



# महाराष्ट्र शासन राजपत्र

## असाधारण भाग आठ

वर्ष ४, अंक ८१(२)]

गुरुवार, नोव्हेंबर २९, २०१८/अग्रहायण ८, शके १९४०

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असाधारण क्रमांक १६०

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of 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) Bill, 2018 (L. A. Bill No. LXXVIII of 2018), introduced in the Maharashtra Legislative Assembly on the 29th November 2018, is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

RAJENDRA G. BHAGWAT,  
Secretary (Legislation) to Government,  
Law and Judiciary Department.

**L. A. BILL No. LXXVIII OF 2018.**

*A BILL*

*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 Socially and Educationally Backward Classes of Citizens (SEBC) in the State of Maharashtra for their advancement and for matters connected therewith or incidental thereto.*

WHEREAS it is expedient 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 Socially and Educationally Backward Classes of Citizens (SEBC) in the State of Maharashtra for their advancement

and for matters connected therewith or incidental thereto ; it is hereby enacted in the Sixty-ninth Year of the Republic of India, as follows :—

Short title  
and  
commencement.

1. (1) This Act may be called 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.

(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 appointment to such services and posts ;

(c) “Competent Authority” means the Competent Authority appointed under section 6 ;

(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, including a University established by or under the relevant Maharashtra Acts, 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.

*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 a University or a Company or a Corporation or a 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 ;

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

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(iii) a Board or a Corporation or a statutory body established by or under a Central or a State Act which is owned and controlled by the Government, or a Government company as defined in the Companies Act, 1956 or 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 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 ;

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(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.

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of 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. (1)** This Act shall apply to all the direct recruitments, appointments made in 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 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.

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(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.

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

**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.

Reservation not to be affected.

**5.** Notwithstanding anything contained in section 4, the claims of students or members belonging to Socially and Educationally Backward Classes (SEBC) 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 a student or member 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 (SEBC), shall not in any way be affected.

Competent Authority.

**6. (1)** The Government may, by notification in the *Official Gazette*, appoint any officer not below the rank of 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.

Carrying forward of reserved vacancies.

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

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.

**8. (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.

**9. (1)** Any admission authority or appointing authority or officer or employee entrusted with the duty or responsibility who wilfully acts in a manner intended to contravene or defeat the purpose 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 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.

**10.** 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 (SEBC) is adversely affected, on account of non-compliance with the provisions of this Act or the rules made thereunder or the Government orders 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. Power to call for records.

**11.** The Government may, by an order, provide for nomination of officers belonging to Socially and Educationally Backward Classes (SEBC) in selections, screening and Department Committee for the purpose of selecting persons for appointment to public services and posts. Representation in selection Committee.

**12.** Any admissions or appointments made in contravention of the provisions of this Act shall be void. Irregular admissions and appointments void.

**13.** The Competent Authority appointed under section 6 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. Competent Authority to be public servant.

45 of 1860.

**14.** 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. Protection of action taken in good faith.

**15. (1)** The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act. Power to make rules.

**(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 *Official Gazette*, 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. **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.

Power to remove difficulty. **17.** (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 :

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.

Repeal and savings. **18.** (1) On the commencement of this Act, 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 shall stand repealed.

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of 2015.

(2) The repeal of the said Act shall not affect,—

(i) anything done or any action taken or purported to have been done or taken including any rule, notification, order, circular or direction issued under the Act so repealed ; or

(ii) any appointment made, any selection process initiated, admissions taken in any educational institutions, any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed ; or

(iii) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed ; or



(iv) any investigation, legal proceeding or remedy instituted before the commencement of this Act may be continued or enforced as if this Act has not been enacted.

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2015.

(v) any declaration made in pursuance of the provisions 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 and such declaration shall continue to be in force as if it is made under this Act.

## STATEMENT OF OBJECTS AND REASONS

The State of Maharashtra is the leading State in upliftment of the persons from the underprivileged society and the policy of reservation for the social and educational advancement of the people belonging to the backward classes of citizens in admissions to educational institutions in the State and for reservation of appointments or posts in the public services under the State has been under implementation in the State of Maharashtra since formation of the Maharashtra State.

2. The initial two notifications making reservation of seats in public employment were issued in the year 1902 by Rajarshi Shahu Maharaj, who is known as the father of the concept of reservation in India. In the said two notifications of 1902 reservation was provided to Maratha community as a backward class. In the Resolution dated the 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. The Maratha community is numerically large in the State of Maharashtra, but an overwhelming majority of the community is educationally and socially backward due to lack of opportunities in admissions to educational institutions in the State and due to inadequate representation in public services under the State.

3. Clause (4) of article 15 of the Constitution of India enables the State to make any special provision for the advancement of any socially and educationally backward classes of citizens and clause (5) of the said article 15 enables the State to make any special provisions, by law, for the advancement of any socially and educationally backward classes of citizens, in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30 of the Constitution. So also clause (4) of article 16 of the Constitution enables the State to make provision for the reservation of appointments 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.

4. The State of Maharashtra has enacted 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 (Mah. VIII of 2004). The Government of Maharashtra on the basis of the material and data collected by the Rane Committee was of the view that, Maratha community was socially, educationally and economically Backward and was inadequately represented in public services under the State and it required special provisions to be made for its advancement. The State Government had, after careful consideration, taken a policy decision that without disturbing the then existing fifty-two percent reservation applicable in the State, 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 or posts in public services under the State, excluding reservations in favour of 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, there should be a separate sixteen per cent reservation for the Educationally and Socially Backward Category (ESBC) in which Maratha community was included.



5. Therefore, 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 (Mah. Ord. XIII of 2014), was promulgated by the Governor of Maharashtra on the 9th July 2014.

6. Thereafter, 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 (Mah. I of 2015), for converting the said Ordinance into an Act of the State Legislature, was enacted on 9th January 2015. However, the Constitutional validity of the said Act has been challenged before the Hon'ble High Court. The Hon'ble High Court has stayed the implementation of the said Act on 7th April 2015.

Thereafter, the State Government has requested the Maharashtra Backward Classes Commission in June 2017, to,—

(i) determine Contemporary Criteria and parameters to be adopted in ascertaining the social, educational and economic backwardness of Marathas for extending benefit of reservation under the constitutional provision keeping in focus the various judgments of the courts, reservation laws and constitutional mandate;

(ii) define the exceptional circumstances and extra ordinary situation applied for the benefits of reservation in the contemporary scenario;

(iii) scrutinize and inspect the quantifiable data and other information which the State has submitted to Hon. Court to investigate the backwardness of Maratha Community;

(iv) determine the representation of Marathas in the State Public Employment;

(v) ascertain the proportion of the population of the Maratha Community in the State by collecting the information available under various sources.

7. The Maharashtra Backward Class Commission had appointed panel of experts, social scientists, statisticians and sociologists from the Government and the Universities to analyse and interpret the Sample Survey Data and Information and collate the findings with the other contemporary Surveys undertaken in the State by the State departments, Government agencies, previously constituted constituents of the Maharashtra State Backward Class Commission so also with the historical data, case studies, the appropriate use of which is proposed by the State Government in its Terms of Reference appended to the letter.

8. The Commission has submitted its report to the State Government on 15th November 2018. The Commission *inter alia* came to the following conclusions and findings :—

(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 pursuit 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 is landing them in lowly labour oriented employment such as mathadis, hamals, dabewalas, etc.

(3) Low earning and livelihood engagements of seasonal nature 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 6% 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, 43.79% 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 Marathas :—

(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 reservation,—

(1) The Maharashtra State Backward Class 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

extraordinary 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 extraordinary situation demanding extraordinary 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-à-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 conditioned by the ceiling of 50%. This is an extraordinary situation and exceptional circumstances emerging in the State.

(3) As per the latest 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 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 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 extraordinary 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 cornered 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.

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 per cent 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 Parishads, 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 the Fifth Schedule to the Constitution of India, as per the notification issued on the 9th 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 classes 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.

Mumbai,

Dated the 29th November 2018.

DEVENDRA FADNAVIS,

Chief Minister.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

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

*Clause 6.—(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 15(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 17(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.