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COMMENT ON THE MARATHA RESERVATION CASE WITH SPECIAL EMPHASIS ON 105TH CONSTITUTION AMENDMENT ACT

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Abstract

This research paper examines the implications of the 105th Constitutional Amendment Act, 2021, which reinstates states' authority to identify socially and educationally backward classes (S.E.B.C.) for reservations. The catalyst for this amendment was the Supreme Court's interpretation in the Maratha Reservation case, which curtailed states' power under the 102nd Constitutional Amendment Act, 2018.

Key questions addressed include whether state reservation powers constitute a federal structure component, if the Supreme Court adequately reflected Parliament's intentions, and how rules of interpretation apply to constitutional provisions versus general statutes. Additionally, the paper analyzes the gaps left by the 102nd Amendment and their impact on reservation policies.

Keywords: Amendment, Reservation, Federal Structure, Interpretation, Commission

1. Background

The 105th Constitutional Amendment Act of 2021, assented by the President of India on August 18, 2021, was enacted in response to the Supreme Court's ruling in the "Maratha Reservation case." This case, Jaishri Laxmanrao Patil v. The Chief Minister and Ors[1], challenged the Bombay High Court's decision upholding the "Maratha Reservation" and the 102nd Constitutional Amendment Act of 2018.

Previously, the Constitution vested the power to designate Scheduled Castes and Scheduled Tribes exclusively with the President, following consultation with the Governor of the concerned state. Amendments could only be made by Parliament to avoid political influence. However, this did not apply similarly to socially and educationally backward classes (S.E.B.C.), as Articles 15(4) and 16(4) empowered both the Union and State governments to make such designations. During the Constituent Assembly debates, Dr. B.R. Ambedkar affirmed that backward communities should be identified by local governments.

In the landmark Indra Sawhney case[2], the Supreme Court directed the establishment of commissions to handle requests for inclusion of specific castes and complaints of over or under inclusion among S.E.B.C. This led to the enactment of the National Commission for Backward Classes Act, 1993, expanding the role of the National Commission for Backward Classes beyond advisory functions to include examination of complaints related to under and over inclusion.

[1] Jaishri Laxmanrao Patil vs The Chief Minister And Ors., SLP (C) 15737/2019 SC
[2] Indra Sawhney & Others vs. Union of India, (1992) Supp. 3 SCC 217

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The 102nd Constitutional Amendment Act of 2018 aimed to strengthen protections for socially and educationally backward classes. It granted constitutional status to the National Commission for Backward Classes, paralleling the status of commissions for Scheduled Castes and Scheduled Tribes.

The 105th Constitutional Amendment Act[3] amended Articles 338B, 342A, and 366(26C) to counteract the impact of the Maratha judgment, which had restricted state governments' authority in this domain.

2. INTERPRETATION OF THE 102nd CONSTITUTIONAL AMENDMENT

Supreme court while interpreting the 102nd amendment of constitution in" The Maratha Reservation Case" majority followed the literal rule of interpretation although justice Bhusan and Nazeer followed purposive rule of interpretation. By 3:2 Supreme court denuded the power of state to identify SEBC for the purpose of reservation in state services and educational institution.

The 102nd constitutional amendment made three major changes in the constitution:[4]

- Firstly, it created the National Commission for Backward classes with constitutional status at par with the National commission of SC and the National Commission for ST by adding Article 338B in the constitution.
- Secondly, it specified particular procedure for identifying SEBC, and majorly followed the similar process of identification like the Article341 (Process for identification of SC) and Article 342 (Process for identification of ST) by adding Article 342A with some difference.
- Thirdly, under Article 366 by adding a new sub-clause (26C), which talks about the term "SEBC" means "such backward classes as are so deemed under Article 342A for the purposes of this Constitution".

There had been two competing view on this amendment of Court, according to the first view these amendments still maintains the status quo (where state and central both have power to identify SEBC). According to the second view these amendment in the constitution stripes the power of State government because it follows the same structure as current structure of identification of SC&ST and gives the sole power of identification to centre.

There were two reason to support the first view is that from the beginning of the constitution both the centre and state have power of identification of SEBC and if constitutional amendment came to change this proposition so drastically then why it was not written specifically that it takes away the power of the state which they had been enjoying from the beginning of the constitution. Remarkably, nowhere in the Article 338B and Article 342A, it is written that this will be the only process for the identification of SEBC's.

[3] The Constitution 105nd Amendment Act, 2021
[4] The Constitution 102nd Amendment Act, 2018.

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Second, there is a substantial difference in Articles 341 and 342 on the one hand, and Article 342A on the other. The president was empowered to notify (SCs, STs, and SEBCs) in the first clause of the these articles, but the second clause of Article 341 and 342 specified that the president's notification could only be altered by Parliament. Article 342(2), on the other hand, uses the following language:

"Parliament may by law include in or exclude from the **Central List** of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class…"
The use of word "central list" denotes the intention of legislature that its operation is only limited to the Central level and not in any way to take away the power of state. If intention of the parliament was that to take away the power of state then why they used the word central list in clause 2 of the Article 342A and why they haven't followed the same wording as used in the Article 341(2) and Article 342(2), which only used the term "List of schedule caste" and "List of Schedule Tribe" By 3:2 majority Supreme Court didn't agreed with this reasoning so now let's examine the majority decision (Justice Bhat's decision, which Justices Gupta and Rao agreed with) of the court which lead to the 105th amendment.

Majority, view was that wording of the amendment is unambiguous so as per the primary rules of interpretation only literal interpretation is required. But the problem is that if only literal interpretation was to be followed why the court extensively referred to parliament's proceedings and standing committee discourses. It was not just through the literal wordings of the statute court came to the conclusion which it did. Following a detailed examination of Bhat's J. Judgment, the following points of contention emerge:

First, SCBCs were stated in Article 366 (26C) with a reference to Article 342A, "for the purposes of this Constitution." The expression "for the purposes of this Constitution" was to be interpreted liberally, continuing the precedent set by Articles 341 & 342, and was to be read to cover the entire Indian Constitution, including Articles 15 (4) and 16 (4). (the reservation provisions). As a result, Article 342A now governs the extent of SEBC identification entirely.

Second, prior definitions clause amendments had been applied "in the fullest sense," even when doing so would decrease the authority of multiple states.

Third, because as central government currently had the ability to publish SEBC lists for union employment as well as central PSU posts under the National Commission for the Backward Classes ["NCBC"] Act, there's no justification to modify the Constitution to provide for an authority that have already existed;

Fourth, the term "central" appeared in several instances in the Constitution, but this only refers to a list provided by the President at the behest of the Union government, not to a list of posts under the Union government; Fifth, the 102nd amendment was meant to replicate the

identifying system that used for SCs and STs, as well as SEBCs, and as a result, Article 338B was a "mirror image" of Articles 338 and 338A.[5]

3. ANALYSIS OF THE MAJORITY JUDGMENT IN MARATHA RESERVATION CASE

It's tough to believe the Majority's arguments. The issues began with Judge Bhat's first opinion ("for the purposes of this Constitution"), which was, in reality, the axis of his interpretation (and thus repeated by him across the Judgment).[6]

Article 366(26(c)) talks about SEBC for the purpose of this constitution means SEBC so deemed under Article 342A. On this issue Bhat J. opinion was that list is notified under clause 1 of Article 342A. But this view is not in coherence with the clause 2 of the Article 342A as it uses the world “Central list”. Even if one concurs with Bhat’s J view that Article 342A refers only to the one list which will be notified by president then what was the need to use word ”Central list” in clause 2 of article 342A, why legislature have not referred to the list notified by the president?

We can consider Bhat’s J. opinion correct only if he said that SEBC definition as given in Article 366(26C) only applies to Article 342A (1). If you read Article 342A (2) use of word “Central list” suggest the intention of legislature of not denuding the power of state.

This view of Bhat J. have consequential effect on the other view of Bhat J. and consequently the majority opinion of Bhat J. falls flat as he gave the full meaning of word “Means” in definition, which is totally dependent upon the interpretation of Bhatt J in Article 342A (1) We can't understand what the defining phrase refers to unless we've first interpreted Article 342, so that argument falls short as well.

Third opinion of Bhatt J, is not looking satisfactory because it is reasonable to argue that parliament wants to give constitutional status to the National Commission for backward classes which was earlier having the status of statutory body and constitutional bodies gets greater prestige compared to the statutory bodies.

Fourth and fifth opinion of Bhat J can be considered together. One deals with word “Central List” and second deals with “Mirror image”. As his view was that constitution uses the word central in various places this doesn’t seem useful for the current case as present case question is not related to the World “Central” but “Central List” and with the fact that the Article 341(2) and the Article 342(2) do not uses that phrase instead it uses “List of Schedule caste and Schedule Tribe”. If as considered by Bhat J that Parliament intended by the 102nd constitutional amendment to “Mirror image” of the system in identification of SC &ST under Article 341 and 342 then why the legislature did not used the same terminology as used in the

[5] Gautam Bhatia, *The Supreme Court’s Maratha Reservation Judgment: A Response*, September 20 2021.

[6] *Supra 4*

Article 341(2) and Article 342(2). In Article 342A (2) they have used the word "Central list" which Bhat J, considered as the list prepared by president because the SC&ST list is also prepared by central government. When the Article 342A (2) uses the word "central list" that means it is not in complete alignment with the Article 341(2) & 342(2), which Bhat J. wrongly considered "Mirror Image"

4. DISCOURESE BETWEEN STANDING COMMITTEE AND LOKSABHA

While discussing 123rd amendment bill[7] the Select Committee of Rajya Sabha expressed doubts as to what extent the amendment would denude the state legislature of their power to specify the SEBCs in the list?

The ministry clarified that the said amendment nowhere takes the power of State and they are free to include or exclude, whoever they wish to in their backward classes list.
But the question arises if this was not the intention of the legislature why Court was unable to find that intention in the true words of constitutional amendment. The court observed in the Maratha Reservation case that: while reading the Select committees report, it is evident that the committee recommended various amendments to the amendments as they were apprehensive of the fact that a reasonable and fair interpretation of the law leads to the conclusion that such amendment could affect State's power to make reservation. But the amendments proposed were not accepted. The court relied on the debates in parliament and observed that a sizeable number of members raised doubts over the implications of the said amendment.
The way the assurance was given by ministry is worth noticing. The ministry said that never has the state been excluded in the consultation process. The state is entitled to recommend to the President for the inclusion or exclusion in SCs and STs. Similarly would be the case in the case of SEBCs.
Thus court came to the conclusion that there are references from both the sides that on the one hand the ministry clarified that the state's power to identify backward classes is not being taken but on the other they didn't accepted the proposed amendments by select committee to include certain clauses which would have made this interpretation clear that the state's power is not being taken. But not including such amendments as per court lead to the consequence that this was not the intention of the legislature as evident from plain and literal meaning of the text. The court referred to the observation made by Supreme Court in **Sanjeev Coke Manufacturing v. Bharat Coking Coal Ltd. [8] where it was held that**: The task of interpretation could not be determined by statements made by MPs or Ministers. The court in this case went on to say that after a statute leaves the parliament it is only the court which may interpret the statute through the reference to the language of the statute.
Hence given all these consideration the court came to the conclusion that the parliament through 102ndAmendment act by inserting 366(26C), 342A,and 338B the procedure for identifying SEBCs has been linked with the existing scheme for identifying SCs/STs.. But now the parliament through 105th amendment Act, 2021 has tried to address the loopholes

[7] The Constitution (123rd Amendment) Bill, 2021.
[8] AIR 1983 SC 239

that were left in the 102nd amendment act which led to the judgment in Maratha Reservation case.[9]

5. EFFECT ON FEDERAL STRUCTURE

The question that arose after the 102nd amendment act was that whether this amendment takes away the State's power to identify SEBCs and if it does whether it shouldn't have been passed with the ratification of at least one half of the assemblies of all states as provided under the proviso to Article 368(2) ? Justice Bhat rejected the argument that it should have been passed with a ratification of the at least one half of the legislative assemblies of all states. The rejection of the argument raises a pertinent question that whether the effect on the federal structure should be direct and whether it should directly be pertaining to the provisions mentioned under article 368(2) from (a) to (e) or an effect on federal structure would suffice. The102nd amendment didn't directly amend any of the specified provisions. To answer given questions we can rely on the judgment of The Supreme Court in **Sajjan Singh v. State Of Rajasthan**[10] that the amendment, which requires state ratification, does not violate the Constitution and that the proviso to Article 368 (2) is not required unless the amendment deletes or modifies any of the Entries in the three lists of the Seventh Schedule, or directly amends an Article for which ratification is required.

J Bhat in Maratha reservation case [11] categorically held that the proviso is only applicable when there is an actual or direct amendment to specified provisions. But on this point what Dr Amdekar said with reference to proviso to article 368(2) is quite relevant for us. Dr Ambedkar said, the proviso's purpose was as follows: If Members of the House who are interested in this topic examine the articles that have been placed under the proviso, they will discover that they refer not only to the Centre but also to the relationships between the Centre and the Provinces. We must not forget that, while we have infringed on provincial authority in a number of areas, we still intend and have ensured that the federal framework of the Constitution is substantially unchanged.[12]

In **Kihoto Hollohan v. Zachillhu And Others**[13], Article 226 was not directly altered by the 52nd Amendment. Nonetheless, the Supreme Court ruled that paragraph 7 of the Tenth Schedule was unconstitutional because it effectively modified Article 226 without according to the proviso's procedure. Rather than focusing on the direct amendment the apex court focused on an in effect amendment.

Article 368(2)'s proviso is a critical protection against the Parliament's unilateral acquisition of power. It lies at the heart of the federal structure established by our Constitution. It can be said that the SC in Maratha reservation case[14] favored the interpretation that Parliament can unilaterally take the powers of the state legislature which though not have a direct effect on

[9] Jaishri Laxmanrao Patil vs The Chief Minister And Ors., SLP (C) 15737/2019.
[10] AIR 1965 SC 845
[11] *Supra 2*
[12] Vrishank Singhania, *A critique of the Supreme Court's Maratha Reservation Judgment: The constitutionality of the 102nd Amendment,* September 26 2021.
[13] 1992 SCR (1) 686
[14] *Supra 2*

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Article 368(2) which is a safeguard of federal structure but it can certainly usurp the powers which do have an incidental effect on co-operative federalism.

6. CONCLUSION

The judgment in the Maratha Reservation Case resulted from the absence of recommended provisions in the 102nd Amendment Act itself, which were meant to be direct and specific. This omission led to confusion and ambiguity in both the amendment and the court's interpretation. The 105th Amendment Act was subsequently passed to specifically restore states' authority to specify SEBCs within their respective territories. However, addressing these gaps through new amendments highlights the significant time and resources parliamentary proceedings consume.

Former Parliamentary Affairs Minister Pawan Kumar Bansal highlighted that Parliament runs for eighty days annually, with each minute costing ₹2.5 lakh.[15] This underscores the importance of clear drafting to avoid subsequent confusion and politically charged debates.

The intersection of the Maratha Reservation Case, the 102nd Amendment, and the 105th Amendment underscores a simple conclusion: "words matter." Parliament must draft statutes meticulously to minimize ambiguity. Simultaneously, courts must avoid overly strict literal interpretations that may yield outcomes contrary to Parliament's original intent. The recent developments concerning these amendments and the case serve as a stark example of this ongoing conflict.

[15] Press Trust of India, , https://www.ndtv.com/india-news/each-minute-of-running-parliament-in-sessions-costs-rs-2-5-lakh-govt-498784 (7 Sept 2012).