

SYNOPSIS

The petitioners are filing this writ petition seeking protection and enforcement of their fundamental, constitutional and legal rights pertaining to their right of contesting elections to the Panchayati Raj institutions. The present petition impugns the Haryana Panchayati Raj (Second Amendment) Act, 2020, which has inter alia provided for 50% reservation of seats for women in elections to the Panchayati Raj institutions by amending sections 9, 59 and 120 of the Haryana Panchayati Raj Act, 1994. As per the impugned amendment, the wards in Gram Panchayats, Block Samitis and Zila Parishads are to be sequentially numbered and the even numbered wards are to be reserved for women candidates and the odd numbered wards are to be kept in other category where “persons other than woman” may contest. Consequently there are no general or open category seats.

As a result of the impugned amendment, women electors who are otherwise eligible to contest elections to the Panchayati Raj institutions have been restricted to contest only from the wards which are specially reserved for women. Consequently, woman candidates such as the petitioners who wish to contest elections to these institutions shall not be able to file their nomination papers from odd numbered wards which should have been general wards that are open for all.

The scheme of reservation laid down in the impugned amendment is manifestly illegal and is against the spirit and provisions of Part IX of Constitution and the Haryana Panchayati Raj Act 1994. Article 243-D of the Constitution provides for reservation of not less than 1/3rd seats for women in Panchayati Raj institutions. The rationale behind the reservation of not less than 1/3rd seats for women was to increase the participation of women in the Panchayati Raj institutions and not to restrict the same as has been done by the

impugned amendment. The impugned amendment has restricted the participation of women by 50%, as women have been restrained from contesting from odd numbered wards which should have been open for all candidates who are eligible to contest elections.

It is trite that the laws enacted by the legislature should not be against the provisions of constitution and particularly against the basic structure of the constitution which includes fundamental rights. The impugned amendment has in effect created reservation for other than women in open wards which is impermissible under our constitution. Further the impugned amendment also creates gender bias against women and is thus violative of article 15 of Constitution.

LIST OF EVENTS

Petitioner No.1 who is a woman; is well educated being a Post Graduate and has been elected as a Member of Zila Parishad and was also elected as Deputy Chairman, Zila Parishad, Rewari. Petitioner holds the required qualification and is otherwise eligible to be elected as a Panch, Sarpanch, Member and Chairman of Panchayat Samiti, Block Samiti and Zila Parishad. Similarly Petitioner No.2 belongs to the Scheduled caste category and has been elected as Member of Zila Parishad Palwal in the last term.

24.04.1993

Constitution (Seventy Third) Amendment Act came to be passed whereby part IX containing 16 articles (Article 243-A to 243-O) was added to the constitution inter alia providing for a three tier Panchayati Raj system at village, block and district levels. Article 243-D inter alia provided for Reservation of Seats for the elections to the Panchayati Raj

institutions. Relevant part of Article 243-D is reproduced herein below;

“243-D. Reservation of seats.-

.....

(3) Not less than one-third (including the number of seats reserved for women belonging to the Schedule Caste and the Schedule Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

.....”

21.04.1994

Government of Haryana enacted the Haryana Panchayati Raj Act 1994 which inter alia provided for the constitution of Gram Panchayats, Panchayat Samitis and Zila Parishads. As per this act, not less than 1/3rd seats were reserved for women. Relevant part of sections 9, 59 and 120 as it was prior to the amendment is reproduced herein under;

“9. Reservation of seats in Gram Panchayat:-

.....

(2) Not less than one- third of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Schedule Castes and such seats may be allotted by rotation and by lots to different wards reserved under sub-section (1).

(3) Not less than one- third (including the number of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation and by lots to different wards in a Panchayat except those falling under sub-sections (1) and (2).

.....

Section 59. Reservation of seats:-

.....

(2) Not less than one-third of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to Scheduled Castes and such seats may be allotted by rotation and by lots amongst the wards reserved under sub-section (1).

(3) Not less than one third (including the number of seats reserved for women belonging to Scheduled Castes) of the total number of seats to be filled by direct election in every Panchayat Samiti, shall be reserved for women and such seats may be allotted by rotation and by lots to different territorial constituencies in a Panchayat Samiti except those falling under sub-sections (1) and (2).

.....

Section 120. Reservation of seats:-

.....

(2) One third of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to Scheduled Castes and such seats may be allotted by rotation to wards reserved under sub-section (1).

(3) One-third (including the number of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled by direct election in a Zila Parishad shall be reserved for women and such seats shall be allotted by rotation and by lots to different constituencies in that district except those falling in sub-sections (1) and (2).

.....”

07.12.2020

Government of Haryana passed the Haryana Panchayati Raj (Second Amendment) Act, 2020 hereinafter referred to as the impugned act, which inter alia amended the sections 9, 59 and 120 in the 1994 Act. The amendment provided for sequential numbering of all wards in a Gram Panchayat, Block Samiti and Zila Parishad. Further to ensure equal representation of women, the act provided for reservation of all even numbered wards for women and all the odd numbered wards were reserved for “persons other than woman”. The relevant part of the amended sections 9, 59 and 120 are reproduced hereunder;

“Section 9. Reservation and equal representation in Gram Panchayat.– (1) *All wards in a Gram Panchayat and all Gram Panchayats in a block shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:*

Provided that for such sequential numbering, the wards or Gram Panchayats reserved for the Scheduled Castes shall be considered as one group and the remaining wards or Gram Panchayats as another group

.....

(3) *To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Gram Panchayat that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Gram Panchayat that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:*

Provided that if in any Gram Panchayat there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes shall be allowed to contest from such ward

.....

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such a Gram Panchayat that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such a Gram Panchayat that receives an odd number in the sequential numbering arrived at for that group under subsection (1) for the office of Sarpanch in any general elections and vice versa in the next general elections

.....

Section 59. Reservation and equal representation.— *(1) All wards in a Panchayat Samiti and all Panchayats Samitis in the State shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:*

Provided that for such sequential numbering, the wards and Panchayat Samitis reserved for the Scheduled Castes shall be considered as one group and the remaining wards and Panchayat Samitis as another group

.....

(3) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Panchayat Samiti that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a

Panchayat Samiti that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:

Provided that if in any Panchayat Samiti there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes shall be allowed to contest from such ward

.....

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such a Panchayat Samiti that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such Panchayat Samiti that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) for the office of Chairman in any general election and vice versa in the next general election

.....

Section 120. Reservation and equal representation.– (1)

All wards in a Zila Parishad and all Zila Parishads in the State shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:

Provided that for such sequential numbering, the wards of Zila Parishad reserved for the Scheduled Castes shall be considered as one group and the remaining wards of Zila Parishad as another group

.....

(3) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives

an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:

Provided that if in any Zila Parishad there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes, shall be allowed to contest from such ward

.....

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election

.....”

Thus by restricting the women candidates to contest only from the even numbered wards and reserving the odd numbered wards for “*persons other than woman*” the said amendment is manifestly arbitrary, discriminatory, illegal and violative of Articles 14, 15, 243-D and is against the spirit of Part IX of the Constitution and law as laid down by this

Hon`ble Court & the Hon`ble Supreme Court in catena of cases.

10.01.2021 The term of the present Panchayati Raj Institutions came to an end after completing its term. The elections are now due and the Notification for fresh elections can be issued anytime. On account of the above amendments, the petitioners will not be able to contest from odd numbered wards which are reserved for "*persons other than woman*". However the said wards ought to have been open for everyone who is eligible to contest, thereby leading to the infringement of their fundamental, constitutional and legal rights as provided by the Constitution of India and the Haryana Panchayati Raj Act.

14.01.2021 Hence this writ petition.

PLACE: CHANDIGARH

DATED: 14.01.2021

(DEEPKARAN DALAL) (AMANDEEP SINGH) (HARMANJIT SINGH)

ADVOCATES
COUNSELS FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. NO. _____ OF 2021

1. Kailash Bai

2. Sneh Lata w/o

....Petitioners

Versus

1. State of Haryana, through its Chief Secretary, Haryana Civil Secretariat,
Sector-1 Chandigarh.

2. Principal Secretary, Department of Development & Panchayats,
Government of Haryana, Haryana Civil Secretariat, Sector 1,
Chandigarh.

3. State Election Commissioner Haryana, Nirvachan Sadan, Plot No-2,
Sector-17, Panchkula.Respondents

PLACE: CHANDIGARH

DATED: 14.01.2021

(DEEPKARAN DALAL) (AMANDEEP SINGH) (HARMANJIT SINGH)

ADVOCATES
COUNSELS FOR THE PETITIONER

Petition under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of Certiorari quashing sections 9(3)(6), 59 (3)(6), 120(3)(6) of the Haryana Panchayati Raj (Second Amendment) Act, 2020 to the extent that the women candidates have been restricted from contesting elections to the Panchayati Raj Institutions from wards other than those reserved for women, as patently illegal, discriminatory, unconstitutional being violative of Articles 14, 15 & 243-D of the Constitution of India;

And further directing the respondents to make necessary amendments so as to allow the petitioners to contest from odd numbered wards, in the event they satisfy the eligibility criteria, as laid down in the Haryana Panchayati Raj Act, 1994;

And Grant *ad-interim* ex-parte stay on the implementation of the impugned amendment till the adjudication of the present writ petition;

And/or such other appropriate writ, order or directions as this Hon'ble Court may deem fit in the facts and circumstances of the instant case.

RESPECTFULLY SHOWETH:

1. That the petitioners who are women and are residents of State of Haryana and being citizen of India are competent to invoke the extra ordinary writ jurisdiction of this Hon'ble Court under Articles 226/227 of the Constitution of India for the enforcement of her fundamental, constitutional and legal rights.
2. That the petitioner No.1 is well educated and holds a post graduate degree. Petitioner is an active social worker in her area and has been elected as

Member of Zila Parishad, Rewari and has also been elected as Deputy Chairman of the Zila Parishad, Rewari. Petitioner No.2 is educated upto class 8th and was elected as a member of Zila Parishad, Palwal in the last term. Even as per the present conditions/qualifications postulated by the Haryana Panchayati Raj Act, the petitioners are eligible to contest elections to various posts of Panchayati Raj Institutions.

3. That the Constitution recognizes the village Panchayats being the units of self-governance and has been regarded as the first level or grass root level of democracy. Administration and governance at village level has been done through village Panchayats and other Panchayati Raj institutions. Empowering the Panchayati Raj institutions at village level onwards is one of the Directive Principles of State Policy as contained under article 40 of Constitution.
4. That the Constitution (Seventy-third Amendment) Act 1992 came to be passed by the Parliament with a view to provide certainty, continuity and strength to the Panchayati Raj institutions. It was further aimed at streamlining the functioning and powers of Panchayati Raj institutions at Gram Panchayat, Panchayat Samiti and Zila Parishad level. The amendment introduced Article 243-D which provided for reservation of seats for scheduled castes and scheduled tribes and also for women. The statement of object and reasons for the Seventy-third Amendment and Article 243-D is reproduced herein below;

STATEMENT OF OBJECTS AND REASONS

Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections,

prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic developments and social justice and for the implementation of development schemes; sound finance of the Panchayats

by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the chief electoral officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.

The Bill seeks to achieve the aforesaid objectives.”

243-D. Reservation of seats.- (1) *Seats shall be reserved for-*

(a) the Scheduled Caste; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Caste or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Schedule Caste and the Schedule Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Schedule Caste, the Schedule Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Caste and the Schedule Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayat at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayat at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favor of backward class of citizens.”

5. That the constitutional amendment necessitated the requirement to enact laws by various states complying with the provisions of the constitutional amendment. State of Haryana enacted the Haryana Panchayati Raj Act, 1994 which inter alia provided for the establishment of Gram Panchayat at village level, Panchayat Samiti at Block level and Zila Parishad at district levels. The

act further provided for the powers and responsibilities of these institutions. Besides this, in Chapter XX, the act also provided for elections to these institutions, reservation for the members of scheduled castes and scheduled tribes and women, disqualification of members and tenure of the Samitis and Parishads. In other words the Act and its Rules are a complete code for the functioning of the Panchayati Raj institutions. The act in sections 173 also provides for qualifications for voters and for the members of the Gram Panchayats, Panchayat Samitis and Zila Parishads, which is reproduced below;

“173. Persons qualified to vote and be elected. (1) *Every person whose name is in the list of voters shall, unless disqualified under this Act or any other law for the time being in force, be qualified to vote at the election of a member for the electoral division to which such list pertains.*

(2) *Every person who has attained the age of twenty-one years and whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected from any electoral division.*

(3) *No person whose name is not entered in the list of voters for the villages, shall be qualified to be elected from any electoral division thereof.*

(4) *Subject to any disqualification of a person the list of voters shall be conclusive proof for the purpose of determining under this section whether any person is or is not qualified to vote, or to be elected at any election, as the case may be.*

Sections 9, 59 and 120 prior to the amendment provided for not less than 1/3rd reservation to women in Panchayati Raj Institutions. Section 9 of 1994 Act is reproduced herein below;

Reservation of seats in Gram Panchayat:- (1) *Seats shall be reserved for the Scheduled Castes in every Gram Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by election in that panchayat as the population of the Scheduled Castes in the Panchayat*

area bears to the total population of that area and such seats may be allotted to such wards having maximum population of persons belonging to Scheduled Castes.

(2) Not less than one-third of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes and such seats may be allotted by rotation and by lots to different wards reserved under sub-section (1).

(3) Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation and by lots to different wards in a Panchayat except those falling under sub-section (1) and (2).

(4) the offices of the Sarpanches in Gram Panchayat in a block shall be reserved for the Scheduled Castes and Women:

Provided that the number of offices of Sarpanches reserved for the Scheduled Castes in the Block shall bear, as may be, the same proportion to the total number of such offices in the Block as the population to the Scheduled Castes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Sarpanches in the block shall be reserved for women including one-third offices of women Sarpanches from Scheduled Castes:

Provided further that the number of offices of Sarpanches reserved under Sub-section shall be rotated to different Gram Panchayats first having the largest maximum population of Scheduled Castes and secondly having the second largest maximum population of such classes and so on.

(5) The reservation of the seats under sub-section (1) and (2) and the reservation of offices of Sarpanches (other than the reservation of women) under sub-section (4) shall cease to have effect on the expiration of the period specified in article 334 of the Constitution of India.

(6) Every Panchayat shall have one panch belonging to backward classes if their population is two percentum or more of the total population of the sabha area and such seat shall be allotted to such ward having maximum population of persons belonging to Backward Classes.

(7) Reservation of seats as mentioned in aforesaid sub-section shall be reviewed after every decennial census.”

Sections 59 and 120 of the 1994 Act are similarly worded as section 9 and are not being repeated here for the sake of brevity.

6. That the State has enacted the Haryana Panchayati Raj (Second Amendment) Act, 2020 (hereinafter referred to as the impugned act) whereby the wards in Gram Panchayat, Panchayat Samiti and Zila Parishads are to be sequentially numbered for the purposes of Reservation for scheduled castes and women. The wards of Gram Panchayats, Panchayat Samitis and Zila Parishads which are reserved for scheduled castes are to be considered as one group and the remaining wards are to be considered as another group. Further the amendment provides for removal of the elected member of Panchayati Raj Institutions upon a resolution passed by not less than 2/3rd of voters of the concerned ward. Section 9, 59 and 120 as amended by the impugned amendment are reproduced hereunder;

“Section 9. Reservation and equal representation in Gram Panchayat.– *(1) All wards in a Gram Panchayat and all Gram Panchayats in a block shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:*

Provided that for such sequential numbering, the wards or Gram Panchayats reserved for the Scheduled Castes shall be considered as one group and the remaining wards or Gram Panchayats as another group

.....

(3) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Gram Panchayat that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Gram Panchayat that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:

Provided that if in any Gram Panchayat there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes shall be allowed to contest from such ward

.....

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such a Gram Panchayat that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such a Gram Panchayat that receives an odd number in the sequential numbering arrived at for that group under subsection (1) for the office of Sarpanch in any general elections and vice versa in the next general elections

.....

Section 59. Reservation and equal representation.— *(1) All wards in a Panchayat Samiti and all Panchayats Samitis in the State shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:*

Provided that for such sequential numbering, the wards and Panchayat Samitis reserved for the Scheduled Castes shall be considered as one group and the remaining wards and Panchayat Samitis as another group

.....

(3) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Panchayat Samiti that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Panchayat Samiti that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:

Provided that if in any Panchayat Samiti there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes shall be allowed to contest from such ward

.....

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such a Panchayat Samiti that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such Panchayat Samiti that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) for the office of Chairman in any general election and vice versa in the next general election

.....

—120. Reservation and equal representation.— *(1) All wards in a Zila Parishad and all Zila Parishads in the State shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:*

Provided that for such sequential numbering, the wards of Zila Parishad reserved for the Scheduled Castes shall be considered as one group and the remaining wards of Zila Parishad as another group

.....

(3) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:

Provided that if in any Zila Parishad there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes, shall be allowed to contest from such ward

.....

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election

.....”

The said amendment was published in the official Gazette on 07.12.2020.

A True typed copy of the Act dated 07.12.2020 is annexed and marked herewith as **(Annexure P- 1)**.

7. That it is thus evident that as per the amendment, all even numbered wards are to be reserved for women and odd numbered wards are to be reserved for “persons other than woman”, and in other words, there are no wards falling in general category which are open for all those who are eligible to contest. Resultantly there is 50% reservation in favour of women.

Consequently, women have been restricted to contest from only those wards which are reserved for women and not from other wards which otherwise should have been open for all those who are eligible to contest.

8. That the impugned amendment is manifestly arbitrary, unconstitutional and liable to be set aside being violative of articles 14, 15 and 243-D, inter alia on the following grounds:-
 - a. Because the impugned amendment is legally untenable and unconstitutional as there is no provision for open or general wards from where all the candidates who are otherwise eligible to contest can contest the elections. It is the settled position in law that reservation cannot exceed more than 50% as was held by the Hon`ble Supreme Court in **Indira Sawhney v Union of India 1992 (Supp.) 3 SCC 217**. It therefore goes without saying that certain number of seats are to be kept in the general or open category which are open for everyone to contest where there are several categories of people who may be eligible to contest.
 - b. Because the impugned amendment is against the very spirit of Part IX and Article 243-D of Constitution which inter alia provides for reservation of “not less than 1/3rd seats for Women in Panchayati Raj Institutions. Further the said Article provides for reservation of 1/3rd seats for Women in the offices of Chairperson at Panchayat and Zila Parishad levels. On the other hand the impugned amendment restricts the Women from contesting on 50% posts, i.e. only on the ones reserved for women and not from other wards which should have been open for all those who are eligible to contest.

- b. Because the impugned amendment has in effect created reservation for “persons other than woman” by restricting women candidates from contesting from those wards. It is trite that reservation for males is impermissible under our Constitution and legal system. Similarly the restriction creates gender bias and discrimination for women who being the other sex are to be given equal and fair treatment in terms of Article 15 of Constitution. An interpretation of the term “persons other than woman”, as used in the impugned amendment, leaves no room of doubt that the said terms creates another class of persons who are other than women. The usage of said term in the impugned amendment and classification arrived at is clearly gender based and is against the principles of gender equality.
- c. Because the terms “persons other than woman” has not been defined under the act but it would include males and trans-genders and excludes women falling in general category and scheduled caste or backward class category. It is manifestly clear that the said term is restrictive in nature and is against the spirit of the Constitution. By putting such a condition, the state has illegally and unconstitutionally taken away the constitutional, fundamental and legal rights of the petitioner and other similarly situated women, which otherwise allows women to contest elections upon fulfilling the conditions as laid down by the constitution or any special act. It is worthwhile to mention here that the petitioners are also eligible to contest elections to the Gran Panchayats, Panchayat Samitis and Zila Parishads. However in spite of them being eligible, the petitioners will not be able to contest from a odd numbered ward, resulting in deprivation of her constitutional right to contest elections.

- d. Because the Hon`ble Supreme Court as held that the Right to Contest elections is a constitutional right. Furthermore the said amendment which seeks to take away this constitutional right should be in accordance with the provisions of the constitution. **In *Rajbala v. State of Haryana, (2016) 2 SCC 445***, Hon`ble Supreme Court while upholding the amendment prescribing requirement minimum educational qualification and solvency etc. for contesting elections to the Panchayati Raj institutions under the Haryana Panchayati Raj Act held as under;

*44. It appears from the above that any person who is disqualified by or under any law for the time being in force for the purposes of elections to the legislatures of the State concerned is also disqualified for being a member of panchayat. In other words **qualifications** and **disqualifications** relevant for membership of the legislature are equally made applicable by reference to the membership of panchayats. Though such **qualifications** and **disqualifications** could be stipulated only by Parliament with respect to the membership of the legislature of a State, Article 243-F authorises the State Legislature concerned also to stipulate disqualifications for being a member of panchayat.*

*45. The **right to vote** at and **right to contest** an election to a panchayat are constitutional rights subsequent to the introduction of Part IX of the Constitution of India. Both the rights can be regulated/curtailed by the appropriate legislature directly. Parliament can indirectly curtail only the **right to contest** by prescribing **disqualifications** for membership of the legislature of a State.*

- e. Because the Haryana Panchati Raj Act, 1994 itself provided for not less than 1/3rd reservation of seats for women with a view to increase their political participation in the Panchayati Raj

institutions. Further a perusal of the scheme of act makes it clear that the reservation for women, backward classes and scheduled castes had not been restricted in any manner. In other words the Reservation provides for the minimum number of seats that are reserved for a certain category and there is no bar on the members of reserved category getting elected from General category seats. However the present amendment has changed the scheme of the act and has made the it contrary to the scheme envisaged in Part IX of Constitution.

- f. Because the impugned amendment fails to meet the test of reasonable classification and the object sought to be achieved, as postulated by Article 14. The object sought to be achieved from impugned amendment is illegal, irrational and is not even remotely connected with the scheme of the 1994 Act and part IX of the Constitution. Restrictions placed on women candidates are unreasonable and are not based on intelligible differentia and do not have any nexus with the objective sought to be achieved by the impugned amendment. Furthermore the right to equality, as postulated by article 14 is incomplete if there is no equality in opportunity, as is the case in the impugned amendment.
- g. Because the object of giving reservation to women is empowering them and increasing their political participation in grass root level democracy. This expectation would be better met if they are allowed to contest from odd numbered wards also. In the present scenario, their representation would be limited to the reserved seats only, which would not serve the purpose effectively. Hon`ble Supreme Court in *Kasambhai F. Ghanchi v. Chandubhai D. Rajput*,

(1998) 1 SCC 285 while discussing the rationale behind reservation held that “**13.** *The idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality but it is also an effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. If because of their popularity a larger number of Scheduled Castes, Scheduled Tribes, Backward Classes or women get elected to the municipality than the number of reserved seats that would be welcome. When the idea is to promote the weaker sections of the society, and to improve their lot, it would be a contradiction in terms if members belonging to that section are debarred from standing to the office of the President because such a candidate is popular enough to get elected from a general constituency. It is a fundamental principle of democratic election that a person who is more popular is elected, popularity being measured by the number of votes which the person gets. The language of various legal provisions do not in any way suggest, expressly or by necessary implication, that even though a person who belongs to a reserved category and is popular enough to get elected from a general constituency should be barred from contesting the election of the President when that office is to be filled only by a reserved category person.*”

- h. Because neither Article IX of Constitution nor chapter XX of the Haryana Panchayati Raj Act contains any bar on the candidates who are otherwise eligible to contest elections to contest from seats falling in general category or which are open to all. It is common knowledge that the seats falling general category are open seats and are available for all candidates who are otherwise eligible to contest elections. In absence of any statutory or constitutional restrictions, the impugned amendment cannot place restrictions. Hon`ble

Supreme Court in *Bihari Lal Rada v. Anil Jain (Tinu)*, (2009) 4 SCC 1 dealt with the question of whether a candidate who got elected from a seat reserved for Backward Class could be elected as President, where the post of President was to be filled by members belonging to general category. Hon`ble Supreme Court while upholding the election observed that “**32.** *The 1973 Act makes available the minimum number of seats to the Scheduled Castes and Backward Classes by way of reservation in proportion to their population. This does not prevent the Scheduled Castes and Backward Classes in getting themselves elected from the unreserved seats on their own merit. The obvious purpose of providing such reservation to the Scheduled Castes, Backward Classes and women who were unable to get adequate representation in the local bodies in the absence of reservation. Reservation ensures that at least minimum number of persons belonging to such classes would get elected. Reservation so made in their favour does not mean that they are not entitled to contest election from unreserved seats and to the offices of Chairperson as the case may be. The reservation does not limit number of candidates from reserved category to be elected. They are eligible to contest from the unreserved seats and get elected resulting in increase of their representation in the local bodies.*

33. *The Haryana Municipal Act, 1973 faithfully adopted the constitutional mandate enshrined in Part IX-A, for carrying out the purposes of the Constitution (Seventy-fourth Amendment) Act, 1992. The Rules thereunder are made for carrying out the purposes of the enactment and the purpose of the Act is to ensure that at least minimum number of persons belonging to the specified categories get elected.”*

- i. Because our constitution has laid great stress on giving equal status to women in terms of their rights. A perusal of the Fundamental

Duties as contained in article 51-A of Constitution reveals that it is the bounden duty of citizens to *renounce practices derogatory to women*.

Discrimination based on gender had been prevalent in the country since long and it was sought to be done away with by the law makers while enacting constitution. Even otherwise this Hon`ble Court being a Constitutional court and a guardian of fundamental rights has struck down laws which have sought to promote discrimination, inequality etc.

- j. Because the term of the Panchayati Raj institutions came to an end on 10th January, 2021. The Respondents are likely to issue the Notification regarding fresh elections in the near future. In the event the impugned amendment is not struck down by this Hon`ble Court, the petitioners will suffer irreparable loss as they will not be able to contest from odd numbered wards.
9. That keeping in view aforementioned facts and circumstances, the impugned amendment in so far as it restricts women candidates from contesting from odd numbered wards and usage of term “persons other than women” to distinguish such wards is patently illegal, discriminatory, unconstitutional being violative of Articles 14, 15 & 243-D of the Constitution of India.
10. That the petition raises the following substantial questions of law:-
 - (a) Whether the impugned amendment restricting women from contesting from odd numbered wards is liable to be declared as unconstitutional being violative of Articles 14, 15 & 243-D of the Constitution of India?

- (b) Whether there is any nexus between the reasonable classification sought to be achieved by the impugned judgement and the object thereof in terms of Article 14 ?
- (c) Whether the impugned amendment is liable to be struck down being discriminatory on the grounds of discrimination on the grounds of sex?
11. That the petitioner has not filed any such or similar writ petition either in this Hon'ble Court or in the Hon'ble Supreme Court of India in the matter to challenge the *vires* of the impugned rules.
12. That the petitioner has no other alternative remedy of appeal/revision available except to approach the Hon'ble High Court under Articles 226/227 of the Constitution of India in the facts and circumstance of the case.

It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to:

- i) issue a writ in the nature of Certiorari quashing sections 9(3)(6), 59 (3)(6), 120(3)(6) of the Haryana Panchayati Raj (Second Amendment) Act, 2020 to the extent that the women candidates have been restricted from contesting elections to the Panchayati Raj Institutions from wards other than those reserved for women as patently illegal, discriminatory, unconstitutional being violative of Article 14, 15 & 243-D of the Constitution of India;
- ii) Issue Directions to the Respondents to make necessary amendments, so as to allow the petitioners to contest from odd numbered wards also, in the event they satisfy the

eligibility criteria, as laid down in the Haryana Panchayati Raj Act, 1994;

- iii) Grant ad-interim ex-parte stay on the implementation of the impugned amendment till the adjudication of the present writ petition;
- iv) such other appropriate writ, order or directions as this Hon'ble Court may deem fit in the facts and circumstances of the instant case;
- v) filing of certified copies of the annexures may be dispensed with and true extract translation/photocopies thereof may be permitted;
- vi) issuance of advance notices to the Respondents may be dispensed with;
- vii) record of the case may be summoned;
- viii) costs of the writ petition may kindly be allowed to the petitioners;

(KAILASH BAI)

Petitioner No-1

(SNEH LATA)

Petitioner No-2

THROUGH

PLACE: CHANDIGARH

DATED: 14.01.2021

(DEEPKARAN DALAL) (AMANDEEP SINGH) (HARMANJIT SINGH)

ADVOCATES
COUNSELS FOR THE PETITIONER

VERIFICATION:

Verified that the contents of para 1 to 7, 9, 11 & 12 are true and correct to our knowledge and that of para 8 & 10 are based on the legal submission and believed to be true and no part thereof has been kept concealed.

(KAILASH BAI)

(SNEH LATA)

Petitioner No-1

Petitioner No-2

PLACE: CHANDIGARH

DATED: 14.01.2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. NO. _____ OF 2021

Kailash Bai & Another

....Petitioners

Versus

State of Haryana & others

.....Respondents

**Affidavit of Kailash Bai w/o Hari Ram aged 50 years Village- Kosli,
Tehsil & District Rewari, Haryana.**

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the facts and averments made in the para nos. 1 to 7,9,11 & 12 to of the accompanying writ petition are true and correct to my knowledge which is derived from the record maintained by the petitioner.
2. The contents of para No. 8 & 10 being legal, are believed to be true and correct on the basis of legal advice.
3. That the deponent has not concealed anything and has not stated any false fact or averment in the accompanying writ petition.

PLACE: CHANDIGARH
DATED: 14.01.2021

DEPONENT
(KAILASH BAI)

VERIFICATION:-

Verified that the contents of para no.1 to 3 of my above affidavit are true and correct from my knowledge. No part of it is false and nothing has been concealed therein.

PLACE: CHANDIGARH
DATED: 14.01.2021

DEPONENT
(KAILASH BAI)

HARYANA GOVERNMENT**LAW AND LEGISLATIVE DEPARTMENT****Notification**

The 7th December, 2020

No. Leg. 41/2020.— The following Act of the Legislature of the State of Haryana received the assent of the Governor of Haryana on the 26th November, 2020 and is hereby published for general information:—

HARYANA ACT NO. 31 OF 2020**THE HARYANA PANCHAYATI RAJ (SECOND AMENDMENT) ACT, 2020****AN****ACT***further to amend the Haryana Panchayati Raj Act, 1994.*

Be it enacted by the Legislature of the State of Haryana in the Seventy-first Year of the Republic of India as follows:—

- | | | |
|----|--|--|
| 1. | This Act may be called the Haryana Panchayati Raj (Second Amendment) Act, 2020. | Short title. |
| 2. | For section 9 of the Haryana Panchayati Raj Act, 1994 (hereinafter called the principal Act), the following section shall be substituted, namely:— | Substitution of section 9 of Haryana Act 11 of 1994. |

“9. Reservation and equal representation in Gram Panchayat.— (1) All wards in a Gram Panchayat and all Gram Panchayats in a block shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:

Provided that for such sequential numbering, the wards or Gram Panchayats reserved for the Scheduled Castes shall be considered as one group and the remaining wards or Gram Panchayats as another group.

(2) The offices of panch in every Gram Panchayat shall be reserved for the Scheduled Castes in such a way that the number of seats reserved for the Scheduled Castes shall bear, as nearly as may be, the same proportion to the total number of seats in that Gram Panchayat as the population of the Scheduled Castes to the total population in that Gram Sabha area and such seats shall be allotted to such wards having maximum percentage of population belonging to the Scheduled Castes.

(3) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Gram Panchayat that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Gram Panchayat that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:

Provided that if in any Gram Panchayat there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes shall be allowed to contest from such ward.

(4) Every Panchayat shall have one panch belonging to Backward Classes if its population is two percent or more of the total population of the sabha area and such seat shall be allotted to such ward having maximum percentage of population of persons belonging to Backward Classes.

Explanation.— In case the same ward of a Gram Panchayat is eligible for reservation of Scheduled Castes and Backward Classes, preference shall be given to Scheduled Castes and the next eligible ward of Gram Panchayat shall be reserved for the Backward Class.

(5) The offices of Sarpanch of Gram Panchayats in a block shall be reserved for the Scheduled Castes and the number of offices reserved shall bear the same proportion to the total number of offices of Sarpanches in the block, as the population of Scheduled Castes in the block bears to the total population of that block and such seats shall be rotated to different Gram Panchayats, firstly having the largest maximum percentage population of Scheduled Castes and secondly having the next largest maximum percentage population of Scheduled Castes and so on until the last eligible Gram Panchayat is reserved and thereafter the cycle shall start again:

Provided that the office of the Sarpanch shall be reserved for Scheduled Castes only if the population of Scheduled Castes in that Gram Panchayat is more than ten percent of the total population.

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such a Gram Panchayat that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such a Gram Panchayat that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) for the office of Sarpanch in any general elections and vice versa in the next general elections.

(7) Eight percent of the total number of offices of Sarpanch in a block and rounded off to the next higher integer in case the decimal value is 0.5 or more shall be reserved through draw of lots for Backward Classes (A) and such seats shall be rotated amongst Gram Panchayats in every succeeding general election:

Provided that in case any Gram Panchayat is reserved through draw of lots but has no member in Gram Sabha belonging to Backward Classes (A) otherwise qualified to be elected as Sarpanch, then for replacing such Gram Panchayat, the draw of lots shall be held amongst the remaining unreserved Gram Panchayats.

(8) The number of wards shall be re-fixed after every decennial census in such manner, as may be prescribed.”.

Substitution of section 10 of Haryana Act 11 of 1994.

3. For section 10 of the principal Act, the following section shall be substituted, namely :-

“10. **Term of office.**— (1) The term of office of Sarpanch shall be five years unless removed otherwise.

(2) A Sarpanch may be removed from his office by an order of such authority, as may be prescribed consequent to a resolution passed, by not less than two-third voters of the members of the Gram Sabha present and voting cast through a secret ballot, on a date and time duration specified by such authority:

Provided that no such ballot shall be held unless a requisition in this behalf is made to the prescribed authority by not less than one-half of the total members of the Gram Sabha.

(3) On the requisition made under sub-section (2), the authority as specified in sub-section (2) shall after inquiring into the genuineness thereof, notify the date and time duration for the purpose of the secret ballot of the Gram Sabha within a period of thirty days from the date of receipt of the requisition:

Provided that no such process shall be initiated within a period of one year from the date of election of the Sarpanch and any subsequent resolution for removal shall not be maintainable within the interval of one year of the last ballot of the Gram Sabha to consider a resolution for removal of the Sarpanch.”.

Substitution of section 59 of Haryana Act 11 of 1994.

4. For section 59 of the principal Act, the following section shall be substituted, namely:-

“59. **Reservation and equal representation.**— (1) All wards in a Panchayat Samiti and all Panchayats Samitis in the State shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:

Provided that for such sequential numbering, the wards and Panchayat Samitis reserved for the Scheduled Castes shall be considered as one group and the remaining wards and Panchayat Samitis as another group.

(2) The offices of member in every Panchayat Samiti shall be reserved for the Scheduled Castes in such a way that the number of seats reserved for Scheduled Castes shall bear, as nearly as may be, the same proportion to the total number of seats in that Panchayat Samiti as the population of the Scheduled Castes to the total population in that Panchayat Samiti area and such seats shall be allotted to such wards having maximum percentage of population belonging to the Scheduled Castes.

(3) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Panchayat Samiti that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Panchayat Samiti that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:

Provided that if in any Panchayat Samiti there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes shall be allowed to contest from such ward.

(4) Eight percent of the total number of offices of members in a Panchayat Samiti and rounded off to the next higher integer in case the decimal value is 0.5 or more, shall be reserved through draw of lots for Backward Classes (A) subject to the condition that the total number of such offices reserved shall not be less than two and such seats shall be rotated amongst different wards in every succeeding general election.

(5) The offices of Chairman of Panchayat Samitis in a State shall be reserved for Scheduled Castes and the number of offices reserved shall bear the same proportion to the total number of offices of Chairman in the State, as the population of Scheduled Castes in the State bears to the total population of the State and such seats shall be rotated to different Panchayat Samitis in the State, firstly having the largest maximum percentage of population of Scheduled Castes and secondly having the next largest maximum percentage of population of Scheduled Castes and so on until the last eligible Panchayat Samiti is reserved and thereafter the cycle shall start again:

Provided that the office of the Chairman in a Panchayat Samiti shall be reserved for Scheduled Castes only if the population of Scheduled Castes in that Panchayat Samiti is more than ten percent of the total population.

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such a Panchayat Samiti that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such Panchayat Samiti that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) for the office of Chairman in any general election and vice versa in the next general election.

(7) The number of wards shall be re-fixed after every decennial census in such manner, as may be prescribed.”.

5. After section 62 of the principal Act, the following section shall be inserted, namely:-

“62A. Term of office of members.– (1) The term of office of member Panchayat Samiti shall be five years unless removed otherwise.

(2) A member of the Panchayat Samiti may be removed from his office by an order of authority, as may be prescribed consequent to a resolution passed, by not less than two-third voters of the concerned ward present and voting cast through a secret ballot, on a date and time duration specified by such authority:

Provided that no such ballot shall be held unless a requisition in this behalf is made to the prescribed authority by not less than one-half of the total voters of the concerned ward.

(3) On the requisition made under sub-section (2), the authority as specified in sub-section (2) shall after inquiring into the genuineness thereof, notify the date and time duration for the purpose of the secret ballot of the concerned ward within a period of thirty days from the date of receipt of the requisition:

Insertion of section 62A in Haryana Act 11 of 1994.

Provided that no such process shall be initiated within a period of one year from the date of election of the member and any subsequent resolution for removal shall not be maintainable within the interval of one year of the last ballot of the concerned ward to consider a resolution for removal of that member of the Panchayat Samiti.”.

Substitution of section 120 of Haryana Act 11 of 1994.

6. For section 120 of the principal Act, the following section shall be substituted, namely:-

“120. Reservation and equal representation.– (1) All wards in a Zila Parishad and all Zila Parishads in the State shall for the purpose of this section be sequentially numbered in such manner, as may be prescribed:

Provided that for such sequential numbering, the wards of Zila Parishad reserved for the Scheduled Castes shall be considered as one group and the remaining wards of Zila Parishad as another group.

(2) The offices of member in every Zila Parishad shall be reserved for the Scheduled Castes in such a way that the number of seats reserved for Scheduled Castes shall bear, as nearly as may be, the same proportion to the total number of seats in that Zila Parishad as the population of the Scheduled Castes to the total population in that Zila Parishad area and such seats shall be allotted to such wards having maximum percentage of population belonging to Scheduled Castes.

(3) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election:

Provided that if in any Zila Parishad there is only one ward reserved for the Scheduled Castes, then a woman who is otherwise qualified to be elected and belonging to the Scheduled Castes, shall be allowed to contest from such ward.

(4) Eight percent of the total number of offices of members in a Zila Parishad and rounded off to the next higher integer in case the decimal value is 0.5 or more, shall be reserved through draw of lots for Backward Classes (A) subject to the condition that the total number of such offices reserved shall not be less than two and such seats shall be rotated amongst different wards in every succeeding general election.

(5) The offices of President of Zila Parishads in the State shall be reserved for Scheduled Castes and the number of offices reserved shall bear the same proportion to the total number of offices of President in the State, as the population of Scheduled Castes in the State bears to the total population of that State and such seats shall be rotated to different Zila Parishads, firstly having the largest maximum percentage of population of Scheduled Castes and secondly having the next largest maximum percentage of population of Scheduled Castes and so on until the last eligible Zila Parishad is reserved and thereafter the cycle shall start again:

Provided that the office of the President in a Zila Parishad shall be reserved for Scheduled Castes only if the population of Scheduled Castes in that Zila Parishad is more than ten percent of the total population.

(6) To ensure equal representation, a woman who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an even number in the sequential numbering arrived at for that group under sub-section (1) and a person other than woman, who is otherwise qualified to be elected, may contest from such ward of a Zila Parishad that receives an odd number in the sequential numbering arrived at for that group under sub-section (1) in any general election and vice versa in the next general election.

(7) The number of wards shall be re-fixed after every decennial census in such manner, as may be prescribed.”.

Insertion of section 123A in Haryana Act 11 of 1994.

7. After section 123 of the principal Act, the following section shall be inserted, namely:-

“123A. Term of office of members.– (1) The term of office of member Zila Parishad shall be five years unless removed otherwise.

(2) A member of the Zila Parishad may be removed from his office by an order of such authority, as may be prescribed consequent to a resolution passed, by not less than two-third voters of the concerned ward present and voting cast through a secret ballot, on a date and time duration specified by such authority:

Provided that no such ballot shall be held unless a requisition in this behalf is made to the prescribed authority by not less than one-half of the total voters of the concerned ward.

(3) On the requisition made under sub-section (2), the authority specified in sub-section (2) shall after inquiring into the genuineness thereof, notify the date and time duration for the purpose of the secret ballot of the concerned ward within a period of thirty days from the date of receipt of the requisition:

Provided that no such process shall be initiated within a period of one year from the date of election of the member and any subsequent resolution for removal shall not be maintainable within the interval of one year of the last ballot of the concerned ward to consider a resolution for removal of that member of the Zila Parishad.”

8. (1) Notwithstanding anything contained in this Act, any vacancy arising after the commencement of the Haryana Panchayati Raj (Second Amendment) Act, 2020 but before the first general elections to the Panchayati Raj Institutions to be held after the commencement of the Haryana Panchayati Raj (Second Amendment) Act, 2020 shall be filled up in accordance with the law in force prior to commencement of the Haryana Panchayati Raj (Second Amendment) Act, 2020. Savings.

(2) Notwithstanding anything contained in this Act, the provisions regarding removal of Sarpanch, member of Panchayat Samiti and Zila Parishad as provided in the Haryana Panchayati Raj (Second Amendment) Act, 2020 shall be applicable after the first general elections to the Panchayati Raj Institutions to be held after the commencement of the Haryana Panchayati Raj (Second Amendment) Act, 2020.

BIMLESH TANWAR,
Administrative Secretary to Government,
Haryana, Law and Legislative Department.