



महाराष्ट्र शासन राजपत्र

असाधारण भाग पाच-अ

वर्ष १०, अंक १]

मंगळवार, फेब्रुवारी २०, २०२४/फाल्गुन १, शके १९४५

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असाधारण क्रमांक १

प्राधिकृत प्रकाशन

महाराष्ट्र विधानसभेत व महाराष्ट्र विधानपरिषदेत सादर केलेली विधेयके (इंग्रजी अनुवाद).

MAHARASHTRA LEGISLATURE SECRETARIAT

The following Bill was introduced in the Maharashtra Legislative Assembly on the **20th February, 2024** is published under Rule 117 of the Maharashtra Legislative Assembly Rules :—

L. A. BILL No. I OF 2024.

A BILL

to specify certain communities as the Socially and Educationally Backward Classes in relation to the State of Maharashtra and to provide for reservation of seats for admission in educational institutions in the State and for reservation of posts for appointments in public services and posts under the State to such Socially and Educationally Backward Classes in the State of Maharashtra for their advancement and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to specify certain communities as the Socially and Educationally Backward Classes in relation to the State of Maharashtra and to provide for reservation of seats for admission in educational institutions in the State and for reservation of posts for appointments in public services and posts under the State to such Socially

and Educationally Backward Classes in the State of Maharashtra for their advancement and for matters connected therewith or incidental thereto; it is hereby enacted in the Seventy-fifth Year of the Republic of India, as follows :—

Short title and commencement.

1. (1) This Act may be called the Maharashtra State Reservation for Socially and Educationally Backward Classes Act, 2024.

(2) It shall come into force on the date of publication of this Act in the *Official Gazette*.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “admission authority”, in relation to admissions to educational institutions, means the authority having supervisory and controlling powers over the educational institutions responsible for admissions to particular educational institutions ;

(b) “appointing authority”, in relation to public services and posts, means the authority empowered to make appointments to such services and posts ;

(c) “Competent Authority” means the Competent Authority appointed under section 7 ;

(d) “educational institutions” includes the educational institutions in the State of Maharashtra owned and controlled by the Government, which receives grant-in-aid from the Government, universities established by or under the relevant Maharashtra Acts, 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.

Explanation.—For the purposes of this clause, the expression “private educational institutions” means institutions which have been given either prior to coming into force of this Act or thereafter, aid in the form of Government land at concessional rates or any other monetary concessions by the Government, or are recognized, permitted, supervised or controlled by the Government ;

(e) “establishment” means any office of the Government or of a local authority or statutory authority constituted under any Act of the State Legislature for the time being in force, or university or company or corporation or co-operative society in which share capital is held by the Government or any Government aided institutions.

Explanation.—For the purposes of this clause, the expression “Government aided institutions” shall also include institutions or industries which have been given, either prior to coming into force of this Act or thereafter, aid in the form of Government land at concessional rates or any other monetary concessions by the Government or is recognized, licensed, supervised or controlled by the Government ;

(f) “Government” or “State Government” means the Government of Maharashtra ;

(g) “prescribed” means prescribed by rules made under this Act ;

(h) “public services and posts” means the services and posts in connection with the affairs of the State and includes services and posts in,—

(i) a local authority ;

Mah.
XXIV of
1961.

(ii) a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960, in which the Government is a share holder ;

18 of 2013.

(iii) a board or a corporation or a statutory body established by or under a Central Act or a State Act which is owned and controlled by the Government, or a Government company as defined in the Companies Act, 2013 ;

(iv) an educational institution owned and controlled by the Government, which receives grant-in-aid from the Government including a university established by or under a Maharashtra Act; and

(v) any other establishment in respect of which reservation was applicable by Government orders on the date of commencement of this Act and which are not covered under sub-clauses (i) to (iv) ;

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

(j) “Socially and Educationally Backward Classes” means the Socially and Educationally Backward Classes as specified under this Act for the purposes of the State of Maharashtra in accordance with article 342A of the Constitution of India ;

(k) “State” means the State of Maharashtra.

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2004.

(2) The words and expressions used in this Act, but not defined, shall have the same meanings respectively assigned to them in 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.

3. The Maratha Community is hereby specified as the Socially and Educationally Backward Class for the purposes of the State.

Socially and
Educationally
Backward
Class in
State.

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

Applicability.

(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 admissions 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 of 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.

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2006.

Reservation
of seats for
admission in
educational
institutions,
appointments
in public
services and
posts under
State for
Socially and
Educationally
Backward
Classes.

5. (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) ten 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) ten 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 :

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, from time to time, by the Governor, in this behalf.

(2) The principle of Creamy Layer shall be applicable for the purposes of reservation to the Socially and Educationally Backward Classes under this Act and reservation under this Act shall be available only to the persons belonging to the Socially and Educationally Backward Classes who are not falling in 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 by general or special orders issued in this behalf, from time to time.

Reservation
not to be
affected.

6. Notwithstanding anything contained in section 5, the claims of students or persons belonging to Socially and Educationally Backward Classes shall also be considered for the allotment on unreserved seats and appointments on public services and posts which shall be filled on the basis of merit, and where students or persons belonging to such classes is selected on the basis of merit, the number of seats and appointments reserved for the Socially and Educationally Backward Classes, shall not in any way be affected.

Competent
Authority.

7. (1) The Government may, by notification in the *Official Gazette*, appoint any officer not below the rank of the District Social Welfare Officer to be the Competent Authority for such area as may be specified in such

notification for the purposes of carrying out the provisions of this Act and the rules made thereunder.

(2) The Competent Authority shall exercise such powers and perform such functions, as may be prescribed.

8. (1) If in respect of any recruitment year, any vacancy reserved for Socially and Educationally Backward Classes of persons remains unfilled, such vacancy shall be carried forward upto five years in case of direct recruitment :

Carrying forward of reserved vacancies.

Provided that, on the date of commencement of this Act, if any Government Order, Resolution, Circular and Office Memorandum regarding filling of posts is in force then, the same shall continue to be in force unless modified or revoked by the Government :

Provided further that, if the sanctioned posts are not adequate to allocate atleast one post for each reserved category, then the reserved post shall be filled in by applying the principle of rotation in accordance with the Government roster orders or rules as may be prescribed or modified in this behalf.

(2) When a vacancy is carried forward as provided in sub-section (1), 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 :

Provided that, the appointing authority may, at any time, undertake a special recruitment drive to fill up such unfilled vacancies and if such vacancies remain unfilled even after such special recruitment drive then, it shall be filled up in the manner prescribed by the Government.

9. (1) The Government may, by order in writing, entrust upon every admission authority or appointing authority or any officer under such authority, with the responsibility of ensuring the compliance with the provisions of this Act.

Responsibility and powers for compliance of Act.

(2) The Government may, in the like manner, invest the admission authority or appointing authority or officer with such powers or authority as may be necessary for such authority or officer, to effectively discharge such duty assigned to such authority or officer.

10. (1) Any admission authority or appointing authority or officer or employee entrusted with the duty or responsibility who willfully acts in a manner intended to contravene or defeat the purposes of this Act shall, on conviction, be punished with imprisonment for a term which may extend to ninety days or fine, which may extend to twenty-five thousand rupees, or with both.

Penalty.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government or officer authorized in this behalf by the Government.

11. When it comes to the notice of the Government or is brought to its notice that any person belonging to Socially and Educationally Backward Classes is adversely affected, on account of non-compliance with the provisions of this Act or the rules made thereunder or the Government orders

Power to call for records.

issued in this behalf, by any admission authority or appointing authority, it may call for such records and pass such appropriate orders as it deems fit.

Procedure of issuance of Caste Certificate and Validity Certificate.	12. The provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (<i>Vimukta Jatis</i>), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and the Maharashtra Scheduled Castes, De-notified Tribes (<i>Vimukta Jatis</i>), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012, shall <i>mutatis mutandis</i> apply for issuance of Caste Certificate and Validity Certificate for Maratha Community as Socially and Educationally Backward Class, for the purposes of this Act.	Mah. XXIII of 2001.
Representation in selection committee.	13. The Government may, by an order, provide for nomination of officers belonging to Socially and Educationally Backward Classes in selections, screening and departmental committee for the purpose of selecting persons for appointment to public services and posts.	
Irregular admissions and appointments void.	14. Any admissions or appointments made in contravention of the provisions of this Act shall be void.	
Competent Authority to be public servant.	15. The Competent Authority appointed under section 7 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.	45 of 1860.
Protection of action taken in good faith.	16. No suit, prosecution or other legal proceeding shall lie against the Competent Authority or its officers, for anything which is in good faith done or intended to be done under this Act or the rules or orders made thereunder.	
Power to make rules.	17. (1) The State Government may, by notification in the <i>Official Gazette</i> , make rules to carry out the purposes of this Act. (2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in any rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the <i>Official Gazette</i> , the rule shall, from the date of publication of notification of such decision have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.	
Savings.	18. (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. <i>Explanation.</i> —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 the form is lapsed.

19. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order published in the *Official Gazette*, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty :

Power to remove difficulty.

Provided that, no such order shall be made after expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

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LXII of
2018.

20. (1) The Maharashtra State Reservation (of 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 is hereby repealed.

Repeal and savings.

1 of 1904.

(2) The provisions of section 7 of the Maharashtra General Clauses Act with regard to effect of repeal shall apply.

STATEMENT OF OBJECTS AND REASONS

The State of Maharashtra has been a leading State in taking measures for promoting the social, economic and educational advancement of persons belonging to the backward class of citizens. As part of the gamut of such measures, the State has made provisions for reservation of seats for admissions in educational institutions in the State and for reservation of posts for appointments in public services in the State in favour of such backward classes.

2. Prior to independence, in the year 1902, Rajarshi Chhatrapati Shahu Maharaj, *vide* two notifications provided reservation in public employment to the Maratha Community as a backward class. Similarly, by resolution dated 23rd April 1942, issued by the then Government of Bombay, about 228 communities were declared as intermediate and backward class wherein Maratha is shown at Serial No. 149 in the list annexed thereto.

3. In June 2017, the Government of Maharashtra requested the Maharashtra State Commission for Backward Classes under the Chairmanship of Justice M. G. Gaikwad (Retd) (the "Gaikwad Commission") *inter alia* to investigate backwardness of the Maratha Community and other related aspects as per the Terms of Reference. By its report dated 13th November 2018 the Gaikwad Commission, recommended that the Maratha Class of citizens to be declared as a Socially and Educationally Backward Class and be granted the benefit of reservation under Article 15(4) and Article 16(4) of the Constitution of India.

4. In 2018, the Government of Maharashtra, on the basis of the material and data collected by the Gaikwad Commission, enacted the Maharashtra State Reservation (of 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 (Mah. LXII of 2018) on 30th November 2018.

The constitutional validity of the 2018 Act was challenged before the Bombay High Court. The Bombay High Court *vide* order dated 27th June 2019 (*Dr. Jaishri Patil v/s. Chief Minister of Maharashtra 2019 4 Bom CR 481*) held that, in the backdrop of the report of the Gaikwad Commission, the State was justified in making provision for separate reservation for the Maratha Community but reduced the quantum of reservation provided thereunder to that recommended by the Gaikwad Commission.

5. The judgment of the Bombay High Court was challenged before the Supreme Court. The Constitution Bench of the Supreme Court *vide* judgment dated 5th May 2021 (*Dr. Jaishri Patil v/s. Chief Minister of Maharashtra (2021) 8 SCC 1*) held the provisions of the said Act granting reservation to the Maratha Community in seats in educational institutions and posts in public services as *ultra vires* the Constitution. A review petition against the said judgment was dismissed and a curative petition is pending before the Supreme Court.

6. In its judgment dated 5th May 2021 the Supreme Court *inter alia* noted that, Gaikwad Commission proceeded on an erroneous understanding of the legal position as laid down in various decisions of the Supreme Court to arrive at a finding that a case for an extraordinary situation had been made out for granting the Maratha Community reservation in excess of 50 per cent. The Supreme Court found that the 2018 Act was based on the Gaikwad Commission Report and therefore, the 2018 Act also did not make

out any extraordinary circumstances for exceeding the 50 per cent. ceiling. The Supreme Court found certain shortcomings in the report of the Gaikwad Commission and the methodology adopted therein to arrive at the conclusion that Marathas were backward and not adequately represented in public services. The Supreme Court further observed that it was not within the Terms of Reference of the Gaikwad Commission to examine whether the earlier reports of the National Commission/ State Commission, in not recommending Marathas to be included in the other backward classes or to provide separate reservation to them, were correct or not. It was further observed that the Gaikwad Commission ought to have focused on what happened in recent years that the Marathas had become a backward class. The Supreme Court further observed that the conclusion reached by the Gaikwad Commission was not borne out by the data and material before it. On these and other grounds, the Supreme Court set aside section 2(j), section 4(1)(a) and section 4(1)(b) of the 2018 Act as *ultra vires* to the Constitution. However, the Supreme Court noted that, it is open to the State to collect relevant data to find out as to whether a particular class or community is a backward class despite any decision to the contrary taken earlier.

7. In the light of the various observations of the Supreme Court, the State Government made reference to the Maharashtra State Commission for Backward Classes under the Chairmanship of Justice S.B. Shukre (Retd.) (the “Shukre Commission”) with the following Terms of Reference :—

(1) to determine the criteria and parameters to be adopted in ascertaining the social, educational and economic backwardness for the benefits of reservation in present context in conformity with the Constitutional mandate, reservation laws and various judgments of the courts including the observations of the Supreme Court in its judgment in the case of Jaishri Laxmanrao Patil V/s. Chief Minister and Others (Civil Appeal No. 3123 of 2020 and connected matters;

(2) to define exceptional circumstances and or extraordinary situations to be applied for the benefits of reservation in the present context in conformity with the Constitutional mandate, reservation laws and various judgments of the courts including the observations of the Supreme Court in its judgment in the case of Jaishri Laxmanrao Patil v/s Chief Minister and Others;

(3) to collect fresh quantifiable and other data and information and also scrutinize and inspect the data and information collected in the past by whichever sources including by the State Backward Class Commission, National Backward Class Commission and the Committees appointed by the State Government from time to time, for determining the social and educational backwardness of Maratha Community and their inclusion in the list of backward classes, by applying the criteria and parameters determined as above;

(4) to ascertain existence of exceptional circumstances and or extraordinary situations in the context of Maratha Community justifying exceeding of the limit of 50% reservation as laid down in judgments of the Supreme Court;

(5) to determine the adequacy of representation of Maratha Community in the public employment under Central and State Government establishments, Public Sector Undertakings, Universities and other Institutions aided and funded by Government;

(6) to ascertain proportion of population of Maratha Community in the State of Maharashtra on the basis of records, reports, census and other available data;

(7) to analyse the earlier reports of the Backward Class Commission and the Committees appointed by the State Government from time to time like the Bapat Committee in the context of Maratha Community, including the analysis of any shortcomings, errors and lacunae therein and also the regression or change of circumstances of Maratha Community thereafter;

(8) to consider, assess and determine the aspects and terms set out in paragraph 33.6 of the Bhosale Committee, constituted by the State Government which reads as under :-

(i) to reassess social backwardness in the context of actual deprived class of Maratha population (non-creamy layer);

(ii) to re-examine educational backwardness in the context of recent regression of Maratha class;

(iii) to re-examine social backwardness in the context of recent regression of Maratha class;

(iv) to re-examine actual percentage of educational backwardness;

(v) to supplant aspects of economic backwardness as that arrived by Gaikwad Commission;

(vi) to examine aspect of proportion of representation of open class *vis-a-vis* Marathas in education;

(vii) to examine aspect of proportion of representation of open class *vis-a-vis* Marathas in services;

(viii) to find out disproportionate imbalance of representation of open category *vis-a-vis* Marathas in education and services;

(ix) to lay out statistics of open category population *vis-a-vis* Marathas;

(x) to trace out recent regression of Marathas especially post year 2008, in particular;

(xi) to trace out actual percentage of forward Maratha Class, such as politicians, businessmen, industrialist, professionals, academicians, etc. and of socially and educationally backward Marathas;

(xii) to make comparative study of earlier backward class commissions for Marathas and its in-depth analysis of short comings of such commission reports if any;

(xiii) to consider the difference margin of economic backwardness of Marathas *vis-a-vis* other open EWS (so as to sub classify/carve out a category);

(xiv) to find out exact statistics of Marathas in higher services such as IAS, IPS in Maharashtra and outside states *vis-a-vis* other classes;

(xv) such other ancillary and supplemental reference as the State in its wisdom may deem it appropriate;

(9) to investigate such other matters as the State Government may hereafter refer to the commission in this context;

(10) to submit a report to the State Government by recording the facts and observations and thereby making 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 any source including 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) engage and 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.

8. The Commission conducted extensive survey throughout the State of Maharashtra. The Commission used scientific and modern technology for conducting intensive house-to-house survey on massive scale based on different criteria and has collected fresh quantifiable contemporary data relating to social, educational and economic status of Maratha Community *vis-a-vis* Open Class Communities.

The Commission has collected data of 1,58,20,264 households through massive workforce of 1,96,259 enumerators by using Computer Assisted Personal Interviews (CAPI) Software for collection of data efficiently. All household information collected during the survey was encrypted in JSON format using the robust Advance Encryption Standard (AES) algorithm. This encrypted data was securely stored on the Server with access restricted solely to the Maharashtra State Commission for Backward Classes.

The Commission has examined wide ranging contemporaneous data collected upon framing an elaborate questionnaire ranging to around 150 plus relevant questions in relation to social and educational aspects of Maratha Community. The questionnaire was so prepared as to elicit scientific and realistic position as of date in regard to the standing of Maratha Community in the society in the context and comparison with other classes of the society that have advanced.

The Commission has done detailed examination, scrutiny and analysis of fresh quantifiable contemporary data and information collected by all sources, through a panel of experts, social scientist, statisticians and sociologists from the Government and Universities appointed by it; and collated the findings with the other contemporary surveys undertaken in

the State by the State Departments, Government agencies, previously constituted Commissions so also with the historical data and case studies.

9. The Commission has submitted its report to the State Government on 16th February 2024. The Commission *inter alia* came to the following conclusions and findings : —

(a) Educational indicators clearly illustrate the Maratha Community's lower education attainment levels, specially in terms of completing secondary education and achieving graduate, post graduate degree and professional courses.

(b) Economic backwardness is the highest barrier to education. Insufficient education often invites poverty and *vice-versa*.

(c) The Maratha households below poverty line and having yellow ration cards are 21.22 % while Open category households below poverty line are 18.09 %. The percentage of Maratha households is more than the State average (17.4%) shows that they are economically backward.

(d) From summary of tables in regard to representation of Marathas in employment such as schools, Government (Mantralaya and field offices), semi-Government departments such as *Zilla Parishads*, Universities, etc. it is revealed that the Maratha class is inadequately represented in all sectors of public employments and therefore, deserves a special protection in terms of an adequate amount of reservation in services.

(e) It is found that the non-creamy layer category is 84 % of Maratha Community, which deserves appropriate protection in terms of adequate reservation in employment and education as held in *Indra Sawhney* case.

(f) As is seen from the statistics of the financial position of this vulnerable Maratha Community, the same is very low even in comparison with Open category, non-creamy layer class and therefore, deserves a special protection.

(g) The Commission having observed through statistical empirical data collated in addition to quantifiable data has reached to a conclusion that vulnerable Maratha class has suffered abject poverty for decade together on account of its primary source of income being agriculture and same being depleted every passing year. The Community has been largely dependent on type of work performed by labourers, *mathadi kamgar*, *hamal*, peon, sweepers, helpers, household job workers, *daba walas*, drivers, security guards, etc. The low class work being done by the community and therefore, look down upon by the society as forming class of lower strata, ignorant and neglected one.

(h) The percentage of data of farmers' suicide reveal that amongst such suicides 94% of these persons are from Maratha Community.

(i) The Maratha Community's economic fortune have since been marked by dwindling returns from agriculture, fragmentation of land holdings, loss of traditional dignity associated with agriculture, lack of attention to educational training of youths, etc.

(j) The Maratha class of its illiteracy and lack of higher education could not make in-roads into respectable jobs, employments which would

fetch them from some standing in the society. The primary reasons of miniscule percentage of community found in higher avenues of education such as graduate, post graduate and/or professional courses in result of non-availability of entry sources.

(k) The statistics of percentage of population drawn that such large number of population has remained to be inadequately represented in employment, services and in avenues of education. This has led to a substantial section of the community being left behind and drawn out of mainstream of national life.

(l) More than two decades as revealed from the empirical data and quantifiable data that the vulnerable Maratha Community is left completely out of the mainstream. The Maratha class is completely left out of the mainstream not only in purely economic sense of backwardness but equally on the aspect of social and educational backwardness.

(m) Keeping in mind the principle of adequacy of representation, Maratha class needs to be provided with such reasonable percentage of reservation in public employment, which would be just, fair and reasonable by exercising powers conferred under article 16(4) of the Constitution of India. Likewise, in order to eradicate educational backwardness of deprived Maratha class, a reasonable percentage of seats needs to be allotted by exercising powers conferred under article 15(4) of the Constitution of India.

(n) The data collected and analysed by the Commission compels to draw the inference that there is no need of community to be provided with reservation in political field as it is adequately represented *qua* its numerical strength in the State. This aspect would impel the Commission to make recommendation for a separate category to be carved out for the vulnerable Maratha Community for reservation only in educational and public employment field.

(o) The Commission has examined cases and instances of reservation prevailing in different parts of country where many of the States have exceeded the benchmark of 50%. The State of Bihar has enacted the Bihar Reservation of Vacancies of Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) (Amendment) Act, 2023, the State of Bihar felt it necessary to make suitable classification so as to accommodate extremely backward amongst the backward classes. The State of Tamil Nadu has enacted the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments of Posts in the Services under the State) Act, 1993 under which 69% of reservation is provided. Such instances of exceeding 50% reservation have been examined by the Commission carefully and is of the opinion that if there exist any peculiar, unique and distinctive circumstances and situations to make necessary provision, the benchmark of 50% can be exceeded with. Such reservation in excess of 50% would stand to rationale of the test of reasonableness and/or intelligible differentia under article 14 of the Constitution of India.

(p) The Commission having found that the vulnerable Maratha Community is such a deprived class that it needs to be classified distinctly than the existing backward classes. Considering that, a very peculiar, unique and unusual situation exists in State as a result of the

extraordinary backwardness of Maratha class being left unattended for decades together, the same needs immediate attention and resolution.

(q) The Commission finds that population of Maratha class is 28 % of the total State population. There is already a substantial number of castes and groups placed in reserved category getting about 52 % reservation altogether. It would, therefore, be completely inequitable to place such Maratha class of 28 % in the State in the said OBC category. The backwardness of Maratha class is distinct and different from backward classes and more particularly OBC in the sense that it is more pervasive in terms of its coverage, it is differed in its penetration and further regressive in its character. The Commission hereby finds that, with the Constitutional amendments as it stands under article 342A read alongwith article 366 (26C), it is the class which needs to be placed in the socially and educationally backward class and in a category which is distinct and different from the existing other reserved categories.

(r) The Commission feels that because of the aforementioned distinctive features and trappings of the vulnerable Maratha class being far more backward amongst the backward class and/or the open class, the classification so made to provide reservation would not be unreasonable and/or arbitrary. On the contrary, any remedial measure of providing reasonably adequate extent of reservation to such class would be in conformity with the obligation of the State of an affirmative action by mode of permissible protective discrimination under articles 14, 15 and 16 read alongwith Directive Principles of the Constitution of India, in the interest of the principle of equity, equality and social justice.

(s) The reservation for vulnerable Maratha Community is the need of the hour and necessary, not only for making available to it a platform which it can use for its social and educational advancement but also to prevent its future generations from slipping below the present level. If not done so on an urgent basis, the community would denigrate even further leading to complete societal imbalance, social exclusion, increasing of inequities and instances of social injustice.

(t) The analysis of data shows that the community fared substantially well on all such criteria of social backwardness. The occupational identification of this community is considered as secondary and / or uncountable in the social hierarchy in the State.

(u) The report clearly demonstrate that the Maratha class is insufficiently and inadequately represented in public services as well as in education and therefore is entitled for reservation in the light of exceptional circumstances and extraordinary situations.

10. The Commission in its wisdom upon consideration of wide-spread data that has been collected from nook and corner of the State and from all possible resources of scientific survey, quantifiable and empirical data, books, writings, opinions, suggestions, consultations and even the disagreements, has made conscious decision to make recommendations as under,—

(i) Maratha Community is recommended to be declared a class of socially, educationally and economically backward citizens of the State, which is inadequately represented in public employment and education;

(ii) There is a need for the State to notify Maratha Community as socially and educationally backward class under Article 342A r/w Article 366(26C) of the Constitution of India;

(iii) The vulnerable Maratha community needs a separate denomination of percentage, distinct and separate from existing reserved categories;

(iv) The State Government may decide upon the adequate percentage of reservation to be given to the vulnerable Maratha community taking into consideration the extent of percentage of backward Maratha community;

(v) It would be just and fair to provide such adequate percentage of reservation in employment as an obligation of the State under Article 16(4) of the Constitution of India and such fair, just and reasonable percentage in education as an obligation under Article 15(4) of the Constitution of India as the State in its wisdom may deem fit and proper as to usher in the light of upward mobility and as a step in a right direction to uplift the said class from the recess of its social, educational and economical backwardness so as to bring it in the mainstream of social life;

(vi) The State may in its wisdom take such periodical review after every 10 years of benefits of such reservation availed of by the vulnerable Maratha community and upon assessment of percentage of such community having been brought into mainstream of social life, may in its wisdom modify such percentage.

11. The Government of Maharashtra has carefully considered the report, conclusions, findings and recommendations of the Commission and accepted the same. On the basis of the exhaustive study by the Commission on various aspects regarding the Maratha Community, the empirical, quantifiable and contemporary data, facts and statistics set out therein, the Government is of the opinion that,-

(a) the Maratha Community is a Socially and Educationally Backward Class and shall be specified as such under article 342A(3) of the Constitution of India and to provide reservation for that class under articles 15(4), 15(5) and 16(4) of the Constitution;

(b) exceptional circumstances and extraordinary situations exists as stated by the Commission which warrants granting reservation to Maratha Community in excess of 50 per cent. reservation of seats for admissions in educational institutions and reservation in public services and posts;

(c) it is necessary and expedient to provide for ten per cent. of reservation in public services and ten per cent. of reservation in admissions in educational institutions to Maratha Community ;

(d) it is expedient to make special provision, by law for giving reservation for the advancement of Socially and Educationally Backward Classes, in public services and for admission in educational institutions other than the minority educational institutions referred to in clause (1) of article 30 of the Constitution of India.

12. Clause (3) of article 342A of the Constitution of India empowers the State to make a law to prepare and maintain a list of Socially and Educationally Backward Classes for the purposes of the State. The State may by law provide for reservation to such classes in educational institutions and public services under articles 15(4), 15(5) and 16(4) of the Constitution of India.

13. In view of above, the Government of Maharashtra, considers it expedient to enact a new law to specify the Maratha Community as the Socially and Educationally Backward Class in relation to the State of Maharashtra and to provide for reservation of seats for admissions in educational institutions in the State and for reservation of posts for appointments in public services and posts under the State to such Socially and Educationally Backward Class for their advancement and for matters connected therewith or incidental thereto.

14. The Bill seeks to achieve the above objectives.

Mumbai,
Dated the 20th February, 2024.

EKNATH SHINDE,
Chief Minister.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative power, namely :—

Clause 7.—(a) Under sub-clause (1), power is taken to the State Government to appoint, by notification in to the *Official Gazette*, any officer not below the rank of District Social Welfare Officer to be the Competent Authority for the purposes of carrying out the provisions of the Act and the rules made thereunder.

(b) Under sub-clause (2), power is taken to the State Government to prescribe by rules, the powers to be exercised and functions to be performed by the Competent Authority.

Clause 17(1).—Under this clause, power is taken to the State Government to make rules, by notification in the *Official Gazette*, to carry out the purposes of this Act.

Clause 19(1).—Under this clause, power is taken to the State Government to remove, by an order published in the *Official Gazette*, any difficulty, which may arise in giving effect to the provisions of this Act.

2. The above-mentioned proposals for delegation of legislative power are of normal character.

Vidhan Bhavan :
Mumbai,

Dated : 20th February, 2024.

JITENDRA BHOLE,
Secretary (1) (I/C),

Maharashtra Legislative Assembly.