THE CASE OF THE MARATHA RESERVATION: LOCATING THE INTENT

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Background of the Case:

The state of Maharashtra promulgated an Ordinance[1] on July 9, 2014, guaranteeing the Maratha community 16 percent reservation in education and public employment. The Bombay High Court issued an interim order[2] on November 14, 2014, halting the ordinance's implementation. On December 18, 2014, the Supreme Court dismissed a challenge to the interim order. The state of Maharashtra then passed[3] Socially and Educationally Backward Classes Act of 2014 (hereinafter referred to as the SEBC act, 2014) wherein persons belonging to socially and educationally disadvantaged classes, including the Maratha community, were given a 16 percent reservation in education and public employment in the State. Owing to a close resemblance of the SEBC act, 2014 to the Ordinance, the Bombay High Court halted[4] its execution on April 7, 2016. The Maharashtra State Backward Class Commission was established on January 4, 2017 by a notification[5] from the Maharashtra government. The Commission, which was chaired by Justice Gaikwad, proposed that Marathas be given a 12 percent and a 13 percent reservation in educational institutions and public employment respectively[6]. On November 29, 2018, the state of Maharashtra enacted the Socially and Educationally Backward Classes Act, 2018[7] (hereinafter referred to as the SEBC act, 2018), based on the Commission's recommendations. The Act goes above and beyond the recommended quotas, providing Marathas 16 percent reservation in State educational

[1] 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) ordinance, 2014, No.13 of 2014, Acts of Maharashtra State Executive, 2014 (India)
[2] Sanjeet Shukla vs State of Maharashtra, 2014 SCC OnLine Bom 1672
[3] 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, No.1 of 2015, Acts of Maharashtra State Legislature, 2014 (India)
[4] Sanjeet Shukla vs State of Maharashtra, 2015 SCC OnLine Bom 5376
[5] Supreme Court Observer, https://www.scobserver.in/court-case/maratha-reservation (last visited: 31st May, 2021)
[6] *Ibid*
[7] 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, 2018, No. 62 of 2018, Acts of Maharashtra State Legislature, 2018 (India)

institutions and government service appointments in Maharashtra. The Bombay High Court upheld the Act's constitutionality on June 27, 2019[8]. On the other hand, the Bombay High Court invalidated sections 4(1) (a)-(b)[9] of the 2018 Act, which mandated 16 percent reservation in education and public employment. The court ruled that the Act should not include reservations in education and public employment that exceed the Commission's recommended levels of 12 and 13 percent, respectively. The Supreme Court admitted an appeal on July 12, 2019[10] against the decision of the Bombay High Court. The apex court declined to stay the order of the Bombay High Court. The preliminary issue that arose was the need for this case to be referred to a larger bench because it involved significant legal questions concerning the interpretation of the Constitution. After hearing both the sides, the Court made a decision to refer[11] the case to a larger bench on September 9 in a brief (non-reportable) order. It also suspended the application of the SEBC Act of 2018 to educational institutions, with the exception of Post-Graduate Medical Courses[12].

The Legal Issues Involved and the Ruling of the Court:

The Supreme Court's recent judgment in *Dr. Jaishri Laxmanrao Patil v. The Chief Minister & Ors*[13] (hereafter referred to as the Judgment) is noteworthy in India's approach to the policy of affirmative action since it unanimously reiterated the three-decade-old *Indira Sawhney's*[14] ruling, declaring the the SEBC Act, 2018[15] unconstitutional for exceeding the 50 percent ceiling limit on total permissible reservations in the state without demonstrating the existence of extraordinary circumstances in the State to qualify for the Indira Sawhney exception; while simultaneously upholding the constitutional validity of 102nd Constitutional Amendment Act[16] (hereinafter referred to as "102nd Amendment").

[8] Dr. Jaishri Laxmanrao Patil v. The Chief Minister & Ors , 2019 SCC OnLine Bom 1107
[9] 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, 2018, section 4(1) (a)-(b), No. 62 of 2018, Acts of Maharashtra State Legislature, 2018 (India)
[10] Dr. Jaishri Laxmanrao Patil v. The Chief Minister & Ors, Access from https://main.sci.gov.in/ (Last Visit: 29 May, 2021 9:10)
[11] MANU/SC/0686/2020
[12] *Ibid*
[13] MANU/SC/0340/2021
[14] AIR 1993 SC 477
[15] *Supra no.7*
[16] One Hundred and Two Constitutional Amendment Act, 1995, Acts of Parliament, 1995 (India)

The Constitution Bench Judgment, which consists of three independent opinions totaling 569 pages, is based on six issues posed by Ashok Bhushan, J. and S. Abdul Nazeer, J which are enlisted hereinbelow[17]:-

1. Whether the judgment in Indra Sawhney v. Union of India[18] should be referred to a larger bench or re-examined by a bigger court in light of later Constitutional Amendments, decisions, and changes in social dynamics etc.?

2. Whether the SEBC Act, 2018 as modified in 2019, offering 12 percent and 13 percent reservation to the Maratha community, in addition to the 50% social quota, covered by extraordinary circumstances, as envisioned by the Supreme Court in Indra Sawhney's case?

3. Whether the State Government has made out a case of presence of unusual situation and exceptional conditions in the State to come inside the exemption carved out in the Indra Sawhney verdict on the basis of the Maharashtra State Backward Commission Report chaired by Justice M.C. Gaikwad?

4. Whether 102nd Amendment restricts the State Legislature of its enabling right to adopt legislation identifying socially and educationally disadvantaged groups and conferring benefits on them?

5. Is Article 342A[19] read with Article 366(26c)[20] of the Indian Constitution curtailing in any way the States' capacity to legislate in relation to "any backward class" under Articles 15(4)[21] and 16(4)[22]?

6. Whether Article 342A of the Constitution deprives states of their jurisdiction to regulate or categorise “any backward class of citizens” and thus has an impact on India's federal policy and structure?

From March 15 to March 26, 2021, Arguments were heard by the Bench on these issues for ten consecutive days. The decision was made on May 5, 2021. On issues 1, 2, and 3, the bench reached a unanimous decision. The court had a split opinion on the states' ability to identify the

[17] *Supra no.13, ¶11 § 12*
[18] *Supra no.14*
[19] INDIA CONST, Art 342A
[20] INDIA CONST, Art 366(26C)
[21] INDIA CONST, Art 15 §, cl 4
[22] INDIA CONST, Art 16 §, cl 4

Socially and Educationally Backward Classes [hereinafter referred to as the SEBC], which was dealt with in general terms in issues 4, 5, and 6. The Court, by a 3:2 majority, answered no to these questions, holding that only the President, after consulting the governors of the states, has the authority to name them for constitutional purposes. On this issue, S. Ravindra Bhat, J. wrote the majority opinion, concurred by L. Nageswara Rao, J. in a separate opinion and Hemant Gupta, J. in total agreement, whereas Ashok Bhushan, J. and S. Abdul Nazeer, J. dissented.

The explanation behind the two opposing viewpoints can be deduced in the following way:

A. PRESUMPTION OF TOTAL ALIGNMENT:-

Bhat, J. puts forth his interpretive tools in paragraph 108[23] of his judgment, stating that when the language of the statute is ambiguous, the first attempt to discover the meaning must be made utilising the internal aids. Only in the event that this fails, may the court look for external aids or material outside the text, such as the declaration of objects and reasons, parliamentary reports, Parliamentary debates and so on.

In his judgment, the honourable Judge continues to inquire what was the Parliament's objective or goal in enacting the 102nd Amendment Act (Rao, J. joins[24] him in this pursuit in his opinion), He expresses his difficulty to obtain a satisfactory response, despite using external aids such as the statement of purposes and reasons, and claims that a "Cosmetic Change"[25] just granting constitutional status to the National Commission of Backward Classes (NCBC) could not be the main purpose of Parliament, and in that case, the insertion of Articles 342A and 366(26C) was unnecessary. Later on, he appeared to have addressed this issue on his own when he described the obligations of the NCBC under Article 338B[26] and the now-repealed National Commission for Backward Classes Act, 1993[27] as “Radically Different.”[28]

Prior to the 102nd Amendment, the scheme, according to Indira Sawhney, allowed states the right to first identify SEBC within their territory through "State lists" and then determine policy addressing them for affirmative action based on the tenant of Articles 15(4) and 16(4) read

[23] *Supra no.13, ¶70*
[24] *Id, ¶17*
[25] *Id, ¶117*
[26] INDIA CONST, Art 338A
[27] National Commission for Backward Classes Act, 1993, No.19 of 1993, Acts of Parliament, 1993 (India)
[28] *Supra no.13, ¶108*

together with Article 12[29]. A number of individual members of the Select Committee on the 102nd Amendment have highlighted the concern that the Amendment would limit the states' ability to identify SEBCs, the Minister navigating the bills through the Houses, as well as the Select Committee Report assuaged these anxieties by emphasizing unequivocally that the 102nd Amendment had no bearing on the authority of states to designate SEBCs. While the dissenting Judges used these external aides to reach the judgment that the states had the power of identification, it is worth noting that the majority of the Judges did not. Because there were dissenting views in the Committee, the majority claimed that the report was not a "determinative external aid."[30]

It is significant because he assumes that the Parliament's intent was to imitate the legal regime of Article 341[31] and 342[32], and that the Parliament couldn't have intended to define the term SEBC first for the purposes of this constitution and then confine that connotation to the "Central List," i.e., for the purposes of central government employment and state-level Central Institutions[33]. He then goes on to clarify the nature, scope, and breadth of the meaning of SCs and STs under the constitution, before applying it to the SEBCs. The Judgment states in paragraph 162[34] that Article 342A infuses the function (of identifying SEBCs and publishing the list by the President) with Articles 341 and 342, just like Article 338B did with the other two previously existing articles of the Constitution. An umbilical cord interfaces these three sets of rules to the definition clause [Article 366(24)[35] in reference to SCs; Article 366(25)[36] in reference to STs and the new 366(26C) in relation to SEBCs

To further substantiate this point, the learned Justice stressed the conclusive nature of the expressions "means" in Article 366(26C) and "deemed" in 342A(1) to believe that reducing terminology through extrinsic means would be ignoring the basic text of the Constitution and give priority to what Parliamentarians or Ministers say[37].

[29] INDIA CONST, Art 12
[30] *Supra no.13, ¶97.*
[31] INDIA CONST, Art 341
[32] INDIA CONST, Art 342
[33] *Supra no.13, ¶155*
[34] *Id, ¶113*
[35] INDIA CONST, Art 366 (24)
[36] INDIA CONST, Art 366 (25)
[37] *Supra no.13, Id,¶117*

The learned judge continues to apply this form of "imputation interpretation", when His Lordship employs interpretations of definitions under Article 366 (1) agricultural income[38], Article 366 (12) goods[39], and Article 366 (29A) tax on the sale or purchase of goods[40], however, there is a fundamental difference between these definitions and the one used by the court in this case., Article 366 (26C), which defines SEBCs as they are "deemed" under 342A. The definitions provided above are complete in themselves, with the exception of Article 366 (1) Agriculture Income, which is defined by the Income Tax Act[41]. As a result, it is similar to article 366(26C), which is dependent on Article 342A to determine its meaning, and without first interpreting Article 342A, Article 366 (26C) is unable to comprehend the definition of SEBCs.

B. INTERPRETATION OF THE TERM "CENTRAL LIST":-

The centerpiece of the two contrary views of interpreting Article 342A was the weightage or importance that should be (or should not be) given to the word "Central List" as it appears in Sub-clause 2 of Article 342A. It's worth noting that this phrase isn't mentioned in the legal framework of Articles 341 and 342 of the Constitution and stood directly into the contradiction of the minister's assurances and the select committee report to the states.

While emphasizing the relevance of the expression in paragraph 426[42], Bhushan, J. wrote that Article 342A (2) adds the word "Central" before the expression "List" of socially and educationally backward classes. If it is accepted that the constitutional scheme of Articles 341 and 342 had to be observed and acted upon in Article 342A as well, the same expression must be used i.e. "list of socially and educationally backward classes," which would have been consistent with the expressions used in Articles 341(2) and 342(2). As a result, it is clear that in Article 342A, a new word, 'Central,' has been added before the phrase 'list of socially and educationally backward classes'. When an additional or new word appears in a statute or the Constitution, it must be assumed that it serves a function and is not extraneous or redundant.

In the majority opinion, however, Bhat, J., regarded the term "Central" in a unique sense, believing it to be synonymous with the phrases "Union"(Article 78[43]) and "the Government of

[38] INDIA CONST, Art 366 (1)
[39] INDIA CONST, Art 366 (12)
[40] INDIA CONST, Art 366 (29A)
[41] *Supra no. 13, ¶86*
[42] *Id, ¶379*
[43] INDIA CONST, Art 78

India" (Article 77[44]), and then interprets "Central Government" (despite the fact that the extra term "government" is not mentioned in the article). It was renamed "the President of India" under the General Clauses Act, with no distinction made between the usage of the extra word "Central List," which was regarded as strange but of little significance.

This reasoning might not sound very fair as the term "Central List" was inserted into the constitution with the same meaning that it adopted from the term "lists" as defined in section 2(c)[45] of the NCBC Act. Prior to the 102nd Amendment, the states and the centre maintained separate lists, and the purpose of the "Central List" aimed to offer reservations for certain classes in state-run institutions and central public-sector enterprises. The Hon'ble Judge defended the importation of the S.Cs and S.Ts scheme by stating that Article 338B was a mirror copy of Articles 338 and 338A, but not of Article 342A. The term "Central List" in Sub-clause 2 projected a different reflection; in the course of the judgment the Hon'ble Judge themselves set down the principle of interpretation that in case of ambiguity or unclarity as has been arisen in this case required a recourse to external aid in comprehending the real intension of the legislature. By not applying this well settled tool of interpretation in this case, the Hon'ble Judge appears to be correcting a mistake that he himself admits in the latter part of the opinion.

The Hon'ble Judge had laid down the purpose for the reason why the word "central" was added in the article 341A. According to him[46], the 102nd Amendment could put a stop to the menese of overexploitation of reservations by the dominant community among the backward community. In the earlier regime predominant communities, once designated as SEBCs by states, are likely to get a disproportionately large share of state advantages of reservation in employment and education to state institutions due to its relative "forward" status. Their inclusion may result in a reduction in the real share of reservation advantages for the most backward people. This outcome can be prevented if a commission or organisation, such as the one established under Article 338B, develops and uses rational and pertinent criteria.

Despite their good intention, this isn't the problem at hand, and it wasn't precisely requested that it be fixed. The learned Judge should have deferred to the wisdom of the Legislature in addressing this issue through appropriate legislation; instead, he ends up doing purposeful

[44] INDIA CONST, Art 77
[45] National Commission for Backward Classes Act, 1993, Section 2(c), No.19 of 1993, Acts of Parliament, 1993 (India)
[46] *Supra no. 13, ¶119*

interpretation outside the limits of his authority in this case.

The Effect on the Federal Structure:-

It was claimed that this interpretation significantly limited the states' powers to identify SEBCs and their authority under article 15(4) and 16(4); the 102nd Amendment's constitutionality was contested on the basis of, first and foremost, violating the Constitution's basic structure (undermining the federal government's structure). Second, the states' mandate was reduced by transferring power to the President and Parliament for identifying as well as amending the list of SEBCs; it was claimed that 102nd Amendment faced a procedural flaw because the prior approval of the required number of state assemblies was not obtained.[47]

Bhat, J. tried to adequately answer both the issues in paragraph 187[48], and he observed that the peripheral and oblique modification of the content of state legislative power would not be considered a breach of federalism. Only if the amendment eliminates the core essence of federalism or effectively relinquishes the constitution's federal character or violates the Constitution's basic structure by depriving states of their effective capacity to legislate or establish executive policies.

Conclusion:

The Hon'ble Supreme Court's two quite different interpretations of the text which is no more res integra in the Judgment raises doubts regarding the rules for interpreting the meaning of the language of the Constitution. In the poll of 34-judge Court, the majority is secured by the agreement of merely three judges in a five-judge bench decision. A constitutional theory that is predictive and deterministic in terms of reaching the outcome is desired. The objective of the legislature was evident in using external aid to favour one reading, however, as the opinion of majority has pointed out, the text told a different story, in their perspective. On the other hand, the minority strongly disagrees. It is not impossible to imagine that a larger bench could have agreed with the minority viewpoint to produce a different outcome. Therefore the question, which needs to be pondered upon while keeping the constitutional spirit alive, of where the legislature's intent or purpose lies and what is the most certain way for a polyvocal court to pinpoint it, continues to exist.

[47] INDIA CONST, Art 368 §, cl 2
[48] *Supra no.13*, *¶128*