation of the new legislation. No doubt, the new legislation can be tested and challenged on its own merits and on the question whether the legislature possesses the competence to legislate on the subject matter in question, but not on the ground of over-reach or colourable legislation.”

48 The judgment in case of **Cauvery Water Disputes Tribunal** (supra) relied on by Shri Datar was based on a completely different situation and the issue was in regard to an order of the Tribunal constituted to decide the River Water Disputes between the State under Article 262 of the Constitution. The Parliament by legislation had created a Tribunal for adjudication and decision of disputes relating to river waters and the sanctity given to the decision by the

Tribunal was emphasized and spelt out in Article 262(2) which empowers the Central Government to pass a law to prohibit even the Supreme Court from exercising jurisdiction in respect of such disputes. The Apex Court in the case held that the operation of Ordinance passed by Karnataka had extra territorial impact which the State could not do under the Constitution and the State had taken out on itself to decide whether the Tribunal had jurisdiction to pass interim orders and thereafter proceed to pass ordinance nullifying the effect of interim orders. The Supreme Court considered all these aspects and held that the ordinance was beyond legislative competence. The said judgment is therefore, delivered in the peculiar facts of the case and the proposition with due respect to the learned Senior counsel cannot be applied in the present case where the law is more or less settled. In the circumstances, we do not feel that the State legislature lacked legislative competence on this count.

After we have closed the matter for hearing, the Hon'ble Supreme Court in Miscellaneous Application No.1151 of 2018 in Civil Appeal No.2368 of 2011 in ***B.K. Pavitra & Ors Vs. Union of India & Ors***, decided a constitutional challenge to the Karnataka Extension of Consequential

Seniority to Government Servants Promoted on the basis of Reservation (to the posts in the Civil Services of the State) Act 2018. The law intends to protect consequential seniority of persons belonging to Scheduled Caste and Scheduled Tribes promoted under the reservation policy of the State of Karnataka. The said enactment was preceded in time by the earlier Enactment of 2002 which was challenged in *B.K. Pavitra Vs. Union of India*, 2017 (4) SCC 620. A Two Judges Bench of the Apex Court held Sections 3 and 4 of the Reservation Act of 2002 as *ultra vires* Article 14 and 16 of the Constitution on the ground that the exercise for determining inadequacy of representation, backwardness and impact of overall efficiency had not preceded the enactment of the law and such an exercise was mandated by **M. Nagaraj** and in absence of the quantifiable data being collected on three parameters, the reservation Act of 2002 was held to be invalid.

One of the foremost ground of challenge to the enactment of 2018 after invalidation of the earlier enactment is that the State legislature has virtually re-enacted the earlier legislation without curing its defect and it was not open to the

legislature to override a judicial decision without taking away its basis. This is the exact and precise argument which is put forth before us as regards the impugned enactment and that the earlier ESBC Act of 2015 came to be stayed by an interim order passed by this Court in Sanjeet Shukla, and therefore, the interim order being in force, it is not open for the State to bring out the new enactment without removing the basis of the order/ judgment staying the earlier enactment. This submission was extensively dealt and the argument of legislative competence to render a judgment ineffective was ruled upon. In point no.(E), His Lordship Justice Chandrachud has answered the question as to whether the Reservation Act of 2018 overrule or nullify B.K. Pavitra (I). It was observed that judgment in B.K. Pavitra (I) held that no exercise as mandated by Nagaraj was undertaken by the State of Karnataka before providing reservation in promotion and providing consequential seniority and the State had not collected quantifiable data on the three parameters. However, this decision did not restrain the State from carrying out the exercise of collecting quantifiable data so as to fulfill the conditionalities for the exercise of enabling power under Article 16(4A) and the legislature has the plenary power to

enact a law. The following observations render an assistance to our observations made in a similar situation.

“The decision in B.K. Pavitra I did not restrain the state from carrying out the exercise of collecting quantifiable data so as to fulfill the conditionalities for the exercise of the enabling power under Article 16(4A). The legislature has the plenary power to enact a law. That power extends to enacting a legislation both with prospective and retrospective effect. Where a law has been invalidated by the decision of a Constitutional Court, the legislature can amend the law retrospectively or enact a law which removed the cause for invalidation. A legislature cannot overrule a decision of the Court on the ground that it is erroneous or is nullity. But, it is certainly open to the legislature either to amend an existing law or to enact a law which removes the basis on which a declaration of invalidity was issued in the exercise of judicial review. Curative legislation is Constitutionally permissible. It is not an encroachment on judicial power. In the present case, state legislature of Karnataka, by enacting the Reservation Act 2018, has not nullified the judicial decision in B.K. Pavitra I, but taken care to remedy the underlying cause which led to a declaration of invalidity in the first place. Such a law is valid because it removed the basis of the decision”.

49 The Apex Court has reiterated the line of precedents and referred to a decision in case of ***Utkal Contractors and Joinery (Pvt) Ltd.*** It was further observed that the legislature has a power to validate a law which is found to be invalid by curing an infirmity and as an incident of the exercise of this power, the legislature may enact a validating law to make the earlier law ineffective from the date on which it was enacted. Reliance was also placed on

Prithvi Cotton Mills Ltd Vs. Broach Borough Municipality²⁰ which had emphatically held that a Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not be given in the altered circumstances. After due deliberation of the law laid down by this Court, it is held that a declaration by the Court that a law is constitutionally invalid does not fetter the authority of the legislature to remedy the basis on which the declaration was issued by curing the grounds for invalidity. While curing the defect, it is essential to understand the reasons underlying the declaration of invalidity. The reasons constitute the basis of the declaration. The legislature cannot simply override the declaration of invalidity without remedying the basis on which the law was held to be *ultra vires*. The Apex Court also deliberated on the issue as to whether the basis of B.K. Pavitra (I) was cured while enacting the Reservation Act of 2018 and concluded that the Ratna Prabha Committee constituted by the State Government collected the quantifiable data in the backdrop of the three parameters laid down in ***M.Nagaraj*** and the State analyzed the data which was found to be both relevant and

20 (1969) 2 SCC 283

representative in character and since the opinion of the State was based on the report submitted by an expert committee which had collected, collated and analyzed the relevant data, the subsequent enactment of 2018 came to be upheld. We gainfully rely upon the observations of the Hon'ble Apex Court in answering the point that the impugned Act of 2018 which we are dealing with, do not suffer from any legislative incompetence on account of the earlier interim order and the subsequent collection of quantifiable data by the Maharashtra State Backward Class Commission (MSBCC) which classifies the community as 'backward' and set out the extra-ordinary situations/exceptional circumstances which we are required to independently examine.

(b) Whether the 102nd (Constitution) Amendment Act 2018 affects the competency of the State legislature to enact the impugned legislation.

50 The submission of the learned Senior counsel Shri Datar and Shri Aney is to the effect that after the Constitution 102nd Amendment Act which came into force with effect from 15th August 2018, the State legislature is denuded of its power to declare a particular class to be socially and educationally

backward and in light of the change brought in, to the effect that “socially and educationally backward classes” are those classes which are so declared under Article 342A of the Constitution. Further submission is that the newly inserted Article 342A confers the power on the President with respect to any State or Union territory and where it is the State, after consultation with the Governor thereof to specify the socially and educationally backward classes which shall be deemed to be SEBC in relation to that State or Union territory. Reliance is also place on clause (2) of Article 342A which confers the privilege only on the Parliament which may by law include or exclude any particular socially and educationally backward class. In light of the said amendment, it is the submission of the learned counsel for the petitioners that the impugned amendment is violative of Constitution (102nd Amendment) Act 2018. The said point has also been extensively and forcefully argued by the learned counsel Shri Talekar.

51 Per contra, it is submission of the State and effectively voiced through the learned senior counsel Shri Thorat that the 102nd Amendment which has inserted Article 342A do not affect the power of the State legislature to

recognize the socially and educationally backward classes within its jurisdiction and exercise of the power conferred on it by Articles 15(4) and 16(4) and to bring a legislation utilizing this enabling power conferred exclusively on the State. The precise submission is that the power to legislate is conferred on the State legislature by Articles 15, 16 and other provisions and perusal of Article 342A would make it amply clear that it do not take away the power of the State and unless and until a constitutional amendment is effected in Articles 15 and 16 so as to exclude the State Government from the ambit and scope from the word 'State', Article 342A cannot be read to control exercise of power under Articles 15(4) and 16(4). It is also the submission of the respondent State that the legislative competence can also be derived from other parts of the Constitution apart from Article 246 read with Seventh Schedule and the power to enact the impugned legislation flows from Article 15 and 16 and Part IV of the Constitution and therefore, there is no gain in saying that State lacks legislative competence.

In order to appreciate the rival contentions, we would make reference to the Constitution (102nd Amendment Act) 2018. The said Act of the Parliament received assent of the

President on 11th August 2018 and it came into effect from 15th August 2018. The said amendment inserts Article 338B into the Constitution which provides for Constitution of “National Commission for Backward Classes”. Article 338-B reads thus :

“338B. National Commission for Backward Classes (1) There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;

(c) to advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:

—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting socially and educationally backward classes.

52 By the same amending Act, Article 342A is also inserted in the Constitution which reads thus :

342A. Socially and Educationally backward classes-(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

53 Further, there is also an amendment in Article 366 of the Constitution and Clause (26C) is inserted to the following effect :

26C “socially and educationally backward classes” means the backward classes as are so deemed under article 342A for the purposes of this Constitution”

The import of the 102nd Constitution Amendment Act is conferment of constitutional status on the Commission for socially and educationally backward classes known as “National Commission for Backward classes”

54 Part XVI of the Constitution contain special provisions relating to certain classes. Article 330 contain a provision for reservation of seats for Scheduled Caste and Scheduled Tribes in the House of people whereas Article 332 embodies the provision for reservation of seats of the Scheduled Caste and Tribes in the Legislative Assemblies of the State. Article 338 prior to the 89th Amendment Act contained a provision for National Commission for Scheduled Tribe and Other Backward Classes under Article 338(10), while by 89th Amendment, a separate National Commission for Scheduled Tribes was formed by inserting Article 338A with

effect from 19th February 2004. The insertion of Article 338B is on similar lines and it constitutes a National Commission for backward classes known as “National Commission for Backward Classes”. The Commission is cast with a duty to investigate and monitor all matters relating to safeguards to be provided for the socially and educationally backward classes under the Constitution or under any other law for the time being in force or under any order of the Government. It is also entrusted with the task of evaluating the working of such safeguards. It is also empowered to inquire into specific complaints with respect of the deprivation of rights and safeguards of socially and educationally backward classes. It is also conferred with a power to present reports upon working of the safeguards to the President, annually and at such other times as the Commission may deem fit, in which it may recommend measures to be taken by the State or the Union for effective implementation of the safeguards and other measures for protection, welfare and socio economic development of the socially and educationally backward classes. The Statements of Objects and Reasons of the 123rd Amendment Bill 2017 would render an insight in the Amendment Act. The Statement of Object and Reasons (SOR)

reads thus :

“3. In the year 1992, the Supreme Court of India in the matter of Indra Sawhney and others Vs. Union of India and others (AIR 1993, SC 477) had directed the Government of India to constitute a permanent body for entertaining, examining and recommending requests for inclusion and complaints of over-inclusion and under-inclusion in the Central List of Other Backward Classes. Pursuant to the said Judgment, the National Commission for Backward Classes Act was enacted in April, 1993 and the National Commission for Backward Classes was constituted on 14th August, 1993 under the said Act. At present the functions of the National Commission for Backward Classes is limited to examining the requests for inclusion of any class of citizens as a backward class in the Lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. Now, in order to safeguard the interests of the socially and educationally backward classes more effectively, it is proposed to create a National Commission for Backward Classes with constitutional status at par with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

4. The National Commission for the Scheduled Castes has recommended in its Report for 2014-15 that the handling of the grievances of the socially and educationally backward classes under clause (10) of article 338 should be given to the National Commission for Backward Classes.

5. In view of the above, it is proposed to amend the Constitution of India, inter alia, to provide the following, namely:—

(a) to insert a new article 338 so as to constitute the National Commission for Backward Classes which shall consist of a Chairperson, Vice-Chairperson and three other Members. The said Commission will hear the grievances of socially and educationally backward classes, a function which has been discharged so far by the National Commission for Scheduled Castes under clause (10) of article 338; and

(b) to insert a new article 342A so as to provide that the President may, by public notification, specify the socially and educationally backward classes which shall for the purposes of the Constitution be deemed to be socially and educationally backward classes”.

55 Perusal of the statement would disclose that it was deemed appropriate to create a National Commission for backward classes with a constitutional status on par with the National Commission for Scheduled Castes and National Commission for Scheduled Tribes. The earlier existing National Commission for backward classes which came to be created in the backdrop of the statutory framework of National Commission for backward classes Act 1992 is repealed with coming into force of the 102nd (Constitution Amendment). The functions entrusted to the commission revolve around a broader framework and it is competent to investigate, monitor, evaluate, recommend, safeguards provided for the socially and educationally backward classes. It may also provide guidance in form of recommendations as to the measures to be taken by the Union or any State for effective implementation of the safeguards meant for the said classes. The Commission with the constitutional status thus aims to work towards advancement of the socially and educationally backward classes and assist the State in conferring benefits on the said classes. The question that arise for consideration after the Constitutional Amendment is whether the

constitution of the State Backward Classes Commission, in pursuance to the directions issued by the Hon'ble Apex Court in case of **Indra Sawhney & ors** to constitute a permanent body for entertaining, examining and recommending upon request for inclusion and complaints of over inclusion and under inclusion in the list of Other Backward Class of citizens would cease to function automatically. Shri Talekar had canvassed this extreme submission and has urged that the State Backward Class Commission would cease to function and he would go to the extent of submitting that by coming into effect of the said provision, the Maharashtra State Commission for Backward Classes Act, 2005 is impliedly repealed. It is to be noted that the OM providing 27% reservation of Other Backward Classes in Central Government posts, pursuant to the Mandal Commission's report which was challenged in **Indra Sawhney's** case, the Supreme Court made the following observations :

“The Government of India, each of the State Governments and the administration of Union territories shall, within four months from today constitute a permanent body for entertaining, examining and recommending upon request for inclusion and complaints of over inclusion and under inclusion in the list of Other Backward Classes of citizens. The advice tendered by such body shall, ordinarily be binding on the Government”.

Pursuant to the said judgment, the National Commission for Backward Classes Act was enacted in April 1993 and the National Commission for Backward classes was constituted on 14th August 1993, which is authorized to examine the request for inclusion of any class of citizens as backward classes in the Central list and it is also authorized to hear complaints of over-inclusion or under-inclusion of any backward classes in such list and tender such advice to the Central Government as it deemed to be appropriate. However, while this Commission was functioning, the Parliament constituted a Committee on welfare of Other Backward Classes under the Chairmanship of Shri B.K. Handique which presented its first report on 27th August 2012 and it recommended that the NCBC should be conferred with a constitutional status and this saw light of the day by introduction of 123rd Bill. The Committee, in its Second Report recommended deletion of clause 10 of Article 338 and instead recommended insertion of new Article 338B. The National Commission for Scheduled Castes also recommended in its report in the year 2014-15 that the hearing of grievances of socially and educationally backward classes under clause (10) of Article 338 should be left to the National Commission for

backward classes. It is also to be noted that in furtherance of the directions issued in case of Indra Sawhney, the State of Maharashtra also provided for constitution of a State level Commission for backward classes other than the Scheduled Caste and Scheduled Tribes by enacting the Maharashtra State Commission for Backward Classes Act, 2005. The said enactment provides for constitution of the State Commission for Backward Classes to entertain and examine the request for inclusion of any class or citizens as backward class in the lists. The Act defines the term “lists” in Section 2(e) in the following manner :

“Lists means the list prepared by the State Government, from time to time for the purposes of making provision for the reservation of appointments or posts, in favour of the backward classes of citizens who, in the opinion of the State Government, are not adequately represented in the services under the State Government and any local or other authority within the State or under the control of the State Government”

The State Backward Commission, therefore, is entitled to entertain, hear, enquire and into complaints of over-inclusion or under-inclusion of any backward classes in the list prepared by the State and tender advice to the State Government as it deemed fit. The advice tendered or recommendation made by the Commission shall ordinarily be

binding on the State Government and the State Government shall record reasons in writing if it totally or partially reject the recommendation or modifies it in terms of sub-section (2) of Section 9 of the enactment. Section 11 of the State Enactment of 2005 enables the State Government on expiration of 10 years from the appointed date and every succeeding period of 10 years thereafter to undertake revision of the lists with a view to exclude from such list those classes which have ceased to be backward or for including in such list new backward classes and while doing so, the State shall consult the Commission.

45 Subsequent to the judgment in Indra Sawhney, apart from the National Commission constituted under the Act of Parliament, the State Commission was also constituted under the State Enactment and continues to discharge the functions as on the date when the Constitution 102nd Amendment came to be introduced. The 123rd Bill came to be introduced and deliberated along with the National Commission for Backward Class (Repealed Bill 2017) and the said Bill came to be passed with the hope that the newly constituted National Commission for Socially and

Educationally backward classes will have a greater and larger role to play and it would not only focus on the issue of inclusion and reservation but on the holistic development and advancement of each community within the backward classes. The deliberations in the Rajya Sabha disclose that the members deliberating expect the newly constituted National Commission to ensure the social and economic development of the backward classes and bring them on par with the socially and economically advanced class and eradicate the malignancy of social inferiority and moving these classes from category of backwardness. However, we do not find any material in form of any discussion to accept the submission of Shri Talekar that this amendment has resulted into repeal of the Maharashtra State Backward Commission Act, 2005 also. Shri Talekar himself has placed before us the report of the Select Committee on the Constitution 123rd Amendment Bill 2013. The 123rd Amendment Bill 2017 was introduced in Lok Sabha on 5th April 2017 and passed by it on 10th April 2017. It was then referred to the Select Committee comprising 25 members of the Rajya Sabha on a motion adopted by the State on 11th April 2017 for examination of the Bill and report thereon to the Rajya Sabha. The Committee, after taking into

consideration, the information furnished by the Ministry of Law and Justice, Ministry of Finance, Ministry of Human Resources, Anthropological Survey of India and memorandum furnished by 23 State Governments and Union territories considered their views on the Bill. We have gone through the report of the Select Committee and have carefully perused the deliberations of the Select Committee. The questions with which we are confronted today strikingly appeared to the Committee also and taking into consideration the history of the reservation, the Committee sought clarifications on the following issues:

- (1) Whether there was an objective criteria laid down by the Supreme Court for deciding the basis of 'inclusions' and 'exclusions' of any notified classes?
- (2) What would be the status of existing list of Other Backward Classes after coming into effect of the Bill under consideration of the observations of the Select Committee are self-explanatory?
- (3) What would be the status of the State Backward Class Commission after coming into force of the Bill under consideration?

(4) What would be role of Governor in deciding about the inclusion or exclusion of classes in the OBC list?

The observations of the Committee are sufficiently eloquent and we would reproduce the same.

“11. The Committee was informed that the eleven indicators provided by the Mandal Commission would provide the broad framework for deciding the classes to be included in the Central list of socially and educationally backward classes (SEBCs) by the National Commission for Backward Classes. The Committee was informed that the proposed amendment was only to confer constitutional status to the National Commission for Backward Classes while the State Backward Classes Commissions would continue to function as earlier without any modifications. It was further informed that two Bills have been introduced in the Parliament, i.e. (i) the Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017 and (ii) the National Commission for Backward Classes (Repeal) Bill, 2017 which provides for saving of the actions taken under the said Act.

12 It was further clarified that in respect of the backward classes, there are two lists i.e. the Central List and the State List. The Central List provides for education and employment opportunities in Central Government Institutions as per laid down procedures. In the State List, the States are free to include or exclude in their backward classes list. This Constitutional amendment does not affect or alter in any way the present powers or functions of the State Backward Classes Commissions and their powers for exclusion or inclusion of backward

classes in the State Backward Classes list shall remain unchanged.

56 As regards point no.4, the Committee observed thus:-

“In its Fifth meeting representatives/members raised a concern about sub-clause (1) of Article 342-A, whether the list would be issued by the President, after consultation with the State Government or consultation with only Governor of the State”.

It was clarified by the Ministry that clause (1) of Article 154 and Article 163 of the Constitution clearly state that the Governor shall act on the advice of the Council of Ministers. It was also clarified that under the above Constitutional provisions, the Governor shall exercise his authority either directly or indirectly through officers of the respective State Government. Article 341 of the Constitution provides for consultation with the Governor of State with respect to Scheduled Castes and Article 342 provides consultation of President with Governor of State in respect of Scheduled Tribes. As is the practice, at no time has the State Government been excluded in consultation process. It is always invariably the State Government which recommends to the President the category of inclusion/exclusion in

Scheduled castes and Scheduled Tribes. Similar provision is provided for in the case of conferring of constitutional status for backward classes for inclusion in Central list of socially and educationally backward classes. Consultation with the Governor thereby implies consultation with the State Government.

57 The report of the Select Committee thus make it amply clear that the constitutional amendment in no way affects the State level commission for Backward Classes to entertain and examine the request for inclusion of any class of citizens as backward classes in the list. The constitutional amendment thus, in no way, nullifies the constitution of a backward class commission by the State Government under a statute whereby the State Government, in exercise of powers conferred under sub-section (1) and clauses (a), (b) and (c) of sub-section (2) of Section 3 of the Maharashtra State Commission for Backward Classes Act, 2005 constituted the Maharashtra State Commission for Backward Classes (MSBCC) under the Chairmanship of Retired Justice Sambhajirao Mhase and subsequently substituted by Justice Gaikwad by notification dated 4th January 2017. The report of the

Commission which formed the basis of the impugned enactment cannot therefore be said to be nullity by coming into force of the Constitution 102nd Amendment with effect from 15th August 2018. The Backward Class Commission constituted by the State is not denuded of its powers to entertain and examine the request for inclusion of any class of citizens as 'backward class' in the list and on such a claim being examined, if a recommendation is made by the Commission under the State enactment, it shall ordinarily bind the State Government in terms of Section 9. We, therefore, do not agree with the submission of the learned counsel for the petitioners that with the Constitution 102nd Amendment coming into force, the State Backward Class Commission would impliedly cease to exercise its jurisdiction and the State legislation itself stands impliedly overruled. The State Backward Class commission, on the contrary, in terms of the directives issued in Indra Sawhney would continue to assist the State in determining the backward classes within its territory and would continue to assist in discharge of its constitutional obligation to uplift the backward classes of citizens.

58 Another argument which need to be dealt with is the scope and width of Article 342A and whether by insertion of the said Article, the State Government is deprived of its power to specify the social and educational backward classes in relation to a particular State and here the State of Maharashtra. It is no doubt true that the terms “Scheduled Caste and Scheduled Tribe” found its place in the Constitution since inception and Article 341 and 342 of the Constitution specified who are Scheduled Caste and Scheduled Tribes. Article 366(24) defined Scheduled Caste “to mean such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution. Similarly, Article 366(25) defined Scheduled Tribes to mean such tribes or tribal communities or part or groups within such tribes or tribal communities as are deemed under Article 342 to the scheduled tribes for the purposes of this Constitution.

Article 341 of the Constitution read thus :

341 Scheduled Castes _ (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Similarly worded to Article 341 is Article 342 which reads thus :-

342 Scheduled Tribes - (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification

From the very inception of the Constitution, the power to specify the Scheduled Caste and Scheduled Tribes vests exclusively with the President who may, where it is a State, after consultation with the Governor, specify the caste, race or tribes or parts of all groups within the caste, races or tribes which shall be deemed to be Scheduled Caste or Scheduled Tribes in relation to that State or the Union Territory, as the case may be. The power to specify these two

classes is therefore, the exclusive prerogative of the President who may consult the Governor of a State if the caste or tribes are to be declared for that particular State. Once the Scheduled Caste or Scheduled Tribes are notified, then, it is only the Parliament which may by law, include in or exclude from the Scheduled Caste or Scheduled Tribe order and this power of inclusion or exclusion can be exercised only by the Parliament and by none else. It has been a consistent view taken by the rulings of the Apex Court as well as the High Court of this country that it is exclusive prerogative of the President to initially specify and notify the caste as Scheduled caste or tribes as Scheduled Tribes and once such list is prepared, it is only the Parliament who is empowered to add, delete or make any alteration in the said list. In exercise of the power conferred by clause (1) of Article 341 of the Constitution of India, the President after consultation with the Governors of the States, was pleased to make the Constitution (Scheduled Caste) Order 1950 and all the caste, races or tribes or parts of, or groups within the caste or tribes of the Schedule appended to the order in relation to the States to which those parts respectively relate were deemed to be Scheduled caste. Similarly, in exercise of power conferred by

clause (1) of Article 342, the President was pleased to declare the Constitution (Scheduled Tribes Order 1950). Every entry in the said order/list meant for a particular State by the President is in consultation with the Governor of the concerned State.

59 As we have mentioned above, on recommendation of the Mandal Commission, the Government of India issued an Office Memorandum providing for reservation of 27% vacancies in civil posts and services under the Government of India in favour of Other Backward Classes. As per the Office Memorandum issued by the Ministry of Personnel, Public grievances and Pensions (Department of Personnel and Training) the Other Backward classes for the purposes of 27% reservation comprised of the caste and communities which are common to both the list in the report of Mandal Commission and the State Government list. The expert committee on 'creamy layer' headed by Justice (Retired) R.M. Prasad, was commissioned to prepare the common list in respect of 14 States including the State of Maharashtra which had notified the list of Other Backward Classes for the purposes of reservation of State services on the date of the

judgment of the Supreme Court in case of **Indra Sawhney**. The common list prepared by the Committee came to be accepted by the Government and then the Government decided to notify the list of Other Backward Classes in context of implementation of the Office Memorandum issued and these lists were deemed to have been in effect from 8th September 1993. The National Commission for Backward Classes set out under the provisions of the National Commission for Backward classes Act, 1993 in pursuance of the directions of the Supreme Court was permitted to entertain, examine and recommend upon request for inclusion and complaints of over-inclusion and under-inclusion in the list of Other Backward Classes of citizens. By this mechanism, there came into existence two lists of Other Backward Classes for the State of Maharashtra. One is the Central list of OBCs for the State of Maharashtra which includes 261 castes, another list is the State list of OBCs in the State of Maharashtra, which as on date, contains 346 castes which are recognized as OBCs for the purposes of reservation of OBC in the State. It is to be noted that the entries in the said list are added/deleted by issuing Government Resolutions from time to time. Thus, the scenario that emerges is unlike the

Scheduled Caste and Scheduled Tribe order pertaining to State of Maharashtra, where there is one common list of Scheduled Castes and Schedule Tribe in form of the Schedule Tribe Order for State of Maharashtra, as far as the Other Backward Class is concerned, there are two lists in existence and the central list of OBCs for the State of Maharashtra is operated for providing 27% reservation in the Central Government services in the State of Maharashtra, whereas for providing 19% reservation for the Other Backward Class category, in terms of the Maharashtra State Public Services Reservation for Schedules Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes Act, 2001 and for providing reservation in the Professional Institutions under The Maharashtra Private Professional Educational Institutions (Reservation of seats for admission for Scheduled castes, Scheduled tribes, De-notified tribes (Vimukta Jatis), Nomadic tribes and Other Backward Classes) Act, 2006, the said list of OBCs in the State of Maharashtra is operated.

60 In light of this existing scenario, we would now examine the scope of Article 342A. As far as sub-clause (1) of

Article 342A is concerned, the same is identically worded as Article 342(1) and 342(2) and there is no distinction. However, sub-clause (2) of Article 342A contains one additional word which is conspicuously absent and the word is "Central". There is no quarrel about the proposition that when the Parliament has used the word 'Central', it is not in vacuum but it must take its due meaning in reference to the context. The Parliament being conscious of the fact that there are two lists operating in various states, listing the OBCs in the State for two distinct purposes, firstly, for providing reservation prescribed by the Central Government in Central Services by its OM i.e. 27% reservation for OBCs and the other list for providing reservation by the respective State Governments for public employment in that particular state and when this scenario in background is kept in mind, then, it becomes apparently clear that the Parliament intended that it would retain the power to include or exclude from the Central list" meaning thereby that the Parliament would exercise the power only for including or excluding from the central list of socially and backward classes which is specified by the President, with respect to any State, after consultation with its Governor. We are in agreement with the submission advanced

by the learned counsel Shri Thorat who had submitted that if the scope of Article 342A is read in the manner which is sought to be interpreted by the learned counsel for the petitioners, then, it would be interfering with the power of the State, and it cannot be the intention of the Parliament to denude the State of its power and confer the said power on the President exclusively, particularly in light of federal structure of our Constitution. On a plain reading of Article 342-A, the position that emerges by reading it without creating any ambiguity is that the Parliament intended to restrict the power of inclusion and exclusion of the Caste from the list of Other Backward Classes in respect of the Central list and therefore, the restriction imposed that it is only the Parliament which may include or exclude from the list restrict itself to the Central List only. Had the Parliament intended to deprive the State of its power, it would have specifically mentioned so. The plain reading of Article 342A thus leads to an irresistible interpretation that by virtue of the 102nd Constitutional Amendment, the socially and educationally backward classes is defined in the Constitution itself and it is that class which is deemed to be socially and educationally backward under Article 342-A. How such class will be created

is specified in Article 342-A. Once this class is specified as “socially and educationally backward class”, then, it is only the Parliament which is authorized by law to include or exclude from the Central list of socially and educationally backward classes as specified by the notification and it is not permissible to vary the first notification by a subsequent notification. The reservation of posts under the State or under any authority of the State or seats in educational institutions within the State is, therefore, beyond the purview of the 102nd Amendment. The operation of clause (2) of Article 342-A is limited to the inclusion or exclusion from the central list. The term 'list' is defined in Section 2(C) of the National Commission of Backward Classes to mean the list which relates to services under the Government of India or any other authority under the control by the Government of India. It, in any contingency, do not extend its sweep to the list of the State which is defined in Section 2(e) of the Maharashtra State Commission for Backward Classes Act, 2005. Howsoever, if the said interpretation as sought to be placed by the petitioners assailing the legislative competency of the State to enact the impugned legislation in the wake of 102nd Amendment to the Constitution is accepted, it would be in

breach of the principle of Federalism, which is a basic structure of the Constitution. The Federal structure of the Constitution is equally important feature of an Indian Constitution necessitated on account of the contemporaneous diversity and as expressed by the Hon'ble Apex Court in the latest judgment of ***State, NCT of Delhi Vs. Union of India***,²¹ in the following words :

“Our Constitution contemplates a meaningful orchestration of federalism and democracy to put in place an egalitarian social order, a classical unity in a contemporaneous diversity and a pluralistic milieu in eventual cohesiveness without losing identity. Sincere attempts should be made to give full-fledged effect to both these concepts”.

The Constitution has mandated a federal balance wherein independence of certain required degree is assured to the State Government. As opposed to centralism, a balance federal structure mandates that Union does not usurp all the powers and State enjoy freedom without any unsolicited interference from the Central Government with respect to matters which exclusively fall within their domain. The federal structure for governance which is a part of basic structure recognizes the importance of fulfilling regional aspirations as a means of strengthening unity.

21 2018 (8) SCC 501

70 The expressive use of the word 'State' in Article 14, 15 and 16 is to be understood in the context of Article 12 which would include the State legislature and all local and other authorities. It is by now settled that the enabling provisions under Article 15(4) and 16(4) can be invoked by the State and in *Indra Sawhney's* case, it has been held that the provision in Article 16(4) need not necessarily only be enforced by the Parliament/legislature but can be made and asserted by an executive fiat. The special power conferred on the State under Article 15(4) for making any special provision for advancement of any socially and educationally backward classes of citizens or the power conferred on the State under Article 16(4) for making any provision for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented is indicative of the fact that the State is in a better position to understand the State of affairs prevailing within its jurisdiction and the power is therefore, conferred on the State to recognize this “socially and educationally backward classes of citizens” or backward class of citizens. Depriving the State of this power and conferring the same on the Parliament would surely result in breach of the principle of

federalism and would destroy the basic structure of the Indian Constitution. In our considered opinion, the enabling provisions contained in form of Article 15(4) and 16(4) need to be construed liberally so as to give full effect to the intention of the Constitution makers in conferring such a power on the State which is a special provision enabling the State to advance the weaker sections. The existence of central list of backward classes is distinct from the list of the State which is prepared by the State for translating the enabling power conferred on it and in any contingency, Article 342-A cannot be read to control the enabling power conferred on the State under Article 15 and 16.

71 We have also carefully glanced over the report of the Standing Committee of Rajya Sabha and the debate in the Lok Sabha and Rajya Sabha while the 123rd Amendment Bill 2017 was tabled. The said material has been referred by us and relied upon to the limited extent of ascertaining the intention of the Parliament as we are conscious of the settled position of law that it can be only used as an external aid in interpretation. The Hon'ble Minister Shri Thavarchand Gehlot has clarified that the methodology which is followed as

regards the Scheduled Caste and Scheduled Tribe in the matter of inclusion or exclusion in the list with the consultation of the State Governments and the Registrar General of India would also be followed while preparing the list of SEBC under the new amendment. He also clarified that the castes which are presently included in OBC based on the report of Mandal Commission, the entries of those castes in the list would be acknowledged and in future, it would be given due weightage. As regards the power of the State Government to place castes in the OBC list, the Hon'ble Minister has clarified that it will be the prerogative of the State Backward Class Commission and of the State Government and there will be no interference by the Union Government but if any caste is to be included in the central list, and a State proposes to do so, then, the same mechanism which is followed in respect of inclusion of a caste in Scheduled Caste/Scheduled Tribe order would be complied with. The Ministry of Social Justice and Empowerment also clarified and it has been so reflected in the report of the standing committee that the proposed amendment does not interfere with the powers of the State Government to identify the socially and educationally backward classes and the existing powers of the State Backward Classes Commission

would continue to exist even after passage of the Constitution 123rd Bill 2017. The Ministry also clarified to the following effect :-

“55 The Ministry clarified that the aspect of reservation of posts under that State or under any other authority of the State or under the control of the State, or seats in the educational institutions within that State was beyond the purview of the instant Bill and hence the amendments proposed are not allowed”

56 It was clarified that Similar provision is provided for in the case of conferring of constitutional status for backward classes for inclusion in Central list of SEBC. Consultation with Governor thereby implies constitution with the State Government”

57 The Ministry also clarified The Article 342-A will provide for a comprehensive examination of each case of inclusion/exclusion from the Central list. The ultimate power for such inclusion/exclusion would stand vested with the Parliament.

67 The Committee observes that the amendments do not in any way affect the independence and functioning of State Backward Classes Commissions' and they will continue to exercise unhindered their powers of inclusion/exclusion of other backward classes with relation to State list”

Perusal of the report is indicative of the intention of the Government in introducing the 123rd Amendment bill 2017 and from the report and the debates, following Points emerge :

- (a) The Constitutional amendment does not affect that alter the powers or functions of the State backward Class Commissions.
- (b) The powers for exclusion or inclusion of backward classes in State Backward Class list shall remain unchanged.
- (c) As a result of the amendment these shall be two lists i.e. the Central and the State list.
- (d) Sub-Clause 9 of Article 338B does not in any way interfere with the powers of the State Government to prepare their own list. The classes included in State backward list do not automatically come into the Central list of OBC's.
- (e) The State Government is to recommend to the President the category of inclusion/exclusion in scheduled Castes and Scheduled Tribes. Similar provision is provided in Article 342A for conferring Constitutional status for backward classes for inclusion in the Central lists.
- (f) In paragraph 48 of the Report, is clearly stated that the amendment Bill neither interferes with the powers of the State Government, nor with State Backward Class Commission to identify SEBC classes even after the passage of the said Bill.
- (g) That the reservation of post under the State or under any authority of the State or seats in the educational institutions within the State was beyond the preview of the 123rd amendment.

(h) Para-67 of the report states that the backward class commission will continue to exercise its power of inclusion/exclusion of backward classes in relation to the State lists.

(i) The summary of the Report reproduced above resulted in several amendments being rejected since it was a view of the Government of India that the amendment does not seek any change in the powers or in the status of the State of Government or the State Backward Commission.

(j) The term “list” is defined under Section 2-C of the National Commission for backward classes Act, which clearly states that the list relates to services under the Government of India or any other authority under the control by the Government of India.

72 Mr.Talekar has vehemently submitted that identification of any class as socially and educationally backward, after the 102nd Constitution Amendment has to be necessarily preceded by the reference to the National Commission for SEBC constituted by the said amendment. He would submit that the State Backward Class Commission stands denuded of any power to identify SEBC and in turn, exercise of its enabling power by carving out a privilege in form of reservation for them. We are not ready to agree with

the said submission of Shri Talekar. With the 102nd Amendment, simultaneously, the National Commission for Backward Classes Act of 1993 stands repealed. However, in terms of the mandate laid down by the Nine Judges Bench in Indra Sawhney, it is left it to the discretion of the respective State to identify the backward classes and in order to have a quantifiable data before it, the States were directed to constitute the backward class commissions. The backwardness of a class/community can be better understood by taking into consideration the prevailing factors by the State itself and when it comes to exercise of the enabling power who can be better positioned than the State to ascertain as to what steps are necessary for advancement of this class or to be subjectively satisfied that this class is not adequately represented in its State. When this power has been construed as a discretion vested in the State, in that contingency, the identification of the beneficiaries of this class is better left to the State, and therefore, in our considered view, the amendment conferring a constitutional status on the National Backward Class Commission would not materially affect the power of the States to recognize such class and exercise its enabling power. Moreover, the Commission is not

yet constituted nor the exercise contemplated under Article 342A has been undertaken and in any contingency, it was not the intention of the Parliament to stall the entire process in the respective States till the exercise contemplated by the 102nd Amendment gets converted into a reality. Hence, in our view, the legislative competency of the State legislature, is not at all curtailed by the Constitution (102nd Amendment) Act of 2018.

(c) As regard the argument about the legislative incompetency on account of the ceiling limit laid down in the case of Indra Sawhney, we have exhaustively dealt with the said point under Head “VII”

(IV) Whether the State has been able to establish the social and educational backwardness and inadequacy of representation of the Maratha Community in public employment on the basis of the report of the MSBCC under the Chairmanship of Justice Gaikwad on the basis of quantifiable and contemporaneous data ?

73 Before proceeding to deal with the impugned enactment, we would deliberate on the report of the Maharashtra State Backward Classes Commission under the Chairmanship of Justice Gaikwad. The said report after

evolving and applying the parameters of the backwardness, has declared the Maratha community as backward and classified it as “*socially and educationally backward class*”. It is this SEBC class which has been provided with reservation under section 4 of the impugned Act and report of the commission in the form of quantifiable data forms the basis of the enactment. We, therefore, proceed to deal with the issue as to whether the commission has established the backwardness of the community so as to justify the exercise of enabling power by the State under Articles 15(4) and 15(5) of the Constitution of India.

74 The conferment of the benefit of reservation and concession by the State is dependent on the credibility of the material collected by the Commission and its analysis, leading to a conclusion of backwardness of Maratha community.

75 The identification of citizens has been left to the State by the majority view of Justice B. P. JeevanReddy in *Indra Sawhney’s case (supra)*. We would gainfully refer to the following observations of the judgment :

“780. Now, we may turn to the identification of “backward class of citizens”. How do you go about

it? Where do you begin? Is the method to vary from State to State, region to region and from rural to urban? What do you do in the case of religions where caste system is not prevailing? What about other classes, groups and communities which do not wear the label of caste? Are the people living adjacent to cease-fire line (in Jammu and Kashmir) or hilly or inaccessible regions to be surveyed and identified as backward classes for the purpose of Article 16(4)? And so on and so forth are the many questions asked of us. We shall answer them. But our answers will necessarily deal with generalities of the situation and not with problems or issues of a peripheral nature which are peculiar to a particular State, district or region. Each and every situation cannot be visualised and answered. That must be left to the appropriate authorities appointed to identify. We can lay down only general guidelines.

782. Coming back to the question of identification, the fact remains that one has to begin somewhere - with some group, class or section. There is no set or recognised method. There is no law or other statutory instrument prescribing the methodology. The ultimate idea is to survey the entire populace. If so, one can well begin with castes, which represent explicit identifiable social classes/groupings, more particularly when Article 16(4) seeks to ameliorate social backwardness. What is unconstitutional with it, more so when caste, occupation, poverty and social backwardness are so closely inter-twined in our society? [Individual survey is out of question, since Article 16(4) speaks of class protection and not individual protection]. This does not mean that one can wind up the process of identification with the castes. Besides castes (whether found among Hindus or others) there may be other communities, groups, classes and denominations which may qualify as backward class of citizens. For example, in a particular State, Muslim community as a whole may be found socially backward. (As a matter of fact, they are so treated in the State of Karnataka as well as in the State of Kerala by their respective State Governments). Similarly, certain sections and denominations among Christians in Kerala who were included among backward communities notified in the former princely State of Travancore as far back as in

1935 may also be surveyed and so on and so forth. Any authority entrusted with the task of identifying backward classes may well start with the castes. It can take caste 'A', apply the criteria of backwardness evolved by it to that caste and determine whether it qualifies as a backward class or not. If it does qualify, what emerges is a backward class, for the purposes of Clause (4) of Article 16. The concept of 'caste' in this behalf is not confined to castes among Hindus. It extends to castes, wherever they obtain as a fact, irrespective of religious sanction for such practice. Having exhausted the castes or simultaneously with it, the authority may take up for consideration other occupational groups, communities and classes. For example, it may take up the Muslim community (After excluding those sections, castes and groups, if any, who have already been considered) and find out whether it can be characterised as a backward class in that State or region, as the case may be. The approach may differ from State to State since the conditions in each State may differ. Nay, even within a State, conditions may differ from region to region. Similarly, Christians may also be considered. If in a given place, like Kerala, there are several denominations, sections or divisions, each of these groups may separately be considered. In this manner, all the classes among the populace will be covered and that is the central idea. The effort should be to consider all the available groups, sections and classes of society in whichever order one proceeds. Since caste represents an existing, identifiable, social group spread over an overwhelming majority of the country's population, we say one may well begin with castes, if one so chooses, and then go to other groups, sections and classes. We may say, at this stage, that we broadly commend the approach and methodology adopted by Justice O.Chinnappa Reddy Commission in this respect.

783. We do not mean to suggest - we may reiterate - that the procedure indicated hereinabove is the only procedure or method/approach to be adopted. Indeed, there is no such thing as a standard or model procedure/approach. It is for the authority (appointed to identify) to adopt such approach and procedure as it thinks appropriate, and so long as the approach adopted by it is fair and adequate, the court has no

say in the matter. The only object of the discussion in the preceding para is to emphasise that if a Commission/Authority begins its process of identification with castes (among Hindus) and occupational groupings among others, it cannot by that reason alone be said to be constitutionally or legally bad. We must also say that there is no rule of law that a test to be applied for identifying backward classes should be only one and/or uniform. In a vast country like India, it is simply not practicable. If the real object is to discover and locate backwardness, and if such backwardness is found in a caste, it can be treated as backward; if it is found in any other group, section or class, they too can be treated as backward.

76 A perusal of above observations makes it clear that identification of backward class of citizens is left to the appropriate authority appointed by the State. The Apex Court also held that there is no set or recognized method in identification of the backward class of citizens and there is no law or other statutory instrument prescribing the methodology. The Apex Court further held that it is for the authority appointed by the State to identify the backward class of citizens to adopt such approach and procedure as it thinks appropriate. It was also held that so long as the approach adopted by the authority is fair and adequate, the Court has no say in the matter.

77 In view of the directions issued by the Apex Court, the State of Maharashtra enacted the Maharashtra State Backward Classes Commission Act in the year 2005. Prior to the said enactment, the State Commissions in the form of Bapat Commission and Khatri Commission, delved into the issue of backwardness of this community. Apart from this, two national commissions also deliberated on the said issue and it has been strenuously argued by the learned counsel for the Petitioners that none of the commissions finds favour with the backwardness of Maratha community and their demand of being included in the list of other backward class came to be rejected. Rane Committee appointed by the State Government in the year 2013 was the only committee who gave a positive recommendation, which resulted into the State introducing an ordinance in the year 2015 and the similar enactment in the year 2015.

78 The said ordinance and the enactment were assailed in a writ petition and this Court has stayed its effect and operation. Resultantly, the Maratha community was not conferred with any benefits stipulated under the said enactment. During the pendency of petition before this Court,

the State constituted the Maharashtra State Backward Classes Commission by issuing notification dated 4th January 2017 in exercise of power conferred under sub-section (1) and clauses (a), (b) and (c) of sub-section (2) of section 3 of the Maharashtra State Backward Classes Commission Act, 2005. The government referred the following terms of reference to the commission.

1. To determine the contemporary criteria and parameters to be adopted in ascertaining the social, educational and economic backwardness for the benefits of reservation in present context and in conformity with the Constitutional mandate, reservation laws and various judgments of the courts.
2. To define exceptional circumstances and or extraordinary situations to be applied for the benefits of reservation in the present context.
3. To scrutinize and inspect the quantifiable and other data collected by State Govt., State and National Commissions for Backward Classes and Rane Committee along with data placed before the Hon'ble High Court of Judicature at Bombay in WP no. 3151/2014 and other connected matters for investigating the social, educational and economical backwardness of Maratha Community by applying the criteria and parameters determined as above.
4. To determine the representation of Maratha Community in the public employment under Central and State Government establishments, Public Sector Undertaking, Universities and other Institutions aided and funded by Government.
5. To ascertain proportion of population of Maratha Community in the State of Maharashtra on the basis of records, reports, census and other

available data.

6. To investigate such other matters as the State Government may hereafter refer to the commission in this context.

7. To submit a report to the State Government by recording the facts and observations and thereby make suitable recommendations.

Further the commission may -

a) Obtain such information or statistics as they may consider necessary or relevant for their purpose in such form and manner as they may think appropriate from the Central and State Government Offices, public sector undertaking, establishments, universities and other institutions and such other authorities, organizations or individuals as may in the opinion of the Commission be of assistance to them.

b) Avail advice of experts and researchers by holding meetings with them and also get assistance of recognized research institutions as and when felt essential for analysis of the quantifiable data and also for the efficient and qualitative functioning of the Commission.

c) Visit or depute sub-committee/s or representative/s to visit such part/ s of the State of Maharashtra and/or places in the country as they may be considered necessary or convenient for obtaining any information or data or documents or otherwise.

d) Record the evidences and contentions lead by the individuals as and when found necessary during the course of investigation.

79 The Commission has representative members from all the regions of the State. The Commission requested its members to suggest names of the institutions from their division for the purpose of carrying out survey. The details of

the Region-wise institutions recommended by the members of the Commission are as under :

1. Guru Kripa Vikas Sansthan – Nashik Region
2. Gokhale Institute of Politics and Economics – Pune Region-wise
3. Rambhau Mhalgi Prabodhini Sanstha, Konkan Region
4. Sharda Consultancy Services – Vidarbha Region (Nagpur, Amravati)
5. Chhatrapati Shivaji Prabodhini Sanshta – Marathwada Region.

80 In addition to the above institutions, the following experts were appointed for analysis of the data :

1. Professor Sudhir Gavhane
2. Dr. Omprakash Shivajirao Jadhav
3. Prof. Ambadas Y. Mohite

It is worth to mention that the experts appointed for analysis of the data are persons having rich experience and expertise in their field.

METHODOLOGY AND PROCEDURE ADOPTED BY THE COMMISSION :

81 Having regard to the constitutional provisions and the decisions of the Constitution Courts , the Commission

devised scientific method for collecting quantifiable data to answer the terms of reference. The Commission adopted procedure in the following manner :-

- a) The Commission decided to conduct sample surveys so as to collect information in respect of social, educational and economic backwardness.
- b) In consultation with a group of Social Scientists, the Commission framed questionnaire for the purpose of sample surveys.
- c) The Commission decided to select five Talukas from each District and two villages from each Taluka so selected and collect information of all families from such selected villages excluding tribal districts.
- d) In addition, the Commission decided to collect information by selecting one Municipal Corporation and one Municipal Council from each of six regions of the State of Maharashtra , so as to cover the information in respect of the Maratha community from the urban areas.
- e) To maintain uniformity in the surveys to be carried out by all the agencies, the agencies were provided with common questionnaire containing 40 questions for collecting required information.

- f) In addition to the information to be collected by way of sample surveys, the Commission also decided to give opportunity of being heard to the public in the State of Maharashtra excluding the tribal districts on the subject of reservation to the Maratha community with reference to its social backwardness, educational backwardness and economical backwardness. For the said purpose, the Commission decided to hold public hearings at the places so selected from all the regions of the State of Maharashtra.
- g) The Commission also decided to call for opinions of experts in the fields of history, sociology and agriculture so as to find out social backwardness, educational backwardness and economical backwardness of the Maratha Community.
- h) The Commission also decided to collect information from the Directorate of Higher and Technical Education, Director of Medical Education and all the Universities in the State of Maharashtra including Agriculture Universities to find out the percentage of students studying for different subjects, so as to decide the educational backwardness or otherwise of the Maratha community.
- i) The Commission also decided to collect information or data from the State Government, Semi-Governmental and

autonomous organizations about the representation of the Maratha community in the employment to find out whether it is adequate or inadequate.

j) The Commission also decided to examine and verify the quantifiable data collected by the Rane Committee supported by other materials accompanying additional affidavits filed in the Court in writ petition (lodging) No.4100 of 2018.

82 The Commission undertook the sociological study of the caste/community system and for that purpose took into consideration the historical accounts. The commission also considered the historical documents so as to make an assertive statement about the exact status of the Maratha community. The commission noted *Varna* system / caste system prevalent in the Indian society, which was divided mainly in two categories, namely, Bhrahmins- higher castes and *Shudras* - lower castes. The commission also referred to quotations from Shastras (Kandpurana) and Manusmruti and found that Upanayana Sanskar is the *sine qua non* for elevation to the higher caste / class. The commission concluded that Upnayan sanskar is not observed / performed in the Maratha community and therefore the same is

considered to be *Shudras*.

83 The Commission found that Maratha community is engaged in agriculture, which is their traditional occupation. The Commission examined the agricultural census of 2010-11 and found that the holding of the agriculturists have decreased in the course of time because of ceiling laws as well as family partitions. The commission noted that agriculturist depends on rain to water crops which he grows. The judicial note of the fact is taken by the commission that over the years or alternate years, there is a short rainfall and there is scarcity like situation in either one or other regions of Maharashtra State. The commission on the basis of agricultural census also found that agricultural holdings of agriculturists in the State of Maharashtra is 1.44 hectares, whereas the holding of individuals in the State of Rajasthan is 3.07 hectares and in Madhya Pradesh it is 1.78 hectares, in Punjab it is 3.77 hectares and in Gujarat it is 3.03 hectares. The commission found that the holding of the agriculturists in the Maharashtra mainly of the Maratha community is uneconomical holding mainly because it depends on rain harvesting. The commission also found that income from the

agriculture is not even sufficient for the livelihood of Maratha community. The commission concluded that considering the holdings held by each family which are unirrigated and rain-fed, the economic conditions of agriculturist class become worst and deteriorated day by day.

84 Out of 43629 families surveyed, the commission found that 345 persons from equal number of families have committed suicide from all the caste groups during last 10 years. Out of these 345 persons, 277(80.28%) were from Maratha families, which is exorbitantly high proportion as compared to other castes indicating the grave state of socio-economic plight of Maratha community warranting urgent attention of the State to address this issue. The Commission found that the suicides in Maratha community are directly related to degrading social status, depleting educational opportunities in the reservation regimen of which they are not the beneficiaries and deteriorating economic condition.

85 The Commission also called for the information from the Labour Commissioner, Mumbai asking for the details of menial workers known as Mathadi kamgar / hamals and

found that as many as 1,25,669 families were reported to be of mathadi workers, out of it 50,483 families, ie., more than 40% are Maratha families. They are residing in slums, having no permanent houses, no facilities of batherooms or toilets. The commission also referred to the survey conducted by Gokhale Institute of Politics and Economics in the year 2016 at the instance of Commissioner of Labour, Mumbai and concluded that in the year 2016, total 2,12,519 mathadis / hamals were found to be registered with 36 different mathadi boards established under the Maharashtra Act No. XXX of 2016. The Gokhale Institute concluded that out of total registered mathadi hamals, 43% were from Maratha community.

86 The commission noted that a large class of Maratha community in Mumbai city is leading a life of dabbewalas. The commission obtained their details from their associations. The commission found that about 4800 families are found engaged in the said occupation. Out of this 4800 families, 4,600 families i.e., 95.8% are of Marathas. The commission found that families of dabbewalas are leading life without any social status. The commission noted that organisation of

dabbewalas has informed it that number of customers of dabbewalas are decreased and consequently dabawalas were required to search for alternative job where they do menial work to learn livelihood for their families. Besides, the wives of dabewalas work as maid-servants in the houses of others where they wash clothes, clean utensils, etc. Moreover, the children of dabbewalas work in morning to distribute daily newspapers and to supply milk to various houses. The commission was informed by the Association that because of the financial condition of dabbewalas, they are unable to afford to pay education fees of their children and as a result of the above aspects dabbewalas are socially backward, educationally backward and also economically backward and by the days passed, their backwardness continues unabated with rise therein.

87 The sample survey was carried out by the institutions named above extensively and the data was collected and submitted to the Commission. The Commission, in addition to this survey, also held public hearing in all parts of the State excluding tribal district on reservation to Maratha community and on its social, educational and economic

backwardness. The total persons heard by the Commission were 1,97,522, out of which, 1,95,174 persons were in favour of Maratha reservation. The Commission also considered representations from experts, public at large and other entities. The Commission called for opinion of the experts. The Commission also called for information from Educational Heads and Universities in the State and collected information from the State Government, Semi Governmental and autonomous organisations about the representation of Maratha community in public employment.

88 The Commission having regard to the principles set out by the Hon'ble Apex Court while interpreting Articles 15 and 16 of the Constitution of India, in order to determine the social, educational and economic backwardness of the Maratha community, considered 26 contemporary parameters to ascertain social backwardness and incorporated them in the questionnaire. So far as the economical backwardness in concerned, the commission considered the following parameters viz. ration card entitlement, below poverty line status, income level of family, borrowing status of family during last 5 years, reasons for borrowing, source of borrowing

and loan repayment, vehicle ownership for personal use, vehicle owned for occupational/agricultural use, agricultural land owned in rural area and non-agricultural land owned.

89 As far as economical backwardness is concerned, the Commission considered following parameters :

“Students undergoing primary education, proportion of drop-outs, proportion of students pass out in higher secondary examination and proportion of conventional graduates and professional graduates”.

90 The data collected from the surveys has been compiled and tabulated by the experts referred to hereinabove. The experts analyzed the data, recorded their observations and thereafter have given their conclusions. The analysis and observations of the data with respect to each of the parameters given by the experts are as under :

[A] Social backwardness :

(1) With regard to occupation of head of family :

76.86% families of Maratha Class are found to be engaged in the occupation of agriculture and agriculture labour (combined), 6% are in government and semi-government services, 3% in private services, 4% in trade and industry and

9% are involved in non-agricultural physical labour for their livelihood.

76.86% of the Maratha families are involved in own agriculture and 26.46% out of that, are also undertaking farming labour in the agricultural farms of others which is the highest of all other Castes and Classes. 26.48% of Marathas are earning livelihood by way of physical labour in agriculture farms as against 2.22% Kunbis, 22.24% OBCs, and 1.34% OOCs. This state of affairs gets confirmed from the figures of the national survey of Rural Livelihood done by NABARD which reveals that the farmers in Maharashtra are earning only 35% of their income from the farming whereas 43% income is generated from labour. Looking to the largest percentage of Marathas involved in agricultural labour compared to other classes confirms the heavy dependence of Maratha cultivators on agriculture labour for subsistence. The figures of Kunbis involved in agriculture labour are insignificant. It reveals a factual position as to agriculture holdings. It is also confirmed under Surveys of sugarcane labour where it is found that most of Maratha labours are marginal farmers also but they have to take up labour work of sugarcane cutting for which they migrate to distant places as income from agriculture is not adequate to make both ends meet leaving farms at the mercy of their extended family members .

Marathas are involved mostly in agriculture and related agriculture labour in rural areas. Their involvement in non agriculture related labour is less compared to other OBCs who have to work in such activities as there is no other source for livelihood. When Marathas migrate to urban area their involvement in physical oriented non agriculture labour-wage, self-employment is significant compared to others as seen from their rampant percentage in works as Mathadis, Dabbewalas, Maid Servants, Port labour, Mill labour, Market Committee kamgars etc. in urban areas.

The major involvement in non-agricultural physical labour in rural areas is also by way of earning additional income from works under Mahatma Gandhi National Rural Employment Guarantee Program (MGNREGP). Marathas cultivators do not have much spare time to earn such extra income whereas villagers belonging to other Caste/Class do obtain extra income. However plight of Marathas if collated with their major dependence on agriculture for livelihood and day-to-day survival, which is not generating adequate income (only 35%) and no spare time to earn extra income from non-farm activities, they had to withdraw some of their family members from agriculture to be migrated to urban areas for meeting the gap in the livelihood income where they have to perform work in lowly labour oriented activities as revealed from the highest percentage of migration to urban centers and involvement in substandard wage earning activities in private sector as compared to Kunbis or OBCs. This is a clear indication of the social degradation and deteriorating economic condition/status of Maratha class of citizenry.

(2) With regard to Nature of Houses of the Families :

More than 42% families of Marathas live in Kuccha houses, 2% live in shelters made from grass and wastes, 26% live in semi-Pucca houses with no amenities and only 29 % live in Pucca-houses

In all 71% families of Maratha caste live in shelters made from grass and wastes, Kuccha houses and semi-Pucca houses with no amenities which show their miserable conditions and low standard of living. Even the Pucca houses in rural areas are not of that type which is built in urban areas. The so-called Pucca houses in rural area are not as pucca and furnished as like urban areas.

(3) With regard to Type of locality of Family :

More than 61% families of Marathas live in village-locality while 29% live in temporary habitats, 8% live in agricultural land habitats and 2% live in slum and like-wise areas. The data reveal that in all 39% families of Marathas live in temporary habitats, agriculture-land habitats and slum and like-wise areas. This proportion is quite higher than other caste-groups. It should be considered that the Maratha families living in village localities are also placed in the same situation of those families who live in temporary and agricultural -habitats.

(4) With regard to Type of Ownership of House :

More than 94% families of Maratha live in owned houses, 6% live in rented houses or are sharing dwellings with others they being homeless. The ownership proportion of the houses in rural areas in all groups is by and large in the same range.

(5) With regard to Number of Rooms for the use of family :

More than 21% families of Maratha caste live in one room houses, 48% live in two rooms, 20% live in three rooms, 8% live in four room and less than 3% live in five and more rooms. The standard of living is lower in Marathas. The percentage of families living in four rooms is the least in Maratha community (only 8%) as compared to other castes.

(6) With regard to Availability of separate kitchen :

58% families of Maratha community are having a separate kitchen while 42% of families are having no separate Kitchen.

(7) With regard to type of bathroom for family use :

More than 14% of Maratha families are not having bathroom facility, 48% families have

Kuccha bathroom and only 37% families have Pucca / Closed Bathroom. The percentage of families having no separate bath room is highest in Maratha Community which is 14% followed by OBC (12%) as compared to other castes.

- (8) With regard to availability and use of toilet :
More than 18% of Maratha families are not having separate toilet facility, 76% families have toilet and 5% families go to the public toilets. The percentage of families having no toilet is 19% in the Maratha community and it is the highest as compared to other castes.
- (9) With regard to sources of water for drinking :
35% of Maratha families have personal drinking water tab connection at homes, 46% families go to public water tabs, 16% families go to public well/bore and 2% go to river and other water sources for their domestic water uses. The percentage of Maratha population having personal tab connection as a source of drinking water is least as compared to other caste groups. The percentage of Maratha population using public water sources and public well and bore well is highest as compared to other castes.
- (10) With regard to fuel for cooking and domestic uses of family :
4% of Maratha families use kerosene for cooking, 60% families have LP gas connections, 2% families are using electricity, bio-gas, solar energy for cooking and 32% families are using fire wood, cow dung, wastage for cooking. The percentage of families using LP gas is least in the Marathas (59%) as compared to other caste / class groups.
- (11) With regard to family member committing suicide during last 10 years. :
In a survey of 43629, 345 persons from equal number of families have committed suicides from

all the caste groups during last 10 years. Out of these 345 persons, 277(80%) were from Maratha families which is exorbitantly high proportion as compared to other castes.

(12) With regard to migration during last 10 years :
21% of Maratha families have migrated during last 10 years, which is very high as compared to migration of family members of other castes.

(13) With regard to occupation of migrants :
17% migrant families of Maratha caste are engaged in private service, most of which are lowly jobs or daily wage earnings. 11% are small self-employment activities or petty business. 52% families engaged in physical labour. 9% are other / contractual work of lower categories.

(14) With regard to inter-caste / inter-religious marriage in family :
98.53% of the Maratha families do not enter into inter-caste / inter-religious marriages.

(16) With regard to widow / widower remarriage in family :
94% of the Maratha families do not enter into widow / widower remarriage in family which is the highest as compared to other castes.

(17) With regard to girls' age of marriage in family :
18% Maratha families marry their daughters at the age of 16 to 18 years and those families marrying them between 18 to 21 is 54.50% and more than 21 years is 27%. 18% of the Maratha families marry their daughters before they attend the legal age of girl's marriage of 16 to 18 years, which is highest as compared to other castes.

(18) With regard to nature of treatment in families (Health) :
9% of Marathas take treatment exclusively from Mantrik / tantrik, not believing in any modern or traditionally recognised scientific treatment. While

71% take treatment from doctors. 6% resort to treatment from house made sources, while 2% have not taken any treatment at all leaving it to fate to get cured.

(19) With regard to nature of treatment for jaundice in families :

9.65% Marathas take treatment from mantrik / tantrik. 69% take treatment from doctors. 5.16% usually resort to house made remedies and 0.54% have not taken any medicine or treatment leaving it to the mercy of God. The proportion of treatment from doctor is lower in the Marathas than all other castes.

(20) With regard to nature of treatment for nominal illness in family :

3.14 families take treatment from mantrik / Tantric, 75.28% take treatment from Doctors, 7.33% Respondents believe in house made sources. 0.56% respondents have not taken any treatment and 13.69% respondents take treatment from both the homemade measures and doctors. The comparative proportion of treatment from Mantrik/Tantric, homemade measures, not taking any treatment and both homemade and Doctor are higher and the proportion of treatment from doctor is lower in Marathas than all other castes.

(21) With regard to influence of superstitions / Blind (Vow/Navas) :

52.84 % Marathas are under the influence of superstitions / blind (Vow/Navas) faith. This proportion is too much higher than all other castes. It indicates lack of rational thinking and influence of unscientific approach to deal with the problems being encountered in the day-to-day lives of Maratha Community. It is certainly due to lack in education, living under the influence of superstitions and lack of social awareness.

(22) With regard to animal sacrifices :

39.22% Marathas believe in the practice of killing goats/ cocks/ animals to please supernatural powers for fulfillment of their wish / desire / demand. The percentage of Maratha is highest of all the OBCs and OOCs.

(23) With regard to modern home appliances uses :

It is seen that 25% of Marathas do not have any of the appliances. 46% Maratha families have a television, while less than 1% own and use refrigerators, washing machines, Air conditioners and computers. It is also seen that the proportion of No-Appliance-Users is very high in Marathas as compared to other OBCs.

(24) With regard to inferior status of the socially recognised traditional occupation from own perspective :

It is seen that 53.28% of Marathas perceive their occupational status as inferior and this proportion is higher in Marathas as compared to other caste-groups. Most of them are involved in the occupation of agriculture and dry land farming not yielding even subsistence level income. The percentage in other OBCs and OOCs describing their occupation as inferior is lesser as compared to Marathas.

(25) Whether others consider your occupation as inferior :

53.04 Marathas affirmed that other peoples consider their occupation has inferior status in the society and this proportion is higher in Marathas as compared to other caste-groups.

(26) With regard to types of backwardness of Maratha community :

73% of Marathas feel that they are suffering from all types of backwardness, while this percentage in Kunbi caste is 19% and 45% for other OBC Caste and 25.56% for OOCs. The Marathas are depolarized lot, desperate and lost their self respect.

(27) Maratha Community considered as backward by others :

It is observed that 98% of the Marathas, 89% of Kunbis, 89% OCCs and 90% OBCs affirm/feel that Maratha is a backward caste.

(28) With regard to women in family engaged in physical labour for livelihood :

89% Marathas affirmed that female family members of the community perform physical labour for the family occupation of agriculture or for adding earnings to the family income or for livelihood. Labour work performance to earn livelihood or support family income gap is also higher in Maratha community, be they working as maid-servants, sugarcane cutting labour, as cook for other families.

[B] Educational backwardness :

(1) With regard to educational level of head of family :

13% heads of Maratha families are illiterate, 35.31% have taken education upto primary level, around 43% have taken education upto secondary and higher secondary level and mere 6% have taken education upto graduation and post-graduation, whereas only 0.77% have taken education in technical and professional streams.

(2) With regard to education of children of Marathas :

Of the total of Marathas' school and college going children, 86.4 are found to be in primary level (standard 1 to 8), 6.5% are found to be in secondary level (standard 9 to 10), 4% are found to be taking higher secondary / junior college level education (standard 11 to 12). With regard to UG/PG level, it is 2.6%, and whereas technical courses level are found to be 0.5% only.

[C] Economical backwardness :

- (1) With regard to types of ration card :
21.97% of Maratha community families have yellow ration card, whereas 70.97% Maratha families have orange ration card and 3% have white ration cards and 4% have no ration cards.
- (2) With regard to below poverty line status :
37% families of Marathas are below poverty line compared to the State rural average of 24.
- (3) With regard to income level of family :
22% Maratha families have annual income upto Rs. 24,000/-. 22% Maratha families have annual income between Rs. 24,001/- to 50,000/-. 19% Maratha families have annual income between Rs.50,001/- to 1,00,000/-. 8% Maratha families have annual income between Rs.1,00,001/- to 4,00,000/- and just 0.46% Maratha families have annual income more than Rs.4,00,000/-.
- (4) With regard to borrowing status of family during last 5 years :
On an average 52% of Marathas have taken the loan in last 5 years. As compared to other castes, this proportion is highest of all of them. It shows Marathas dependency on borrowings to make both ends meet because of low income generated from agriculture, which is their main source of livelihood.
- (5) With regard to reasons for borrowing :
85.65% Maratha families take loan for agricultural purposes, 6% Maratha families take loan for their profession, 2% for marriages, 1% for illness, 0.32% for religious activities and 2% for child education and 3% for other purposes.
- (6) With regard to source of borrowing and loan repayment :
40.03% Marathas have taken loan from banks, 39.94% Marathas have taken loan from co-operative societies, 14% Marathas have taken loan

from private money-lenders, 2.10% Marathas have taken loan from relatives or friends and 2.14% Marathas have taken loan from private banks and other sources.

7.97% Marathas had to sell their properties and assets for repayment of loans. This proportion is higher as compared to other castes-groups.

(7) With regard to vehicles owned for personal use :

48.97% Marathas have no personally owned vehicles of any kind. 47% Marathas have two wheelers, 0.45% Marathas have 3 wheelers and only 0.53 Maratha families have four wheelers.

(8) With regard to vehicles owned for occupational use :

78.31% families of Marathas have no occupational vehicles owned by them.

(9) With regard to agricultural land owned in rural areas :

8.66% of Maratha families are landless, 62.74% of Maratha families own agricultural land not more than 2.5 acres, 19% own agricultural land more than 2.5 acres and less than 5 acres, 6% of Maratha families own agricultural land in the range of 5 to 10 acres and just 2.7% of Maratha families have agricultural land more than 10 acres.

(10) With regard to non-agricultural land owned :

88% of Maratha families have no non-agricultural lands of their own. 9% of Maratha families own such land to the extent of 1000 sq.ft., 0.65% of Maratha families have plot of land of themselves in the range of 1000 to 2000 sq.ft. and 9.48% of Maratha families have ownership of land in the range of 2000 to 3000 sq. ft, and only 1% of Maratha families have owned the plot of non-agricultural land more than 3000 sq.ft.

91 Apart from the data collected through surveys, the Commission also collected data from the hearings and representations. The Commission received total of 1,97,522 representations from individuals as well as from various organizations and public bodies. The Commission also received gram-sabha resolutions from 282 villages-panchayats. Out of these representations and gram-sabha resolutions, only 84 representations stated that no reservation should be given to Maratha community, which is 0.04% of total representations received by the commission. The rest of the representations/gram-sabha resolutions have demanded reservations for the Maratha community.

MARKING SYSTEM :

92 For the purpose of marking system, the Commission fixed broad parameters as follows :

[A] Social backwardness :

 Considered lower in social structure on the basis of caste, considered to be pursuing lower occupation/livelihood, females engaged in physical labour, males engaged in physical labour.

[B] Educational backwardness :

Students undergoing primary education, proportion of drop-outs, proportion of students passing out in higher secondary examinations, proportion of conventional graduates / professional graduates.

[C] Economical backwardness :

Percentage of families below poverty line, percentage of families living in Kuccha houses, strength of marginal farmers, strength of landless families.

93 Out of total 25 marks, the commission allotted 10 marks to Maratha community for social backwardness, 8 marks for educational backwardness and 7 marks for economical backwardness. The Marathas were to be considered backward if they obtain more than 50% of total marks, i.e., 12.5 marks out of 25 marks.

94 The Commission considered the analysis of data collected in surveys regarding the backwardness of Maratha community and compared the same with the State average and on the basis of the parameters mentioned hereinabove, out of 10 marks the Commission allotted 7.5 marks for social

backwardness to Maratha community and, therefore, the Marathas were held to be socially backward. The Commission allotted 8 out of 8 marks for educational backwardness to the Maratha community and, therefore, they were held to be educationally backward. So far marks which were to be allotted under the head of “economic backwardness” is concerned, the Commission allotted 6 out of total 7 marks to the Maratha community and held them economically backward. Thus, Maratha community got 22.5 marks out of total 25 marks under the three different heads viz. social backwardness, educational backwardness and economical backwardness. The Commission accordingly concluded that the Maratha community is socially, educationally and economically backward.

Whether Marathas are inadequately represented in public employment.

95 So far as the representation of Maratha community in services under the State is concerned, the Commission has considered the same extensively in Chapter IX of Volume III of the report. The Commission also took into consideration the report of the Rane Committee that the representation of

Marathas in public employment is 14.68% of total sanctioned posts and that it is more in Grade C and D as compared to Grade A and B. Apart from the report of Rane Committee, the Commission also obtained independent data and found that the proportion of Maratha Class employees against sanctioned posts who are eligible only for open category posts is 11.16% in Grade-A, 10.86 % in Grade-B, 16.09% in Grade-C and 12.07% in Grade-D. Whereas the proportion of Maratha Class employees against the filled post as on 31st August, 2018 is 18.95% in Grade-A, 15.22% in Grade-B, 19.56% in Grade-C and 18.23% in Grade-D. The combined average proportion of Maratha employees in all the four grades is found to be 14.63 % against total sanctioned posts and 19.05% against the filled posts. Having regard to these figure, the Commission arrived at the conclusion that in none of the four grades, the strength of Maratha Class employees is touching the proportion to their population in the State which, based on various sources, is estimated at to be 30%.

96 All these posts referred to in above paragraph in Class A, B and C occupied by Maratha community are from the open category, they being included in the unreserved

category for which 48% of the total posts as against 52% for all the reserved class categories are available. The commission considered the proportion of 48% of the total available open class posts occupied by average 30% population of Maratha in the State and compared the same with the total open category citizens, which population is averaged to be approximately 12% including unreserved minorities (excluding 13% Scheduled Caste + 7% Scheduled Tribes + 38% OBCs including minority communities included in OBCs). Having compared the availability of seats for the open class, the commission came to the conclusion that out of total 5,72,214 open category posts filled in as on 30th August 2018, 2,07,989 are occupied by 30% Maratha population whereas remaining 3,64,225 are occupied by 12% to 15% open category population, which makes out of that total open category posts 30% Marathas obtained 36.34% of the open category posts whereas 12% of all other open category citizens obtained 63.66% of the open unreserved posts.

97 The Commission also called for information about the officers in All India Cadres i.e. IAS, IPS and IFS cadres. The Commission found that so far as IAS cadre is concerned, out of

total unreserved posts, Marathas occupy 15.52 % and other open category occupies 84.48% posts. In IPS cadre, out of total unreserved posts Marathas occupy 28% and other open category occupies 72% posts. So far as IFS is concerned, out of total unreserved posts, the Marathas occupy 17.97% and other open category occupies 82.03%. The Commission also concluded that out of total posts in Mantralaya, Marathas occupy 16.17% of the sanctioned posts. The Commission also collected the information of the teachers from some of the universities in the State and found that so far as Pune University is concerned, out of total unreserved posts, the Marathas occupy 7% posts and other open category occupy 93% posts. As far as Mumbai University is concerned, 4.14% out of total filled post are from Maratha Community.

Population of Marathas :

98 The commission has come to the conclusion that the population of Marathas is 30% in the State of Maharashtra. In order to arrive at this figure, the commission relied upon the following material :

- (i) The census of 2011 provides figure of exact population percentage of SCs and STs and minorities. According to this census, the

population of scheduled caste is 11.81%, the population of scheduled tribe is 9.30%, the population of minority is 11.80%, the percentage of the OBCs is estimated under the Government of India documentation at 32.75% in the State (including DT/NT, SBCs). The total of above percentage of population comes to 65.66%. What remains is two categories, namely, Maratha and other open classes, and population of these two categories is 34.34%. The commission took into consideration the population of other open categories excluding minorities, which is around 4% to 5%, and the estimated population of Marathas is around 29.34%.

(ii) The commission also relied upon the sample surveys carried out by the planning department of State Government to assist Rane Committee. In this survey, the population of Maratha community was found to be 32.14%

(iii) The survey of Maratha population in the rural area was conducted by the Rural Development Department of the State Government through GIPE. This reflects figure of 27% Maratha in rural area. The commission took into consideration the integrating rural population percentage with the exodus to the urban area which was found to be around 6% to 7% per annum, and came to the conclusion that average Maratha population (rural plus urban) to be 30%.

The average of above surveys comes to 30.49% and therefore the commission concluded that the population of Maratha community is about 30% of the total population of the Maharashtra state.

99 After identifying the backwardness of the community by applying different yardsticks in the social, educational and economical fields, the commission concluded that the Maratha community is socially, educationally and economically backward. It also concluded that the said community is inadequately represented in the services under the State. The commission dedicated Chapter-X of its report to “Exceptional Circumstances and/or Extraordinary Situations”, justifying the excess of reservation beyond 50% and we have separately dealt with the said circumstances and examined the same in exercise of power of judicial review.

(V) Scope of Judicial Review for Interference in the Findings, conclusions, and recommendations of the MSBCC.

100 The Constitution does not permit unfairness or unreasonableness in state action in any sphere of its activity contrary to the professed idea of its preamble. The power of judicial review which is recognized as one of the basic features of the Constitution enables the Constitutional Court to oversee the action of the State for the purpose of satisfying that it is not vitiated by the vice of arbitrariness. The wisdom of the

policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review. The Courts would not exercise its power so as to recast the policy of the State or to substitute it with another. The power is to be limited to the grounds of illegality, irrationality and procedural impropriety.

The reports of the Backward Class Commissions under the statutory framework which have been established in form of an expert body to identify the backwardness contemplated for conferring the benefits of reservation under Article 15(4) and 16(4) must toe the line in somehow similar way. As early as in 1972, the Apex Court in case of **State of Andhra Pradesh versus U.S.V. Balram**,²² while dealing with the report of the Backward Classes Commission appointed by the State of Andhra Pradesh, and which recommended reservation of 30% of seats to persons belonging to backward classes, dealt with the scope of judicial review in the report of the Commission.

101 The terms of reference made over to the Commission included the determination of criteria to be

²² 1972 (1) SCC 660

adopted in considering whether any section of citizens of India in the State of Andhra Pradesh may be treated as socially and educationally backward. The Commission in its report, had drawn a list of 92 castes, which are socially and educationally backward and classified as backward classes. The Government accepted the list drawn up by the Commission in *toto*. After making a detailed reference to the methodology adopted by the Commission which included the questionnaire which was widely circulated to various authorities and organizations and which referred to various matters regarding the criteria to be adopted in ascertaining the backwardness of persons as well as information on matters relating to social and educational backwardness, it was noted that the Commission also called information from Head of the Government Departments regarding number of persons belonging to each class or community employed in their department and also information was sought from Principals of Colleges including the professional and technical colleges. It was noted that the Commission toured all the districts in the State and recorded evidence on oath from the representatives of the communities. The Commission visited the houses and huts belonging to the different communities and also made

inquiries about their conditions of living, customs and their problems. It then analyzed the replies received by it and the Commission made a reference to upto date statistical information with regard to population of several communities. After making reference to the report of the Commission recommending provision for reservation on the basis of the data collected by it, the Apex Court observed thus :-

96 There is a criticism levelled that the Commission has used its personal knowledge for the purpose of characterising a particular group as backward. That, in the circumstances of the case, is inevitable and there is nothing improper or illegal. The very object of the Commission in touring the various areas and visiting the huts and habitations of people is to find out their actual living conditions. After all that information has been gathered by the Commission not secretly but openly. In fact the actual living conditions of habitation can be very satisfactorily judged (1) [1968] 2 S. C. R. 786 and found out only on a personal visit to the areas, which will give a more accurate picture of their living conditions and their surroundings. If the personal impressions gathered by the members of the Commission have also been utilised to augment the various other materials gathered as a result of detailed investigation, it cannot be said that the report of the Commission suffers from any vice merely on the ground that they imported personal knowledge. In our opinion, the High Court has not been fair to the Commission when it says that whenever the Commission found the figures obtained in respect of certain groups as relating to their educational standard being higher than the State average, it adopted an ingenious method of getting over that obstacle by importing personal knowledge. In fact the Commission has categorically stated that the information received from the various schools showed that the percentage of education was slightly higher than the State average in respect of certain

small groups; but in view of the fact that their living conditions were deplorably poor, the slight higher percentage of literacy should not operate to their disadvantage.

102 The judgment of the Hon'ble Apex Court in Indra Sawhney which was examining the report of the 2nd Backward Class Commission and its culmination into provision of reservation of OBC, the Apex Court observed thus :-

“—798....The language of clause (4) makes it clear that the question whether a backward class of citizens is not adequately represented in the services under the State is a matter within the subjective satisfaction of the State. This is evident from the fact that the said requirement is preceded by the words “in the opinion of the State”. This opinion can be formed by the State on its own, i.e., on the basis of the material it has in its possession already or it may gather such material through a Commission/ Committee, person or authority. All that is required is, there must be some material upon which the opinion is formed. Indeed, in this matter the court should show due deference to the opinion of the State, which in the present context means the executive. The executive is supposed to know the existing conditions in the society, drawn as it is from among the representatives of the people in Parliament/ Legislature. It does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within subjective satisfaction of the executive are well and extensively stated in Barium Chemicals v. Company Law Board [1966 Supp SCR 311 : AIR 1967 SC 295] which need not be repeated here. Suffice it to mention that the said principles apply equally in the case of a constitutional provision like Article 16(4) which expressly places the particular fact (inadequate representation) within the subjective judgment of the State/executive.”

The Nine Judges Bench therefore, recorded that the State is aware of the conditions prevailing and the subjective satisfaction on adequacy of representation for backward classes in public services should be based on subjective satisfaction of the State. That is the reason why direction came to be issued to constitute Backward Class Commission in each State so that the State would be able to identify the classes which are backward and exercise its enabling power for their advancement to ensure that they are adequately represented in the services of the State.

103 In **Nagaraj** while dealing with the parameters governing the assessment of adequacy of representation or of the impact on efficiency, the Constitution Bench of the Apex Court held thus:

“45.....The basic presumption, however, remains that it is the State who is in the best position to define and measure merit in whatever ways it considers it to be relevant to public employment because ultimately it has to bear the costs arising from errors in defining and measuring merit. Similarly, the concept of “extent of reservation” is not an absolute concept and like merit it is context-specific.

49. Reservation is necessary for transcending caste and not for perpetuating it. Reservation has to be used in a limited sense otherwise it will

perpetuate casteism in the country. Reservation is underwritten by a special justification. Equality in Article 16(1) is individual specific whereas reservation in Article 16(4) and Article 16(4A) is enabling. The discretion of the State is, however, subject to the existence of backwardness and — inadequacy of representation in public employment. Backwardness has to be based on objective factors whereas inadequacy has to factually exist. This is where judicial review comes in. However, whether reservation in a given case is desirable or not, as a policy, is not for us to decide as long as the parameters mentioned in Articles 16(4) and 16(4A) are maintained. As stated above, equity, justice and merit (Article 335) / efficiency are variables which can only be identified and measured by the State therefore in each case, a contextual case has to be made out depending upon different circumstances which may exist State-wise.”

102..... As stated above, equity, justice and efficiency are variable factors. These factors are context-specific. There is no fixed yardstick to identify and measure these three factors, it will depend on the facts and circumstances of each case.....”

104 The scope of the State Governments to determine adequacy of representation in promotional posts is emphasized in the decision of the Apex Court in **Jarnail Singh v. Lachhimi Naranain Gupta [(2018) 10 SCC 396]**. The relevant observation is contained in paragraph 35, which reads thus : -

“35...According to us, Nagaraj has wisely left the test for determining adequacy of representation in promotional posts to the States for the simple reason that as the post gets higher, it may be necessary,

even if a proportionality test to the population as a whole is taken into account, to reduce the number of Scheduled Castes and Scheduled Tribes in promotional pots, as one goes upwards. This is for the simple reason that efficiency of administration has to be looked at every time promotions are made. As has been pointed out by B P Jeevan Reddy, J.'s judgment in Indra Sawhney, there may be certain posts right at the top, where reservation is impermissible altogether. For this reason, we make it clear that Article 16 (4A) has been couched in language which would leave it to the States to determine adequate representation depending upon the promotional post that is in question." (Emphasis supplied)"

105 In ***Ram Singh Vs. Union of India***,²³ the Apex Court once again dealt with the issue of scope of judicial review in appreciating the findings recorded by the Backward Class Commission in regards to the inclusion of Jat community in the Central list of backward classes. The National Commission for backward classes entrusted the task of survey of the relevant material to an expert committee constituted by ICSSR. On completion of the task, the Committee submitted its report to the NCBC on 26th February 2014 which was based on a detailed consideration of various report of the State backward classes commission, other available literature on the subject and findings of the expert committee. The decision was taken not to recommend the Jats for inclusion in

²³ 2015(4) SCC 696

the central list of OBC of the States in question and the issue was whether there was any scope for interference in the said report. While recording a finding that the decision not to recommend the *Jats* for inclusion in the Central list of Other Backward Classes cannot be said to be based on 'no material' or unsupported by reasons or characterized at decision arrived at extraneous and irrelevant consideration and the report being of an expert body, the Apex Court held as under :

47 Undoubtedly, the report dated 26.02.2014 of the NCBC was made on a detailed consideration of the various reports of the State Backward Classes Commissions; other available literature on the subject and also upon consideration of the findings of the Expert Committee constituted by the ICSSR to examine the matter. The decision not to recommend the Jats for inclusion in the Central List of OBCs of the States in question cannot be said to be based on no materials or unsupported by reasons or characterized as decisions arrived at on consideration of matters that are, in any way, extraneous and irrelevant. Having requested the ICSSR to go into the matter and upon receipt of the report of the Expert Committee constituted in this regard, the NCBC was under a duty and obligation to consider the same and arrive at its own independent decision in the matter, a duty cast upon it by the Act in question. Consideration of the report of the Expert Body and disagreement with the views expressed by the said body cannot, therefore, amount to sitting in judgment over the views of the experts as has been sought to be contended on behalf of the Union. In fact, as noticed earlier, the Expert Body of the ICSSR did not take any particular stand in the matter and did not come up with any positive recommendation either in favour or against the inclusion of the Jats in the Central List of OBCs. The report of the said Body merely recited the facts as found upon the survey undertaken, leaving the eventual conclusion to be drawn by the NCBC. It may

be possible that the NCBC upon consideration of the various materials documented before it had underplayed and/or overstressed parts of the said material. That is bound to happen in any process of consideration by any Body or Authority of voluminous information that may have been laid before it for the purpose of taking of a decision. Such an approach, by itself, would not make either the decision making process or the decision taken legally infirm or unsustainable. Something more would be required in order to bypass the advice tendered by the NCBC which judicially (Indra Sawhney) and statutorily (NCBC Act) would be binding on the Union Government in the ordinary course. An impossible or perverse view would justify exclusion of the advice tendered but that had, by no means, happened in the present case. The mere possibility of a different opinion or view would not detract from the binding nature of the advice tendered by the NCBC.

While dealing with an argument advanced on behalf of the Union claiming the power to bypass NCBC and to include group of citizens in the Central List of OBCs on the basis of Article 16(4) itself, it is held that undoubtedly, Article 16(4) confers such a power on the Union but what cannot be overlooked is the enactment of the specific statute providing for constitution of a Commission (NCBC) and the recommendations of which are required to be adequately considered by the Union Government before taking its final decision and surely the Union cannot be permitted to discard its self professed norms which are statutory in character.

106 The Apex Court in **Bir Singh v. Delhi Jal Board** **[(2018) 10 SCC 312]** has held that the quantifiable data can

be gone into on the limited ground of relevance of the circumstance on which the satisfaction of the State is moulded. The relevant observation in paragraph 37 reads thus :

“37. [Article 16\(4\)](#) is an enabling provision. It enables the State to provide to backward classes including Scheduled Castes and Scheduled Tribes reservation in appointments to public services. Such reservation is to be provided on the basis of quantifiable data indicating the adequacy or inadequacy, as may be, of the representation of such classes in Government service. The data which is the basis of the satisfaction of the State being verifiable, is open to judicial scrutiny on the limited ground of relevance of the circumstances on which the satisfaction is moulded. The policy decision to provide reservation, of course, is beyond the pale of judicial review.

107 We need not multiply the authorities so as to assail the well settled principle that the Constitutional courts cannot sit over the decision of the expert bodies as Courts of Appeal.

108 The Apex Court in a recent decision in ***B. K. Pavitra and ors. Versus Union of India and ors.*** took a survey of earlier decisions regarding the scope of judicial review in the matter of expert committee reiterated the parameters on which judicial review can be exercised. It examined the Ratnaprabha Committee report which was the

basis of reservation of the Karnataka Act of 2018. By applying the parameters laid down in Nagaraj, subsequently clarified in case of Jarnail Singh, in regard to adequacy of representation and impact of efficiency of administration, the Apex Court held as under :-

95. In dealing with the submissions of the petitioners on this aspect, it is relevant for this Court to recognize the circumspection with which judicial power must be exercised on matters which pertain to propriety and sufficiency, in the context of scrutinizing the underlying collection of data by the State on the adequacy of representation and impact on efficiency. The Court, is above all, considering the validity of a law which was enacted by the State legislature for enforcing the substantive right to equality for the SCs and STs. Judicial review must hence traverse conventional categories by determining as to whether the Ratna Prabha Committee report considered material which was irrelevant or extraneous or had drawn a conclusion which no reasonable body of persons could have adopted. In this area, the fact that an alternate line of approach was possible or may even appear to be desirable cannot furnish a foundation for the assumption by the court of a decision making authority which in the legislative sphere is entrusted to the legislating body and in the administrative sphere to the executive arm of the government."

109 In the light of the aforesaid position of law, we have examined the report of the commission and proceed to deal with the scope for our interference in the said report in exercise of our power of judicial review.

The terms of reference made over to the Commission included the determination of the contemporary criteria and parameters to be adopted in ascertaining the social, educational and economic backwardness for conferring the benefit of reservation in present context and in conformity with the constitutional mandate, reservation laws and the existing precedents. The exhaustive report of the commission has focused itself on collection of quantifiable and contemporary evidence. The Commission had before it several representations, which included individual representations as well as the representations from various organizations. The representations raised the demand for inclusion or non-inclusion of Maratha community into the other backward class. The Commission held public hearings at distinct places on different dates which were widely attended. The commission also took into consideration the written representations made by 5 main organisations in the State of Maharashtra including Akhil Bhartiya Maratha Mahasangh, Maratha Seva Sangh, Akhil Maratha Federation etc. There were representations before the commission which staked a demand that Marathas should be given a separate reservation out of the reservation meant for the other backward class in

the State of Maharashtra. The commission scrutinized the claim made in those representations at length and has given its thoughtful consideration to the demands raised by the organisations. It also took into consideration the statements made on oath by the members of the community which favoured the inclusion of Maratha community in the list of other backward classes. The individual affidavits highlighted the social position and status of the said community, justifying their demand. The commission in public hearing conducted by it, collected the information of the social, educational and economical status of the said community and it identified its backwardness in light of the parameters recognized by the Constitution Bench judgment in Indra Sawhney (supra) for conferring the benefits of Articles 15(4) and 16(4). The report of the commission refers to the history of the community and also the fact as early as in 1902, the community was recognised to be backward and privilege of being backward was conferred on this community. The commission has also made an exhaustive reference to the judgment of Madras High Court in the case of Maharaja of Kolhapur Vs. S. Sundaram Ayyar, AIR 1925 Madras 497 focusing on the point whether Marathas are “Khastriya” or “Shudras”. It relied upon the

observations of the Madras High Court, which has held that direct blood relatives of great King Chhatrapati Shivaji Maharaj were declared as Shudras. After referring to the history of community and to the distress in which the community finds itself, the commission also made reference to the agricultural census and analysed the quantum of holding of the persons belonging to this community by specifically making reference to the irrigation potential created in each sector. The commission has also heavily relied upon the economic census of 2017-18 published by the Statistical Department of Government of Maharashtra and concluded that the average holding in the state of Maharashtra is 1.44 hectare and on comparison with the other States, the report has concluded that the holding of agriculturist in the survey is on the decline and moreover, the yield of this holding also depends on the condition of soil and percentage of rain. The commission also made reference to the NABARD Survey which is national level survey providing insights into the economical conditions of the farmer community in the State of Maharashtra. It is not a matter of dispute that Maratha and Kunbi communities are engaged in the traditional occupation of farming and therefore it had relied upon the afore-stated two reports to assess the

financial distress suffered by this community who are largely agriculturists and residing in rural areas.

The Commission appointed five agencies to collect the data and which were provided with uniform questionnaire containing 40 questions. It evolved 25 indicators for determining the backwardness broadly categorized under three heads. It also called for opinion of experts in the fields of history, sociology and agriculture so as to assess the backwardness.

110 The Commission had before it the exhaustive data in form of the survey reports, response to the questionnaire and the representations, affidavits and based on the said material, it analyzed the reasons for backwardness of the said community. It also received information from the Commissioner of Labour in respect of the status of members registered as Mathadi Hamals along with information in relation to Dabbewalas from their registered associations. Apart from this major reports, the commission had before it, several survey reports of individuals like the report submitted by Advocate Surya Rao in respect of village Shindi Khurd, report in relation to a village in Thane district. Panel of experts

was appointed by the Commission to analyze the data collected by the five agencies in the sample survey.

On careful perusal of the Three Volume Report submitted by the Commission, we have noted that the Commission has undertaken an independent sample survey in order to estimate social, economical and educational backwardness of Maratha community, it collected quantitative and qualitative data and information to estimate, assess and analyze the status of Maratha community. It has thereafter collated data and information obtained independently in the survey with regard to the studies, case studies, survey done separately by the expert entities, reputed institutions and agencies in a contemporary times. The Commission has related the finding in the independent survey and public hearings and integrated the historical information, view and opinions of the members of the Commission who separately conducted the exercise. Lastly it evaluated conclusions, findings and observations with reference to the various judicial pronouncements and as to whether backwardness contemplated in the Constitution is the same which the community suffers from and it arrived at a positive conclusion

that the said community is socially, economically and educationally backward. It is also relevant to note that the assessment of the backwardness was carried out by the Commission by allocation of weightages and by adopting marking system. As far as social backwardness is concerned, the Commission applied 26 parameters and the averages of the weightage was arrived at by comparing it with the State average. As far as the educational backwardness is concerned, the Commission determined the educational status of the said community at all levels i.e. primary, secondary, UG/PG, technical/professional and the rate of illiteracy and compared it with the State average and concluded that the Maratha Population seems to be suffering from all the deficiencies in education sector i.e. from failure to gain an entry, drop out and inability to continue schooling. 8 marks were allotted for educational backwardness which was determined on the basis of four parameters pertaining to the deficiency in admission percentages, compared with the State average in Primary, Secondary, higher secondary education and drop out at the primary education level and the gap in the higher education levels in the community compared to the State average. The economic backwardness was also

assessed by assessing the contemporary position of the said community. The Commission has exhaustively dealt with the statistics about the holdings in the Ninth agricultural census of 2011 and on the basis of the said census, it has made observation about the deteriorating social status of the farming Maratha class in the State. The Commission also concluded that the figure of the agricultural census conducted for three periods namely 1970-71, 2000-01 and latest 2010-11 which throws light on the deteriorating social and economical condition of the traditional farming class in the State, majority of them belong to Maratha and Kunbi caste. It also conclusively recorded a finding that the agricultural community which once may have enjoyed the privilege of having sumptuous agricultural land, is no more able to sustain themselves simply on the farming activities, whereas the other avenues of livelihood are not within their reach particularly on account of lack of education and alternate skills and this is a factor which has contributed to their backwardness.

The Commission also collected data in the form of surveys on the basis of category of the ration card and assessed *per capita* average income of the members of the

said community. On the basis of data and survey it has arrived at the conclusion that 37% families belonging to Maratha are below poverty line compared to the State rural average of 24.20% and as compared, this proportion for Kunbis is 32% and for OBC it is 41.5%. The family income has also been calculated and the Commission has concluded that out of total surveyed families 22% of the Maratha families have annual income upto 24,000/-, 22% families have income in the range of 24,001/- to 50,000/-, 19% have income between 50,001/- to 1,00,000/- and 8% families have income between 1,00,000/- to 4,00,000/- and the bare minimum of 0.46% families have annual income of more than 4,00,000/-. It also assessed dependency of this community on the borrowed resources on account of the deficient earning capacity of the family. Conclusively, the Commission has recorded a finding that the community on the basis of the sample survey, analysis of the survey by experts and applying 25 indicators and by allocating marks on the basis of analysis have established that the community has scored 21.5 marks out of 25 marks, and applying the said parameters, the said community is socially, educationally and economically backward.

It is this exhaustive report which we have carefully analyzed and in the light of well determined parameters laid down by the Apex Court of the permissibility of the Courts to exercise its power of judicial review, we have given thoughtful consideration as to the scope of judicial review to be exercised by us. The Commission has collected the contemporaneous and quantifiable data and recorded a finding, after analyzing data in a scientific manner. The criticism of the report of the Commission by the learned senior counsel Shri Sancheti on the ground that the sample size is not representatives of the entire State data, is without merit. The detailed report of the Commission do disclose that the Commission has factually collected the information in the form of various parameters/yardsticks to determine the backwardness of the community and it had adopted the method of purposive sampling and the data collected is compared with the State average. In any contingency, the petitioners who have assailed the data, do not possess an expertise to claim its exclusion and cannot attack the credibility of the data collected by the Commission merely on the basis of assumptions and surmises. The scope of judicial review being

only available when the irrelevant material being taken into consideration and relevant material kept out of the consideration, is by now a settled position of law. In the light of the limited scope of the judicial review, it is not open for us to substitute the finding by an expert body which had before it the quantifiable data. The approach of the Commission has been to assess the status of the Maratha community at ground level and factually it dispelled the common submission that it is a forward community. It is only on factual assessment and surveys being carried out in villages where the community actually resides, the Commission has recorded its finding and conclusions. We are of the opinion that even if there are minuscule errors in the data collection or a little disparity in comparing this community with other communities in the backdrop of the State average which was emphasised by Mr. Sancheti, we do not feel that it is proper for us to exercise our power of judicial review and substitute the finding of the Commission. Once the Commission has carried the exercise of collection, collation and analysis of the relevant data we do not think it is possible for us to reevaluate it. The scope and reach of the judicial scrutiny in the matters which lie within the subjective satisfaction of the executive is well settled and

as held in the case of Pavitra (supra), the principles apply equally in the case of constitutional provision like Article 16(4) which expressly places the particular fact (inadequate representation) within the subjective judgment of the State/executive.

111 On a similar analogy, a legislation enacted by a State legislature which is based on a report of the Commission constituted by the State, backed by the empirical and contemporaneous data leaves very little scope for us to interfere. The statute is no doubt presumed to be constitutionally valid and it is the legislature of the State which would better understand the contingencies and the extra-ordinary circumstances and exceptional situations and it is thus the best Judge to reflect on the needs of a particular class. The State which exercises its enabling power and brings a legislation in the form of the affirmative action backed by data supporting the inadequacy of representation of a particular community or intending to take steps for advancement of a weaker section like the Maratha community which is identified as socially and educationally backward, which the State of Maharashtra has precisely done, in our

opinion, do not call for any interference since we have not noted any illegality or perversity in the methodology adopted by the Commission and the well supported conclusions derived by it. The presumption is always in favour of the constitutionality of an enactment and the onus lies upon the person who attacks the statute and we are not impressed by the arguments which would convince us to interfere in the exercise undertaken by the State except to the limited extent which we would deal with in the subsequent paragraphs.

(VI) - Whether impugned Enactment, satisfy test of Reasonable classification and meet the Essence of Article 14.

112 The Preamble of the Constitution of India, which is a brief introductory statement embodies the fundamental values and the underlying philosophy and the aims and objectives which the founding fathers of the Constitution enjoined the polity to strive to achieve. The hopes and aspirations of the people of India are enveloped in the preamble. According to Dr. Babasaheb Ambedkar, the Preamble is, indeed a way of life which recognizes liberty, equality and fraternity which cannot be divorced from each

other. In words of Dr.Ambedkar, they form a union of trinity in the sense that to divorce one from other is to defeat the very purpose of democracy.

113 The right to equality is embodied in the Constitution from Article 14 to Article 18. Article 14 contains the principle Rule of law whereas Article 15 and Article 16 contain the application of this principle. Article 14 reads thus :

“The State shall not deny to any person equality before law” and equal protection of law within the territory of India”.

It involves two expressions “Equality before law” and “equal protection of the laws”. Equality before law is a negative concept and equal protection of law is a positive concept. The principle of equality before law owes its origin to the doctrine of rule of law profounded by Professor Dicey in his book “The Law of the Constitution” (1885) who give three implications of Rule of law - Supremacy of law - Equality before law - Primacy of the rights of the individuals. Equal protection of law under the Indian Constitution conveys the concept of right to equal treatment in similar circumstances

both in privileges and liabilities. Article 14 does not imply that the same law should apply to all persons and every law must have universal application because all persons are not by nature, attainment or circumstances in the same position. In an ideal situation, the concept of equality would simply contemplate equality of status and opportunity as the preamble indicates. The right of equality was considered to be a negative right of an individual not to be discriminated in matters of public access or public office or public matters generally. It did not take into account the existing inequalities arising even from public policies and exercise of public powers. The framers of the Indian Constitution were conscious of the wide spread, social and economic inequalities in the country as past experience which was supported by the classification of society based on caste, religion, each one of its firmly established and deeply rooted in forms of social norms and practices. The framer of the Constitution in order to tackle with such inequalities deemed it necessary to enforce equality in its positive form and did not restrict the concept of equality merely to a negative right, but ushered in the positive aspect of equality, conveying equal opportunity for the grossly affected and discriminated to move forward so

that they can march hand in hand with other citizens of India on equal basis.

This positive concept of equality in form of an affirmative action was introduced in the Constitution by making a provision of reservation which lead to a series of measures in form of clause(4) of Article 15 and clause (4) of Article 16. This enabling provisions enabled the State to translate the special provision for advancement of socially and educationally backward classes or for the Scheduled Castes and Scheduled Tribes or in favour of those backward classes of citizens which, in the opinion of the State, are not adequately represented in public employment. The reservation aimed to nourish the historical disadvantageous caste and tribes listed as Scheduled Caste and Scheduled Tribes and also identified as 'Other Backward Classes" and it expected to address historic oppression, inequality and discrimination faced by those communities. In form of the said provisions, the Constitution makers intended to realize the promise of equality enshrined in the Constitution. The provision of reservation thus flow from the Constitution and find its entry in the statutory laws, local rules and regulations. It aims to enhance the social and educational status of the

underprivileged communities and this was looked as a means of enforcing the equality in a positive way.

114 The concept of equality which also contemplates an affirmative action by the State towards unequals do not prevent certain classes of persons being conferred with special privileges. Article 14 prohibits class legislation which makes improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected but it permits reasonable classification for the purpose of achieving specific ends. Article 14 contains an inhibition against discrimination either in favour of a person or a class of persons or against any individual or group of individuals but it do not prohibit legislature from enacting special laws as applicable to a particular group in a State nor does it forbid classification resting upon reasonable grounds of distinction. The principles is stated by Professor Willice (Constitutional law) in the following words :

“The guarantee of equal protection of the laws means the protection of equal laws”.

115 The meaning and scope of Article 14 came to be elaborated in ***Chiranjeet Lal Vs. Union of India***,²⁴ and the principles laid down by the Constitution Bench could be summarized in the following words:

“The principle underline the guarantee in Article 14 is not that the same Rules of Law should be applicable to all persons within the Indian Territory or that the same remedies should be made available to them irrespective of differences of circumstances”.

It only means that all persons similar circumstanced shall be treated alike, both in privileges conferred and liabilities imposed. Equal laws will have to be applied to all, in the same situation and there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is substantially the same. The entire problem under the equal protection of laws is one of classification or of drawing lines. In making a classification, the legislature cannot certainly be expected to provide an abstract symmetry. It can make and set apart the classes according to the needs and exigencies of the Society and is suggested by experience. The classification should never be arbitrary, artificial or evasive. It must rest upon real and substantial distinction bearing a reasonable and just relation

241950 SCR 869

to the thing in respect of which the classification is made and classification made without any reasonable basis should be regarded as invalid.

116 In case of ***Union of India vs. N.S. Rathnam & Sons***,²⁵, the following observations of the Hon'ble Apex Court needs a reproduction:-

13. It is, thus, beyond any pale of doubt that the justiciability of particular Notification can be tested on the touchstone of [Article 14](#) of the Constitution. [Article 14](#), which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At the same time, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. [Article 14](#) would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of [Article 14](#) has to show that there is no reasonable basis for the differentiation between the two classes created by the State. [Article 14](#) prohibits class legislation and not reasonable classification.

14. What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the

25(2015) 10 SCC 681

classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory.

In the backdrop of the said legal scenario, we examined the case in hand as to whether the reservation carved out in favour of Maratha community by classifying them as SEBC is sustainable.

117 The true meaning and scope of Article 14 has been explained in several decisions and they have been succinctly summarized by Das, C.J in case of ***Ram Krishna Dalmia Vs. Justice S.R. Tendolkar***²⁶. The Constitution Bench was dealing with an enactment providing for appointment of commission of inquiry and conferring of powers to conduct an inquiry. Sub-section (1) of Section 3 empowered the appropriate Government, if it was of the opinion that it is necessary so to do to appoint a commission of inquiry for the purpose of making an inquiry into any definite matter of public

²⁶ AIR 1958 SC 538

importance and performing such function within such time as may be specified in the notification and the Commission so appointed shall then make an inquiry and perform the functions. We need not deliberate on the scheme of the enactment but suffice it to say that in exercise of powers conferred by Section 3 of the Act, the Central Government published in the Gazette of India a notification dated 11th December 1956, thereby directing a full inquiry into the matters involving the appellant and it had categorically opined that these are the matters which are of definite public importance, both by reason of great consequences which appear to have ensued to the invested public and also to determine such measures as may be deemed necessary in order to prevent a recurrence thereof. This notification was the subject matter from which the litigation spurred.

The judgment of the Apex Court has laid down ever guiding principles when a statute comes up for consideration, on question of its validity under Article 14 and categorized the same into one of the five classes. The first two classes are important for us and we reproduce the same as under :

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law.

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but, no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination.

On factual aspect in paragraph no.13, the Court held that the case falls in the first category and since the preamble or provisions of the statute classed under the first category mentioned above, could read as making a reasonable classification satisfying the requirement of Article

14 and there can be no objection in construing Section 3 as making a reasonable classification as, at any rate, declaring with sufficient clarity the policy of Parliament and laying down principles for the guidance for the exercise of powers conferred on appropriate Government so as to bring the statute in first category. The Act came to be upheld and the contention that the Companies that they have been arbitrarily singled out for the purpose of hostile and discriminatory treatment, came to be rejected.

118 Another important judgment on the point which is heavily relied upon by the learned Senior counsel Shri Dada is in the matter of *In Re : Special Courts Bill, 1978* (1971 (1) SCC 380) and he relied upon the following propositions laid down by the Apex Court.

1.

2. *The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.*

3. *The Constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an*

exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. *The principle underlying the guarantee of [Article 14](#) is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.*

5. *By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.*

6. *The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.*

7. *The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics*

must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while [Article 14](#) forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

Applying the principles carved out as above, the Constitution Bench by upholding the creation of Special Courts to try offences committed by high public offices during the period of emergency, since it satisfied the test under Article 14.

119 Based on this decision, what is being argued by the State is that the Maratha community clearly falls within four corners of the above 11 principles. The argument advanced is that the Maratha community is in need of affirmative action in form of reservation but to their detriment, both the National Commissions constituted under Article 340 did not consider

the claim of the community in proper perspective and the community was declared as forward by the Second Commission without supportive data. Further, the Khatri Commission report was also unfair to the Maratha community and Justice Bapat Committee report, according to the State, has ignored a dissent note of expert member recommending the Maratha community to be backward. It is then sought to be argued that the Gaikwad Commission report has gone into great detail and collected quantifiable data analysed it and has carved out an extra-ordinary situation and exceptional circumstances and recommended to include the community in a separate category without touching the existing reservation and this categorization cannot be claimed to be arbitrary since it is based on intelligible differentia and has a rational nexus with the object. The classification is also sought to be justified on the ground that no reservation is being afforded to Maratha community in the political arena since they were sufficiently represented in politics. The classification is sought to be justified by stating that it has resulted into some inequality but if a law which deals with liberties of approximately 30 to 34%, well defined class of population of the State, it is not open to charge it with denial of equal protection on the ground

that it has no obligation to other persons. The Maratha class of citizens are in need of affirmative action since 1902 they were provided with benefits of reservations which were discontinued from 1952. The Commission has recorded a finding about population of Maratha community and Maratha being numerically high in number were excluded without any justification and subsequently several Commissions ignored the claims of this community. The Gaikwad Commission, in light of the extra-ordinary situation which it has carved out in great detail has created a separate class for this community and captioned as “Socially and Educationally Backward Class”. This classification is asserted by Shri Dada to be reasonable, based on the report of an independent commission which has collected adequate quantifiable data and carved out an extraordinary situation and exceptional circumstances. No benefit of reservation in form of political reservation is conferred on the SEBC i.e. in Panchayati Raj Institutions and local self governing bodies and this makes this class stand apart. The very idea of classification is to remove inequality and when classification is made by creating a separate class of SEBC's and inclusion of Maratha community in it in order to attain social justice and advancement of this community, we

do not find the classification to be unreasonable. Article 14 of the Constitution ensures that similarly circumstanced are entitled for equal treatment. Equality is for equals and to treat unequals as equals would violate Article 14. The Maratha community on the basis of its historical position and the fact that it was treated as 'backward class/intermediate class' prior to the point of time when the Constitution came into force shared the quota meant for Other Backward Classes. The segregation of this community from the Other Backward Classes is without any justification. Merely because the Backward Class Commission answering a reference made to it in the year 2000 for its inclusion in the list of OBC, was negatived, do not preclude examination of the backwardness of this community once again. Now, in the contemporaneous period, its backwardness is identified and recognized, it is the duty of the State to confer the concessions on this class from which they were kept away. This would achieve in real sense the equality of opportunity. Equality under the Constitution of India has been recognized as a dynamic concept which must cover every process of equalization and it is expected to become a living reality for the large masses of people. Those who are unequal cannot be treated by identical standards and

that may amount to equality in law but not equality in reality. The existence of equality of opportunity depends not only mere absence of disabilities but on the presence of abilities.

The Maratha community on account of its identified backwardness, also is distinctly placed than the advantageous class and it cannot be equated with them. It is always permissible for the State while enacting a provision for upliftment of backward class to classify it into a different class provided the classification satisfies the twin test. As a principle recognized in the case of *In Re: Special Court Bill, 1978*, the State in its governmental power may feel the necessity to make laws operating differently on different groups or classes to attain particular aims and the only test is that the class which is separately created has some distinguishing features, which is lacking in the one left out. The State has the power to determine who should be regarded as a class for the purposes of legislation and it can then segregate this class based on its distinct properties. The State has carved out an SEBC class under the Enactment of 2018 which include the Maratha class. The affirmative action of the State, though apparently appear to be discriminatory is in reality aimed at attaining equality by eliminating the de facto

inequality. This is achieved by placing this class by applying the principle of equality on par with the other backward classes but on account of its distinctive character of not being conferred with the benefit for more than last six decades and since it is not conferred with any political reservation, form a separate class, not adequately represented in services under the State.

120 The enabling provisions in form of 15(4), 15(5) and 16(4), 16(4A) if looked at in light of the directive principles of State policy and in particular, contained in Article 38 which cast a duty on the State to secure a social order for promotion of welfare of people, then this affirmative action of the State in form of reservation has always been construed as a method to advance the prospects of weaker section of society. The question, however, remains about the social adjustments, that is how to strike a balance between the segment of socially disadvantageous community and for how long to become equal with others and it has always been a matter of judicial concern to strike a balance so that there is no discontentment on the part of any community or section of community and not to exclude their legitimate expectations. The reservation

to the backward classes though is not a constitutional mandate, but it has been recognized as prerogative of the State which can be exercised through an executive or legislative fiat and the extent of reservation in form of affirmative action is thus left to the respective States. The recognition of these backward classes and its classification so as to ensure the benefits which the State intends to confer on them by taking recourse to Article 15(4) and 16(4) are best left to the State including determination of the percentage of reservation with the limit or ceiling laid down by the Constitution Benches of the Hon'ble Apex court subject to the exceptions laid down finally by the 9 Judges Bench in Indra Sawhney. The affirmative action formulated with a view to increasing opportunities for disadvantageous class and which is commonly referred to as compensatory discrimination finds its place in the Constitution itself. The Maratha community which is recognized as a backward class is a homogeneous group which has suffered uniformly from the same level of deprivation. Amongst themselves, they may vary with range of difference in the economic, social or educational standards of backwardness.

The State of Maharashtra enacted The Maharashtra State Public Services Reservation for Schedules Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes Act, 2001 which provide for reservation of vacancies in public services and posts in favour of the persons belonging to all the aforesaid categories. The Act of 2001 defines “Other Backward Classes” in Section 2(g) to mean Socially and Educationally Backward Class of Citizens as declared by the Government and includes Other backward classes declared by the Government of India in relation to the State. Section 4 of the Enactment prescribed that there shall be posts reserved for the persons belonging to Scheduled Caste, Scheduled Tribes, De-Notified (Vimukta Jatis) Nomadic Tribes Special Backward category and Other Backward Classes at the stage of direct recruitment of public services and it provided for percentage of seats to be reserved as against the particular caste or tribe. The classification of these categories is mentioned in Section 4 is as follows :

	Description of Caste/Tribe/Category/ Class	Percentage of vacancies or seats to be reserved
1	Scheduled Castes	13.00%
2	Scheduled Tribes	7.00%
3	De-Notified Tribe (A)	3.00%
4	Nomadic Tribes (B)	2.50%
5	Nomadic Tribes (C)	3.50%
6	Nomadic Tribes (D)	2.00%
6	Special backward category	2.00%
7	Other Backward Classes	19.00%
	Total	52.00%

121 The explanation appended to the said section set out that the expression “De-Notified Tribe (A), Notified Tribe (B) (C) (D) shall mean such tribe or sub-tribes declared by the Government by general or special orders issued in this behalf from time to time.

Similarly, the State of Maharashtra has enacted an Act known as The Maharashtra Private Professional Educational Institutions (Reservation of Seats For Admission For Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes and Other Backward Classes) Act, 2006 to make special provisions for reservation of seats in the private professional educational institutions for this caste/ class. The said enactment in Section 4 prescribe that in every aided private professional educational institutions, seats equal

to 50% of the sanction intake of each professional course shall be reserved for candidates belonging to the reserved category. The classification of this caste/tribe/category and the percentage of reservation prescribed is to the following proportion :

	Description of Caste/Tribe/Category/ Class of Reserved Category	Percentage of reservation
1	Scheduled Castes and Scheduled Castes converts to Buddhism	13.00%
2	Scheduled Tribes	7.00%
3	De-Notified Tribes (A)	3.00%
4	Nomadic Tribes (B)	2.50%
5	Nomadic Tribes (C)	3.50%
6	Nomadic Tribes (D)	2.00%
7	Other Backward Classes	19.00%
	Total	50.00%

The note appended to Section 4 declares that a candidate belonging to Special Backward Category shall be considered from and out of their respective (original and parent reserved category such as Other backward Classes). Section 5 of the said enactment prescribe that in every unaided private professional educational institutions, the seats to be reserved for candidates belonging to reserved category shall be such as may be notified from time to time in the official gazette but shall not exceed 50% of the sanction intake for the particular

professional course.

122 With these enactments being in force from 2001 and 2006 respectively when the State Government collected the quantifiable data through the Backward Class Commission, and conclusively held that Maratha community is socially and educationally backward, and the State took a decision to provide reservation to this community for admission in educational institutions and on posts for appointments in public services and under the State by bringing in a legislation, it exercised its enabling power and took necessary steps for providing adequate representation to this Committee and to take steps for its social advancement. Once it was satisfied on the basis of the report of the Commission, its finding and recommendations that this community requires the desired protection as an affirmative step, it also proceeded to decide the quantum of reservation by carving out an extraordinary situation and exceptional circumstances to justify and deviate from the limit of 50% set out by the constitutional courts and it deemed it expedient to provide 16% reservation to this category.

123 The affirmative action contemplated in the Indian Constitution contemplates the upliftment of the weaker sections. By reserving the posts in service or seats in educational institutions, a fixed number is reserved for a group or class collectively and the competition is amongst the members of the same class. The equality enshrined in the Indian Constitution is sought to be achieved by grouping these two classes on a same platform and that is how the real equality is sought to be achieved. The terminology implied in Article 15(4) and 16(4) intend to benefit the backward classes lagging behind and though under Article 16(4) these classes are entitled for protection if they are not adequately represented in the services in the State and in Article 15(4), the backward classes so categorized as socially and educationally backward classes are entitled to have measures for their social advancement.

As far as State of Maharashtra is concerned, the Maharashtra State Public Services Act of 2001 ensures reservation of 52% for the Scheduled Caste, Scheduled Tribe, De-Notified Tribes (Vimukta Jatis) Nomadic Tribes, Special Backward Category and Other Backward Classes of citizens. The Scheduled Caste and Scheduled Tribe being a distinct

category recognized under the Indian Constitution has been allotted 13% and 7% of reservation in the public services. The Other Backward Classes have been divided into six categories and separate percentage of reservation is carved out for the de-notified tribes and Nomadic Tribes, for the Special Backward category and the Other Backward Classes. The enactment stipulates that the percentage of reservation in all the posts to the aforesaid categories shall be on the post of the latest census record of the population of the State in the case of State cadre post and the concerned district in the case of District cadre post. Further, a principle of creamy layer is made applicable to all categories except Scheduled Caste and Scheduled Tribes. What can thus be seen has a fall out of Section 4 is the classification made between two categories, Scheduled Caste and Scheduled Tribe on one hand, to whom the principle of creamy layer is not applicable and another class covers the remaining 32% of reservation to whom the creamy layer requirement is made applicable and this includes the Other Backward Classes for whom the 19% of seats are to be reserved in the public services or posts in the State.

Similar is the situation in case of the Maharashtra Private Professional Educational Institutions Act of 2006 where

the similar percentage of reservation is maintained except the Special Backward Category and in case of this legislation, the candidates of the Special Backward Category are entitled to be considered from their respective parent reserved category such as Other Backward Classes. The implementation of the provisions of both the enactments is held to be imperative.

The position of the reservation in state of Maharashtra as it stands today is as under :-

Reservation Quota

SN	Cast e	Reservati on %	Details of Caste Categories	Remarks
1	<u>SC</u>	13%	SC & SC converts to Budhhism	59 Castes
2	<u>ST</u>	7%	ST including those living outside specified areas	47 Tribes
3	<u>OBC</u>	19%	OBC-Other Backward Class :	346 Castes
4	<u>SBC</u>	2%	SBC-Special Backward Class:	7 Castes
5	<u>VJ</u>	3%	(Vimukta Jati/Denotified Tribes)	14 Tribes
6	<u>NT-B</u>	2.5%	(Nomadic Tribes-B)	28+7 Tribes
7	<u>NT-C</u>	3.5%	Dhangar-(Nomadic Tribes-C)	1 Caste
8	<u>NT-D</u>	2%	Vanjari-(Nomadic Tribes-D)	1 Caste
TOTAL		52%		

The Other Backward classes in State of Maharashtra are thus stratified into compartments of OBC – SBC – VJ De-notified

Tribe – NT-B – NT-C (dhangar) – NT-D (Vanjari). The situation prevailing in Maharashtra thus denotes that the Tribes other than Scheduled Tribes have distinctly classified and allotted a separate quota and in case of Dhangar and Vanjari, they have been assigned exclusive quota of 3.5% and 2% respectively. Therefore, the sub-classification of backward classes is not a new concept in State of Maharashtra and in light of the Apex Court judgment in Indra Sawhney which permit such a sub-classification as backward and more backward classes would be referred in the subsequent paragraphs.

124 Since we have already expressed our opinion on the report of the backward class commission and have concurred with its findings that Maratha is a backward class, the question arises for consideration is in which category this class should fall in? The reservation provided for OBC category in both these two enactments is to the extent of 19%. The report has conclusively held that the Maratha community forms 30% of the population of the State and since this community was never counted in the OBC category, the question that fell for consideration before the Commission and the State Government was whether they should be fitted into

the 19% quota meant for OBC. As the Commission has expressed that it would lead to a catastrophic situation since as on today, there are approximate 346 number of castes included in the list of OBC and they together take 19% reservation. The list of Other Backward Classes in the State includes several severely backward classes which may be minuscule in population but they being socially and educationally backward require protection and therefore, find their place in the list declared by the State Government. If the Maratha community which comprises of 30% of population is ushered into the said category, the reservation of the OBC would be shared with the new class which comprises of 30% of the population and it is likely to take major chunk of the reservation benefits in the class of Other Backward Category. This situation was sought to be avoided by the Commission once it was satisfied that this class being backward needs protection. The Commission referred to the data available with it about the availability of jobs for youth in public services and the figures are disheartening. The Maratha being included in the OBC quota would destroy the entire structure of the OBC quota and apart from they being entitled for the benefits, the caste already finding place in the OBC list since

1995 would stand displaced and they would be making way to accommodate the Maratha community. The Commission expressed its apprehension of creation of a situation where the backward class communities already included in OBC list are abruptly asked to share their well established entitlement for reservation with the Maratha communities and it apprehended that this may lead to unwarranted repurgations in the well set harmonious co-existence culture of the State. The Commission therefore, suggested a mechanism to provide justice to the newly recognized backward class of citizens i.e. the Maratha and at the same time, not disturbing the existing composition of the Other backward Class which is entitled for 19% reservation in educational field and in employment. It, therefore, thought it expedient to categorize the said class into a distinct class captioned as “socially and educationally backward class” and carved out a distinct 16% reservation for this class.

The argument advanced before us opposing the permissibility of such a sub-classification of the Other Backward Category since the Marathas are ultimately nothing but Other Backward Class, but they have been categorized distinctly as SEBC, requires consideration. The question that

arise is whether it is permissible for the State to classify the backward classes into backward and more backward category. This issue came up for consideration for the first time in Balaji (supra) and it was categorically held that it is not permissible for the State to categorize backward classes into backward and more backward on the basis of their relative social backwardness. However, this issue was again framed as Question No.5 in Indra Sawhney and on this point, the finding recorded in Balaji was disapproved by the 9 Judges Constitution Bench. As per the majority view voiced through Justice Jeevan Reddy, a reference was made to the observations of Justice Chinappa Reddy in Vasanth Kumar (supra) where he was observed thus :

“We do not see why on principle there cannot be a classification into Backward Classes and More Backward Classes, if both classes are not merely a little behind, but far far behind the most advanced classes. In fact such a classification would be necessary to help the More Backward Classes; otherwise those of the Backward Classes who might be a little more advanced than the More Backward Classes might walk away with all the seats.

Relying on the said observation, Justice Jeevan Reddy observed as under :

“We are of the opinion that there is no constitutional or legal bar to a State categorizing the backward classes as backward and more backward. We are not saying that it ought to be done. We are concerned with the question if a State makes such a categorisation, whether it would be

invalid? We think not. Let us take the criteria evolved by Mandal Commission. Any caste, group or class which scored eleven or more points was treated as a backward class. Now, it is not as if all the several thousands of castes/groups/classes scored identical points. There may be some castes/groups/classes which have scored points between 20 to 22 and there may be some who have scored points between eleven and thirteen. It cannot reasonably be denied that there is no difference between these two sets of castes/groups/classes. To give an illustration, take two occupational groups viz., goldsmiths and vaddes (traditional stone-cutters in Andhra Pradesh) both included within Other Backward Classes. None can deny that goldsmiths are far less backward than vaddes. If both of them are grouped together and reservation provided, the inevitable result would be that goldsmiths would take away all the reserved posts leaving none for vaddes. In such a situation, a State may think it advisable to make a categorisation even among other backward classes so as to ensure that the more backward among the backward classes obtain the benefits intended for them. Where to draw the line and how to effect the sub-classification is, however, a matter for the Commission and the State - and so long as it is reasonably done, the Court may not intervene. In this connection, reference may be made to the categorisation obtaining in Andhra Pradesh. The Backward Classes have been divided into four categories. Group-A comprises of "Aboriginal tribes. Vimukta jatis. Nomadic and semi-nomadic tribes etc.". Group-B comprises professional group like tappers, weavers, carpenters, ironsmiths, goldsmiths, kamsalins etc. Group-C pertains to "Scheduled Castes converts to Christianity and their progeny", while Group-D comprises of all other classes/communities/groups, which are not included in groups A, B and C. The 25% vacancies reserved for backward classes are sub-divided between them in proportion to their respective population. This categorisation was justified in Balram [1972] 3 S.C.R. 247 AT 286. This is merely to show that even among backward classes, there can be a sub-classification on a reasonable basis.

The majority view also examined this issue with reference to Article 16(4) and according to Justice Reddy, it recognizes only one class i.e. Backward class of citizens. It does not speak separately of Scheduled Caste and Scheduled Tribe as Article 15(4) and therefore, even Scheduled Caste and Scheduled Tribes are included in the expression “backward class of citizens” and separate reservation be provided in their favour and this according to the majority view is a well accepted phenomenon throughout the country. The majority view further observed :-

“It is that if Scheduled Tribes, Scheduled Castes and Other Backward Classes are lumped together, O.B.Cs. will take away all the vacancies leaving Scheduled Castes and Scheduled Tribes high and dry”.

“The same logic also warrants categorization more backward and backward. We do not mean to say – we may reiterate – that this should not be done. We are only saying that if a state chooses to do so, it is not permissible in law”

Justice Savant also touched the said issue and made reference to judgment in Vasanth Kumar and held that depending upon the facts of each case, sub-classification of backward classes into backward and more, or most backward would be justifiable provided separate quotas are prescribed

for each of them. He has quoted an instance and justified conclusion in the following manner :-

“To give an instance, the Mandal Commission has, on the basis of social, educational and economic indicators evolved 22 points by giving different values to each of the three factors, viz., social, educational and economic. Those social groups which secured 22 points or above have been listed there as “socially and educationally backward” and the rest as “advanced”. Now, between 11 and 22 points some may secure, say, 11 to 15 points while others may secure all 22 points. The difference in their backwardness is, therefore, substantial. Yet another illustration which may be given is from Karnataka State Government order dated October 13, 1986 on reservations issued after the decision in Vasanth Kumar where the backward classes are grouped into five categories viz. A, B, C, D and E. In category A, fall such castes or communities as that of Bairagi, Banjari and Lambadi which are nomadic tribes, and Bedaru, Ramoshi which were formerly stigmatised as criminal tribes whereas in category D fall such castes as Kshatriya and Rajput. To lump both together would be to deny totally the benefit of special provisions to the former, the latter taking away the entire benefits. On the other hand, to deny the status of backwardness to the latter and ask them to compete with the advanced classes would leave the latter without any seat or post. In such circumstances, the sub-classification of the backward classes into backward and more or most backward is not only desirable but essential. However, for each of them a special quota has to be prescribed as is done in the Karnataka Government order. If it is not done, as in the present case, and the reserved posts are first offered to the more backward and only the remaining to the backward or less backward, the more backward may take away all the posts leaving the backward with no posts. The backward will neither get his post in the reserved quota nor in the general category for want of capacity to compete with the forward”

Justice Sahai, however, did not agree to the view of the majority and according to him, since the constitution treats all citizens alike for purposes of employment except those who fall under Article 16(4), any further classification or grouping for reservation is constitutionally invalid and according to him, for valid classification, legislature or executive measures may be co-related with the legislative purpose or objective. Similar is the observation of Justice Pandian and Justice Thommen. In any event, the said observations are in minority and therefore, not binding on us. Thus, in light of the Constitution Bench judgment, it is permissible to divide the backward classes into backward and more backward.

125 The list of OBC in the State includes the castes which are identified as socially and educationally backward by applying yardsticks which was approved in Indra Sawhney. The argument advanced of reserving 27% seats for the recognized backward classes was turned down by holding that though equal protection clause prohibits the State from making unreasonable discrimination for providing facilities for any section of its people, it requires the State to afford

substantially equal opportunities to those placed unequally and the submission that implementation of the recommendation of the report will curtail concept of equality and destroy the basic structure of the Constitution was held to be not legally sustainable. Justice Savant in para 415 has observed thus :

“Equality contemplated by Article 14 and other cognate articles including Article 15(1), 16(1) 29(2) and 38(2) of the Constitution is secured not only when equals are treated equally but also when unequals are treated unequally. Conversely, when unequals are treated equally, the mandate of equality before law is breached. To bring out equality between unequals, therefore, it is necessary to adopt positive measures to abolish inequality. The equalizing measures will have to use the same tools by which inequality was introduced and perpetuated. Otherwise equalization will not be of the unequals.

The reservation when looked as an affirmative action and provides a remedy for historical discrimination and its continuing ill-effects, aims at redressing the malady. The eradication of such discrimination is the constitutional mandate. It is no doubt true that any legitimate affirmative action must be supported by valid classification based on intelligible differentia distinguishing classes of citizens chosen for the protective measures from those excluded from those measures and such differentia must bear a reasonable nexus

with the object sought to be achieved i.e. the amelioration of the backwardness of the chosen class of citizens. The avowed purpose for which the impugned legislation is introduced by the State legislature is to attain an affirmative action for a class which has escaped its identification as 'backward class' for a considerable long period of time. However, after collecting the quantifiable data in respect of a particular community, the State stepped in and enacted a legislation conferring recognition on the said class to be a socially and educationally backward class. The conclusion derived on the basis of applying the indicators set out by the National Commission for backward classes i.e. the Mandal Commission and by applying the similar yardsticks which came to be applied by the Commission while identifying the Other Backward Classes. The classification of Maratha community as a backward community, however, posed several questions and the perplexed issue which the State was confronted with was about introducing this class to the benefits of reservation contemplated under Article 15(4) and 16(4) particularly when the Other Backward Classes, the Scheduled Caste and Scheduled Tribes have already taken their positions and the quota of seats was already reserved for them. The newly

identified class called for an accommodation but without disturbing the well established pattern in favour of the Other Backward Classes which entered the State list on being identified so. This resulted into an extra-ordinary situation and an exceptional circumstance which compelled the State to sub-categorize the strata of Other Backward Classes into the two distinct categories i.e. the existing Other Backward Classes which already have paved a way for availing benefits of reservation in form of affirmative action and the other class which is found to be backward but is being provided benefits for the first time. The population of 30% of this class, if allowed its entry in the Other Backward Category would have resulted into unjust deprivation of those caste which already finds place in the list of Other Backward Classes after being identified so on the recommendation of Mandal Commission. The State Government therefore, bifurcated the backward class existing in State and divided it in Other Backward Class and the Socially and Educationally backward class (SEBC) and Maratha community is one of them. The State has left scope for including other such castes in this newly category as class i.e. Socially and Educationally Backward Class of Citizens (SEBC) who have been held eligible to avail the benefits of

reservation of seats for admission in educational institutions in the State and for appointments or posts in the public services under the State. The categorization of this class, however, did not entitle it to avail the benefits of appointments to super specialized posts or in the temporary appointments of less than 45 days duration. Similarly, the impugned legislation restricts the benefit to be conferred on the newly created class only for admission in educational institution and posts for appointments in public services and under the State and not for political purpose. The said enactment, further clarified that the impugned Act will not affect the reservation provided to Other Backward Classes under the Act of 2001 or the Act of 2006. The classification of Maratha community which is otherwise declared as Backward class into a distinct class captioned as 'Socially and educationally backward class' is perfectly within the province of the State and the classification of the Other Backward Classes in the State based on the acclaimed parameters of backwardness i.e. Social and Educational backwardness, according to us, is reasonable classification commensurating with the object sought to be achieved i.e. upliftment of Maratha as socially and educationally backward class in the State and of affording

equality of opportunity in the matter of employment and education to the said class.

126 Learned counsel Shri Datar has placed reliance on the judgment of the Hon'ble Apex Court in case of ***E.V. Chinnaiah Vs. State of Uttar Pradesh***,²⁷ to submit that it is not permissible for a State to sub-divide a class so as to give more preference to a minuscule proportion in preference to other members of the said class. He has placed reliance on the said judgment and advanced an argument that the reservation looked as affirmative action for Scheduled Caste though it is the prerogative of the State, it is not permissible to have further sub-division/sub-classification of Scheduled caste as contained in presidential list under Article 341 and according to him, it was not open for the State to sub-classify Scheduled caste and apportion the seats of the quota already reserved for Scheduled caste as a whole among sub-classes of Scheduled caste so created. He would submit that the Hon'ble Apex Court in categorical terms has held that such sub-classification or micro classification would be violative of Article 14 and doctrine of reasonableness.

²⁷ 2005(1) SCC 394

We have perused the said judgment and on its perusal, express that the said judgment is clearly distinguishable. It pertains to sub-classification of the list of Scheduled caste under Article 341 and this makes it distinguishable from the present case in hand where we are dealing with the Other backward classes. The said judgment revolves around distinct fact involving the Andhra Pradesh Scheduled Caste (Rationalization of Reservation Act 2000). The facts disclose that the State of Andhra Pradesh appointed a Commission to identify group amongst the Scheduled Caste found in the list prepared under Article 341 of the Constitution by the President who had failed to secure the benefit of reservation provided for Scheduled Caste in the State in admission to Professional colleges and appointment to services in the State. According to the report, the State, by an ordinance divided 57 castes enumerated in the Presidential list into 4 groups based on *inter se* backwardness and fixed separate quotas in reservation of each of these groups, resultantly in the Presidential list came to be grouped as 'A', 'B', 'C' and 'D' and 15% reservation for the Scheduled Caste under Article 15(4) and 16(4) came to be apportioned as Group A – 1%, Group B 7%, Group C 6% and Group D 1%. The

argument of the appellant before the Court was that the State legislature has no competence to make any law in regard to bifurcation of the Presidential list of scheduled caste prepared under Article 341(1) of the Constitution and impugned legislation being one solely meant for sub-dividing or sub-grouping of the caste enumerated in the Presidential list suffers from lack of legislative competence.

The appellant was thus critical of allotting a separate percentage of reservation from amongst the total reservation allotted to the scheduled caste to different groups among the scheduled caste amounted to depriving one class of benefits of such reservation atleast partly. The State advanced a submission that quantum of reservation to be provided is an exclusive privilege of the State and that State will have to keep in mind the extent of backwardness of a group, be it Other backward Class, Scheduled caste or Scheduled Tribe and since the legislative competence of the State was not disputed, the sub-categorization was sought to be justified by placing reliance on *Indra Sawhney vs. Union of India*. It was in these peculiar facts, the Apex Court dealt with the contentions and emphasize that under Article 341 of the Constitution, there is only one list for the State and the Article

provides that the President may, with respect to any State or Union Territory after consultation with the Governor thereof by public notification specify the caste, races or tribes or part of, or groups within the caste, races or tribes, which shall for the purposes of Constitution be deemed to be scheduled caste in relation to that State or Union Territory and this was indicative that there can be only one list which shall include all specified caste, races or tribes or part or groups notified in that presidential list and any inclusion or exclusion from the said list can only be done by Parliament under Article 341(2) of the Constitution. It was also observed that in the entire Constitution whenever reference has been made to "Scheduled Castes", it refers only to the list prepared by the president under Article 341 and there is no reference to any sub-classification or sub-division in the said list except may be for the limited purpose of Article 330. It was thus observed that it is clear from Article 341 that except for a limited power of making an exclusion or inclusion in the list by an act of parliament, there is no provision to sub-divide, sub-classify or sub-group these castes which are found in the Presidential list of Scheduled castes. A reference was made to the constituent Assembly Debates and a unique nature of Article 341. It was

then held that the Scheduled Caste list prepared by the President under Article 341(1) forms one class of homogeneous group and any division of this class based on any consideration would be tinkering with the presidential list. The enactment which provides for creation of four groups of the caste enumerated in the presidential list of the state and provided for proportionate allotment of reservation after regrouping was held to be resulting in sub-classification or micro classification and this was held to be violative of Article 14. The following observations would reveal the conclusions :-

32. The last question that comes up for our consideration is : whether the impugned enactment creates sub-classification or micro classification of the Scheduled Castes so as to violate [Article 14](#) of the Constitution.

37. We have already held that the members of Scheduled Castes form a class by themselves and any further sub- classification would be impermissible while applying the principle of reservation.

38. On behalf of the respondents, it was pointed out that in Indra Sahani's case(supra), the court had permitted sub- classification of other backward communities, as backward and more backward based on their comparative under development, therefore, the similar classification amongst the class enumerated in the Presidential List of Scheduled Castes is permissible in law. We do not think the principles laid down in Indra Sahani's case for sub-classification of other backward classes can be applied as a precedent law for sub- classification or

sub-grouping Scheduled Castes in the Presidential List because that very judgment itself has specifically held that sub-division of other backward classes is not applicable to Scheduled Castes and Scheduled Tribes. This we think is for the obvious reason, i.e. Constitution itself has kept the Scheduled Castes and Scheduled Tribes List out of interference by the State Governments.

127 In light of the aforesaid observation, we would gainfully observe that the Apex Court was dealing with a situation of a list of Scheduled Castes under Article 341(1). However, before us, we are confronted with the issue of sub-classification of Other Backward classes and its permissibility by sub-classifying them.

128 In case of ***Atyant Pichhara Barg Chhatra Vs Jharkhand State Vaishya***²⁸ when the State of Jharkhand had clubbed together the Extremely Backward Category and Backward Category for the purpose of reservation in the State of Jharkhand, the Apex Court remitted the matter to the State to determine separately as to what would be the percentage of reservation for the Extremely Backward Category and held that the amalgamation of the two classes of people for reservation would be unreasonable as two different classes are treated similarly which is in violation of the mandate of

28 2006(6) SCC 718

Article 14 of the Constitution of India which is to "treat similar similarly and to treat different differently" and it was held that it is well settled, that to treat unequals as equals also violates Article 14 of the Constitution. It was further held that there is no constitutional bar to a state categorizing the backward classes as backward and more backward class but the action of the State Government for excluding from the list of classes was frowned upon on the ground that once the particular community is included in the list, it can be taken out only after the State has reached a conclusion that community is adequately represented in the services of the State. It was held that the State has failed to show any new circumstances except for a bald statement that the community was removed after careful application of mind whereas there was no empirical data to indicate that the circumstances have undergone change. In these circumstances, the matter was remitted to the State Government to undertake a deep study and research by a special Committee of experts and to make recommendations.

129 It can thus be seen that there is a systematic relation in segregating the Maratha class which is distinct in characteristic and herding Maratha class with the OBC would be highly unjust. The argument is that the State has taken utmost care in classifying the Maratha community as SEBC and has satisfied itself of the characteristic of social, educational and economic backwardness and inadequacy of representation in public employment and these characteristic features are consequently absent in the open category who are left out of reservation and therefore, there is well founded intelligible differentia which distinguishes the Maratha community from others. Ultimately, the whole object in providing reservation is to attain social justice, advancement of Maratha community as a class of citizens and adequate representation in Government service for the differently placed Maratha class of citizens and this establishes a nexus which is the basis of creating separate class of SEBC and while doing so, State has already taken care of maintaining the efficiency of administration by not diluting the standard of educational qualification for direct recruitment.

(VII) WHETHER CEILING LIMIT OF 50% IN RESERVATION EXISTS

130 The philosophy of Indian Constitution is reflected in its preamble. The significance of the preamble lies in its components. It embodies the source of the Constitution i.e. "We, the People of India". The terms 'sovereign', 'socialist', 'secular', 'democratic', 'republic' suggest the nature of the State. The Ideals of justice, liberty, equality, fraternity reflects the objectives of the Constitution. The words employed in the preamble are indicative of the fundamental values on which the constitution rests. It emulates the dreams and aspirations of its founding fathers.

 The preamble avouch equality of status and equality of opportunity as one of its prominent goal. It embraces three dimensions of equality – civil, political and economic. The fundamental rights enshrined in Part III of the Constitution ensures civil equality through the paraphernalia of Article 14, 15, 15(1) and 16(1) and also through Article 17 and 18 which abolish untouchability and titles. Political equality is ushered through Article 325 which contemplates one general electoral roll for every territorial constituency of election either to the house of Parliament or to the house of

the legislature of the State and no person shall be deemed to be ineligible for inclusion in such roll on the ground of religion, race, caste, sex or any of them. Article 326 prescribes that the elections to the house of people and to the legislative assembly of States to be based on adult suffrage. Economic equality in the country is secured through directive principles of State Policy and in particular, Article 39 which mandates every State to direct its policy towards securing adequate means of livelihood to citizens – men and women equally, and which ensures equal pay or equal work for both. It also mandates the State to direct its policy in a way that the operation of economic system does not result in concentration of wealth and means of production to the common detriment.

131 Equality is thus essence of the Indian Democracy. The right to equality under Article 14 has been held to constitute the basic structure of the Constitution in terms of the decision of the Apex Court in case of **N. Nagaraj** (supra). Article 14 of the Constitution envelopes a positive concept and postulates equal treatment to similarly situated persons. It makes it imperative for the State to ensure equality before law and equal protection of laws within the territory of India.

However, recognizing the inequality in existence in our social structure, the makers of the Constitution conceived that the weaker sections have to be dealt with preferential hand. A special responsibility was placed on the State to provide protection to the weaker sections of Society. The Constitution, contains several inbuilt provisions which provide for protective discrimination to accelerate the process of building an egalitarian social order which would ensure upliftment of the weaker sections of society. This was an answer found by the Constitution makers to the Indian Social System which is a caste based hierarchical system which made certain classes suffer the demerits of social and economic underdevelopment. Though these provisions appear to be violating the principle of equality, yet, its justification is sustained by the obligation of a social welfare state.

132 The system of reservation in India extends to a series of measures such as reserving seats in Parliament/legislature, government job, securing admission in higher educational institutions, scholarships, housing etc. The reservation policy nourishes the historically disadvantaged

castes and tribes – listed as Scheduled Caste and Scheduled Tribe and also those designated as Other Backward Class so as to address the historic oppression, inequality and discrimination faced by certain communities and to uplift them on the same pedestal as those who have already advanced in the social scenario. The reservation system is intended to realise the promise of equality enshrined in the Constitution and is looked upon as a means to confer benefits on indigenous people with lesser abilities so that they can get access to the social and economic resources and gain entry into the mainstream of public life.

Though the 'equal protection' clause prohibits State from making unreasonable discrimination in providing preferences and facilities to any section of it is people, none the less, the spirit of the constitution obligates a State to afford substantially equal opportunities to those placed unequally so as to ensure equality to them. The basic philosophy of reservation is to off-set the inequality and remove the manifest imbalance, the victims of which have been left behind by those who, on account of advantages conferred, have moved far ahead and those lagging behind demand equality, at times through special preferences.

Those classes of social groups which are inherently unequal and suffered the brunt of social discrimination resulting into backwardness, demand to justify the treatment to them in form of concession and equality can be achieved only when equilibrium is established between these two sections of society who were once unequal. Equality can be achieved only by treating equals, equally and to equate unequals would amount to perpetuating inequality.

The idea of preferential treatment for caste and tribal groups perceived to be the lowest in social and economic hierarchy pre-dates the Indian Constitution. The Constitution of independent India has translated the idea of preferential policies, declared untouchability as illegal and espoused the ideal of a casteless society.

133 The reservation system in India first came into effect from 1950 though prior to its advent, the Hindu system was a *Chaturvarniya* system involving the higher caste and the lower caste frequently referred to as '*shudras*'. When the makers of the modern India sat to pen down the Constitution of independent India though realized the need to give visibility to the diversity within its social landscape while at the same

time, were confronted with levelling them out in an equal socio economic strata. Caste was the very important factor to be taken care of since the *Varna* system had gained its root in the society and was firmly founded. While this unique position existed in Indian subcontinent for over a century, the Decenn Census started by British in late 19th Century had institutionalized it as a foremost social division existing. Recognition of caste discrimination and the need to rectify the same was noted even before the Constitution was framed. Dr. Ambedkar was a pioneer of separate political representation for lower caste. His vociferous effort culminated in allotment of separate electorate for the lower caste, grouped under the category “Scheduled Caste” in the Government of India Act, 1935. The constituent assembly promised to transform India into a casteless society. The Constitution with its theme of equality was weaved around the “Fundamental Rights of Citizens”. Keeping in mind the unique role that the caste played historically discriminating against the entire group of people, it was deemed necessary for the Constitution to recognize its existence through provisions carefully crafted for their advancement. Article 15(4) and 16(4) translate this policy and carve out a special provision. The constituent

assembly is a witness to long and heated debate and discussion to decide upon the precise nature and duration of these provisions. In 1951, when reservation privileges were being decided, Census lists were utilized and the State came to the conclusion that 55.3 million people i.e. 20% of India's population would be brought under reserved categories. The constitution makers deemed it fit to determine the indicators of the backward classes though as far as Scheduled Caste and Schedule Tribes are concerned, it devised a special mechanism of identifying them by Presidential Notification and its inclusion and deletion by the Parliament itself. Social backwardness and Educational backwardness were zeroed down as the indicators for determining the backwardness and sub-clause (4) of Article 15 which was inserted by the 1st Amendment with effect from 18th June 1951 conferred the power on the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Caste and the Scheduled Tribes. The word “backward classes” was preceded by terminology 'socially and educationally'. The equality of opportunity in matters of public employment which is contained in Article 16 of the Constitution enable the State to

make any provision for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State are inadequately represented.

134 Affirmative action, especially for Other Backward classes has always been an issue of debate in the history of independent India. Positive discrimination, as this is known in India, is a laudable process in line with the Constitutional goals that India has set out for itself. The task of identifying the other Backward Classes is a complex issue since the Constitution has neither defined the term nor has prescribed any method of recognizing them unlike the Scheduled Caste and Scheduled Tribes. The issue of identification of the Backward class still persists despite several authoritative pronouncements embarking the issue. In absence of an uniform method conclusively tested to determine the backwardness, resentment among large section of population remains as the issue is seen to have politicized at times with the intent of OBC being marginalized. Though the perennial conundrum whether caste should be used as sole factor for identification of the backward classes, has undergone a paradigm shift in the approach and by this time it is settled

that caste may not be the sole factor in identification of the backward classes and other indicators contributing to the backwardness in various forms including educational backwardness, economic backwardness, occupation, place of residence has been recognized as accepted yardsticks for measuring backwardness.

After Seven decades of the Constitution being in force, the States are still baffled with the concept of social and economic backwardness and whether, these indicators/ yardsticks are sufficient to determine backward classes, determination of which has been left exclusively to the province and wisdom of the States.

135 The first National Commission for backward class constituted in the year 1953 under the Chairmanship of Kalelkar Commission which was entrusted with the task of listing of the socially and educationally backward classes, related it to social hierarchy based on caste and identified 2399 castes. However, the recommendations of this Commission were not accepted since it was predominantly based on caste. In 1979, the Second National Backward Commission Class Commission under the Chairmanship of

Bindeshwari Prasad Mandal was constituted which carried out an empirical assessment of 405 out of 406 districts by evolving 11 yardsticks covering social, educational and economic backwardness. It submitted its report in 1980 listing 3743 Hindus and non-hindu caste and communities which according to the Commission, constituted 52% of the population. The Mandal Commission recommended 27% reservation for the communities identified by it as “socially and educationally backward” over and above the Scheduled Caste and Scheduled Tribe. After a gap of 10 years, the Government took a decision to implement the recommendations of the Commission and it is not a hidden fact that it was met with wide spread protest, both classes i.e. one being identified as socially and educationally backward and the other class being apprehensive of the privileges being conferred protested in rigorous forms. Amongst this chaos and conflict, the Hon'ble Apex Court through its Constitution Bench in case of **Indra Sawhney** (supra) upheld the reservation of 27% conferred on the socially and educationally backward class. Since then, the caste led reservation on being identified as social backwardness have stayed in form of an affirmative action.

136 The Other Backward Class is thus another beneficiary group which has entered into the arena of reservation policy. Though the term “backward class” is not precisely defined in the Constitution, the characteristic for its identification finds place in Article 15(4) and Article 16(4). Further, Article 46 contained in the directive principles of State policy which endows the State with a duty to promote with special care the educational and economic interest of the weaker section of the people and in particular of Scheduled Caste and Scheduled Tribe and to protect them from social injustice and all forms of exploitation lead to an irresistible conclusion that the constitution makers intended to protect the educational and economic interest of the weaker sections. The term being widely used so as to cover a community other than Scheduled Caste and Scheduled Tribes and to protect this community from any sort of social injustice, thereby taking care of their social backwardness. Article 15(4) and 16(4) removes the fetters of the equality clause from the State and permits it to make special provision for advancement of socially and educationally backward class of citizens for the Scheduled Caste and Scheduled Tribes and also permit the

State to make provision for reservation of appointments of post 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. The said provision thus recognizes the need to take special steps for ameliorating the social conditions of certain classes. Pertinent to note that neither Article 15(4) nor Article 16(4) makes reference to the words “caste” but it makes a reference to the word 'class'. “Class” is clearly distinguishable from 'caste' and 'class' is a system of social stratification which rests upon the unequal distribution of power between status groups having definite position in prestige hierarchy. It is relatively open as compared to other form of status like caste. 'Backward class' do not constitute one single whole but a multitude of social groups with varying position and socio economic standing in the social hierarchy of Indian Society.

137 We are confronted with the rival claim as to whether 50% limit for reservation of the backward classes of citizens, including the Scheduled Caste and Schedule Tribe exists in the constitutional frame work. The learned senior counsel representing the State Government Shri Rohatgi and

Shri Thorat has strenuously urged that the ceiling of 50% in reservation is a misconception. It is argued that the reservation is permissible under the Constitution and is carved out as an exception to the theory of equality and there is no embargo created by the Constitution restricting it to 50%. It is also urged that the authoritative pronouncement of the Apex Court do not lay down any numerical limit for the reservation contemplated under Article 15(4) or 16(4). The arguments are also focused on the 77th Constitutional amendment as well as 81st Amendment in form of Article 16(4B) dealing with the unfilled vacancy and it is then argued that except this article, the Constitution nowhere prescribes 50% as the limit. It is attempted to canvass that the pronouncements of the Apex Court in case of M.R. Balaji (supra) while dealing with the competing claims of the two categories have been clarified subsequently by the majority judgment in Indra Sawhney as only rule of prudence and it has been categorically held that exceptional circumstances and extra-ordinary situation justify crossing of the limit of 50% and ceiling of 50% is normal rule and excess is an exception which contemplates a justification. Learned senior counsel Shri Rohatgi has placed heavy reliance on certain parts of the judgment in case of N. Nagaraj.

Respective counsel appearing for the State have also invited our attention to a subsequent judgment of the Apex Court in case of ***S.V. Joshi Vs. State of Karnataka***²⁹ and relying on the said judgment, they would submit that if quantifiable data is available, then, there is no hindrance in the reservation exceeding 50%. It is then sought to be submitted that when the MSBCC headed by Shri Gaikwad has made available quantifiable data pertaining to Maratha community, in light of this existing data demonstrating that Maratha constitute 30% of the population in State of Maharashtra has therefore, justified the reservation in favour of Maratha and this data being collected in a scientific manner, and the scope of judicial review being limited, the ceiling of 50% will not preclude the State from enacting a legislation providing for 16% reservation in favour of Maratha community. On the other hand, the respective counsel opposing reservation in favour of Maratha proceed on the very premise that the said reservation obliterate the constitutional requirement of a ceiling limit of 50% and submit that even the father of the Constitution Dr. B.R. Ambedkar in the constituent assembly had expressed that reservation should be confined to a

²⁹ 2012(7) SCC 41

minority seats. Heavy reliance is placed by the respective counsel in case of Archana Reddy, a judgment delivered by the Andhra Pradesh High Court where even 1% excess reservation has been frowned upon since the exceptional or extra-ordinary circumstances were not made out. It is unequivocally argued by the learned senior counsel Shri Aney, Shri Datar and Shri Sadavarte that the Constitution Bench Judgment in case of Indra Sawhney upholds and follows the principle laid down in **Balaji** and the only exception is in respect of the “Far flung and Remote areas” which are portrayed as extra-ordinary situation. However, the ultimate word of the Constitution Bench is “extreme caution” for going beyond 50%.

138 In light of these legal submissions, we would examine the legal scenario as unfolded in the catena of judgments of the Hon'ble Apex Court to ascertain as to whether ceiling of 50% really exists. The said judgments need to be construed and read in the light of the provisions providing for the special privilege. Article 15(4) is introduced by the Constitution (1st Amendment) Act of 1951 in order to enable the State to make special provision for the

advancement of any socially and educationally backward class of citizens or for the Scheduled caste or Scheduled Tribe. Further, it would be also necessary to make a reference to clause (5) inserted in Article 15 by the Constitution (93rd Amendment) Act of 2005 with effect from 20th January 2006 which is an enabling provision for advancement of any socially and educationally backward classes of citizens or for the Scheduled Caste and Schedule Tribe, insofar as it relate to their admission to educational institutions, including private educational institution, whether aided or unaided by the State, other than the minority educational institution referred to in clause (1) of Article 30. Article 16(1) and 16(2) mandate the equality of opportunity in matters of public employment. Clause (4) of Article 16 enables the State for making any provision for reservation of appointment 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. Clause (4) do not make any reference to Scheduled Castes or Scheduled Tribes but it is apparent and by this time, conclusively held that the expression “any backward class of citizens” would include within its sweep the Scheduled caste and Scheduled Tribe. It is clarified so in the Constitution

Bench Judgment in case of Indra Sawhney. Further more, the position as regards whether Article 16(4) would apply only to initial appointment or promotion is also clarified by the Constitution Bench that it would apply only to appointment and would not extend to promotion. However, on account of an uproar following the said verdict, since it adversely affected the interest of Scheduled Caste and Schedule Tribe, the 77th Amendment Act of 1995 introduced clause 16(4A) which reads thus :

“(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes or posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State”.

We would also make a reference to Article 16 (4B) which was inserted by the Constitution (85th Amendment) Act of 2001 with effect from 17th June 1995.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year”.

It is this clause which is introduced with effect from 9th June 2000, there is a mention of ceiling of 50%.

139 In case of ***M.R. Balaji Vs. State of Mysore*** (supra), the Hon'ble Apex Court was confronted with the two affirmative clauses in form of Article 15(4) and 16(4) and the Constitution Bench dealt with two competing claims i.e. interest of weaker sections of the Society and adjudged the said claim against the interest of other communities. In the said case, the petitioners before the Apex Court had challenged the validity of an order passed by the State of Mysore endeavoring to make a special provision of advancement of its socially and educationally backward class of citizens under Article 15(4) of the Constitution. The said order was challenged by the petitioner on the basis that but for the reservation, they would have been entitled to admission in the respective colleges on the basis of their merit. It was urged that the basis adopted by the order in specifying and enumerating social and backward class of citizens in the State is unintelligible and irrational and the classification made on the said basis is inconsistent with and

outside the provision of Article 15(4). It was also urged that the extent of reservation prescribed by the said order was unreasonable and extravagant and amounts to a fraud on the power conferred by the said provision on the State. The State, on the other hand, urged that the classification is rational and intelligible and reservation prescribed is fully justified by Article 15(4). By the said order, a quota of 50% was fixed for Other Backward Class, out of which 28% seats were reserved for so-called backward classes and 22% seats were reserved for more backward classes. This was in addition to the reservation of 15% and 3% for Scheduled Caste and Scheduled Tribe respectively and result of the order was 68% of the seats available for admission to engineering and medical colleges came to be reserved, leaving only 32% seats available to the merit pool.

140 While dealing with the two competing claims, the Constitution Bench determined the scope and extent of the expression “backward classes” and held that the concept of backwardness is not intended to be relevant in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. It

held that if such relative tests were to be applied, there would be several layers or strata of backwardness and each one of them may claim to be included under Article 15(4). It held that the backwardness under Article 15(4) must be social and educational, both. It then proceeded to determine how the social and economic backwardness can be determined. It then deliberated on the issue of the extent of such reservation and observed thus :-

30 That takes us to the question about the extent of the special provision which it would be competent to the State to make under [Art. 15\(4\)](#). [Article 15\(4\)](#) authorizes the State to make any special provision for the advancement of the Backward Classes of citizens or for the Scheduled Castes and Scheduled Tribes. The learned Advocate-General contends. that this Article must be read in the light of [Art. 46](#), and he argues that [Art. 15\(4\)](#) has deliberately and wisely placed no limitation on the State in respect of the extent of special provision that it should make. [Art. 46](#) which contains a directive principle, provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all form,% of exploitation. There can be no doubt that the object of making a special provision for the advancement of the castes or communities, there specified, is to carry out the directive principle enshrined in [Art. 46](#). It is obvious that unless the educational and economic interests of the weaker sections of the people are promoted quickly and. liberally, the ideal of establishing social and economic equality will not be attained, and so, there can be no doubt that [Art. 15\(4\)](#) , authorises the State to take adequate steps to achieve the object which it has in view. No one can dispute the proposition that political freedom and even

fundamental rights can have very little meaning or significance for the Backward Classes and the Scheduled Castes Scheduled Tribes unless the backwardness and inequality from which they suffer are immediately redressed.

31 When [Art. 16\(4\)](#) refers to the special provision for the advancement of certain classes or scheduled castes or scheduled tribes, it must not be ignored that the provision which is authorised to be made is a special provision ; it is not a provision which is exclusive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that [Art. 15\(4\)](#) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of [Art. 15\(4\)](#). It would be extremely unreasonable to assume that in enacting [Art. 15\(4\)](#) the Parliament intended to provide that where the advancement of the Backward Classes or the Scheduled Castes , and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored,

32 In this connection, it is necessary to remember that the reservation made by the impugned order is in regard to admission in the seats of higher education in the State. It is well-known that as a result of the awakening caused by political freedom, all classes of citizens are showing a growing desire to give their children higher university education and so, the Universities are called upon to face the challenge of this growing demand. While it is necessary that the demand for higher education which is thus increasing from year to year must be adequately met and properly channelised, we cannot overlook the fact that in meeting that demand standards of higher education in Universities must not be lowered. The large demand for education maybe met by starting larger number of educational institutions, vocational schools and polytechnics. But

it would be against the national interest to exclude from the portals of our Universities qualified and competent students on the ground that all the seats in the Universities are reserved for weaker elements in society. As has been observed by the University Education Commission,

"he indeed must be blind who does not see that mighty as are the political changes, far deeper are the fundamental questions which will be decided by what happens in the universities" (p. 32).

Therefore, in considering the question about the propriety of the reservation made by the impugned order, we cannot lose sight of the fact that the reservation is made in respect of higher university education. The demand for technicians scientists, doctors, economists, engineers a experts for the further economic advancement of the country is so great that it would cause grave prejudice to national interests if considerations of merit are completely excluded by whole-sale reservation of seats in all Technical, Medical or Engineering colleges or institutions of that kind. Therefore, considerations of national interest and the interests of the community or society as a whole cannot be ignored in determining the question as to whether the special provision contemplated by [Art. 15\(4\)](#) can be special provision which excludes the rest of the society altogether.

141 Thus, in a broader way, the Constitution Bench expressed that a special provision for reservation should be less than 50% of the seats and as to how much less would be depending on the circumstances of each case. The recommendation of the Nagan Gowda Committee prescribing 68% reservation was not found to be proper in the larger interest of the State. Direction was issued to the State

Government that while making provision for advancement for the weaker sections of the society, the issue should be approached objectively in a rational manner. It categorically expressed "there can be no doubt that the constitution makers assume as they were entitled to, that while making adequate reservation, under Article 16(4), care would be taken not to provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general competitor in a large field and by creating widespread dissatisfaction amongst the employees, materially affecting efficiency. Therefore, like the special provision improperly made under Article 15(4) reservation made under Article 16(4) beyond beyond permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution.

142 The Special Bench of Nine Judges came to be constituted to settle the legal position relating to the affirmative actions in form of reservation in light of OM dated 13th August 1980 and 25th September 1991 issued by the Government pursuant to Mandal Commission Report.

 The Constitution bench indicated and formulated several issues and issue no.6 which is relevant for us at this

juncture reads thus :-

- (a) Whether the 50% rule enunciated in Balaji (1963 Supp 1 SCR 439) is a binding rule or only a rule of caution of prudence?
- (b) Whether the 50% rule, if any, is confined to reservations made under clause (4) of Article 16 or whether it takes in all types of reservations that can be provided under Article 16?
- (c) Further while applying 50% rule, if any, whether an year should be taken as a unit of whether the total strength of the cadre should be looked to?

143 The majority judgment was delivered by Justice Jeevan B.P. Reddy (for Justice M.H. Kania, CJ, Justice M.N. Venkatachalaiah, Justice Ahmadi,). Since the bone of contention between the parties is based on the judgment of the Constitution bench, it will be apposite to consider the said Judgment in its proper perspective.

The majority judgment carefully analyzed the term “Socially and educationally” contained in clause (4) of Article 15. It clarified that the backward class of citizens in clause (4) OF Article 16 takes in the Scheduled Caste and Scheduled Tribes and all other backward class of citizens including Socially and Educationally backward class. On the issue as to

whether the class should be situated similarly to the scheduled caste or scheduled tribes to be qualified as backward, in para 795, Justice Jeevan Reddy observes thus :

“795 We see no reason to qualify or restrict the meaning of the expression "backward class of citizens" by saying that it means those other backward classes who are situated similarly to Scheduled Castes and/or Scheduled Tribes. As pointed out in para 85, the relevant language employed in both the clauses is different. [Article 16\(4\)](#) does not expressly refer to Scheduled Castes or Scheduled Tribes; if so, there is no reason why we should treat their backwardness as the standard backwardness for all those claiming its protection. As a matter of fact, neither the several castes/groups/tribes within the Scheduled Castes and Scheduled Tribes are similarly situated nor are the Scheduled Castes and Scheduled Tribes similarly situated. If any group or class is situated similarly to the Scheduled Castes, they may have a case for inclusion in that class but there seems to be no basis either in fact or in principle for holding that other classes/groups must be situated similarly to them for qualifying as backward classes. There is no warrant to import any such a priori notions into the concept of Other Backward Classes. At the same time, we think it appropriate to clarify that backwardness, being a relative term, must in the context be judged by the general level of advancement of the entire population of the country or the State, as the case may be. More than this, it is difficult to say”

While answering question no.6, which we have reproduced above, the majority view, after making reference to the Constitution Bench judgment in Balaji which rejected the argument that the absence of limitation contained in Article 15(4), no limitation can be prescribed by the Court on the extent of reservation and after making further reference to the

observation of Justice Fazal Ali in the judgment of N.M. Thomas, expressed that after a decision in Thomas, controversy arose wherein the 50% rule enunciated in Balaji, stands overruled by Thomas or does it continue to be valid. The majority view is expressed in the following manner :

807 We must, however, point out that Clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State Legislatures in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of [Article 16](#) should also be exercised in a fair manner and within reasonable limits - and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50% of the appointments or posts, barring certain extra-ordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in [Narayan Rao v. State](#) 1987 A.P. 53, striking down the enhancement of reservation from 25% to 44% for O.B.Cs. The said enhancement had the effect of taking the total reservation under [Article 16\(4\)](#) to 65%.

808 It needs no emphasis to say that the principle aim of [Article 14](#) and [16](#) is equality and equality of opportunity and that Clause (4) of [Article 16](#) is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in [Article 14](#). The provision under [Article 16\(4\)](#) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in Clause (1) of [Article 16](#) which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent Assembly, set out in para 28). No other member of the Constituent Assembly suggested otherwise. It is, thus clear that reservation of a majority of seats was never envisaged by the founding fathers. Nor are we satisfied that the present context requires us to depart from that concept.

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 out of the main stream 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.

Our attention was invited to the relevant observation in paragraph no.807 by Shri Dada where it is observed that “though it is not possible to accept the theory of proportionate representation, though the proportion of population of the backward classes of the total population would certainly be relevant”. Emphasis is also laid on observations in para 810 which contemplate extra-ordinary situations.

It would also be appropriate to reproduce paragraph no.859:

859. We may summarise our answers to the various questions dealt with and answered hereinabove:

(1)

(6)(a)&(b) The reservations contemplated in Clause (4) of [Article 16](#) should not exceed 50%. 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 out of the main-stream of national life and in view of the conditions peculiar to and characteristic of 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.

860. For the sake of ready reference, we also record our answers to questions as framed by

the counsel for the parties and set out in para 681. Our answers question-wise are:

(1)

(4) The reservations contemplated in Clause (4) of [Article 16](#) should not exceed 50%. 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 out of the main-stream of national life and in view of the conditions peculiar to and characteristic of 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.

For applying this rule, the reservations should not exceed 50% of the appointments in a grade, cadre or service in any given year. Reservation can be made in a service or category only when the State is satisfied that representation of backward class of citizens therein is not adequate.

To the extent, Devadasan is inconsistent herewith, it is over-ruled.

(5) There is no constitutional bar to classification of backward classes into more backward and backward classes for the purposes of [Article 16\(4\)](#). The distinction should be on the basis of degrees of social backwardness. In case of such classification, however, it would be advisable-nay, necessary - to ensure equitable distribution amongst the various backward classes to avoid lumping so that one or two such classes do not eat away the entire quota leaving the other backward classes high and dry.

For excluding 'creamy layer', an economic criterion can be adopted as an indicium or measure of social advancement.

144 Further in the said decision, S. Ratnavel Pandian, J. while concurring has observed thus :

183. As to what extent the proportion of reservation will be so excessive as to render it bad must depend upon adequacy of representation in a given case. Therefore, the decisions fixing the percentage of reservation only upto the maximum of 50% are unsustainable. The percentage of reservation at the maximum of 50% is neither based on scientific data nor on any established and agreed formula. In fact, [Article 16\(4\)](#) itself does not limit the power of the Government in making the reservation to any maximum percentage; but it depends upon the quantum of adequate representation required in the Services. In this context, it would be appropriate to recall some of the decisions of this Court, not agreeing with Balaji as regards the fixation of percentage of reservation.

184. The question of percentage of reservation was examined in Thomas wherein Fazal Ali, J not agreeing with Balaji has observed thus:

".... clause (4) of [Article 16](#) does not fix any limit on the power of the Government to make reservation. Since Clause (4) is a part of [Article 16](#) of the Constitution it is manifest that the State cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in [Article 16\(1\)](#). As to what would be a suitable reservation within permissible limits will depend upon the facts and circumstances of each case and no hard and fast rule can be laid down, nor can this matter be

reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50%. As I read the authorities, this is, however, a rule of caution and does not exhaust all categories. Suppose for instance a State has a large number of backward classes of citizens which constitute 80% of the population and the Government, in order to give them proper representation, reserves 80% of the jobs for them, can it be said that the percentage of reservation is bad and violates the permissible limits of Clause (4) of [Article 16](#)? The answer must necessarily be in the negative. The dominant object of this provision is to take steps to make inadequate representation adequate."

185. Krishna Iyer, J in the same decision has agreed with the above view of Fazal Ali, J stating that "...the arithmetical limit of 50% in any one year set by some earlier rulings cannot perhaps be pressed too far." (SCC p.371, para 143).

186. Though Mathew, J. did not specifically deal with this maximum limit of reservation, nevertheless the tenor of his judgment indicates that he did not favour 50% rule.

187. Chinnappa Reddy, J in Karamchari case has expressed his view on the ceiling of reservation as follows:

".... There is no fixed ceiling to reservation or preferential treatment in favour of the Scheduled Castes and Scheduled Tribes though generally reservation may not be far in excess of fifty percent. There is no rigidity about

the fifty percent rule which is only a convenient guideline laid down by Judges. Every case must be decided with reference to the present practical results yielded by the application of the particular rule of preferential treatment and not with reference to hypothetical results which the application of the rule may yield in the future. Judged in the light of this discussion I am unable to find anything illegal or unconstitutional in any one of the impugned orders and circulars...."

188. Again in Vasanth Kumar, Chinnappa Reddy, J reiterates his view taken in Karamchari in the following words:

"We must repeat here, what we have said earlier, that there is no scientific statistical data or evidence of expert administrators who have made any study of the problem to support the opinion that reservation in excess of 50 per cent may impair efficiency."

189. I fully share the above views of Fazal Ali, Krishna Iyer, Chinnappa Reddy, JJ holding that no maximum percentage of reservation can be justifiably fixed under Articles 15(4) and/or 16(4) of the Constitution.

190. It should not be out of place to recall the observation of Hegde, J in Hira Lal observing [SCC p.572, para 8]

"The extent of reservation to be made is primarily a matter for the State to decide. By this we do not mean to say, that the decision of the State is not open to judicial review.... The length of the leap to be provided depends upon the gap to be covered. (emphasis supplied)"

145 Justice P. B. Sawant, J. while concurring with the majority view has held that clause (4) of Article 16 is not an exception to clause (1) thereof and even if assuming that it is an exception, there is no numerical relationship between the rule and its exception and their respective scope depends of the areas and situations they cover and how large the areas of exception will be, would depend on the circumstances of each case. Their Lordships held that legally it cannot be insisted that exception will cover not more than 50% of the area covered by the rule. It is further clarified that clause (4) even if it is held as an exception to clause (1), it has no bearing on the percentage of reservations to be kept under it. Quoting ***Justice Hegde in State of Punjab Vs. Hiralal***³⁰, “The length of the leap to be provided depends upon the gap to be covered,” he concluded that in Article 16(4), there is no indication of the extent of reservation that can be made in favour of backward classes. However, the object of reservation being to ensure adequacy of representation, serves as a guide for percentage of reservation to be kept and broadly speaking the adequacy of representation in the services will have to be proportionate to the portion of the

30 1971 SCR (3) 267

backward classes in the total population. It is further conclusively held that if reservation is to be on the basis of proportion of the population in this country, the backward classes being no less than 77 - one half% (socially and educationally backward classes and SC and ST taken together, the total reservation will have to be to that extent. It is not disputed that the present reservation of the Scheduled Caste and Scheduled Tribe is in proportion to their population.

Justice Savant further observed :

“What was in the mind of the Constitution-framers was the removal of the inadequacy in representation over a period of time, on each occasion balancing the interests of the backward classes and the forward classes so as not to affect the provisions of equality enshrined in Articles 14 and 16(1) as also the interests of the society as a whole. As pointed out earlier, Dr Ambedkar was not only not in favour of proportional representation but was on the contrary, of the firm view that the reservations under Article 16(4) should be confined to the minority of the posts/appointments. In fact, as the debate in the Constituent Assembly shows nobody even suggested that the reservations under Article 16(4) should be in proportion to the population of the backward classes.

506. *While deciding upon a particular percentage of reservations, what should further not be forgotten is that between the backward and the forward classes, there exists a seizable section of the population, who being socially not backward are not qualified to be considered as backward. At the same time they have no capacity to compete with the forwards being educationally and economically not as advanced. Most of them have only the present generation acquaintance with education. They are, therefore, left at the mercy*

of chance-crumbs that may come their way. They have neither the benefit of the statutory nor of the traditional in-built reservations on account of the unequal social advantages. It is this section sandwiched between the two which is most affected by the reservation policy. The reservation percentage has to be adjusted to meet their legitimate claims also.

518. To summarise, the question may be answered thus. There is no legal infirmity in keeping the reservations under clause (4) alone or under clause (4) and clause (1) of Art. 16 together, exceeding 50%. However, validity of the extent of excess of reservations over 50% would depend upon the facts and circumstances of each case including the field in which and the grade or level of administration for which the reservation is kept. Although, further, legally and theoretically the excess of reservations over 50% may be justified, it would ordinarily be wise and nothing much would be lost, if the intentions of the Framers of the constitution and the observations of Dr. Ambedkar on the subject in particular, are kept in mind. The reservations should further be kept category and gradewise at appropriate percentages and for practical purposes the extent of reservations should be calculated category and gradewise.

146 The afore-extracted passages from the majority judgment in *Indra Sawhney* undisputedly lead to a conclusion that there is no constitutional bar to the reservation exceeding more than 50%. Articles 15 and 16 of the Constitution of India and more particularly Articles 15(4) and 16(4) being the enabling provisions for advancement of socially and educationally backward class of citizens and the power exercised by the State, in this regard, is to be circumscribed in

limited sphere of judicial review, in order to test the bonafides of State. The judgment of *Indra Sawhney* read in its proper perspective and in benevolence of advancing cause of the weaker sections under Articles 15 and 16 the Constitution does not impose any fetter on State's power to exceed reservation more than 50% in a deserving case. This is however, subject to the State providing valid justification in exceeding the limit of 50%. No provision of the Constitution, and in particular Articles 15 and 16, impose any restriction on the extent of reservation. There is a reference in Article 16(4-B) to 50% limit but, that is restricted to promotions per year. The ratio of the majority judgment binds us and we need not refer to the minority view. The Judgments of the Apex Court and the High Courts make reference to the percentage of reservation. The ratio of *Indra Sawhney* has not been disturbed, modified or reversed by any other judgment. Obviously, the judgment in *Indra Sawhney* is a seven Judges has been constituted to consider the issues. It is also required to be noted that the minority judgment of the Supreme Court need not be referred to, since what is binding upon the High Court is the majority view. Reading of the majority view and concurring views of the said judgment would divulge that 50%

ceiling limit has been accepted as a rule but the majority view also contemplated certain extra-ordinary situations inherited in the great diversity in this country and its people and this was illustrated in form of “far flung and remote area” where population inhabiting those areas might on account of their being within the main stream of national life and conditions peculiar to them need to be treated in a different way. It was thus accepted that such a contingency may call for some relaxation. However, in expressing so, word of extreme caution was also expressed and categorically it was ruled that unless and until a specific case is made out, imperative nature of the rule shall not be diluted. We are therefore, inclined to accept the submission by the learned Senior Counsel Shri Rohatgi that though 50% ceiling/cap has been imposed on the power of the State to exercise its enabling power, the State is not denuded in exercising the discretion in exceeding the ceiling limit in extra-ordinary situations and exceptional circumstances. Whether the State has been able to make its case fall within its newly opened window, is to be determined by us which we will be dealing at a later point.

147 True that, between the judgment delivered by the Constitution Bench in **Balaji** (supra) and in judgment delivered by the 9 Judges Bench in **Indra Sawhney** (supra), another Constitution Bench found in its way in **State of Kerala & Anr vs. N.M. Thomas & Ors**³¹, while determining the validity of Rule 13(AA) which empowered the State Government to exempt for a specified period, members of Scheduled Caste and Scheduled Tribe already in service from passing the test, the purport of Article 14 and Article 14 was once again scrutinized and this time, in the backdrop of Article 335, CJ Ray, as His Lordships was, then analyzed the scheme of Article 14, 15 and 16 threadbare and held it to be formed part of the Constitution creating rights, supplementing each other. Article 16 which ensured to all the citizens equality of opportunity in the matters relating to employment, was held to be independent of guarantee of equality contained in Article 14. It was also held that equality under Article 16 could not have a different content from equality under Article 14 and Article 16(1) is affirmative, whereas Article 14(1) is construed in negative language but ultimately, Article 16(4) indicates one of the methods of achieving equality embodied

³¹ 1976 AIR 490,

in Article 16(1). The concept of equality was further elaborated in the backdrop of Article 16(1) and 16(4) in the following paragraphs :-

28 This equality of opportunity need not be confused with absolute equality. [Article 16\(1\)](#) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such a promotion to a selection post all that [Article 16\(1\)](#) guarantees is equality of opportunity to all citizens. Articles 16(1) and (2) give effect to equality before law guaranteed by [Article 14](#) and to the prohibition of discrimination guaranteed by [Article 15\(1\)](#). Promotion to selection post is covered by [Article 16\(1\)](#) and (2).

The rule of equality within Articles 14 and 16(1) was held to be not violated by a rule which will ensure equality of representation in the services for unrepresented classes after satisfying the basic needs of efficiency of administration. Justice Mathew described the concept of 'Equality of Opportunity' contemplated under Article 16(1) as an aspect of the more comprehensive notion of equality. He elaborated the said concept in the following paragraphs

81 Article 16(1) is only a part of a comprehensive scheme to ensure equality in all spheres. It is an instance of the application of the larger concept of equality under the law embodied in Articles 14 and 15. [Article 16\(1\)](#) permits of classification just as [Article 14](#) does [see [S. G.](#)

Jaisinghani v. Union of India & ors.(2), State of Mysore & Anr. v. P. Narasing Rao(3) and C. A. Rajendran v. Union of India & Ors.(4).]. But, by the classification, there can be no discrimination on the ground only of race, caste and other factors mentioned in Article 16(2)

148 Justice Krishna Iyer described equal justice as an aspect of social justice, the salvation of the very weak and down-trodden, and held that the methodology for levelling them up to a real, not formal, is the goal. His Lordship described Article 46 and 336 being testament and Articles 14 to 16 being the tool-kit. In paragraph no.129, he deduced certain clear conclusions of great relevance in the following manner :

129 Now we may deduce from these and other like Articles, unaided by authority, certain clear conclusions of great relevance to the present case: (1) The Constitution itself demarcates Harijans from others. (2) This is based on the stark backwardness of this bottom layer of the community. (3) The differentiation has been made to cover specifically the area of appointments to posts under the State. (4) The twin objects, blended into one, are the claims of harijans to be considered in such posts and the maintenance of administrative efficiency. (5) The State has been obligated to promote the economic interests of harijans and like backward classes, Arts. 46 and 335 being a testament and Arts. 14 to 16 being the tool-kit, if one may put it that way. To blink at this panchsheel is to be unjust to the Constitution.

If Art. 14 admits of reasonable classification, so does Art. 16(1) and this Court has held so. In the present case, the economic advancement and promotion of the claims of the grossly under-represented and pathetically

neglected classes, otherwise described as Scheduled Castes and Scheduled Tribes, consistently with the maintenance of administrative efficiency, is the object, constitutionally sanctioned by Arts. 46 and 335 and reasonably accommodated in [Art. 16\(1\)](#). The differential, so loudly obtrusive, is the dismal social milieu of harijans. Certainly this has a rational relation to the object set out above. I must repeat the note of caution earlier struck. Not all caste backwardness is recognised in this formula. To do so is subversive of both [Art. 16\(1\)](#) and [\(2\)](#). The social disparity must be so grim and substantial as to serve as a foundation for benign discrimination. If we search for such a class, we cannot find any large segment other than the Scheduled Castes and Scheduled Tribes. Any other caste, securing exemption from [Art. 16\(1\)](#) and [\(2\)](#), by exerting political pressure or other influence, will run the high risk of unconstitutional discrimination. If the real basis of classification is caste masked as backward class, the Court must strike at such communal manipulation. Secondly, the Constitution recognizes the claims of only harijans (Art. 335) and not of every backward class. The profile of [Art. 46](#) is more or less the same. So, we may readily hold that casteism cannot come back by the backdoor and, except in exceptionally rare cases, no class other than harijans can jump the gauntlet of 'equal opportunity' guarantee. Their only hope is in [Art. 16\(4\)](#). I agree with my learned brother Fazal Ali J. in the view that the arithmetical limit of 50% in any one year set by some earlier rulings cannot perhaps be pressed too far. Overall representation in a department does not depend on recruitment in a particular year, but the total strength of a cadre. I agree with his construction of [Art. 16\(4\)](#) and his view about the 'carry forward' rule.

149 In words, Justice Fazal Ali, the doctrine contained in Article 16 is a hard and reeling reality, a concrete and constructive concept and not a rigid rule or an empty formula. According to him, Article 16 is merely an incident of Article 14, Article 14 being the genus is of universal application, whereas

Article 16 is the species and seeks to obtain equality of opportunity in the services under the State. According to Justice Fazal Ali, the only manner in which the objective of equality as contemplated by the founding fathers of the Constitution and as enshrined in Articles 14 and 16 can be achieved is to boost up the backward classes by giving them concessions, relaxations, facilities, removing handicaps, and making suitable reservations so that the weaker sections may compete with the advanced class and in due course of time all may become equals and backwardness is banished for ever. Justice Fazal Ali, however, did not agree that an arithmetical limit of 50% set by some earlier rulings is the final word.

It is to be noted that the view point expressed by Justice Krishna Iyer and Justice Fazal Ali was appropriately deciphered and given due consideration by majority view in case of ***Indra Sawhney*** (supra), to which we have already referred to above. In any contingency, the Constitution Bench has added a further adage in the form of extra-ordinary situation is the verdict of a larger Bench and prevails as on date.

150 A perusal of the subsequent judgment in case of **N. Nagaraj & Ors Vs. Union of India**³² reiterates the said position. The Constitution Bench in Nagaraj was confronted with the Constitution (Eighty-Fifth Amendment) Act, 2001 inserted Article 16(4) of the Constitution retrospectively providing reservation in promotion with consequential seniority and the same was challenged as unconstitutional and violative of the basic structure. The argument canvassed was that the Parliament appropriated the judicial power to itself and has acted as an appellate authority by reversing the judicial pronouncement of the Court by the use of power of amendment, and therefore, it is violative of the basic structure. It was also argued that it also altered the fundamental right of equality which was part of the basic structure of the Constitution. According to the petitioners, the consequences of 85th Amendment which provided for reservation and promotion, would result in reverse discrimination in the percentage of reservation in the reserved category.

151 Apart from examining the said contention on a broader canvas of whether the basic structure of the

³² 2006 (8) SCC 212

Constitution was infringed by the said amendment, the Constitution Bench dealt in detail the ambit and scope of Article 16(4A), it also dealt with the extent of reservation. The problem as to what should be basis of distribution was approached with the three criteria to judge the basis of distribution and these three criteria were put under two concepts of equality, formal equality and proportional equality. Formal equality was described to mean that the law treats everyone equal and does not favour anyone, whereas concept of proportional equality expect the State to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy.

152 It was held that Article 16(1) cannot prevent the State from taking cognizance of the compelling interest and the earlier position of Article 16(4) being read as an exception to 16(1) was clarified in Indra Sawhney and the position which emerges is that Article 16(1) and 16(4) are restatements of principles of equality under Article 14 and equality in Article 16(1) is individual - specific whereas reservation in Article 16(4) and 16(4A) is an enabling power. It also held that the word “nothing in this article” in Article 16(4) represents a legal

device allowing the discrimination in favour of a class and it creates a field which enables the State to provide for reservation where it is satisfied on the basis of quantifiable data that there exists backwardness of a class and inadequacy of representation in employment and these are considered to be compelling reasons which do not exist in Article 16(1). The Apex Court, therefore, formulated existence of two circumstances i.e. 'backwardness' and 'inadequacy of representation'. It held that backwardness has to be based on effective factors whereas 'inadequacy' has to factually exist.

153 Justice S.H. Kapadia (as he was then) in M. Nagaraj identified the limitation on the power available to the State under 16(4A) and 16(4B) viz. (1) The ceiling limit of maximum 50% reservation (quantitative limitation) (2) The principle of creamy layer (qualitative exclusion) (3) The compelling reason for exercise of power i.e. backwardness and inadequacy of representation and (4) Overall administrative efficiency as required by Article 335. The Constitution Bench observed thus :-

123 However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely,

backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of [Article 335](#). It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

Our attention was specifically invited by Mr.Rohatgi in paragraph no.58 where Their Lordships proceeded to observe that in Indra Sawhney, majority held that 50% was a binding rule and not a mere rule of prudence. Shri Rohatgi attempted to canvass that Indra Sawhney itself carve out a window for exceptional circumstances and extra-ordinary situation and he would submit that paragraph no.58 is not the sole spirit of the judgment but the entire permissibility of exceeding the reservation of 50% is further highlighted in the subsequent paragraphs and para 58 cannot be thus read in isolation. The respective counsel for the State have heavily relied upon a judgment in case of ***S.V. Joshi Vs. State of Karnataka*** (supra) which is delivered by Three Judges Bench of the Apex Court where the window opened by Nagaraj was

carried forward while determining whether the quantum of reservation provided for in Tamil Nadu Backward Classes, Scheduled Caste and Scheduled Tribes (reservation of seats in educational institutions and of appointments or posts in the services under the State) Act of 1993 is valid. The Court, after taking note of the Constitution (93rd Amendment Act 2005) and Constitution (81st Amendment Act 2000) which were subject matter of Nagaraj and Ashok Kumar Thakur Vs. Union of India which had laid down the position of law that if the State wants to exceed 50% reservation, then it is required to base its decision on quantifiable data. The Court proceeded to observe that this exercise was not undertaken by State of Tamil Nadu and therefore, direction was issued to the State to place the quantifiable data before the Tamil Nadu State Backward Classes Commission and on the basis of such quantifiable data, the Commission was directed to decide the quantum of reservation. As far as the State of Karnataka was concerned whose enactment was subject to scrutiny since it provided for reservation exceeding 50% in matter of admission to educational institutions and recruitment to service, the State was cautioned that it should be guided in its decision by Nagaraj and Ashok Kumar Thakur (supra). Time

was granted to the State Government to take appropriate decision and it was held that the reservation exceeding 50% would be permissible only on the basis of quantifiable data, placed before the Government since no such data was collected or presented to the Court.

154 The subsequent judgment in case of ***Jarnail Singh Vs. Lachmi Narain Gupta***,³³ disclose that the Constitution Bench was constituted to determine the issue of reservation in promotion with consequential seniority for Scheduled Caste and Scheduled Tribes under Article 16(4A) and 16(4B) and to determine whether three pre-conditions laid down in Nagaraj and the obliteration of creamy layer requirement in case of Scheduled Caste and Scheduled Tribes for reservation need to be referred to a larger Bench. The first test of collecting quantifiable data on backwardness insofar as Scheduled Caste and Scheduled Tribes are concerned, were held to be contrary to the judgment in case of Indra Sawhney and was struck down to that extent. The principle laid down in M. Nagaraj which had left the test for determining adequacy of representation in promotional post to the State, it was clarified

³³ 2018(10) SCC 306

that efficiency of administration should be ensured since that was a third factor laid down in Nagaraj. Ultimately, the decision in E. V. Chinnaiah (supra) came to be clarified and it was held that Chinnaiah dealt with a completely different problem and not a constitutional amendment and therefore, the reference to a larger bench was totally unwarranted. In any contingency, this referred to the Scheduled Caste and Scheduled Tribes. However, as far as Other Backward Classes are concerned, the three guiding principles laid down in Nagaraj remained untouched and reference to larger Bench was held unwarranted.

155 Recently, the Rajasthan High Court, Jaipur bench in case of ***Captain Gurvinder Singh Vs State of Rajasthan***³⁴ had an opportunity to deal with a similar situation wherein the State Government enacted the Rajasthan Special Backward Class (Reservation of Seats in Educational Institutions) in the State and appointments and post in Services under the State) Act, 2015, on the basis of report submitted by the Other Backward Commission recommending 5 castes as Special Backward Classes with 5% reservation and sought to shift these five castes from Backward classes to Special Backward

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Classes. The allegation of the petitioners was that the State Government somehow wanted to provide 5% reservation to Gurjars/Gujars and other castes on account of the Statewide agitation launched by them for their inclusion in the category of Scheduled Tribe.

Strong reliance has been placed on these judgments by the learned senior counsel Shri Aney appearing for the petitioner. The Division Bench was called up to answer the challenge to the reservation which was crossing the ceiling of 50%. After making a detail reference to the judgment of ***M.R. Balaji*** (supra) and the judgment in case of N. Nagaraj, the Division Bench examined the report of the Commission on its merit. By citing instances demonstrating perversity and inadequacy in the report which recommended for reservation beyond 50% by carving out a new category for those who are already getting benefit of reservation for past many years, the Division Bench held that no extra-ordinary circumstances exist to provide 5% reservation. The report was said to be not based on quantifiable data.

The said judgment can be distinguished from the facts which we are dealing since the Division of Rajasthan High Court did not find a case of 'extra-ordinary

circumstances' being made out to justify exceeding the ceiling of 50% as the report did not place any quantifiable data and therefore, according to the Division Bench, the special case as set out in Indra Sawhney was not made out and the Court quashed the report of the Commission itself along with the impugned enactment.

156 Reliance was also placed on the interim order passed by this Court on an earlier occasion when the earlier Ordinance and the Enactment of 2015 providing 16% reservation to Maratha community was challenged on somehow similar grounds. The observations made by a Bench headed by the Hon'ble Chief Justice Mohit Shah (as he was then) are prima facie in nature and were made on interim deliberations, nonetheless, the Special Leave Petition assailing the said judgment delivered on 14th November 2014 has been dismissed. The Division Bench extensively dealt with the plethora of judgments touching the issue of ceiling of 50% and it has in extenso referred to the observations of the Apex Court in Indra Sahwney. The Division Bench though made a reference to S.V. Joshi Vs. State of Karnataka and Rohtas Bhankar Vs. Union of India, it brushed aside the exercise

undertaken in S.V. Joshi's case on the ground that the said judgment was not merely concerned with reservation of posts/ vacancies in public employment but also with reservation of seats in educational institutions and in this judgment, the Apex Court did not purport to modify the law laid down in M. Nagaraj, but rather directed the State to follow the law and refer to the principles laid down regarding inter alia, collection of quantifiable data. The Division Bench therefore, reiterated that 50% is the ceiling limit but it also observed that the ceiling limit cannot exceed in absence of any quantifiable data. The said observations of the Division Bench no longer hold good since the restriction now gets watered down since the State has asserted the compelling reasons in view of quantifiable data demonstrating backwardness of the class and inadequacy of representation in addition to compliance in Article 335 for maintenance of administrative efficiency.

157 Reliance is placed by Shri Datar on the judgments of the Andhra Pradesh High court in case of ***B. Archana Reddy and ors Vs State of Andhra Pradesh***³⁵. The Andhra Pradesh High court was dealing with the reservation of seats

35 2005 (6) ALT 364

in the educational institutions and of appointments/posts in the public services under the State to Muslim community Ordinance 2005 (Ordinance No.13 of 2005). The most important question that fell for consideration was whether Muslim community as a community can be declared socially and educationally backward for the purposes of Article 15 and 16. The larger bench also deliberated as to whether there was relevant and scientific material before the Commission to come to a conclusion that Muslim community in Andhra Pradesh were, as a community backward, socially and educationally and how far can the Court go into analyzing the material which was collected by the Commission. Acting Chief Justice Bilal Nazki, as his Lordship was then, writing for himself and on behalf of Justice R Subhash Reddy did not agree with the remaining 2 Judges i.e. Justice Raghuram and Justice V.Rao and held that in light of the earlier Five Judges Bench of the same Court held that Muslims can be declared a community to be a backward class. The judgment also commented on the report of the Commission and according to Justice Nazki, the report of the Commission could not have accepted to form an opinion that Muslim community, as a whole, in State of Andhra Pradesh is a backward community in the light of the

parameters laid down in the Mandal Commission case. After carefully analyzing the report of the Commission and the scope of judicial review, a finding was ultimately recorded that the identification was done on a defective criteria, which is unscientific and which do not indicate as to whether Muslim community, as a whole, is backward or not and therefore the Ordinance was quashed.

Justice Raghuram approached the question from a different angle and as regards the first issue as to whether declaration of a Muslim community residing in the State of Andhra Pradesh as backward class and their inclusion in the list of backward class is sustainable in light of law declared in Indra Sawhney and also whether it is violative of Article 14, 15 and 16 of the Constitution. It was held that quotas even for affirmative action predicated on religion basis alone derogate the human dignity of all to whom they are applied, positively or negatively. It was also held that relevant criteria, adequate and probative data must exist to sustain a conclusion for backwardness of class (social and/or educational) and adequacy of data justifies the satisfaction of backwardness and states conclusion based on illusory or irrelevant information or data would compel a judicial determination.

Resultantly, it was held that the entire exercise undertaken by the Commission and its conclusion fell foul of the impregnable constitutional norm of classification in identifying and classifying the backward classes. It was further held that in treating the backward class of Muslims in the State of Andhra Pradesh and the other Muslims as an integral homogeneous social class, as the basis for its entire exercise, the Commission was led into a fatal error and the entire exercise was in futility. Resultantly, the Ordinance based on the report of the Commission met with the same fate in the judgment of Justice Nazki. The point of excess reservation as a proposition of law evolving from the said judgment needs to be read and referred to in light of the aforesaid factual and legal situation emerging out of the said judgment. After finding fault with the report of the Commission which identified Muslims as the backward class, thereby increasing the reservation from 46% to 51%, the judgment proceeds to observe that the excess 1% do not fall within that “extra-ordinary situation” carved out in Indra Sawhney and then the observation of 1% (excess) was propounded and it was held that the reservation though exceeding by 1%, is not tolerable relaxation but we will have to keep in mind the observations in the backdrop of the entire

gamut of the facts and law evolved in the said judgment and when the Ordinance itself providing for 5% reservation came to be quashed on being held that the identification of the community itself was unsustainable in the fabric of the Constitution, we do not think that the said judgment can be accepted as a proposition as to what has been sought to be propounded by Shri Datar.

We are therefore, inclined to hold that it is ultimately the State on whom the burden is cast to justify the excess reservation and since the 50% ceiling limit is not exhaustive of all the categories. As Justice Jeevan Reddy has expressed in the majority view that the extent of reservation depends upon the proportion of backward classes to the total population and their representation in public services. It is also by now settled that backwardness being a relative term, it must be judged by the general level of advancement of the entire population of the country or the State, as the case may be, and therefore, determination of backwardness is best left to the respective State. Once the State forms an opinion about the backwardness of a community and has before it, the data depicting that the said community/class is not adequately represented in the services in the State and

requires an affirmative action, it would determine the quantum of reservation to this class in form of a quota. The extra-ordinary situations contemplated by Indra Sawhney were not exhaustively set out but none the less, it contemplated the conditions of a class peculiar and characteristical which may prove a justification for relaxation of strict rule. The view of the majority judgment in Indra Sawhney is concurred by Justice Ratnavel Pandian by making reference to the observations of Justice Fazal Ali, Justice Krishna Iyer and Justice Chinnappa Reddy holding that no maximum percentage of reservation can be justifiably fixed under Article 15(4) and/or Article 16(4) of the Constitution. Justice Savant concurring in unequivocal terms hold that the validity of the extent of excess of reservation over 50% would depend upon the facts and circumstances of each case, including the field in which and the grade or level of administration for which the reservation is made. Ultimately, in Nagaraj, the Apex Court has expressed that in a given case, an appropriate Government is free to provide reservation where it is satisfied on the quantifiable data of backwardness and inadequacy of representation of a community. All these factors are context specific and there cannot be any fixed

yardstick and the exercise of the power of the State can be examined by the Court in exercise of its power of judicial review and the State would then be required to justify the existence of compelling reasons i.e. backwardness, inadequacy of representation and overall administrative efficiency. In light of the aforesaid parameters which we have derived from the series of judgments to which we have referred, we now proceed to determine whether extra-ordinary circumstances or exceptional situations have been brought forth by the state of Maharashtra in bringing the impugned legislation.

(VIII) Whether extra-ordinary circumstances or exceptional situations as spelled out in Indra Sawhney are made out by the State in providing reservation for Maratha community by the impugned legislation.

158 The issue that arise for our consideration is, therefore, whether there exists extra-ordinary circumstances which would justify the dilution of the principle of 50% ceiling limit in favour of the Maratha community and as to whether the State has been able to establish extra-ordinary circumstances classifying Maratha as a separate class.

159 When a reservation policy of State is challenged, several factors need consideration and they can be enumerated as follows :

- (i) The Constitutional limits within which the State action may be pursued such as the explicit or clearly implied constitutional prohibition as to classificatory parameters
- (b) The relevance or rationality of the criteria adopted by the State constituted commission or an expert body entrusted by the State to undertake the said exercise.
- (c) The adequacy of data considered in the said exercise
- (d) The rationality of the synthesis between the evolved criteria and the collected data for analysis and ;
- (e) The rationality of conclusions arrived at by an expert body resulting into the decision by the State.

160 In ***Ram Singh Vs. Union of India***,³⁶ Justice Ranjan Gogoi, the Hon'ble Chief Justice, while dealing with the notification published in the Gazette of India and examining its validity, by which the *Jat* community was included in the

36 2015(4) SCC 697

Central list of backward classes in Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, NCT of Delhi and two districts of Rajasthan and State of Uttar Pradesh and Uttarakhand, it observed that the decisions which affect the right of citizens and specifically based on Articles 14, 16(4) and 15(4) must be on the basis of contemporaneous inputs and not outdated antiquated data since one may legitimately presume progressive advancement of all citizens on every count i.e. social, economic and political. The following observations made by the Hon'ble Chief Justice aptly provides the prism through which the whole issue can be examined :-

54 Backwardness is a manifestation caused by the presence of several independent circumstances which may be social, cultural, economic, educational or even political. Owing to historical conditions, particularly in Hindu society, recognition of backwardness has been associated with caste. Though caste may be a prominent and distinguishing factor for easy determination of backwardness of a social group, this Court has been routinely discouraging the identification of a group as backward solely on the basis of caste. [Article 16\(4\)](#) as also [Article 15\(4\)](#) lays the foundation for affirmative action by the State to reach out the most deserving. Social groups who would be most deserving must necessarily be a matter of continuous evolution. New practices, methods and yardsticks have to be continuously evolved moving away from caste centric definition of backwardness. This alone can enable recognition of newly emerging groups in society which would require palliative action. The recognition of the third gender as a socially and educationally backward class of citizens

entitled to affirmative action of the State under the Constitution in [National Legal Services Authority vs. Union of India](#)[8] is too significant a development to be ignored. In fact it is a path finder, if not a path-breaker. It is an important reminder to the State of the high degree of vigilance it must exercise to discover emerging forms of backwardness. The State, therefore, cannot blind itself to the existence of other forms and instances of backwardness. An affirmative action policy that keeps in mind only historical injustice would certainly result in under-protection of the most deserving backward class of citizens, which is constitutionally mandated. It is the identification of these new emerging groups that must engage the attention of the State and the constitutional power and duty must be concentrated to discover such groups rather than to enable groups of citizens to recover "lost ground" in claiming preference and benefits on the basis of historical prejudice.

161 The most cherished principle of equality embodied in Article 14 of the Constitution finds place in Chapter III with its different facet in form of Articles 15 and 16. A duty is cast on the State to achieve the goal of equality enshrined in Article 14. Article 15 is thus an instance of right to equality stated in Article 14. Article 15(4) which begins with the word "Nothing in this Article" envisages a policy of compensatory protective discrimination which enables the State in making any special provision for advancement of any socially and educationally backward class of citizens or for the Scheduled Caste and Scheduled Tribes. Sub-clause (5) is another sprawling tenet of equality where it enables the State to make

any special provision, by law, for the advancement of socially and educationally backward class of citizens or for the Scheduled Caste and Scheduled Tribes, insofar as such provisions relate to their admission to educational institutions. Article 15(4) confers a discretion and it may not be looked at as creating any Constitutional obligation and the Constitutional Court in exercise of writ jurisdiction may not be persuaded to issue writ of mandamus to provide for reservation. The enabling power can be exercised by the State in favour of the socially and educationally backward classes of citizens or for the Scheduled Caste and Scheduled Tribes. The latter are recognized by the Constitution itself but the former are to be identified by the State by the well-known parameters which are to be found in the Constitution itself, though ironically the issue as to who are backward classes has eluded the State and the judiciary equally. It is, however, settled position that the enabling power which is a special provision and though not looked at necessarily to be an exception to the guarantee of equality underlying in Article 15(1), a balance should always be struck between the fundamental rights of other citizens of not to be discriminated and protection or concession being availed by the weaker

section. The State must identify the socially and educationally backward classes and what it contemplated is both social and educational backwardness of a class. The identification of the backwardness is a prerogative conferred on the State as defined in Article 12 and it can then take assistance of the backward class commission constituted under Article 340 to investigate the conditions of backward classes. This power exercised by the State is always subject to judicial review and when it is found that it is not exercised within the four corners of the Constitutional principles or not based on reasonable classification, then exercise of such power by the State can always be struck down as not violative of the Constitutional mandate.

162 Those who oppose the identification of Maratha community as a backward community and reservation provided to them through the State legislation have propensely argued that a community which was not backward for all these years and to be precise in the opinion of two National Commissions and the earlier State Backward Class Commissions which did not find sufficient material to identify them as backward and the presumption being that the

population of this country is advancing with the country's advancement and taking the leap forward, how can it be presumed that a community which was once upon a time 'forward' can be declared as 'backward' by passage of time. This question is unequivocally raised by all the respective counsel appearing for the petitioners.

In order to enable us to find an answer to this question, it would be required to refer to the past including the findings of various Commission which dealt with the aspect of backwardness of this community. The history disclose that as early as in 1902 Maratha community was provided the benefit of reservation by Chhatrapati Shahu Maharaj. It is to be noted that the census of India 1931 Vol.VIII Part 2 Bombay Presidency has shown Maratha community as Hindu Intermediate community. This Hindu Intermediate community is synonymous with backward classes and we would refer to para 768 in Indra Sawhney which reads thus :

"768. In Bombay province, the Government of Bombay, Finance Department Resolution No. 2610 dated 5.2.1925 defined "Backward Classes" as all except Brahmins, Prabhus, Marwaris, Parsis, Banyas and Christians. Certain reservations in Government service were provided for these classes. In 1930, the State Committee noticed the over-lapping meanings attached to the expressions "depressed classes" and "backward classes" and recommended that "Depressed Classes" should be used in the sense of untouchables, a usage

which "will coincide with existing common practice." They proposed that the wider group should be called "Backward Classes", which should be subdivided into Depressed Classes (i.e., untouchables); Aborigines and Hill Tribes; Other Backward Classes (including wandering tribes). They opined that the groups then currently called Backward Classes should be renamed "intermediate classes"

Further, the Government of Bombay by its resolution dated 23rd April 1942 classified the intermediate communities and this included Maratha community at Sr. No.149. However, after this point of time, this community came to be displaced from the category of backward classes and though most of the intermediate communities found their way in the list of OBCs, Kunbi being one of them, Maratha community was excluded. It do not appear that there was any conscious exercise to exclude it. As far as the report of Mandal Commission is concerned, it did not focus particularly on Maratha community and rather, broadly dealt and recognized the backward classes qua the respective States. A request was therefore, made for inclusion of the Maratha community which is a synonym of 'Kunbi' in the central list of backward classes and the National Commission for Backward Classes report submitted on 22nd February 2000 has been strongly relied upon by Shri Talekar. The Member Secretary of the NCBC has submitted this report after analyzing the request received by the Commission from

the Akhil Bharatiya Maratha Mahasangh. The claim at the relevant time was submitted making a request for inclusion of Marathas along with the Kunbis in the list of backward classes on the ground that Marathas are originally Kunbis. The Two Member Maharashtra Bench of the Commission consisting of Shri P.S. Krishnan, Member Secretary and Shri Sahu Akshay Bhai held public meetings and this hearing was attended by Justice Shri S.N. Khatri, Chairperson of MSBCC. The Commission took note of the fact that 'kunbi' is included in the Mandal, State and the first phase central list of backward classes for Maharashtra. The Commission made reference to the Maharashtra District Gazetteers of districts like Nagpur, Parbhani, Aurangabad, Sangli and Thane as well as Amravati and Wardha and it recorded a finding that Maratha is not one and the same as Kunbi but rather it constitutes a separate and distinct class/community though they originated from Kunbi. A distinction is then sought to be drawn between these two castes with reference to its communal practices. The two Member Commission then observed that a community whose close association is with the ruling classes and which has enjoyed important economic and political rights and positions of power and influence and which eventually became rulers

cannot be said to have suffered any social disadvantages. It also noted that numerous Chief Ministers from this community never made this demand and conclusively in light of the fact that Maratha is not a synonym of Kunbi, it did not recommend its inclusion in the list of backward classes. This finding is not based on any quantifiable data and/or any material on record. A general perception which prevailed in respect of Maratha community was a basis for rejecting the demand for inclusion of this class into the list of Other Backward Class. The said inclusion was, therefore, not rejected on basis of any contemporaneous or quantifiable data or any in-depth study of the social and educational status of the said community but it was only rejected on the ground of its classification earlier as 'forward community' in the past and it bears no semblance with 'Kunbi' which had already found its way in the Other Backward Class list. We, therefore, conclude that the two Member Commission did not analyse the status of this Community, social, educational and economical and merely because minuscule members of this community have reached the upper strata of the society and were in controlling position and even gained a political placement was the broad rationale for not conferring the benefit on the entire community.

163 We then turn to the reports of the Commissions constituted by the State specifically Khatri Commission and the Bapat Committee report where attempt was made by these Commissions to assess the social status of this class. Perusal of the reports would divulge that the report placed before us no way indicate that this class has progressed socially and educationally in the subsequent years. The Bapat Commission report which was submitted in the year 2008 is carefully perused by us which disclose that the Committee Members had factually visited various villages in different districts and the members who visited, for example, Professor Dr. Anuradha Bhoite, who visited and carried out the survey in Satara district has observed that the lower strata of Maratha community are extremely poor and leading a life of distress and they need a helping hand for their upliftment. Same is the observation in respect of the Kolhapur district. Professor D.K. Gosavi who was also part of the Commission and participated in the survey conducted in several villages in Beed, Nanded, Latur districts, also recommended that in North Maharashtra, the entries of caste recorded in the year 1917-1927 are 'kunbi'. However, subsequently, the Maratha

community considered it to be a matter of inferiority to record such a caste and thereafter, subsequent to 1994-95, the entries of Kunbi were deleted. The said Member has also recorded that the community comprises of members who are unemployed and like any other community, it is stratified into lower, middle and higher middle class. In conclusion, the member has recommended that the whole Maratha community cannot be declared as Other Backward Class but the lower strata of the society which is economically backward needs some protection. Another Member Shri Laxman Gaikwad on the basis of his survey has highlighted the deplorable status of Marathas in rural areas and he has clearly observed that the Maratha community residing in villages is extremely backward, economical and they have been deprived of their agricultural yields and most of them worked in fields owned by others. He categorically makes a reference to Latur from where one of the Chief Ministers of Maharashtra comes and record that this is also no exception. He has also state that in Usmanabad, there is a mixture of political leaders, sugarcane cultivators and the extreme poverty of Maratha community deserve them a reservation in OBC. The member suggested that the OBCs would also be adversely

affected and he recommended that though Maratha community needs some reservation for their advancement but that should be done without placing them in the OBC category.

This Commission was not however, a statutory Commission since the MSBCC Act 2005 came to be implemented only in the year 2009. Thus, this report in fact is in favour of inclusion of Maratha in OBC but the final decision by way of voting is contrary as pointed out by the learned senior counsel Shri Vineet Naik. We have therefore, perused the individual reports of the members and except the dissent note of Shri Devgaokar and Shri Deshpande, the other members have supported the backwardness of the community. Anyhow, the report was not based on any data on educational backwardness and inadequacy of representation but was rather a fact finding/field survey report depicting the situation of Maratha community.

It was after this report and coming into force of the MSBCC Act of 2005, Rane Committee came to be appointed to procure quantifiable data pertaining to the social, educational and economic backwardness of the community and inadequacy of the representation in State public services.

This resulted into the Ordinance 2014 which was replaced by ESBC Act of 2015.

It can thus be seen that the claim of Maratha community was never deeply gone into and on the other hand, the fact finding disclose the social status of this community. As far as the earlier reports are concerned, we have noted that none of the reports had empirical data before it and it therefore, cannot stand the scrutiny of classifying Maratha as not backward. We would curiously refer to the reports, which would disclose that it is for the first time in form of Gaikwad Commission the quantifiable data has been collected and in terms of Nagaraj, the quantifiable data. inadequacy of representation are two key factors which would permit exceeding of reservation of 50% by the State.

The erroneous exclusion of the Maratha community from reservation itself contribute to the extra-ordinary situation that this community without determination of its backwardness was kept out of the benefits conferred on the backward classes though the kunbi community which is identically placed in social scenario since ages, finds its place in the list of Other Backward Classes on recommendation of Mandal Commission. This contribute as one of the extra-

ordinary circumstance when the State attempts to do away the injustice caused to this community which has been completely kept out of any benefits approximately Seven decades after the concept of backwardness was introduced and still continues to remain backward.

164 The tabular form reproduced below would indicate the manner in which the various commissions dealt with the Maratha community and as to why the findings of the earlier Committee/Commissions will not preclude the claim of the community being once again considered by the MSBCC based on the quantifiable data.

Sr. No	Commission Report	Modalities adopted and Method undertaken
1	Kalekar Report-1955	No sample survey was carried out and no representative data. No quantifiable data pertaining to social, educational and economic backwardness and inadequacy of representation in government services. No criteriawise marks allotment. No State averages compared for any of the class or community. No ascertainment of backwardness for each Class/community. Social backwardness proclaimed on the basis of perceptions and personal knowledge. Arbitrary listing of castes and communities as backward and inadequately represented. Maratha categorized as backward class and included in the list of Vidarbha and Marathwada regions.

		Reservation in services recommended at the extent of 62.5%. Reservation in education recommended to the extent of 70%. All the women from all classes in the country identified as backward class for reservation.
2	Deshmukh Committee-1964	Appointed for the purpose of reservation in services only. No sample survey was carried out and no representative data. No quantifiable data pertaining to social, educational and economic backwardness and inadequacy of representation in government services. No criteria wise marks allotment. No State averages compared for any of the class or community. No ascertainment of backwardness of any Class/community. No ascertainment of backwardness of any Class/community. No list of backward classes or communities given. Categorisation of all backward classes into four categories-1. SC and Neo Buddhists, 2. ST, 3. VJNT and 4. OBC. Reservation percentage of each category recommended in proportion to its population.
3	Mandal Commission -1980	At the beginning of its working, Mandal divided the population of the country into backward and non backward without going into investigation and identification. The so called non-backward segment excluded completely from its further consideration. The data of public employment sought collectively for the so called backward castes/communities without identification of backwardness at the beginning of its work and list of backward castes prepared at the end. No sample survey was carried out and no representative data collected. No quantifiable data pertaining to social, educational and economic backwardness and inadequacy of representation in government services.

		11 Criteria of backwardness applied to any of the caste or communities. No criteria of backwardness applied to any of the caste or communities. No criteria-wise marks allotment for any of the castes or communities. No State averages compared for any of the castes or communities. No ascertainments of backwardness for any or the caste or communities. Social backwardness proclaimed on the basis of perceptions and personal knowledge. Arbitrary listing of castes and communities as backward and inadequately represented. Maratha mentioned under the heading of forward Hindu castes and communities for the purpose of deriving OBC population. No mention of a single fact or figure that Maratha were not socially, educationally and economically and economically backward and inadequately represented. Mandal recommended review of its entire scheme after 20 years.
4	NCBC- 2000	No sample survey was carried out and no representative data. No quantifiable data pertaining to social, educational and economic backwardness and inadequacy of representation in government services. No criteria-wise marks allotment to Maratha community. No State averages compared for ascertaining backwardness Maratha community. No ascertainment of backwardness of Maratha community. Social backwardness rejected on the basis irrelevant citations pertaining to 3 centuries ago. Only issue of whether Maratha Kunbi are one and the same was referred. Arbitrary rejection of backwardness of Maratha community and stating it as advanced community without any fact, figure or particulars or recored. Only tow meetings in Mumbai with a few representatives held for understanding the issue.

		Conclusions drawn at the whims and fancies. Total report of 25 pages without any table and annexure. No scientific data analysis of Maratha community. No investigation and no proper identification.
5	Khatri Commission Report-2001	Entire report is 10 pages without any annexure or table. No sample survey was carried out and no representative data collected. No quantifiable data pertaining to social, educational and economic backwardness and inadequacy of representation in government services. 8 Criteria prepared but none applied for ascertaining backwardness of Maratha community. No criteria wise marks allotment. No State averages compared. Final conclusions were drawn in absence of the chairman and recommendation were made without validation by the chairman. Government accepted this incomplete report and included Maratha Kunbi and Kunbi Maratha in the list of OBC as a part of Kunbi Caste at Sr. no 83.
6	Bapat Commission Report-2008	No quantifiable data pertaining to social, educational and economic backwardness in government services. 10 Criteria prepared but not applied for ascertainment of backwardness of Maratha community. No criteriawise marks allotted to Maratha community. No State averages compared to te3st any parameter. Total report is of 5 pages without any annexure, tabulation or analysis. No data collected to examine the backwardness and inadequacy of representation. 4 out 5 members concluded their field observation reports stating that Mratha and

		Kunbi are socially one and the same and submitted hundreds of valid caste certificates and record of marriages inter se Maratha and Kunbi. 2 of the members of the commission submitted their independent note recommending inclusion of Maratha into OBC as a apart of Kunbi caste at Sr. no 83. Final conclusions were drawn on the basis of political method of voting on a negative resolution without giving notice to all members and without giving notice to all members and without considering the written submission of absent member. The member who did not do any field survey and who did not submit any written opinion and who was appointed at the time of last meeting only, voted against the reservation for Maratha community.
7	Rane Committee	Not a statutory Committee Compiled quantifiable data Identified Maratha community as educationally and socially backward

165 In the backdrop of the long drawn demand of the Maratha community for conferment of benefits and its specific assertion that though this community is socially and educationally backward, it was deprived from the fruits of any form of concessions being conferred by the State, and the earlier Commissions not taking into consideration the factual scenario, the State decided to appoint the backward class commission under the Chairmanship of Justice Gaikwad to determine the contemporary criteria and parameters to be adopted in ascertaining the social, educational and economic

backwardness for availing the benefits of reservation in conformity with the Constitutional mandate. The terms of reference also directed the Committee to scrutinize and inspect the quantifiable and other data collected by the State Government and the State and National Commissions for backward classes and to determine the representation of the Community in public employment and educational sector. The Terms of Reference also directed to ascertain the proportion of population of Maratha community in the State on the basis of records, reports, census and other available data.

The commission, in its report, in Chapter IV has set out in detail the procedure and investigation carried out by it and in Chapter VII makes a reference to the quantifiable evidence of backwardness in social, educational and economic form. The report of the Commission in Chapter IX also focus on the inadequacy of Marathas in the services under the State.

The commission in terms of the Second term of reference has defined the exceptional circumstances and/or extra-ordinary situations necessitating crossing of the ceiling limit of 50% while conferring the benefit of reservation on the Maratha community in the present context, which it culled out

on the basis of the material collated by it. The Committee also had before it the opinions of the organizations of Backward Classes, including the organizations of Maratha community and it also dealt with the apprehension raised by the organization of backward classes that if Maratha community is included in the OBC, after recognizing its backwardness, the existing backward classes would be required to share their quota of 19% and resultantly, they would suffer huge injustice. The Committee, therefore, proceeded to deal with this extra-ordinary situation. After analyzing the Constitutional scheme and keeping in mind the ceiling for total reservation of 50% as laid down in case of Indra Sawhney and also keeping in mind the word of extreme caution while exceeding the ceiling limits, the Commission has ascertained the 'extra-ordinary circumstances'.

The quantifiable data collected by the Committee based on the census of the year 2011 where population of the Scheduled Caste and Scheduled Tribes in State of Maharashtra is recorded as 11.81% and 9.35% respectively, the Committee fell back on the socio economic caste census conducted by the State of Maharashtra through Gokhale Institute of Politics and Economics, Pune. The said survey report has calculated

the percentage of Maratha community with Kunbi community as 35.7% and percentage of all the reserved Backward Classes to be 48.6%. The percentage of other classes of population who have not disclosed their caste have been shown to be 15.7%. The Commission therefore concludes that though the survey report relates to rural area, the total percentage of existing backward classes, Maratha and kunbi, who claim to be backward comes to 48.6% + 35.7%, equivalent to 84.3% of the total population. The Commission has also made a reference to the census of the year 1872 which calculates the population of *Shudras* and the census report of 1872 from which the position emerge that more than 80% population was found backward in the census of 1872. The commission categorizes this as an extra-ordinary situation since the majority of the unequals are living with the minority of the equals. The figures available on record on the basis of 2011 census disclose that the State population is about 11.24 crores out of which 3,68,83,000 is the population of OBC (VJNT, OBC SBC) The statistics of Ministry of Social Justice and Empowerment, Government of India has given the State wise percentage of OBCs in India and for Maharashtra it is 33.8% whereas SC-ST is 22%. The Gaikwad commission has

therefore deduced that the population of Marathas is 30%. Therefore, in terms of the population, if we look at the figures then the situation which emerges is that almost 85% of the population is of the backward classes and to suggest that if 85% of people are backward and they get only a reservation of 50%, it would be traversity of justice. When we speak of equality - equality of status and opportunity, then whether this disparity would be referred to as achieving equality is the moot question. The situation of extra-ordinary circumstances as set out though by way of illustration in Indra Sawhney would thus get attracted and the theme of the Indian Constitution to achieve equality can be attained. Once we have accepted that the Maratha community is a backward class, then it is imperative on the part of the State to uplift the said community and if the State does so, and in extra ordinary circumstances, exceed the limit of 50%, we feel that this is an extra ordinary situation to cross the limit of 50%.

The Maratha community post the Constitution of India coming into force, has never enjoyed any concession or privilege in form of reservation. Its counterpart like Kunbi caste and contemporaries like Mali, Dhangar, already made their way in the list of backward classes prepared by State of

Maharashtra. It is not disputed by anyone that this community is mostly the agricultural community and the social status of the agricultural community is well known and specially, of the marginal farmers who could barely manage to stay alive. The community faces a peculiar situation where on account of its educational backwardness, the youth of this community is not in a position to compete with the open category candidates on merits for securing public employment and in absence of them enjoying any concession or privilege find themselves distanced from the Other Backward Classes. In spite of their proven and factual social and educational backwardness, they are forced to compete with the open category candidates and cannot withstand them and this is apparent from their poor performance. The social status of Maratha community is further deteriorating on account of the agrarian crisis and absence of any advancement on economic and educational front. The perception that this community is forward and affluent no longer factually exists and in spite of the brave front on part of this community, their present situation is aptly described in Ethnographic Appendices to Sir H.H. Risley's India Census Report of 1901 in the following words :

“What little display his means afford a Maratha still tries to maintain. Though he may be clad in rags at home, he has a spare dress which he himself washed and keeps with great care and puts on when he goes to pay a visit. He will hire a boy to attend him with a lantern at night, or to take care of his shoes when he goes to his friend’s house and hold them before him when he comes out. Well to do Marathas are usually in their service a Brahman clerk known as ‘divanji’ who often take advantage of his master’s want of education to defraud him”.

The Maratha community which is awarded weightage of 21.5 marks out of 25 by the Commission is identified as socially and educationally backward in light of it having obtained 90% of the total weightage. The social status of the community is very well depicted in the report of the Commission and we do not find any arbitrariness or excessiveness in the report of the Commission which, according to us, is based on a ground level survey of the members of the community mostly from rural area where this community is predominantly found. The educational status of the community is highly deplorable and is well brought before us through the report of the

Commission. Same is the situation about the economic condition of the community. The report of the Gokhale institute on suicide of the farmers including the Marathas is self eloquent about its status. The inadequacy of the Marathas in service is also brought on record through its well researched survey. In light of the yardsticks applied, the Commission has conclusively held that the Maratha community is socially and educationally backward. The core issue before the Commission was to tackle with the extraordinary situation which has developed in the State after recording that 30% of the population of State is Maratha and it was thus imperative for the State to focus on their needs and it was duty bound to take steps for removal of disparity and backwardness of this community. After declaring the said community as backward and after recording a finding that about 85% of the population of the State is backward, the Commission had to address itself as to how justice can be done to everyone and it has arrived at the following solution which we reproduce as under :-

320 After declaring Marathas a socially, educationally and economically backward class of the citizens the total percentage of the State population entitled to the Constitutional benefits

and advantages as listed under the Article 15(4) and the Article 16(4) will be around 85% (21.16% SCs and STs + 13% Vjs/Nts/SBCs+ 20% already listed OBCs + proposed 30% Maratha population community). Additionally, a Minority group of citizenry (Muslims, Christians, Jains) having a state population share of around 10/11% (After reducing the strength of around 50 Castes like groups already included in the State OBC list) are clamoring for their inclusion in the OBC category leaving only 4%-5% forward class population out of reservation fold. Now to address and accommodate the constitutionally admissible claims for the reservations, being falling in entitlement zone is herculean impossibility. This is a compelling extra ordinary situation demanding extra ordinary solution within the Constitutional frame.

321 *Added to that the judicial verdicts have categorically pronounced that the reservation policy frame and Constitutional mandate as regards SCs and STs is so sacrosanct that there is no need of any quantifiable data or its verification whatsoever deemed to have been "Given". It has also to be in proportion to their population needing no distinction to be made as regards "adequate" vis-a-vis "proportionate" as to be done in case*

of reservations to other backward class of citizens. Therefore, the scenario that emerges would be to accommodate remaining 63% (85% - 22%) backward class population in remaining 29% (50 - 21) reservation allocation as conditioned by the ceiling 50%. If in future the claim of Minorities is conceded (which is presently sub judice) it will mean to accommodate around 73% backward class of the State population within 29% reservation quota. This is yet another facet of the extraordinary situation and exceptional circumstance emerging in the State"

166 The other crucial aspect is regarding the quantifiable data about the public employment. Under this subhead, it is observed by the Commission that at present strength of State Public Employment is around 14,00,000, which is available to 11.24 crores population of the State, which proportion comes to 1.24% jobs per hundred youth. If computed against the eligible youth, population which is found to be 27% of the State population as per latest figure, it gets converted into 4.62% jobs per hundred youth. It is further observed that the average recruitment per year is not more than 5% in the State. Therefore, 5% of the 4.62% jobs per

hundred youth gets translated to 0.23%, that is almost less than one job per hundred eligible youth. Now in this scenario, there is 50% reservation in matter of public employment, which further brings the number down to 0.12% and this is the percentage which will be available for 95% population and the remaining 0.12% would be available for remaining 5% forward class youth.

167 The aforesaid data reflect the availability of jobs for youth and also raises a question as to if the said statistics is accepted, then, where would the youth belonging to Maratha community which is 30% in the State of Maharashtra finds a chance to get an employment. The data collected by the Commission clearly reflect that the Maratha community is engaged mostly in agricultural occupation but wherever this community has moved to the city like Bombay, it has found its employment only in form of Mathadi Hamals, Dabbewalas and the women creed being engaged as domestic workers. The report from the Maharashtra State Labour Commissioner on Mathadi-Hamals has established that out of total Mathadi-Hamals who are registered with Labour Commissioner, the percentage of Marathas is 43% and 33% belong to Muslim

community. There cannot be any doubt about the socio economic and educational status of those who are working as Mathadi Hamals and the survey of Gokhale Institute has made available the quantifiable data about this community. The Gokhale Institute has also conducted a study of domestic workers, house maids in the year 2015 in the area of Pune and Pune Chinchwad Municipal Corporation and it has recorded that this includes large part of Maratha community women. The report on sugarcane cutters is also one significant report before the Commission. The study carried out at 10 sugar factories reveal that sugarcane cutters belonging to Beed, Dhule, Ahmednagar, Jalgaon, Nandurbar and Aurangabad largely comprise of Marathas and Vanjara communities which is a migrant population. There can also be no quarrel about the social status based on the economical earnings of this class of people. The data placed before the Commission disclose that 85% segment of Maratha community has an annual average income per family less than Rs.25,000/- and this figure itself is sufficient to indicate the financial backwardness of the community. This financial distress is probably one of the major factor which has contributed to large number of suicides of farmers and since it is largely the

Kunbis and Marathas who were the cultivators, the proportion of suicides of farmers from this community, the percentage is higher being agriculturist and with the sizable decrease in the holding of the land, the non-irrigated holding being as large as 82% coupled with the poor quality of soil are some of the factors which have contributed to the suicides being committed on account of agrarian crisis and the major chunk is of Maratha.

The situation, therefore, which emerges is that the earlier generation of the community has with great efforts trying to clinch on to their traditional occupation of farming in spite of the major agrarian crisis whereas the younger generation is finding its way into the cities. However, on account of the lower educational levels and the scarcity of availability of jobs, they are constrained to take up the occupations like working as Hamals, entering in the Dabbewala chain prominent in the city of Bombay and other inferior and ancillary jobs. Hence, we have before us a community which is conclusively established to be backward and has reached its Nadir on account of their economic distress and the State in its enabling power is duty bound to lead a helping hand to this community in exercise of the duty

cast upon it in light of the directive principles of the State policy. The prime question, therefore, is when the State has identified this community as backward on all fronts, i.e. social, economic and educational, can the State turn a blind eye to their demand to claim certain concessions which are otherwise available to number of communities residing in the State only on the ground that ceiling of 50% would not permit the State to do so. It is the duty of the State to promote with special care the educational and economic interest of the weaker section of the people and to protect them from social injustice and all forms of exploitation. It is also a bounden duty of a State under Article 38 of the Constitution to strive to promote the welfare of its people by securing and protecting as effectively as it made a social order in which justice, social, economic and political can be achieved. It is also a duty of the State to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but group of people engaged in different vocations. If in exercise of this duty which is enjoined on the State, the State makes a sincere attempt to achieve such a social order ensuring welfare of a section of people, can it be not said that the situation

prevalent in State of Maharashtra and the endeavour of the State to take steps for upliftment of Maratha community falls within the exceptional and extra-ordinary circumstances. Accommodating the said community in the list of Other Backward Classes of the State which have been held entitled for a quota of 19% under the two legislations framed by the State would really be a chaotic situation. This would not only hit the Other Backward Classes adversely but it would also in a sense literally uproot them since the Other Backward Class community is enjoying the benefit of reservation and unfortunately that day has not yet come when it can be said that they have relieved themselves of backwardness and have been really brought on par with the upper class of the society. The situation that emerges is that the Maratha community suffers from a double jeopardy, in spite of the proven social and educational backwardness, historically and contemporarily, they are perforced to compete with the open category candidates and do not fare well. The social status of this community is on the decline on account of its economic and educational backwardness and on account of the fact that no benefit has ever being conferred on them leading to a situation that they are left to themselves and their outburst

has been witnessed by the State in form of participation in agitations and various dharnas/morchas which were taken out. The State is, therefore, attempting to derive a solution which is in the interest of Other Backward Classes and also the Maratha community which is nothing else but an Other Backward Class. The visible biggest inequality perpetuating in State Public Employment compels the State to ensure that the existing scenario is not disturbed, but at the same time, the large backward class of Marathas having estimated population of 30% is also conferred with the benefit of Article 15(4) and 16(4). The wrong done to the community can only be righted by classifying them as a distinct class from the OBC and ensuring them a separate quota of reservation so that the OBCs with the quota of 19% who are themselves struggling, do not get disturbed. The very inability of the Marathas to stand in with the open category candidates who are otherwise socially, educationally and economically better placed, would then be taken care of and this would gain them an entry into the main stream of life and avail an opportunity to overcome the backwardness with which they are struggling and by availing the opportunity, they would progress further. This can only be done by crossing the limit of 50% ceiling on account of

extra-ordinary situations created in the State. We are conscious that mere agitations or demands by a particular community may not be a justiciable reason for the State to exceed the limit of 50%. However, we have noted that here is a community who on the basis of quantifiable and contemporary data, is entitled to be classified as a separate class and the State has taken necessary steps for its social advancement and also provided it an adequate representation in the posts in the State by taking affirmative steps in exercise of its enabling power. This peculiar situation has given rise to an extra-ordinary scenario which the State has strived to deal with in exercise of its enabling power so as to achieve the primary goal of equality for all its citizens. The Commission, has collected and collated the data and placed it before the State so as to enable it to invoke its enabling power, and particularly when the Commission has arrived at a conclusion that 80% to 85% of population in the State of Maharashtra is backward and accommodating this population within a ceiling limit of 50% will be injustice to the identified backward classes and it will also frustrate the very purpose of the reservation policy, the State has taken steps to deal with the situation through the impugned legislation.

168 Justice A.P. Sen in ***K.C. Vasanth Kumar Vs. State of Karnataka*** has expressed his opinion on the percentage of reservation by taking into consideration the population and his opinion reads thus :

85. *"In this context, I must point out that the adequacy or otherwise of representation of the backward classes in the services has to be determined with reference to the percentage of that class in the population and the total strength of the service as a whole. The representation does not have to exactly correspond to the percentage of that class in the population; it just to be adequate. Moreover, in the case of services the extent of representation has to be considered by taking into account the number of members of that class in the service, whether they are holding reserved or unreserved posts. I cannot overemphasize the need for a rational examination of the 17 whole question of reservation in the light of the observation made by us. The State should give due importance and effect to the dual constitutional mandates of maintenance of efficiency and the equality of opportunity for all persons. The nature and extent of reservations must be rational and reasonable. It may be, and often is difficult for the Court to draw the line in advance which the State ought not to cross, but it is never difficult for the Court to know that an invasion across the border, however ill-defined, has taken place. The Courts have neither the expertise nor the sociological knowledge to define or lay down the criteria for determining what are 'socially and educationally backward classes of citizens' within the meaning of Art 15(4) which enables the State to make 'special provisions for the advancement' of such classes notwithstanding the command of [Art. 15\(2\)](#) that the State shall not discriminate against and citizens on the ground only of religion, race, caste, descent, place of birth, residence or any of them. [Art. 340](#) provides for the appointment of a Commission to 'investigate the conditions of socially and educationally backward*

classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition. The state of backwardness of any class of citizens is a fact situation which needs investigation and determination by a fact finding body which has the expertise and the machinery for collecting relevant data. The Constitution has provided for the appointment of such a Commission for Backward Classes by the President under [Art. 340](#) to make recommendations and left it to the State to make special provisions for the advancement of such backward classes. The Court is ill- equipped to perform the task of determining whether a class of citizens is socially and educationally backward. This Court has, however, a duty to interpret the Constitution and to see what it means and intends when it makes provision for the advancement of socially and educationally backward classes. In considering this situation then, we must never forget that it is the Constitution we are expounding. Except for this the Court has very little or no function”.

169 The State has also taken into account the efficiency of administration while considering the exceptional circumstances. The next point to which we would refer is the overall efficiency of administration is as highlighted by the judgment in Nagaraj. In the latest judgment in case of **B.K. Pavitra Vs. The Union of India and ors**, (supra) the said argument has been conclusively dealt with in the backdrop of the various judgments and we would carefully refer to the said observations :-

116 Critics of affirmative action programs in government services argue that such programs adversely impact the overall competence or —efficiency of government administration. Critics contend that the only method to ensure —efficiency in the administration of government is to use a —merit based approach - whereby candidates that fulfil more, seemingly —neutral, criteria than others are given opportunities in government services. The constitutional justification for this —efficiency argument is centred around Article 335.

—335. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

[Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.].

The proviso was inserted by the Constitution (Eighty-second Amendment) Act 2000.

117 The substantive part of Article 335 contains a mandate : a requirement to take into consideration the claims of SCs and STs in making appointments to services and posts in connection with the affairs of the Union or of a State. Consideration is much broader in its ambit than reservation. The consideration of their claims to appointment is to be in a manner consistent with maintaining the efficiency of administration. The proviso specifically protects provisions in favour of the SCs and STs for: (i) relaxing qualifying marks in an examination; (ii) lowering the standards of evaluation; or (iii) reservation in matters of promotion. Reservation is encompassed within the special provision but the universe of the latter is wider.

118 The proviso recognizes that special measures need to be adopted for considering the claims of SCs and STs in order to bring them to a level playing field. Centuries of discrimination and prejudice suffered by the SCs and STs in a feudal, caste oriented societal structure poses real barriers of access to opportunity. The proviso contains a realistic recognition that unless special measures are adopted for the SCs and STs, the mandate of the Constitution for the consideration of their claim to appointment will remain illusory. The proviso, in other words, is an aid of fostering the real and substantive right to equality to the SCs and STs. It protects the authority of the Union and the States to adopt any of these special measures, to effectuate a realistic (as opposed to a formal) consideration of their claims to appointment in services and posts under the Union and the states. The proviso is not a qualification to the substantive part of Article 335 but it embodies a substantive effort to realise substantive equality. The proviso also emphasises that the need to maintain the efficiency of administration cannot be construed as a fetter on adopting these special measures designed to uplift and protect the welfare of the SCs and STs.

119 The Constitution does not define what the framers meant by the phrase —efficiency of administration. Article 335 cannot be construed on the basis of a stereotypical assumption that roster point promotees drawn from the SCs and STs are not efficient or that efficiency is reduced by appointing them. This is stereotypical because it masks deep rooted social prejudice. The benchmark for the efficiency of administration is not some disembodied, abstract ideal measured by the performance of a qualified open category candidate. Efficiency of administration in the affairs of the Union or of a State must be defined in an inclusive sense, where diverse segments of society find representation as a true aspiration of governance by and for the people. If, as we hold, the Constitution mandates realisation of substantive equality in the engagement of the fundamental rights with the directive principles, inclusion together with the recognition of the plurality and diversity of the nation constitutes a valid constitutional basis for defining efficiency. Our benchmarks will define our outcomes. If this benchmark of efficiency is grounded in exclusion, it

will produce a pattern of governance which is skewed against the marginalised. If this benchmark of efficiency is grounded in equal access, our outcomes will reflect the commitment of the Constitution to produce a just social order. Otherwise, our past will haunt the inability of our society to move away from being deeply unequal to one which is founded on liberty and fraternity. Hence, while interpreting Article 335, it is necessary to liberate the concept of efficiency from a one sided approach which ignores the need for and the positive effects of the inclusion of diverse segments of society on the efficiency of administration of the Union or of a State. Establishing the position of the SCs and STs as worthy participants in affairs of governance is intrinsic to an equal citizenship. Equal citizenship recognizes governance which is inclusive but also ensures that those segments of our society which have suffered a history of prejudice, discrimination and oppression have a real voice in governance. Since inclusion is inseparable from a well governed society, there is, in our view, no antithesis between maintaining the efficiency of administration and considering the claims of the SCs and STs to appointments to services and posts in connection with the affairs of the Union or of a State.

Reliance is also placed on the judgment of Justice O.

Chinnappa Reddy in ***K.C. Vasanth Kumar*** which reads thus :

120 This part of the philosophy of the Constitution was emphasized in a powerful exposition contained in the judgment of Justice O Chinnappa Reddy in K C Vasanth Kumar v State of Karnataka (—K C Vasanth Kumar). The learned Judge held:

—35. One of the results of the superior, elitist approach is that the question of reservation is invariably viewed as the conflict between the meritarian principle and the compensatory principle. No, it is not so. The real conflict is between the class of people, who have never been in or who have already moved out of the desert of poverty, illiteracy and backwardness and are entrenched in the oasis of convenient living and those who are still in the desert and want to reach the oasis. There is not enough fruit in the garden and so those who are in, want to keep

out those who are out. The disastrous consequences of the so-called meritarian principle to the vast majority of the under-nourished, poverty-stricken, barely literate and vulnerable people of our country are too obvious to be stated. And, what is merit? There is no merit in a system which brings about such consequences...

Conclusively, Their Lordships have held as follows:

124 Once we understand —merit as instrumental in achieving goods that we as a society value, we see that the equation of —merit with performance at a few narrowly defined criteria is incomplete. A meritocratic system is one that rewards actions that result in the outcomes that we as a society value.

125 For example, performance in standardised examinations (distinguished from administrative efficiency) now becomes one among many of the actions that the process of appointments in government services seeks to achieve. Based on the text of Articles 335, Articles 16 (4), and 46, it is evident that the uplifting of the SCs and STs through employment in government services, and having an inclusive government are other outcomes that the process of appointments in government services seeks to achieve. Sen gives exactly such an example

If, for example, the conceptualisation of a good society includes the absence of serious economic inequalities, then in the characterisation of instrumental goodness, including the assessment of what counts as merit, note would have to be taken of the propensity of putative merit to lessen – or to generate – economic inequality. In this case, the rewarding of merit cannot be done independent of its distributive consequences.

... A system of rewarding of merit may well generate inequalities of well-being and of other advantages. But, as was argued earlier, much would depend on the nature of the consequences that are sought, on the basis of which merits are to be characterised. If the results desired have a strong distributive component, with a preference for equality, then in assessing merits (through judging the generating results, including its distributive aspects), concerns about distribution and inequality would enter the evaluation.

The State Government while acting on the quantifiable data has ensured that the standards of merit are not diluted while the community compete in the quota allotted to it and in any contingency, the Other Backward Classes in the State are enjoying the said privileges and the Maratha community should not be accused of bringing the efficiency down, which is again not proved by any material being placed on record, but is only expressed as an apprehension.

170 The State after constituting a Commission in June 2017 to determine the representation of Marathas and to define the exceptional circumstances and extra-ordinary situations has enacted a legislation conferring benefits on the said class which it has identified as backward. The Commission has recommended that Maratha class of citizens in the State is socially, educationally and economically backward by analyzing the determined parameters. We have reproduced above the conclusions of the Commission. Point No.H of the said recommendation categorise the extra-ordinary situation and circumstances for crossing 50% limit. The Committee is also therefore, conscious of the limit/ceiling of 50% as determined by the authoritative pronouncement of

the Hon'ble Apex Court through its 9 Judges Constitution Bench. The extra-ordinary situations have been culled out as the report has declared that Maratha community comprise 30% of the population of the State and this figure is derived on the basis of quantifiable data. The extra-ordinary situation is therefore carved out for awarding an adequate representation to the Maratha community who is now declared socially, educationally and economically backward. Based on the population of 30%, Commission has arrived at a conclusion that the total percentage of State population which is entitled for the constitutional benefits and advantages as listed under Article 15(4) and Article 16(4) would be around 85% and this is a compelling extra-ordinary situation demanding extra-ordinary solution within the constitutional framework. The Commission has concluded that as far as Scheduled Caste and Scheduled Tribes are concerned, the Constitutional framework do not contemplate any quantifiable data or its verification and it has to be in proportion to the population requiring more distinction to be made as regards adequate, vis-a-vis proportionate as to be one in case of reservation to the Other Backward Classes. The Commission therefore, proceeds to derive a formula for tackling emerging

scenario and it calculates that for dealing with 63% of weaker section, excluding 22% (SC ST VJNT) will have to be restricted to the remaining 29% reservation allocation as a condition by ceiling of 50% and this is an extra-ordinary situation. The Commission has attempted to clarify it in the following manner :-

87+9Total Backward population	85% (52% as determined by Mandal Commission + 30% of Maratha
OBC and Maratha Population	63% (85% - 22% SCST VJNT)

Total percentage of reservation 50%

Reservation of 22% SCST	21.00%
Reservation available for 63% (Maratha + OBC)	29.00%

The Commission, therefore, makes out a case that if the ceiling of 50% is kept in tact, and more and more classes of citizenry are to be accommodated in the other 50%, this would result in a way favouring the forward class of society to enjoy their age-old social and educational dominance in perpetuity again at the cost of majority, backward class of population and this is a breach of principle of positive discrimination which has been invoked by the Constitution

makers. The plight of Maratha has been described as the worst sufferers by not allowing the breach of 50% reservation limit on one hand and tagging them with forward class citizens to frame the constitution on the other hand, and in fact, the Maratha community was already included in the backward category before independence and till the year 1952, as an intermediary class and most of the classes from intermediary has been included in backward classes but only the Marathas have been included without any reasoning and came to be tagged with forward class of citizens to face a stilt unequal competition. The reasoning cited by the Commission in its report does disclose that it has formulated and answered an issue that Maratha community is a kin to another side of coin of Kunbi community. However, the Commission has derived a method of placing this community outside the Other Backward Class list and it has shared a reasoning that the backward class communities already included in the OBC list, the total population of which is estimated to be around 33% to 34% and they are enjoying 29% of reservation quota (50 - 21) allotted to SCST and and if abruptly they are asked to share their well established entitlement of reservation with 30% Maratha class, it would be a catastrophic scenario and this,

according to the Commission is an extra-ordinary situation and exceptional circumstances, which if not swiftly and judicially addressed may lead to unwarranted repurcation in the well said harmony of of co-existence culture of the State. This conclusion of the Commission gets translated into the Bill which is included in the State legislature providing the reservation to Maratha community in a different compartment than that of the backward classes. There can be no quarrel and we have already expressed our accord to the findings recorded by the Commission and we are also in agreement with the report of the Commission that Marathas have a less representation in the public services. The statistics by the Commission do disclose that as per the latest census figure 4.62% jobs are available per 100 youth in public services and has the average recruitment per year is not more than 5% of the total body of the State. The availability ratio sinks to 0.23 % less than one job per 100 eligible youth. According to the SOR, if the job scenario is restricted in the manner that only 50% of 0.23% i.e. 0.12% jobs per recruitment year will be available to 95% population and remaining 0.12% jobs to a population of 5% unreserved jobs of forward seats, this is a mockery of reservation principle in State/employment

constitutionally treachery according to the report and this is also taken as an extra-ordinary situation warranting enhancement of reservation of percentage beyond 50%.

171 In light of the aforesaid discussion, we are satisfied that the Commission as well as the State Government has made out a case of existence of extra-ordinary situation and exceptional circumstances being in existence in the State so as to fall within the exception carved out in the judgment of Indra Sawhney and it has crossed the said limit in light of an extra-ordinary situation emerging in the State.

(IX) WHETHER THE STATE GOVERNMENT HAS JUSTIFIED EXERCISE OF ITS ENABLING POWER UNDER ARTICLE 15(4) AND 16(4) IN THE BACKDROP OF THE FINDINGS CONCLUSIONS AND RECOMMENDATIONS OF THE MSBCC REPORT

172 Under the Indian Constitution, reservation is accepted as one of modes of achieving equality and though the quotas are seen as widely unfair and condemned for punishing the innocent upper caste for the damage suffered in the past, leading to widening of gaps in the society, based on

caste lines instead of striving for casteless society, the need for reservation in form of special concession still persists as it assists in achieving the Constitutional goal of equality of opportunity and equality of status. Amidst this conundrum, it is also realised that benefiting generation whose parents have already moved up by enjoying the privilege and attained equality in the social structure, both in status and opportunity do not avail the benefits in form of such concession. The result of the situation is that the much poorer, first generation of a family is left in lurch.

Due to passage of time, the traditional occupation as the standard means of economic achievement has lost much of its significance and by this time it is also settled by the legal debate that caste cannot be the sole criteria for identifying backwardness. However, the criteria of social and educational backwardness is still relevant since it finds place in the Constitution itself and identification of this class is important. It may not contemplate identification of a particular individual to fit into the said category but the task is to identify an entire class which is socially and educationally backward. Though economic backwardness is not a measure to identify backwardness till the latest 103rd Amendment

which has mandated certain reservation in favour of the economically weaker sections of the society. However, we cannot turn a blind eye to the social scenario with a wide gap between the affluent economic class enjoying an upper hand irrespective of their caste, occupation etc, whereas there exist a class which is economically deprived and though normally we apply the terminology 'poor' to the said class, it exist irrespective of the caste, occupation, etc. The present scenario prevailing in the State of Maharashtra is also not an exception to this rule. The community known as Maratha also comprise of these two stratas those which are well to do, affluent and even in the helm of affairs of the State on one hand and the persons belonging to the same class on account of the economic backwardness suffer from social and educational backwardness. It is difficult to ascertain whether economic situation leads to educational and social backwardness or vice-a-versa. However, for the purpose of the Constitution, the educational and economic backwardness is a measure of backwardness. It is necessary to achieve a social balance so that the said class attains social empowerment. Backwardness no longer remains to be identified on the basis of traditional yardsticks of occupation

and social acceptability. The backwardness of OBC need not be strictly comparable to that of Scheduled Caste and Scheduled Tribes. Mere educational or social backwardness would also be not the end point since the economic criteria is closing in as a prime cause for backwardness.

Though it is attempted to canvass before us that Maratha community is socially advanced and the instances have been cited to inform that several Chief Ministers of the State, belonged to Maratha community, that in our opinion, do not make the entire community forward or advanced. A community is a group of people having a particular characteristics in common and when this community is stratified on economic factors, then just because one part of the community has progressed do not wipe out the backwardness of the remaining part. By applying the yardstick for measuring the backwardness, the MSBCC concluded that Maratha community as a class are socially, educationally and economically backward and weightage of 21.5 marks out of maximum 25 marks, by statistically analysing the data has been brought on record. Similarly, the Commission has also recorded that there is no adequate representation of this community in public employment and

the presence of Marathas in the said public employment in higher grade of 'A', 'B', 'C' and 'D' is found to be inadequate not only as proportion to their State population share of around 30% but also because of inadequacy in the number of graduates which is the minimum educational qualification for this grade of public posts. Further, the Commission has also brought on record the quantifiable data as regards the presence of Maratha community in pursuit of academic career and on an average 4.30% is the figure which is arrived at being occupied by the persons from Maratha community in academic and teaching post. The lack of conventional degree level education has been traced as one of the cause for they adopting a lowly labour oriented employment such as Mathadis, Hamals, Dabbewalas working in sugar crushers etc. As far as the educational status is concerned, 13.42% of the community is found to be illiterate whereas the proportion of those attaining SSC and HSC level is also recorded to be below State average and whereas only 0.77% of this population has acquired technical and professional proficiency. This position of Marathas is reflective of their economical status and the Commission has concluded that around 93% of Maratha families have an annual income of much less, which is below

the average income of middle class family. The percentage of landless and marginal farmers (land ownership less than 2.5 acres) is found to be around 71% and percentage of big farmers holding about 100 acres of land is only around 2.7%. This precisely is the position of Maratha community in the State. This situation being emerged out of the report of the Commission which we have accepted since based on a systematic study and since the Commission has collected the contemporaneous data by actually visiting the houses located in villages, talukas and attempted to ascertain the condition of living of this community and though we accept the argument of those opposing reservation to the said community that the situation of all the communities residing in rural area is the same. However, we have also noted that dominantly, it is this caste which continues its habitat in rural part of State of Maharashtra. The community is not able to move out of the rural scenario since their traditional occupation being agriculture, either they own small portions of land in villages or have been working with the land owners of the same community having more acreage of land. When they migrate to the urban/semi-urban areas, their educational status poses a handicap for them. The backwardness of the said

community thus not being doubted, the State has come up with an affirmative action by bringing in a legislation providing quotas in education and employment for this community. Considering the fact that the community had sufficient political representation, no reservation is provided to this community in the political arena. The compelling State's interest of recognizing the said community as backward and conferring certain privileges on the said community has been scrutinized by us in exercise of a power of judicial review. The Maratha community largely is found to be poor though poverty is a peculiarity of Indian population that a factor has not been adopted the sole criteria for identifying their backwardness but the unfortunate situation leading to their social and educational backwardness has been pin-pointedly relied upon by the State while exercising its enabling power. In ***Ashok Kumar Thakur Vs. Union of India***,³⁷ the Apex Court has unmistakably recognised that the economic backwardness is also a relevant factor which can never be lost sight of.

³⁷ 2008 (6) SCC 1

173 The following observations truly depict the scenario prevailing as on today not only in the State of Maharashtra but through out the country :

“Caste has divided this country for ages. It has hampered its growth. To have a casteless society will be realization of a noble dream. To start with, the effect of reservation may appear to perpetuate caste. The immediate effect of caste based reservation has been rather unfortunate. In the pre- reservation era people wanted to get rid of the backward tag -- either social or economical. But post reservation, there is a tendency even among those who are considered as 'forward', to seek 'backward' tag, in the hope of enjoying the benefits of reservations. When more and more people aspire for 'backwardness' instead of 'forwardness' the country itself stagnates. Be that as it may. Reservation as an affirmative action is required only for a limited period to bring forward the socially and educationally backward classes by giving them a gentle supportive push. But if there is no review after a reasonable period and if reservation is continued, the country will become a caste divided society permanently. Instead of developing an united society with diversity, we will end up as a fractured society for ever suspicious of each other. While affirmative discrimination is a road to equality, care should be taken that the road does not become a rut in which the vehicle of progress gets entrenched and stuck. Any provision for reservation is a temporary crutch. Such crutch by unnecessary prolonged use, should not become a permanent liability. It is significant that Constitution does not specifically prescribe a casteless society nor tries to abolish caste. But by barring discrimination in the name of caste and by providing for affirmative action Constitution seeks to remove the difference in status on the basis of caste. When the differences in status among castes are removed, all castes will become equal. That will be a beginning for a casteless egalitarian society.”

174 In **Ram Singh Vs. Union of India** (supra), Hon'ble

The Chief Justice Ranjan Gogoi held thus :

“An affirmative action policy that keeps in mind only historical injustice would certainly result in under-protection of the most deserving backward class of citizens, which is constitutionally mandated. It is the identification of these new emerging groups that must engage the attention of the State and the constitutional power and duty must be concentrated to discover such groups rather than to enable groups of citizens to recover “lost ground” in claiming preference and benefits on the basis of historical prejudice”.

The perception of a self-proclaimed socially backward class of citizens or even the perception of the “advanced classes” as to the social status of the “less fortunates” cannot continue to be a constitutionally permissible yardstick for determination of backwardness, both in the context of Articles 15(4) and 16(4) of the Constitution. Neither can any longer backwardness be a matter of determination on the basis of mathematical formulae evolved by taking into account social, economic and educational indicators. Determination of backwardness must also cease to be relative; possible wrong inclusions cannot be the basis for further inclusions but the gates would be opened only to permit entry of the most distressed. Any other inclusion would be a serious abdication of the constitutional duty of the State. Judged by the aforesaid standards we must hold that inclusion of the politically organized classes (such as Jats) in the list of backward classes mainly, if not solely, on the basis that on same parameters other groups who have fared better have been so included cannot be affirmed”.

Keeping these principles in mind, we have delved into the report of MSBCC. A community which was

subjected to the test of backwardness at the hands of various commissions never received recognition as backward till the MSBCC came into picture. The said Commission for the first time carried a systematic scientific analysis based on the ground survey and analysed the status of the said class and identified it to be backward. Their backwardness though not comparable to Scheduled Caste and Scheduled Tribe, is comparable to several other backward classes which find its place in the list of Other Backward Classes pursuant to Mandal Commission. "Kunbi" is one such caste which has gained entry into the list of OBC and Gaikwad Commission has specifically ruled that there is no distinction between 'Kunbi' and 'Maratha' community. In the backdrop of these findings, a question has arose for determination is if the yardstick of backwardness apply to both the communities, produce the same end result of they being identified as 'backward', then why the Maratha community should be excluded from availing the benefits. The extra-ordinary situation that have emerged in adjusting the said community into the 50% ceiling limit has already been dealt with by the Commission extensively and it had recommended for creation of a separate class for this

community and similar other communities which are socially and educationally backward. This community can have its comparison with the Other Backward Classes in getting the recognition of its social and educational backwardness whereas it is distinct from the Other open class which do not satisfy the criteria of social and educational backwardness. The community, therefore, finds its place in a separately grouped class of SEBC and a separate quota being reserved for it. Since we have accepted the report of the Commission and do not find any perversity or arbitrariness in the said report and also since we have recorded that the State legislature did not lack competency to enact the SEBC Act 2018, a step taken by it in exercising of its enabling power, it poses no difficulty to uphold the reservation in favour of this community. In the words of Justice Krishna Iyer “Constitutional questions cannot be viewed in vacuo but must be answered in the social milieu which gives it living meaning. “There must be a synthesis of ends and means, of life’s maladies and law’s remedies”. If these words are kept in mind, in the framework of the Constitution and the existing need of a particular class which came to be subjected to scrutiny by the State and on a finding recorded

by an expert body in form of MSBCC who has acted within the statutory framework, we feel no reason to interfere in the decision of the State to confer reservation under Article 15(4) and 16(4) on the said community. It is to be noted that in order to do away with the malady of the affluent or the so-called advance members of this community availing the benefit of Section 4(2) of the Enactment has introduced the principle of creamy layer and has made it applicable for the purposes of reservation to the SEBC and the reservation available can only be availed by those persons who are below creamy layer. Not only this, in form of Section 5, the Enactment stipulated that if on merit, the person belonging to SEBC class competes or secures a seat or appointment, such a selection or appointment shall be considered on the basis of merit. The impugned enactment keeps open the inclusion of other similarly situated classes of citizens to be included in the SEBC class created under Section 2(j) of the impugned enactment and share the quota prescribed in Section 4. The enactment do not entail any political reservation for the said community for election of the seats in Village Panchayats, Panchayat Samitis, Zilla Prishadas, Municipal Councils, Municipal Corporations, etc.

The State Government has also taken care of the argument affecting the efficiency of administration. This argument which is very much on the lips of the privilege whenever reservation is mentioned was dealt by Justice Chinappa Reddy three decades back in K.C. Vasanth Kumar Vs. State of Karnataka (supra) has observed thus:-

37. But the controversy between the meritarian and the compensatory principals cannot be allowed to cloud the issues before us. An intelligible consequence of the fundamental rights of equality before the law, equal protection of the laws, equality of opportunity, etc., guaranteed to all citizens under our Constitution is the right of the weaker sections of the people to special provision for their admission into educational institutions and representation in the services. Appreciating the realities of the situation, and least there by any misapprehension, the Constitution has taken particular care to specially mention this right of the weaker sections of the people in Arts. 15(4) and 16(4) of the Constitution. In view of Arts. 15(4) and 16(4) the so-called controversy between the meritarian and compensatory principles is not of any great significance, though, of course, we do not suggest efficiency should be sacrificed. The question really is, who are the scheduled castes, scheduled tribes and backward classes, who are entitled to special provision and reservation in regard to admission into educational institutions and representation in the services"

58 We must repeat here, what we have said earlier, that there is no scientific statistical data or evidence of expert administrators who have made any study of the problem to support the opinion that reservation in excess Or 5() percent may impair efficiency. It is a rule of thumb and rules of the thumb are not for judges to lay down to solve complicated sociological and administrative problems. Sometimes, it is obliquely suggested that excessive reservation is indulged in as a mere votecatching device. Perhaps so,

perhaps not. One can only say 'out of evil cometh good' and quicker the redemption of the oppressed classes, so much the better for the nation. Our observations are not intended to show the door to genuine efficiency. Efficiency must be a guiding factor but not a smokes-cream. All that a Court may legitimately say is that reservation may h not be excessive. It may not be so excessive as to be oppressive; it may not be so high as to lead to a necessary presumption of unfair exclusion of everyone else.

175 The avowed purpose of the impugned legislation being lending a helping hand to persons belonging to the said class below creamy layer and in order to afford them an opportunity to advance further in the contemporary period, aims at moving them to a stage of equality with the advance section of the society wherefrom they can proceed further. The State who is conferred with the enabling power and though argued by the Senior counsel Shri Aney that the State cannot be compelled to exercise this enabling power, equally true that if the State exercises this power, we can only review the decision of the State to a limited extent to find out whether the decision making is just and would not ponder on the decision itself unless it is arbitrary. When we have scrutinized the report of the Commission and the decision of the State, we are satisfied that the procedure preceding identification of a backward class has been

complied with and the data arrived by the Commission of inadequacy of representation and backwardness being based on the subjective satisfaction of the State, we have shown restraint in substituting the findings of the Commission. The State Government has exercised its enabling power based on the report of the Commission and has accepted the report in totality with an exception to the quantum of reservation. The report of the Commission has carved out 12% reservation for the community for education purpose and 13% reservation to the posts/seats in the services in the State. The learned senior counsel Shri Sancheti has submitted that there is no justification for the State to deviate from the percentage prescribed by the Commission and when it has capped it at 12 and 13% respectively, the State was not justified in prescribing the reservation of 16% in favour of Maratha community. We find substance in the said submission of the learned senior counsel. The State Government is not justified exercise of its enabling power in fixing a limit of 16%, both under 15(4) and 16(4). The said limit, according to us, is not justified by the State by bringing any quantifiable data establishing the end point of 16%. The report of the Commission though

recommendatory in nature or in form of an advice given by the Commission in terms of Section 9 of the MSBCC Act 2005 shall ordinarily be binding on the State Government and if the State Government propose to reject the same, totally or partially or even if intends to modify, it is imperative for the State Government to record reasons in writing. In absence of any such exercise undertaken by the State Government, we hold that the exercise of enabling power by the State Government determining the quantum of reservation cannot be sustained and we express that the quantum/limit fixed by the Commission is based on quantifiable data. Since we have heard storming arguments on the point of the ceiling imposed by the Apex Court in matters of reservation, and the judgment in Archana Reddy by the Andhra Pradesh High Court is heavily relied upon, we should be conscious of even one percent of reservation being conferred by the State without quantifiable data. The Gaikwad Commission has justified the limit which it has set in the report is based on the quantification set out by it by taking into consideration the factors like the population of Maratha as well as the several reserved categories who can compete with the individuals on merit and do not desire to

avail the reservation benefits as per their free choice and aspire to opt for merit quota only. The Commission has set out the calculation in Volume II in the following manner :-

(A) For employment in State Public Employment will be :

Sr. No.	Class	Proposed Allocation of reservation percentage	Proposed merit open Quota percentage	Remarks.
1	Scheduled Caste	13%	35% for all categories	Open Merit Quota of 35% for All the classes from 1 to 6 can compete including those individuals who do not desire to avail reservation benefits as their free choice and aspire to opt for Merit Quota Selection only.
2.	Scheduled tribe	7%		
3.	Most Backward Classes (NT/VJ/SBC)	13%		
4.	Other Backward classes	19%		
5.	Socially Educationally Intermediate Backward Class (SEIBSC)	13%		
6.	Free Merit Quota for all the Open & Reserved Categories	NIL		
	Total	65%	35%	

(B) For admission in Higher, Technical and Medical Admissions will be :

Sr. No.	Class	Proposed Allocation of reservation percentage	Proposed merit open Quota percentage	Remarks.
1	Scheduled Caste	13%	36% for all categories	Open Merit Quota of 36% for All the classes from 1 to 6 will be eligible.
2.	Scheduled tribe	7%		
3.	Most Backward Classes (NT/VJ/SBC)	13%		
4.	Other Backward classes	19%		
5.	Socially Educationally Intermediate Backward Class (SEIBSC)	12%		
6.	Free Merit Quota for all the Open & Reserved Categories	NIL		

	Total	64%	36%	
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The Commission has given its thoughtful consideration to the extent of reservation in the backdrop of the ceiling limit laid down by the Apex Court and at the same time, ensuring the quantum of reservation to a class which it has determined and identified to be backward. In making its recommendation, the Commission has undertaken a balancing act by classifying the newly created class into a separate category of SEBC to ensure that this do not affect the reservation already provided to the Other Backward Classes in the State. Considering the need of the State to prescribe a separate quota for the Maratha community pursuant to the MSBCC report, we hold and declare that since the State Government has accepted the report of the MSBCC, it ought to have adhered to it including its recommendation on quantum of reservation for the SEBC. The action of the State Government in not accepting the recommendation on quantum of reservation and prescribing the reservation of 16% to the community cannot be sustained, over and above the percentage recommended by the Commission. By doing so, we ensure the compliance

of the parameters laid down in Nagaraj, i.e. the inadequacy of representation and backwardness which necessarily has to be based on quantifiable data being available with the State. In light of this, though we uphold the enabling power of the State to carve out a separate quota for the socially and educationally backward class, including the Maratha, and we uphold this enabling power contained in Section 4 of the impugned Act, we declare that the quantum of 16% of reservation under Article 15(4) and (5) as prescribed in sub-section (a) of Section 4(1) of the impugned Act and the quantum of reservation under Article 16(4) prescribed by sub-section (b) of Section 4 (1), over and above, the quantum prescribed by the Maharashtra State Backward Class Commission is quashed and set aside.

176 Our whole deliberation revolved around the identification of a community as a backward class and the steps taken by the State in exercise of its enabling power. We have also dealt with the specific objection advanced on behalf of the petitioners that a class which was not backward since the advent of the Constitution is now being identified as backward. The issue of identification of the

backward classes which has eluded the constitutional courts since it started examining the enabling power of the State conferred as a special provision. The focal point has always been of identification of these “backward classes”. Several judgments have been dedicated in answering the said question and as to whether the backwardness has to be social and educational or whether the economic backwardness which contribute to the other two can also be the factor for determination since in country like India, poverty is the root cause for social and economic backwardness. The uniform test of evolving the criteria to determine the social and educational backwardness has also been delved into for a long time. It is however, not in dispute that the reservation policy which has been considered as a more for achieving equality without impairing the efficiency but at the same time, aimed at securing adequate representation, was never considered to be a permanent feature. The framers of the Constitution intended it to survive for a limited period to remove the disparity which was historically traced amongst different classes. The preferential principle involved formidable burden on the policy makers and the administration in a

developing nation. The constitutional court also step in to ensure that the policy makers have devised the effective use of its enabling powers which the Constitution has conferred on them. The width of the power exercised by the State by invoking the provisions in the Constitution which conferred this power on them varied from State to State and region to region within a State depending on conditions prevailing of the backward classes. Since the reservation itself was expected to have a life, the provisions were introduced in form of statutes which would enable the State to have a review of the situation prevailing in its State and take periodical measures to continue its exercise of reviewing the socio economic progress of the backward classes of citizens. This did not extend only to review the conditions of those who are already conferred with the benefits but also of those who are left out and are struggling with their backwardness and feel aggrieved, comparing themselves with those classes who have been enjoying the privilege conferred by the State and have sufficiently progressed in life. This was the precise function which was assigned to the backward class commissions to be constituted by the States in form of permanent body for

entertaining, examining and recommending upon request for inclusion, hearing complaints of over-inclusion or under-inclusion in the list of Other Backward Classes in light of the decision in the case of Indra Sawhney. As far as the State of Maharashtra is concerned, it enacted the MSCBC Act 2005 constituted the State Commission for Backward Classes and entrusted it with the functions set out in Section 9 and apart from inclusion and exclusion of any class of citizens in the list of backward class, it was assigned a function to cause studies to be conducted on regular basis through and in collaboration with reputed academic and research bodies for building of data for about the changing socio economic status of various classes of citizens and to regularly review the socio economic progress of the backward classes of citizens. In light of this function to be discharged by the Commission, under Section 11 of the Statute, it is made imperative for the State Government to undertake revision of the list after every succeeding period of 10 years, with a view to exclude from such list, those classes which have ceased to be backward classes, or for including in such list new backward classes. Thus, the exercise of identification of backwardness is a continuous process which the State is

expected to undertake but the issue is not about identification of such backward classes, but the issue is after identifying these classes, conferring the concessions on such classes. The Statute expects the State Government to revise the list of Other Backward Classes and even empowers it to remove those classes who have progressed and in order to follow the regime of the maximum limit prescribed for reservation, it is open for the State to achieve this limit by undertaking a periodical exercise of conferring the concession. This, according to us, is the only solution which would avoid a situation which the State has faced today. The Maratha community which, compels itself with the Other Backward classes who has found their way in the list of OBC framed by the State, also stakes its demand for being placed in the list whereas there are castes/communities which have been placed in the list who have progressed since their inclusion, pursuant to Mandal Commission report. We have noted that the said list has been subjected to amendment from time to time and various castes/ communities have been included and the deletion from this list is a rare phenomenon. The Courts have neither expertise nor the sociological knowledge to

define or lay down the criteria for determining what are “socially and educationally backward classes of citizens” for the purpose of Article 15(4) nor does it have an expertise to determine what is adequacy of representation for the purpose of Article 16(4), the duty which is assigned to the Constitutional courts is only to examine the exercise undertaken by the State and that too, on limited grounds, keeping in mind its function to expound the Constitution. We hope and trust that the State Government would discharge the duty cast on it by Section 11 of the MSBCC Act of 2005 and bring the reservation conferred on the Other Backward Classes as well as the SEBC within the ceiling limit set out by the Constitution Bench in Indra Sawhney. At present, we have dealt with the extra ordinary situation with which the State is confronted with where it justified the exceeding of limit, and we, by taking into consideration the exceptional circumstances, have upheld this exercise of power by the State. We hope and trust that the said situation would be reviewed by the State in the near future so that it follows the rule of caution and do not forever continue with this “Exceptional circumstances and extraordinary situation”.

The need of a solution to the peculiar problem brought before us arise on account of the social status of the Maratha community which can be best described by the lines of poetry quoted in Nehru's Autobiography³⁸

***“Bowed by the weight of centuries,
he leans
upon his hoe and gazes on the ground
the emptiness of ages in his face and on
his back, burden of the world”.***

(X) Summary of conclusions :

177 In the light of the discussion above, we summarize our conclusions to the points which we have formulated in the proemial of the judgment and deliberated in the judgment. We summarize our conclusions in the same sequence :

[1] We hold and declare that the State possess the legislative competence to enact the Maharashtra State Reservation for Seats for Admission in Educational Institutions in the State and for appointments in the public services and posts under the State (for Socially and Educationally Backward Classes) SEBC Act, 2018 and State's legislative competence is not in any way affected by the Constitution (102nd Amendment) Act 2018 and the interim order passed by this

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Court in Writ Petition No. 3151 of 2014. We resultantly uphold the impugned enactment except to the extent of quantum of reservation as set out in point no. 6.

[2] We conclude that the report of the MSBCC under the Chairmanship of Justice Gaikwad is based on quantifiable and contemporaneous data and it has conclusively established the social, economical and educational backwardness of the Maratha community and it has also established the inadequacy of representation of the Maratha community in public employment / posts under the State. Accordingly we uphold the MSBCC report.

[3] We hold and declare that the classification of the Maratha class into “Socially and Educationally Backward Class” complies the twin test of reasonable classification permissible under Article 14 of the Constitution of India, namely, (a) intelligible differentia and (b) rational nexus to the object sought to be achieved.

[4] We hold and declare that the limit of reservation should not exceed 50%, however in exceptional circumstances

and extra-ordinary situations, this limit can be crossed subject to availability of quantifiable and contemporaneous data reflecting backwardness, inadequacy of representation and without affecting the efficiency in administration.

[5] We hold and declare that the report of the Gaikwad Commission has set out the exceptional circumstances and extra-ordinary situations justifying crossing of the limit of 50% reservation as set out in Indra Sawhney's case.

[6] We hold and declare that the State Government in exercise of its enabling power under Articles 15(4)(5) and 16(4) of the Constitution of India is justified, in the backdrop of report of MSBCC, in making provision for separate reservation to Maratha community. We, however, hold that the quantum of reservation set out by the Maharashtra State Reservation for Seats for Admission in Educational Institutions in the State and for appointments in the public services and posts under the State (for Socially and Educationally Backward Classes) SEBC Act, 2018, in section 4(1)(a) and 4(1)(b) as 16% is not justifiable and resultantly we quash and set aside the quantum of reservation under the said provisions over and

above 12% and 13% respectively as recommended by the Commission.

In the light of the discussion and the conclusions enumerated above, we pass the following order.

: O R D E R :

[A] In the light of summary of conclusions above, we dispose of the following writ petitions / PILs by upholding the Impugned Act of 2018 except to the extent of quantum of reservation prescribed by section 4(1)(a) and 4(1)(b) of the said Act :

- 1] PIL No. 175 of 2018,
- 2] WP (stamp No.) 2126 of 2019
- 3] WP (stamp No.) 2668 of 2019
- 4] WP (stamp No.) 3846 of 2019
- 5] PIL No. 140 of 2014
- 6] WP (Lodg. No.) 4100 of 2018
- 7] WP (Lodg. No.) 4128 of 2018.
- 8] WP (Lodg. No.) 4269 of 2018
- 9] PIL No. 6 of 2019.
- 10] WP (Lodg No.) 969 of 2019.

[B] The following writ petitions / PILs seeking implementation of the Impugned Act of 2018, are also disposed of in view of the Impugned Act being upheld except to the extent of quantum of reservation prescribed by section 4(1)(a) and 4(1)(b).

1] PIL No.19 of 2019 :- The petition is allowed in terms of prayer clause (a).

2] PIL No.181 of 2018 :- The petition is allowed in terms of prayer clause (a). As far as prayer clause (b) is concerned, we grant liberty to the petitioner to file a fresh petition in case cause of action survives.

[C] The following writ petitions are rendered infructuous on account of the passing of SEBC Act of 2018 which has repealed the earlier ESBC Act of 2015.

- 1] Writ Petition (Stamp No.) 10755 of 2017
- 2] PIL No. 105 of 2015
- 3] PIL No. 126 of 2019
- 4] PIL No. 149 of 2014
- 5] PIL No. 185 of 2014
- 6] PIL No. 201 of 2014
- 7] Writ Petition No. 3151 of 2014.

[D] The following writ petitions are de-tagged from the present group of petitions as they claim reservation for the Muslim communities.

- 1] Writ Petition No. 937 of 2017
- 2] Writ Petition No. 1208 of 2019
- 3] PIL No.209 of 2014
- 4] PIL (Stamp No.) 1914 of 2019.

[E] WP No.11368 of 2016:- The Petition is dismissed as far as prayer clause (A) is concerned. As far as prayer (B) is concerned the petitioner is at liberty to file an appropriate Writ Petition seeking said relief.

[F] PIL (Stamp No.) 36115 of 2018 :- The is disposed of since the recommendation of the commission are implemented in form of the impugned SEBC Act, 2018.

[G] In the light of disposal of above writ petitions and PILs, all pending civil applications / notice of motions / Chamber Summons taken out in these writ petitions and PILs do not survive and the same are accordingly disposed of.

178 Before concluding, we place on record the appreciation of the erudite submissions advanced by the learned Senior counsel who have ably assisted us in delivering the judgment. We deeply value the assistance rendered by the learned senior counsel Shri Datar, Shri Aney, Shri Sancheti assisted by the junior counsel on record. We also acknowledge the valuable assistance rendered by Advocate Shri Sadavarte, Shri Talekar. We also acknowledge the valuable assistance rendered by the learned senior counsel Shri Thorat who was ably assisted by Advocate Akshay Shinde and Ms.Prachi Tatke for his strenuous efforts. We also

acknowledge the special assistance rendered by the learned senior counsel Shri Mukul Rohatgi and Shri Paramjeet Singh Patwalia. We were also deeply assisted in our endeavor by the learned senior counsel Shri Rafiq Dada, Shri Arif Bookwala, Shri Sakhare, Shri Dhakephalkar, Shri Vineet Naik, Shri Mihir Desai. We also acknowledge the assistance of Shri Tekale, Advocate Gaikwad and Advocate Abhijeet Patil.

179 At this stage, Mr.Sancheti, learned senior counsel and Mr.Sadavarte, learned counsel appearing for the petitioners requested for stay of the judgment. Since we have upheld the validity of the Act of 2018 on the reasoning given in the judgment, we reject the said prayer.

(SMT.BHARATI DANGRE, J)

(SHRI RANJIT MORE, J)