

THE CONSTITUTIONAL PROMISE TO CONDUCT ELECTIONS FOR LOCAL SELF-GOVERNMENTS IN MAHARASHTRA: BROKEN OR FULFILLED?

*Anshul Dalmia & Debargha Roy**

Free and fair elections have always been considered to be the cornerstone of Indian democracy. However, free and fair processes can be incorporated only if elections are conducted in the first place. This paper deals with the unique and pressing issue of delayed elections for local self-governmental bodies. The Supreme Court of India has, in several cases, struck down state legislations that extended the tenures of local self-governing bodies (such as panchayats, parishads, and samitis). They were held to be in violation of the mandatory time limits provided by the Indian Constitution. Through this paper, the authors seek to showcase the blatant non-adherence and flagrant violation of these judgments and highlight the constitutional issues which arise from them. First, since elections are not being held, it allows the incumbents to be in power for a longer time than constitutionally stipulated. This indicates a semblance of a tyrannical regime since such a monopoly cannot be kept in check with the existing democratic safeguards. Second, the independence of the State Election Commission is challenged since it is due to their failure and incompetence that this problem originally arose. Third, an investigation into the public finances held by these incumbents highlights a usurpation and misuse of public funds during their ‘temporary’ posts. These judgments have merely ordered the States to conduct the elections in these states, without examining these intricate foundational obstructions, leaving a constitutional hiatus between legal adjudication and practical reality. Through this paper, the authors aim to conduct a thorough and intricate investigation to explore this prevalent vacuum, which has neither been judicially addressed nor legislatively explored. While the States have argued that the continuous delay of elections for the local self-government bodies is due to judicially imposed administrative formalities, this paper aims to discern reasons to the contrary.

TABLE OF CONTENTS

I.	INTRODUCTION: A CONSTITUTIONAL AMNESIA	2
II.	BACKGROUND: A CONSTITUTIONAL DEEP-DIVE	5
	A. POWER: DETAILING THEIR ROLES AND FUNCTIONS	5
	B. TIME: EXAMINING THEIR TERM DURATIONS AND LIMITS	7
	1. CONSTITUTIONAL PROVISIONS	8
	2. JUDICIAL PRONOUNCEMENTS	8
	C. INDEPENDENCE: EVALUATING THE ROLE OF THE SEC	10

* Anshul Dalmia is a graduate of the University of Oxford where he completed his Bachelor of Civil Law and completed his B.A. LL.B (Hons.) at the West Bengal National University of Juridical Sciences, Kolkata. He has worked in Charkha, the Centre for Constitutional Law at the Vidhi Centre for Legal Policy. Debargha Roy is a practicing advocate leading Project Sathi and a LL.M candidate at the University of Cambridge. He completed his B.A. LL.B (Hons.) at the Gujarat National Law University, Gandhinagar. All errors, if any, are solely attributable to the authors. The authors may be reached at anshuldalmia31@gmail.com and debargharoy17@gmail.com.

The authors would like to sincerely thank Somerville College, University of Oxford and the generous donors of the Alice Horseman Grant which made this study and research possible in the first place. The paper would not have been possible without the enriching conversations with Ritwika Sharma (Former Lead, Vidhi Centre for Legal Policy). The authors are very grateful for that. The authors would also like to extend their gratitude to Amitesh Neogi, Tanishq Desai, and Ayushi Srivastava for their patient help and research assistance.

1.	<i>CONSTITUTIONAL PROVISIONS</i>	10
2.	<i>JUDICIAL PRONOUNCEMENTS</i>	10
D.	<i>MONEY: QUESTIONING FISCAL FEDERALISM</i>	12
III.	<i>NON-ADHERENCE OF THE TIMELINES BY THE RESPONSIBLE ACTORS: A CONSTITUTIONAL CHOKEHOLD</i>	13
A.	<i>MAHARASHTRA SEC: A CAGED BIRD?</i>	13
1.	<i>ARCHITECTURAL COMPROMISES</i>	13
2.	<i>FINANCIAL DEPENDENCE</i>	15
3.	<i>FUNCTIONAL INCAPACITY</i>	17
B.	<i>COURTS: THE CONFUSED FORUM?</i>	18
1.	<i>CONSTITUTIONAL SILENCES: BRIDGING THE GAP?</i>	18
2.	<i>JUDICIALLY-IMPOSED DELAY: OLD HABITS DIE HARD?</i>	20
IV.	<i>UNDERMINING FISCAL AUTONOMY OF THE LOCAL SELF-GOVERNMENTS: A CONSTITUTIONAL PARALYSIS</i>	27
A.	<i>CONSTITUTIONAL FOUNDERS OF THIRD-TIER FISCAL AUTONOMY</i>	27
B.	<i>THE LEGITIMISATION OF THE DENIAL OF FINANCIAL TRANSFERS TO LOCAL BODIES</i>	29
C.	<i>MISUSE OF UNTIED GRANTS BY INCUMBENTS</i>	30
D.	<i>IMPACT OF THE LACK OF FISCAL AUTONOMY OF LOCAL BODIES ON CIVIC LIFE</i>	30
V.	<i>SOLVING THE PROBLEM: A CONSTITUTIONAL ANSWER</i>	31
A.	<i>CODIFYING THE DOCTRINE OF UNPOSTPONABLE ELECTIONS</i>	31
B.	<i>DISBURSAL OF FUNDS DESPITE ELECTORAL VACANCIES: REFRAMING THE FISCAL LOGIC</i>	32
C.	<i>LIMITING ADMINISTRATOR DISCRETION AND PREVENTING FISCAL CAPTURE</i>	33
D.	<i>LEGISLATIVE REFORM FOR INDEPENDENCE OF SEC</i>	33
VI.	<i>CONCLUSION</i>	34

I. INTRODUCTION: A CONSTITUTIONAL AMNESIA

On 4 August 2022, two bills were placed in the Maharashtra Legislative Assembly, namely the Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2022¹ and the Mumbai Municipal Corporation and Maharashtra Municipal

¹ The Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2022 (amended the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961).

Corporations (Amendment) Act, 2022.² These bills sought to amend the respective State acts in the following ways: *first*, in order to increase the directly elected councillors in various local government bodies ranging from municipal corporations, nagar panchayats, and municipal councils;³ *second*, to introduce a multi-member tier ward system;⁴ and *third*, to annul the process of division of areas into wards and the reservation of councillors.⁵ These bills were unanimously passed by the State legislature and approved by the Governor. The authors argue that the conscious decision to annul elections and undo existing reservation policies could cause potential wide-ranging issues concerning the representative democracy landscape in Maharashtra.

Since these amendment acts sought to delay elections, the obvious consequence would be that the term of the offices of the presiding authorities would expire. Hence, on 12 August 2022, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2022 was passed.⁶ This Amendment Act sought to extend the term of the authorities to five years (from the earlier two and a half years) from the date of the election and prevent their unnecessary removal.⁷ The Act sought to justify this unprecedented extension by highlighting the impending delay of elections and emphasising the need to smooth the functioning of these offices.⁸ *Prima facie*, this amendment could be justified on the above-mentioned grounds. However, a deeper dive would warrant us to ask: *first*, would this issue have arisen if the earlier legislation had not delayed the elections in contravention of the constitutional provisions and judicial orders? And *second*, who is the true beneficiary of this delay?

The paper mainly seeks to explore these two questions and challenge the continuous delay of elections for the local self-governments in the State of Maharashtra. The elections in Maharashtra, which were due to be completed in 2022, have unfortunately not been conducted yet.⁹ This provides us with an avenue to not only theoretically highlight the consequences of the delay but also practically showcase the ongoing complications. Accordingly, Maharashtra provides us with the perfect laboratory to test the authors' arguments and navigate these questions. Additionally, it becomes imperative to clarify that these issues

² The Mumbai Municipal Corporation and Maharashtra Municipal Corporations (Amendment) Act, 2022 (amended the Mumbai Municipal Corporation Act 1888 and the Maharashtra Municipal Corporations Act 1949).

³ The Mumbai Municipal Corporation and Maharashtra Municipal Corporations (Amendment) Act, 2022, §3; *Statement of Objects and Reasons of The Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2022*.

⁴ INDIAN EXPRESS, *Two Bills Passed in Both Houses to Postpone Local Body Polls till OBC Quota Restored in Maharashtra*, March 7, 2022, available at <https://indianexpress.com/article/cities/mumbai/maharashtra-bills-civic-polls-obc-quota-7805567/> (Last visited on October 21, 2025).

⁵ The Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2022, §3; The Mumbai Municipal Corporation and Maharashtra Municipal Corporations (Amendment) Act, 2022, §4.

⁶ The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2022 (amended the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965).

⁷ The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2022, §5.

⁸ *Statement of Objects and Reasons of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2022*.

⁹ Ajit Ranade, *Civic Poll Delay and its Sweeping Fallout*, DECCAN HERALD, April 2, 2025, available at <https://www.deccanherald.com/opinion/civic-poll-delay-and-its-sweeping-fallout-3473059> (Last visited on October 21, 2025); Purva Chitnis, *No Corporator to Turn to, Lack of Funds — People Pay Price of Delayed Civic Polls in Maharashtra*, THE PRINT, September 11, 2023, available at <https://theprint.in/statedraft/no-corporator-to-turn-to-lack-of-funds-people-pay-price-of-delayed-civic-polls-in-maharashtra/1755298/> (Last visited on October 21, 2025); Suchitra Karthikeyan, *Why Mumbai Civic Polls Have Been Delayed and the Road Ahead*, THE HINDU, December 11, 2024, available at <https://www.thehindu.com/news/cities/mumbai/why-have-mumbai-civic-polls-been-delayed-and-the-road-ahead/article68958793.ece> (Last visited on May 30, 2025).

are not solely confined to Maharashtra. Several states in India continue to face legal, administrative, and financial problems concerning local body elections.

Some States are marked with reservation-related issues. For instance, Gujarat saw the passage of the Gujarat Local Authorities Laws (Amendment) Act 2023,¹⁰ which has capped the reservation in their respective local bodies to an aggregate of fifty per cent of the total number of seats. This Act has recently been challenged in the High Court.¹¹ In Uttar Pradesh¹² and Madhya Pradesh,¹³ reservation was made mandatory for the urban local body polls for the Other Backward Classes ('OBC') following judicial intervention. Issues around women's reservation also arose in Nagaland after the court repealed the Nagaland Municipal Act 2001.¹⁴

On the other hand, a pattern of unjustified delay of elections to local bodies could be identified in some States. Jharkhand¹⁵ and Bihar¹⁶ did not conduct elections for the local bodies even after the expiry of the terms of all local bodies in the state. Protests erupted in Puducherry over a thirteen-year-long delay in holding local body elections.¹⁷ The Telangana government also held elections for gram panchayats, panchayat samiti, and zilla parishads after a long period.¹⁸ Lastly, some States saw an emergence of issues which were neither related to delay nor reservation, but were closely associated with local body elections. West Bengal saw the prevalence of lawlessness and violence during local body elections.¹⁹ The Kerala

¹⁰ The Gujarat Local Authorities Laws (Amendment) Act, 2023 (amended the Gujarat Provincial Municipal Corporations Act 1949, the Gujarat Municipalities Act 1963 and the Gujarat Panchayats Act 1993).

¹¹ Pathuji Chhagaji Thakor v. State Election Commission, W.P. (PIL) No. 16 of 2025 (Gujrat High Court) (Pending); LIVE LAW, *Reservation In Local Bodies: High Court Seeks State's Stand On PIL Challenging Vires Of Gujarat Local Authorities Laws (Amendment) Act 2023*, October 19, 2025, available at <https://www.livelaw.in/high-court/gujarat-high-court/gujarat-high-court-pil-constitutional-validity-state-local-authorities-laws-amendment-act-2023-286142> (Last visited on October 20, 2025).

¹² State of Uttar Pradesh v. Vaibhav Pandey And Anr. Civil Appeal No. 2047 of 2023 (Unreported).

¹³ Suresh Mahajan v. State of Madhya Pradesh, (2022) 12 SCC 770 ('Suresh Mahajan').

¹⁴ Peoples Union for Civil Liberties (PUCL) & Anr. v. State of Nagaland & Ors., Civil Appeal No. 3607 of 2016 (Nagaland High Court) (Unreported).

¹⁵ Rina Kumari v. State of Jharkhand, 2024 SCC OnLine Jhar 14.

¹⁶ Anju Devi v. State of Bihar, Writ Petition (Civil) No. 13339 of 2022 (Patna High Court) (Unreported).

¹⁷ THE NEW INDIAN EXPRESS, *Protests Erupt in Puducherry over 13-year Delay in Holding Local Body Elections*, August 20, 2024, available at <https://www.newindianexpress.com/states/tamil-nadu/2024/Aug/20/protests-erupt-in-puducherry-over-13-year-delay-in-holding-local-body-elections-2> (Last visited on October 20, 2025).

¹⁸ THE NEW INDIAN EXPRESS, *Telangana Government Plans Local Body Elections Soon*, July 26, 2024, available at <https://www.newindianexpress.com/states/telangana/2024/Jul/26/telangana-government-plans-local-body-elections-soon> (Last visited on October 20, 2025).

¹⁹ THE HINDU, *Grassroots Peace: On the Local Body Elections in West Bengal*, June 20, 2023, available at <https://www.thehindu.com/opinion/editorial/grassroots-peace-on-the-local-body-elections-in-west-bengal/article66986760.ece> (Last visited on October 20, 2025); Shiv Sahay Singh, *Violence During 2023 West Bengal Panchayat Polls was Widespread and Endemic, Says Study*, THE HINDU, December 11, 2024, available at <https://www.thehindu.com/news/national/west-bengal/violence-during-2023-west-bengal-panchayat-polls-was-widespread-and-endemic-says-study/article68969765.ece> (Last visited on May 31, 2025); Suhrud Sankar Chattopadhyay, *West Bengal Panchayat Election Plunges into Chaos and Violence*, FRONTLINE, July 8, 2023, available at <https://frontline.thehindu.com/news/west-bengal-panchayat-election-plunges-into-chaos-and-violence/article67058324.ece> (Last visited on October 20, 2025); Shiv Sahay Singh, *Political Violence in Panchayat Election was the Highlight of West Bengal politics in 2023*, THE HINDU, December 30, 2023, available at <https://www.thehindu.com/news/national/other-states/political-violence-in-panchayat-election-was-the-highlight-of-west-bengal-politics-in-2023/article67690653.ece> (Last visited on October 20, 2025); Dipankar Rit v. State of W.B., 2023 SCC OnLine Cal 1460; Sparsh Upadhyay, *Panchayat Polls Violence | Uttarakhand High Court Bars Media From Reporting Courtroom Discussions; Flags 'Growing Gun Culture'*, LIVE LAW, August 24, 2025, available at <https://www.livelaw.in/high-court/uttarakhand-high-court/uttarakhand-high-court-panchayat-polls-violence-media-reporting-courtroom-discussions-growing-gun-culture-301815> (Last visited on August 24, 2025).

delimitation process was also challenged when the Kerala Municipality (Second Amendment) Act, 2024,²⁰ and Kerala Panchayat Raj (Second Amendment) Act, 2024,²¹ increased the ratio of the number of councillors and panchayat members.²² Thus, while it is quite apparent that these issues have a nationwide presence, the authors restrict their observations to Maharashtra in this paper since the twin issues of delay and reservation both arise with respect to local body elections.

This paper is an investigation into the veracity of the reasons given for non-adherence to the constitutional timelines provided for local body elections. Since they continue to be delayed — in violation of constitutional provisions and contravention of judicial pronouncements — the authors aim to explore the actors and circumstances which have contributed to this. In Part II, the authors ground their conversation within constitutional provisions, statutory indications, and judicial cases in order to indicate the governing legal mandate. Part III of this paper focuses on the role of the actors, i.e., institutions such as the State Election Commissions (‘SECs’) and the Courts, and their structural and functional idiosyncrasies that have led to the issues of delay and reservation. In Part IV, the authors highlight the financial repercussions which arise as a consequence of this continuous delay and renewal process. Part V discusses the authors’ recommendations and suggestions on this issue, which range from legislative amendments to judicial non-intervention. The authors conclude with the hope that elections to the local bodies are conducted regularly, and this time deficit is bridged through effective governance.

II. BACKGROUND: A CONSTITUTIONAL DEEP-DIVE

Given that the authors’ core argument rests on the claim that delayed elections and the consequent erosion of local self-governance reflect a deeper constitutional malaise, a clear understanding of the original constitutional mandate is essential. This part seeks to provide a comprehensive account of all the constitutional provisions related to the powers, functions and terms of panchayats and municipalities.

First, the authors examine the provisions relating to the powers and functions of panchayats and municipalities to highlight how these institutions were envisioned as effective units of self-governance. *Second*, the authors explore the constitutional provisions governing their term duration and the strict timeline for elections, tracing how the framers embedded temporal safeguards to prevent arbitrary extensions or political manipulation. *Third*, the authors review the relevant judicial pronouncements to underscore how courts have interpreted these provisions and responded to executive non-compliance. This detailed exposition is necessary to demonstrate that the continuous delay of elections is not merely an administrative lapse but a structural infraction that undermines the constitutional promise of democratic decentralisation.

A. POWER: DETAILING THEIR ROLES AND FUNCTIONS

The terms “Panchayat” and “Municipality” derive their constitutional foundation from Article 243(d) of Part IX and Article 243P of Part IX-A of the Constitution,²³ respectively. While both are characterised as institutions of self-government, a distinction is

²⁰ The Kerala Municipality (Second Amendment) Act, 2024 (amended the Kerala Municipality Act, 1994).

²¹ The Kerala Panchayat Raj (Second Amendment) Act, 2024 (amended the Kerala Panchayat Raj Act, 1994).

²² *State of Kerala v. Abdul Gafoor*, 2025 SCC OnLine Ker 1213.

²³ The Constitution of India, 1950, Arts. 243(d), 243P.

drawn with respect to their territorial jurisdiction.²⁴ Panchayats, irrespective of the nomenclature employed, are established for rural areas at the village, intermediate and district levels.²⁵ The composition of these panchayats has been left to the State Legislatures.²⁶ However, there is a rule that the ratio of the population and the number of seats elected therefrom must be equal throughout the State.²⁷ In contrast, municipalities are constituted under Article 243Q of the Constitution to govern urban territories, which are further classified into three categories: transitional areas (i.e., areas in the process of urbanisation), smaller urban areas, and larger urban areas.²⁸

The determination of such classification is contingent upon various factors, including but not limited to — the population size, population density, revenue generated for local administration, the proportion of employment in non-agricultural sectors, and the economic significance of the area or any other factors as the Governor may deem fit.²⁹ The Governor is also empowered to take into account any other relevant criteria for such classification.³⁰ Unlike the composition of panchayats, which is left largely to the discretion of the State Legislature, the Constitution itself provides for the composition of municipalities.³¹ However, the procedural aspects governing their operation remain within the legislative competence of the States.³²

Clauses 3 to 5 of Article 243C of the Constitution delineate the scope of the State Legislature's authority in relation to the composition of panchayats, including the modalities concerning the office of the Chairperson. Similarly, with respect to municipalities, the Constitution mandates the establishment of Ward Committees within the territorial jurisdiction of each municipality.³³ Article 243S of the Constitution sets forth provisions *pari materia* to those under Article 243C of the Constitution, detailing the framework for the constitution and functioning of such committees.³⁴ The State Legislature retains the power to legislate on matters incidental to its composition and functioning.³⁵

The constitutional scheme for local self-governance adopts a parallel structure for panchayats and municipalities with respect to their powers and functions. While both entities are conceived as institutions of self-government, the actual conferment of functional

²⁴ K.C. Sivaramakrishnan, *Local Government* in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION, 560 (Oxford University Press, 2016).

²⁵ The Constitution of India, 1950, Art. 243B.

²⁶ Marc Galanter & Upendra Baxi, *Panchayat Justice: An Indian Experiment in Legal Access* in ACCESS TO JUSTICE: EMERGING ISSUES AND PERSPECTIVES, VOL II: PROMISING INSTITUTIONS (Sijthoff & Noordhoff, 1979).

²⁷ The Constitution of India, 1950, Art. 243C.

²⁸ Rumi Aijaz, *Form of Urban Local Government in India*, Vol. 43(2), J. OF ASIAN AND AFRICAN STUDIES, 131 (2008).

²⁹ The Constitution of India, 1950, Art. 243Q; Chailcy Sharma & Ramakant Tripathi, *Urban Development in India: A Study in Light of Constitution's 74th Amendment*, Vol. 3(2), INDIAN J. OF L. & LEGAL RESEARCH, 790 (2024).

²⁹ The Constitution of India, 1950, Art. 243Q.

³⁰ *Id.*, Art. 243Q.

³¹ *Id.*, Arts. 243C (relating to the composition of Panchayats, determined by State Legislatures), 243R (mandating directly elected members for Municipalities). See Aijaz, *supra* note 28, 137–140 (discussing structural differences between Panchayats and Municipalities under the 73rd and 74th Amendments).

³² K.C. Sivaramakrishnan, *Urban Development and Metro Governance*, Vol. 46(31), E. P. W., 49 (2011).

³³ The Constitution of India, 1950, Arts. 243C(3)–(5).

³⁴ *Id.*, Art. 243S.

³⁵ Rosa Rodja Labina et al., *Governing Locally: Institutions, Policies and Implementation in Indian Cities by Babu Jacob and Suraj Jacob*, Cambridge University Press, Cambridge, 2021, Vol. 33(5)1–2, EUR. PLAN. STUD., 820 (2024).

authority rests with the State Legislatures.³⁶ In this regard, the Constitution provides a broad enabling framework, allowing States to devolve powers and responsibilities that would permit these bodies to effectively discharge their developmental and administrative mandates.³⁷

For panchayats, such devolution may relate to the formulation and execution of plans aimed at fostering economic development and promoting social justice, particularly in relation to subjects enumerated in the Eleventh Schedule.³⁸ Municipalities are similarly intended to be entrusted with functions that facilitate urban governance, encompassing planning, service delivery, and implementation of schemes pertinent to matters listed in the Twelfth Schedule.³⁹ Additionally, the State Legislature also has the power to enable the panchayats and municipalities to generate revenue and utilise state funds.⁴⁰

However, the constitutional text stops short of mandating such devolution, thereby rendering the extent and depth of functional empowerment to the discretion of the States. This framework, while conceptually rooted in decentralisation, operates in practice through enabling — not obligatory — provisions, leading to significant variation in the degree of autonomy and institutional capacity across jurisdictions. For instance, Kerala, through the People’s Campaign for Decentralised Planning, has transferred substantial powers to panchayats, devolving nearly thirty-five percent of the state’s plan funds to local bodies and empowering them with genuine decision-making authority.⁴¹ In contrast, states like Uttar Pradesh and Bihar have retained most planning and implementation functions at the state level, with panchayats functioning largely as administrative extensions rather than autonomous governance units.⁴²

B. TIME: EXAMINING THEIR TERM DURATIONS AND LIMITS

This section examines the constitutional, judicial, and practical dimensions of term durations and time limits for local self-governing bodies. *First*, it outlines the relevant constitutional provisions under Articles 243E and 243U of the Constitution to establish the mandatory nature of the five-year term and the timelines for elections. *Second*, it analyses how judicial pronouncements have interpreted and reinforced these timelines, while also highlighting the doctrinal limitations in judicial reasoning — especially the uncritical reliance on the phrase “and no longer”. *Finally*, it critiques the gap between constitutional theory and administrative practice by showing how States, under the guise of complying with procedural requirements (like the triple test for OBC reservations), have systematically delayed elections. Through this analysis, the authors show that the problem of delayed elections is not just a procedural lapse but a deeper constitutional violation that undermines democratic decentralisation.

³⁶ M. N. Singh, *Local Government, Constitutional Democracy and Federal Governance in India*, Vol. 69(3), INDIAN JOURNAL OF PUBLIC ADMINISTRATION, 678–687 (2023).

³⁷ Mathew Idiculla, *Unpacking Local Self-Government: The Uncertain Power of Cities in the Indian Constitution*, Vol. 53(1), VERFASSUNG UND RECHT IN ÜBERSEE/LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA, 30 (2020).

³⁸ See The Constitution of India, 1950, Art. 243G read with Sch. XI (providing for devolution of powers to panchayats concerning 29 functional areas including agriculture, health, education, and rural development).

³⁹ See The Constitution of India, 1950, Art. 243W read with Sch. XII (listing 18 functions including urban planning, water supply, sanitation, and public health intended for devolution to municipalities).

⁴⁰ See The Constitution of India, 1950, Arts. 243H & 243X, for panchayats and municipalities respectively.

⁴¹ See T.M. Thomas Isaac & Richard W. Franke, LOCAL DEMOCRACY AND DEVELOPMENT: THE KERALA PEOPLE’S CAMPAIGN FOR DECENTRALISED PLANNING, 78–92 (Rowman & Littlefield Pub Inc, 2002).

⁴² Craig Johnson, *Decentralisation in India: Poverty, Politics and Panchayati Raj*, 21 (University of Guelph, Ontario, Department of Political Science, Working Paper No. 199, 2003).

1. CONSTITUTIONAL PROVISIONS

The larger controversy, however, that the authors intend to explore in this paper, concerns the duration of the two constitutionally recognised forms of self-governance. Although largely *pari materia*, Article 243E provides for the duration of a panchayat, and Article 243U provides for the duration of a municipality.⁴³ The Constitution prescribes a fixed term of five years and “no longer” for both panchayats and municipalities. This duration is anchored from the date of the first meeting of the respective body and is subject only to earlier dissolution in accordance with applicable law. This reflects the framers’ intent to provide uniformity in the governance of rural and urban local bodies. However, there is one key difference between the two provisions. Municipalities are entitled to a reasonable opportunity of being heard prior to their dissolution. This right is absent in the case of panchayats.

One critical aspect of these provisions is the bar against legislative amendments affecting the premature dissolution of a functioning body.⁴⁴ The provisions also mandate that elections to reconstitute a panchayat or municipality must be conducted prior to the expiry of its term or, in the event of dissolution, within six months thereof, except where the residual period of a dissolved body’s term is less than six months.

2. JUDICIAL PRONOUNCEMENTS

The controversy arose from the decision of the Supreme Court of India (‘Court’ or ‘SCI’) to direct the State of Maharashtra to complete the process of securing reservations for OBCs in compliance with the triple test laid down by the SCI in *Vikas Kishanrao Gawali v. State of Maharashtra* (‘Vikas Gawali’)⁴⁵ prior to conducting the local body elections in the state.⁴⁶ The jurisprudential landscape concerning local body elections became significantly complex following the SCI’s engagement with the issue of the OBC reservations. The constitutional framework for reservation in local bodies, while recognising the need for inclusive representation, created procedural requirements that states, such as Maharashtra, began to exploit as grounds for electoral delays.⁴⁷ In *Vikas Gawali*, the SCI established a three-pronged constitutional requirement that states must satisfy before providing reservations to OBCs in local body elections.⁴⁸ While the test was designed as a constitutional safeguard to ensure that OBC reservations are based on empirical data rather than political considerations, it inadvertently provided states with a procedural shield to justify electoral delays. Rather than expediting the commission’s work or conducting elections without OBC reservations (while

⁴³ The Constitution of India, 1950, Arts. 243E, 243U.

⁴⁴ See The Constitution of India, 1950, Art. 243E(2) for panchayats and Art. 243U(2) for municipalities.

⁴⁵ *Vikas Kishanrao Gawali v. State of Maharashtra*, (2021) 6 SCC 73 (‘Vikas Gawali’).

⁴⁶ Shruti Kakkar, *Supreme Court Directs Maharashtra State Election Commission To Conduct General Election For Panchayat Samiti, Shrirampur, Following ‘Tripe Test’ For OBC Reservation*, Livelaw, January 20, 2022, available at <https://www.livelaw.in/top-stories/supreme-court-directs-maharashtra-state-election-commission-to-conduct-general-election-for-panchayat-samiti-shrirampur-following-triple-test-for-obc-reservation-189934> (Last visited on October 23, 2025).

⁴⁷ MONEYCONTROL NEWS, *SC Slams Maharashtra State Election Commission Over Delay in Local Body Polls, Sets Final Deadline for January 2026*, September 16, 2025, available at <https://www.moneycontrol.com/news/india/sc-slams-maharashtra-state-election-commission-over-delay-in-local-body-polls-sets-final-deadline-for-january-2026-13550624.html> (Last visited on October 23, 2025); The authors have separately discussed how the lack of independence of the SEC from the State Government separately below, see *infra* Part II.C on “Independence: Evaluating the Role of the SEC”.

⁴⁸ *Vikas Gawali*, ¶12; This triple test requires: (i) constituting a commission to study the nature and implications of backwardness with respect to claims for reservation in local bodies for OBCs; (ii) laying out the quantum of reservation in line with recommendations of the said commission; and (iii) not breaching the 50 per cent cap on reservation.

maintaining the constitutionally mandated Scheduled Caste (‘SC’) and Scheduled Tribe (‘ST’) reservations), Maharashtra chose to defer the entire electoral process.⁴⁹

The Court in *Suresh Mahajan v. State of Madhya Pradesh* (‘Suresh Mahajan’) held that the continued failure to hold elections constituted a “palpable infraction of the constitutional mandate qua the existence and functioning of such local self-government, which cannot be countenanced”.⁵⁰ Emphasising that the tenure of local bodies is constitutionally fixed at five years and “no longer”, the Court affirmed that this mandate is inviolable. It further clarified that all authorities concerned are “obligated” to ensure the constitution of a newly elected body prior to the expiry of the outgoing body’s term. Even in cases where a local body is dissolved prematurely, and an Administrator is appointed, such an arrangement cannot continue beyond six months under the relevant State legislation.⁵¹

This has been an issue plaguing several States. The Court, in *Suresh Mahajan*, also drew upon its earlier decision in *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad* (‘Kishansing Tomar’),⁵² which addressed similar delays in the conduct of local body elections. There, the Court held that a new Municipality must be constituted in a timely manner before the expiration of the term of the outgoing body.⁵³ The SEC, the court held, cannot invoke unreasonable grounds to justify delays. In order to comply with the constitutional mandate, any revision of electoral rolls must be completed within a reasonable timeframe; if that is not feasible, elections must proceed on the basis of the existing rolls.⁵⁴ Only under “exceptional circumstances” — such as man-made calamities, including riots or breakdowns of law and order, or natural disasters — can the extension of a Municipality’s term be considered, and even then, such exceptions must not become a regular practice.⁵⁵

Although decisions such as *State of Goa v. Fouziya Sheikh* (‘Fouziya Sheikh’)⁵⁶ continued to uphold a strict interpretation of the five-year term of local bodies, the Court did not articulate a detailed justification for this interpretive rigidity beyond reading the phrase “and no longer” as indicative of the framers’ intent to preserve the sanctity of that term.⁵⁷ This interpretive approach has been consistently invoked⁵⁸ to highlight inconsistencies arising from State legislative amendments, which, under various pretexts, seek to extend the term of local bodies, as has been observed in the cases of Maharashtra⁵⁹ and Madhya Pradesh.⁶⁰

The Court, the authors argue, failed to appreciate three critical issues, namely, *first*, constant delaying of elections on political considerations leading to paving the way for a tyrannical regime by the State Governments; *second*, independence of the SEC; and *third*, challenges concerning fiscal federalism. These three issues are analysed in detail in subsequent sections of this paper — specifically, the role of political considerations in delaying elections

⁴⁹ *Rahul Ramesh Wagh v. State of Maharashtra & Ors.*, SLP (C) No. 19756 of 2021 (Supreme Court).

⁵⁰ *Suresh Mahajan*, *supra* note 13.

⁵¹ *Id.*, ¶7.

⁵² *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad and Ors.*, (2006) 8 SCC 352.

⁵³ *Id.*, ¶12.

⁵⁴ *Id.*, ¶19.

⁵⁵ *Id.*, ¶21.

⁵⁶ *State of Goa v. Fouziya Imtiaz Shaikh*, (2021) 8 SCC 401 (‘Fouziya Sheikh’).

⁵⁷ *Id.*, ¶30.

⁵⁸ *Suresh Mahajan*, *supra* note 13, ¶6.

⁵⁹ The Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2022; The Mumbai Municipal Corporation and Maharashtra Municipal Corporations (Amendment) Act, 2022.

⁶⁰ The Madhya Pradesh Municipal Act, 1956; The Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993; The Madhya Pradesh Municipalities Act, 1961.

(Part III), the lack of independence of the SEC (Part III), and the fiscal implications of these delays (Part IV).

C. INDEPENDENCE: EVALUATING THE ROLE OF THE SEC

In this Part, the authors examine the constitutional role of the SEC and assess the structural and operational challenges that undermine its independence. The authors begin by outlining the constitutional provisions under Articles 243K and 243ZA of the Constitution, which establish the SEC as the institutional guardian of local body elections and endow it with protections modelled on the judiciary. Next, the authors evaluate the limitations of this framework — particularly the absence of safeguards in the appointment process, lack of financial and administrative autonomy, and constitutional silence on exclusive tenure, which have enabled functional subordination to State Governments. The authors then turn to key judicial pronouncements, including Fouziya Sheikh, Suresh Mahajan, and Kishansing Tomar, to understand how courts have interpreted and attempted to reinforce SEC independence. While these judgments mark important interventions, they stop short of resolving the deeper institutional imbalance between States and their SECs. Finally, the authors argue that this imbalance is exploited by States to delay elections under procedural pretexts, and call for a constitutional re-examination of SEC design — an issue the authors take up more fully in subsequent parts of the paper.

1. CONSTITUTIONAL PROVISIONS

At the core of the electoral framework governing local self-government is the constitutional mandate that vests the superintendence, direction, and control of elections in panchayats and municipalities with the SEC in Articles 243K and 243ZA of the Constitution, respectively. These provisions have been designed to ensure that the electoral process at the grassroots remains free from political interference, emphasising the autonomy of the State Election Commissioner ('Commissioner'). Understandably, the Constitution provides that the Commissioner shall not be removed from his office except in a manner and on the like grounds as a Judge of a High Court, and the conditions of service of the Commissioner shall not be varied to his disadvantage after his appointment.

The constitutional design of the Commissioner's independence, while modelled on judicial protections under Article 243K(3) of the Constitution, reveals critical structural gaps that undermine its effectiveness. Although the Constitution provides security of tenure comparable to High Court judges and prohibits adverse variation of service conditions post-appointment, it fails to address key vulnerabilities: the appointment process remains at state discretion, no dedicated secretariat or independent budget allocation is mandated, and the constitutional silence on holding multiple offices enabled problematic dual appointments like in Fouziya Sheikh. This creates a situation where formal autonomy is undermined by practical subordination to state governments for administrative support, staff, and financial resources, ultimately enabling political pressure for electoral postponements despite constitutional protections.⁶¹

2. JUDICIAL PRONOUNCEMENTS

Judicial scrutiny has, however, revealed repeated attempts by State Governments to undermine this autonomy. One such instance arose before the SCI in Fouziya

⁶¹ This can be depicted from the Maharashtra example, depicted in Part III.A.

Sheikh,⁶² when the State of Goa appointed its Law Secretary — an officer under direct control of the executive — as the Commissioner.⁶³ The Court, while dealing with the constitutional validity of such an appointment, strongly deprecated the practice, describing it as a direct affront to the independence of the Commission and the constitutional vision under Article 243K of the Constitution. It held that the conferment of an additional charge of this high constitutional office upon a serving bureaucrat represented a ‘mockery of the constitutional mandate’.⁶⁴

Holding that all appointed Commissioners have to be independent persons, the SCI went further to declare that a person occupying a post under the Central or any State Government is ineligible to serve as a Commissioner.⁶⁵ Reinforcing the non-negotiable requirement of independence, it directed that any such appointments already made across the country be revoked and replaced with individuals unconnected to executive offices.⁶⁶ These directions were issued under Article 142 of the Constitution to preserve the sanctity of the constitutional scheme governing local elections.⁶⁷

This judicial intervention complements the jurisprudence as such in Suresh Mahajan and Kishansing Tomar, which has stressed not only the timeliness of local body elections but also the institutional integrity of the bodies charged with conducting them. However, the Court, beyond holding that a Government officer (Law Secretary in this case) cannot hold the office of the Commissioner, does not settle the larger controversy concerning the independence of the SEC in the conduct of elections for panchayats and municipalities. It is seen that States continue to exploit procedural gaps, including delays in delimitation, reservation processes, or electoral roll revisions, to postpone elections.⁶⁸ These actions are facilitated, in part, by the structural subordination of the SEC, which depends on the State for staff, finances, and election notifications.⁶⁹

The structural dependence of SECs on state governments — through budgetary control, staffing decisions, and administrative support as discussed earlier — fundamentally undermines their constitutional independence. This enables states to exploit procedural delays in delimitation, reservation processes, and electoral roll preparation as pretexts for postponing elections, knowing that operationally dependent SECs lack the institutional capacity to resist such manipulation. A constitutional re-examination of this structural subordination is therefore imperative to ensure genuine functional independence of SECs. This is explored in detail in Part III of the paper.

⁶² Fouziya Sheikh, *supra* note 56.

⁶³ *Id.*, ¶3.

⁶⁴ *Id.*, ¶73.

⁶⁵ *Id.*, ¶74.

⁶⁶ *Id.*, ¶74.

⁶⁷ *Id.*, ¶75.

⁶⁸ *Id.*; See also Aqa Raza et al., *Democratic Governance and Local Elections: Issues and Challenges*, Vol. 2(1), JOURNAL OF GOVERNANCE AND POLICY ANALYSIS, 54 (2020) (analyzing the strategic use of procedural delays such as delimitation and reservation processes by States); Aneesha Mathur, *Delay in OBC Reservation Cannot Hold up Local Body Polls: SC Tells States*, INDIA TODAY, May 10, 2022 available at <https://www.indiatoday.in/law/story/supreme-court-local-body-elections-states-delay-obc-reservation-delimitation-exercise-1947828-2022-05-10> (Last visited on October 23, 2025); Surendra P Gangan, *Confusion About Delimitation, OBC Quota After SC Orders Local Body Polls*, HINDUSTAN TIMES, May 30, 2022, available at <https://www.hindustantimes.com/cities/mumbai-news/confusion-about-delimitation-obc-quota-after-sc-orders-local-body-polls-101746991616433.html> (Last visited on October 23, 2025).

⁶⁹ *Id.*, (Aqa Raza et al.); The authors have also discussed this in detail in Part III.A.2.

D. MONEY: QUESTIONING FISCAL FEDERALISM

Despite the constitutional recognition of panchayats and municipalities as institutions of self-government, the framework of decentralisation in India remains fundamentally incomplete in the absence of commensurate political and fiscal reforms. The transfer of functions and responsibilities to local bodies — without the requisite devolution of financial autonomy and institutional independence — has produced what is better described as deconcentration rather than true decentralisation. This structural shortcoming severely impairs the effectiveness of local governance.

At its core lies the issue regarding the absence of fiscal federalism at the third tier of governance. A large part of the share of transfers made to these bodies is purpose-specific, often tied to the implementation of Centrally Sponsored Schemes, leaving little room for local discretion or prioritisation.⁷⁰ Consequently, local governments are unable to independently design and deliver public services that cater for the unique needs of their constituencies — hence, reducing the capacity for true decentralisation. As the authors demonstrate in greater detail in Part IV, the absence of elected representatives has been strategically used by State Governments to both delay the disbursement of funds to local bodies and to permit administrators, appointed in their place, to exercise financial powers, often under the influence of the ruling political alliance.

The mismatch between functions assigned to local bodies and the finances made available to them is a critical issue, tied to the effective implementation of the constitutional goal of decentralisation. Urban local bodies in particular are frequently found to be in states of fiscal distress or even bankruptcy, unable to raise their own resources due to the lack of an autonomous tax domain or independent revenue-raising authority.⁷¹ As an outcome, their viability hinges on the bureaucratic favours and political will of the State Governments, rendering them ineffective.

With political interference, particularly in the conduct of elections to local bodies, States have often sought to delay panchayat and municipal elections on tenuous legal or administrative grounds, typically motivated by political considerations.⁷² While the elections are conveniently delayed and democratic processes suspended, local bodies are often simultaneously denied financial transfers, curtailing their functional capacities altogether.⁷³ Ironically, the States themselves continue to receive their respective revenue shares from the Centre during the time of non-elections of the local bodies in the respective State, highlighting the asymmetry in fiscal accountability across levels of government.⁷⁴ While the Constitution provides for a decentralised structure of governance, the absence of fiscal autonomy and institutional insulation at the local level has severely limited the democratic and developmental potential of panchayats and municipalities. Without robust fiscal federalism at the third tier, the promise of local self-government remains largely symbolic.

In this section, the authors have attempted to discuss the present position of law concerning the duration of local bodies and timelines for elections. The authors highlighted

⁷⁰ Nishith Rai & Awadhesh Kumar Singh, *Decentralized Urban Governance in India*, REGIONAL CENTRE FOR URBAN AND ENVIRONMENTAL STUDIES, LUCKNOW UNIVERSITY CAMPUS, LUCKNOW, 13.

⁷¹ NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, *Report of the National Commission to Review the Working of the Constitution*, 1–43 (March 31, 2002).

⁷² *Id.*

⁷³ CENTRE FOR POLICY RESEARCH, *Devolution of Union Finance Commission Grants to Panchayats*, 6 (January, 2019) ('CPR Report').

⁷⁴ *Id.*

that the existing jurisprudence by the SCI on the issue of duration of the term of local bodies has limited its ambit of providing justification for a strict interpretation of the 5-year term to a bare statutory reading of intent behind ‘and no longer’. The authors have discussed how the non-conduct of elections is regularly justified on various political considerations, ineffective role of the SEC due to its lack of ‘functional’ independence from the State Government and lack of fiscal federalism at the local level — all of which require the attention of the Constitutional Courts in addressing issues of non-conduct of local body elections holistically. In the subsequent chapters, to appreciate the issues raised, the authors aim to expand on these issues, engage with existing literature and provide an in-depth way forward to expand the existing jurisprudence on this subject.

III. NON-ADHERENCE OF THE TIMELINES BY THE RESPONSIBLE ACTORS: A CONSTITUTIONAL CHOKEHOLD

In this part, the authors seek to probe the deeper reasons for the non-adherence to constitutional timelines by the responsible actors. The responsible actors here have been limited to the SEC and the Courts. These two institutions have been closely studied since the former is statutorily responsible for conducting regular elections at the local level, whereas the latter is constitutionally bound to ensure that any deviation is penalised. An abdication of their statutory and constitutional responsibilities warrants immediate examination and appropriate redressal.

A. MAHARASHTRA SEC: A CAGED BIRD?

The authors argue that there is an absence of alternative governance options within the legislation and constitutional instruments dealing with the Commission. The authors contend that the functional helplessness of the Commission makes it an ineffective fourth-branch institution which lacks the ability to be independent and safeguard electoral processes against executive attacks. In this section, the legislative, functional and financial architecture of the Maharashtra SEC, which makes it easily susceptible to capture by the State Government, is examined. Following this analysis, the recent ways in which the State Government has gone ahead and attempted to influence the Commission in order to delay elections are investigated.

1. ARCHITECTURAL COMPROMISES

Articles 243K and 243ZA of the Constitution provide that the elections to the panchayats and municipalities must be conducted by the SEC.⁷⁵ As highlighted in Part II.C.a, the Constitution merely provides that the SEC shall not be removed from his office except in a manner and on the like grounds as a Judge of a High Court.⁷⁶ However, the constitutional provision is silent on the qualifications and method of appointment of the Commissioners. Article 243K(2) states that the tenure and the conditions of office of the Commissioner shall be governed by the state legislation and decided by the Governor.⁷⁷ In light of this delegation, the State Election Commissioner (Qualifications and Appointment) Act 1994 (‘SEC Act’) was passed by the Maharashtra Government.

⁷⁵ The Constitution of India, 1950, Arts. 243K, 243ZA.

⁷⁶ See Part II.C.1 on “Constitutional Provisions”.

⁷⁷ The Constitution of India, 1950, Art. 243K(2)

The objective of the SEC Act was to provide for the qualifications and the appointment of the Commissioner in Maharashtra.⁷⁸ An examination of the SEC Act highlights that the Maharashtra Commissioner must be appointed from people who are holding or have held a post higher in rank than that of a Principal Secretary to the Maharashtra Government.⁷⁹ The Commissioner is allowed to hold office for a tenure of five years with no option of re-appointment.⁸⁰ The SEC Act even details provisions related to pension⁸¹ and other conditions of service.⁸²

The authors argue that such a legislative set-up provides the State Government with an easy option to influence and dominate the appointment procedure. Article 243K(1) of the Constitution states that the SEC would be appointed by the Governor.⁸³ It is contended that the Governor, acting on the aid and advice of the Cabinet (comprising ministers from the State Government),⁸⁴ could appoint favourable officers and people to this post. However, after the decision in *Fouziya Sheikh*, it is assumed that the Commissioner would need to be independent and not include persons who hold any office or post in the Central or any State Government.⁸⁵ The SCI also had directed that candidates who do not satisfy these criteria would have to step down from this constitutional office.⁸⁶ While such an observation is laudatory and prevents partisan appointments, the authors contend that it does not necessarily guarantee true independence due to the following reasons.

First, the Court does not consider the enormous influence the State Government will have on the appointment of the Commissioners. While the Constitution mandates the Governor and the Cabinet of Ministers to be the ultimate decision-makers, the reality in Maharashtra is starkly different and rather unfortunate. On January 16, 2025, the Maharashtra State Cabinet approved the proposal to make the current Chief Minister the sole authority to appoint the Commissioner.⁸⁷ Such an action is not only against the Constitution but also violates the dictum of the SCI in *Fouziya Sheikh*. The authors further argue that this severely compromises the office of the Commissioner and also undermines the fairness of elections being conducted at the local level in Maharashtra. Analogically speaking, the SCI had also espoused a similar concern when it attempted to replace the Central Government as the appointing authority for Chief Election Commissioners with a much more balanced panel.⁸⁸

Second, the SCI fails to contextually provide safeguards in order to ensure true ‘independence’ during the appointment process. A report published by the Maharashtra SEC on the ‘Independence of SECs in India’ highlighted the fact that the State Government not only

⁷⁸ The State Election Commissioner (Qualifications and Appointment) Act, 1994, Long Note.

⁷⁹ *Id.*, §3.

⁸⁰ *Id.*, §6.

⁸¹ *Id.*, §8.

⁸² *Id.*, §10.

⁸³ The Constitution of India, 1950, Art. 243K(1).

⁸⁴ *The State of Tamil Nadu v. The Governor of Tamil Nadu and Anr.*, WP (Civil) No. 1239/2023.

⁸⁵ *Fouziya Shaikh*, *supra* note 56, ¶68.

⁸⁶ *Id.*

⁸⁷ Aman Khan, ‘Conflict of Interest? MTRA Cabinet Grants Fadnavis Sole Authority; Serving IAS Man Appointed as SEC’, SABRANG INDIA, June 13, 2024 available at <https://sabrangindia.in/conflict-of-interest-mtra-cabinet-grants-fadnavis-sole-authority-serving-ias-man-appointed-as-sec/> (Last visited on July 7, 2025); INDIAN EXPRESS, *Maharashtra IAS Officer Dinesh Waghmare is New State Election Commissioner*, June 26, 2024, available at <https://indianexpress.com/article/cities/mumbai/maharashtra-ias-officer-dinesh-waghmare-is-new-state-election-commissioner-9789825/> (Last visited on July 7, 2025).

⁸⁸ *Anoop Baranwal v. Union of India*, 2023 SCC OnLine SC 216 (‘Anoop Baranwal’).

intentionally delayed the appointment of Commissioners but also appointed unwanted people, creating indirect hurdles in the efficient functioning of the SEC.⁸⁹

Third, there exists no objective criterion which would assist in gauging whether a person is independent enough to be appointed as the Commissioner. Such a decision would still be a subjective one made by the Government. Fourth, the decision does not prevent the independence of Commissioners from being overstepped through indirect means.

Lastly, the judgment does not consider the ability of the Government to impose several administrative roadblocks to the appointment process. The appointment of the current Maharashtra Commissioner was also delayed for a considerable amount of time since it was lying vacant from September 4, 2024, till January 20, 2025.⁹⁰ This vacancy was also in the backdrop of an important time period⁹¹ where local body elections had not taken place, and imperative decisions regarding delimitation exercises and election timelines had to be made.

The SEC Act provides for certain grounds of disqualification, such as that the Commissioner must not be a Member of the Parliament/Legislative Assembly,⁹² hold any office of trust/profit,⁹³ be connected with any political party,⁹⁴ carry on any business,⁹⁵ or practice any profession.⁹⁶ These disqualifications politically insulate the appointees but do not ensure their independence. With reference to Maharashtra, it could be seen that the appointing authority is the Chief Minister himself, rendering the Commissioner's independence questionable. Thus, the authors contend that the independence of Commissioners must be legislatively accentuated since several wide gaps lie in both the SEC Act and the SCI's directions.

2. FINANCIAL DEPENDENCE

Apart from the plaguing issues in the structural independence of SECs, their ability to be financially independent has also been severely undermined. The SEC Act, *prima facie*, provides for several secure financial avenues. For instance, the salaries payable⁹⁷ and pension due of the Commissioners have been provided for by the Act.⁹⁸ The allowances,⁹⁹ facilities and leaves have also been clearly mentioned.¹⁰⁰

The authors argue that *first*, the SEC Act only secures the financial independence of the Commissioner and not of the SEC as a whole. The finances, budget, revenue and expenditure of the SEC continue to be controlled by the State Government. This

⁸⁹ STATE ELECTION COMMISSION MAHARASHTRA, *Independence of State Election Commissions in India*, 92 (June, 2019) ('SEC Report').

⁹⁰ Sonu Shrivastava, *Fadnavis Gets All Powers to Select New SEC*, DECCAN CHRONICLE, July 5, 2024, available at <https://www.deccanchronicle.com/nation/fadnavis-gets-all-powers-to-select-new-sec-1854607> (Last visited on July 7, 2025).

⁹¹ Chaitanya Marpakwar, *Aaditya Thackeray Hits Out at Maharashtra Government, ECI Over Vacant State Poll Commissioner Post*, TIMES OF INDIA, September 23, 2024, available at <https://timesofindia.indiatimes.com/city/mumbai/aaditya-thackeray-hits-out-at-state-govt-eci-over-vacant-state-poll-commissioner-post/articleshow/113577512.cms> (Last visited on October 23, 2025).

⁹² The State Election Commissioner (Qualifications and Appointment) Act, 1994, §5(a).

⁹³ *Id.*, §5(b).

⁹⁴ *Id.*, §5(c).

⁹⁵ *Id.*, §5(d).

⁹⁶ *Id.*, §5(e).

⁹⁷ *Id.*, §4.

⁹⁸ *Id.*, §8.

⁹⁹ *Id.*, §10

¹⁰⁰ *Id.*, §7.

makes them easily susceptible to executive capture. The Maharashtra State Government also has not shied away from continuously imposing severe obstructions in the efficient functioning of the SEC. The Government has imposed informal directions wherein expenditure above the financial powers of the Secretary requires governmental approval.¹⁰¹ Moreover, the Government delays or, in some cases, does not approve the SEC budget in its entirety.¹⁰² The SEC is also not provided with the appropriate monetary funds to appoint necessary staff, which would assist the Commission in carrying out their work.¹⁰³ The authors contend that this provides the Government the ability to financially incapacitate the SEC and, in a way, obstruct its effective functioning.

In this backdrop, it becomes imperative to showcase the inability of the judiciary to insulate the SEC from these financial attacks made by the Government. A petition was filed in the Bombay High Court to grant a writ of mandamus to direct the State Government to give the SEC some financial autonomy.¹⁰⁴ This issue arose in the backdrop of the State Government refusing to provide for the SEC's sanctioned strength of eighty-three staff posts and allowing only sixty-five posts.¹⁰⁵ The SEC argued that, though the expenditure for the elections for the respective local bodies was borne by the State Government, it took considerable time to release the funds to the SEC.¹⁰⁶ Hence, the SEC found it difficult to discharge its functions for want of adequate financial resources. The High Court, while accepting the argument of the SEC and disposing of the petition, ordered that,

“In this behalf, we hope and trust that the State Government shall see to it that at the time of announcing of such election programmes, the State Government may release appropriate funds to the Concerned Collector/authority so that the concerned authority may carry out its function properly and whatever expenditure is required for the purpose of implementing/conducting elections, the authority may not find any financial difficulty in this behalf. The State Government, as aforesaid, may accordingly act in this behalf”.¹⁰⁷ (emphasis added)

The authors contend that the above-mentioned observation does not assist the SEC in achieving any semblance of financial autonomy. The High Court merely states that the State Government is not duty-bound to release appropriate funds but ‘may’ do so. Such an indicative non-binding direction highlights the judicial inability to maintain and preserve the independence of the SEC.

Second, the authors contend that even the finances of the Commissioner are not entirely secured. §8(2) of the SEC Act states that when a Commissioner demits office, they shall on the demission be paid a pension.¹⁰⁸ While the SEC Act provides for the pension amounts, it does not mandate a timeline for the Government to pay them. This has led to pensions being either delayed or reduced for Commissioners.¹⁰⁹ In light of such instances, it is clear that the financial autonomy of both the SEC and the Commissioners has been curbed, but needs to be maintained and preserved.

¹⁰¹ SEC Report, *supra* note 89, 90.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ State Election Commission v. State of Maharashtra, Writ Petition No. 958 of 2002.

¹⁰⁵ *Id.*, ¶1.

¹⁰⁶ *Id.*, ¶2.

¹⁰⁷ *Id.*, ¶3.

¹⁰⁸ The State Election Commissioner (Qualifications and Appointment) Act, 1994, §8(2).

¹⁰⁹ SEC Report, *supra* note 89, 92.

3. FUNCTIONAL INCAPACITY

SEC has unfortunately been structured in such a way that it makes it vulnerable to executive capture. In this part, the authors argue that the State Government, vis-à-vis the SEC, has not only tried to influence the appointment of the Commissioner or deprive them of finances but also impact the actual functioning and working of the SEC. The most common way in which the State Government interfere is by changing the areas and boundaries of the local level bodies.¹¹⁰ For instance, the State Government had changed the area and boundaries of the Zilla Parishad of Nagpur & Raigad along with the Aurangabad Municipal Corporation and the Kalyan Dombivali Municipal Corporation.¹¹¹ This was speedily changed within six months, leading to obstacles in the timely conduct of elections.

The change in the boundaries also leads to extreme administrative inconvenience. In 2018, the Maharashtra SEC had filed a petition in the Bombay High Court contending that when an election for a local body is due and upcoming because of the expiry of their tenure, the SEC fails to discharge its constitutional obligation in holding elections.¹¹² This was mainly due to the State Government, which suddenly altered the boundaries of the local bodies, preventing the newly elected body from taking over the incumbent affairs.¹¹³ Since the boundaries were altered, all the work done by the SEC till that date became redundant and inconsequential, since imperative exercises such as the voters' list had to be re-prepared,¹¹⁴ making the elections a distant dream.

The authors argue that the response of the High Court not only showcases judicial abdication but also highlights cowardly hesitance. The High Court acknowledged that first, elections for the Zilla Parishad in Nagpur were severely impacted by the State Government;¹¹⁵ and second, similar allegations of influence were upheld by a Division Bench in the case of the Panvel Municipal Corporation and the Khargar Gram Panchayat.¹¹⁶ Rather than constitutionally responding to such continuous attacks, the High Court refused to even entertain the question of the potential '*malafides*' of the State Government.¹¹⁷ They kept the question open.

Additionally, as a remedy, the High Court directed the elections to be conducted at the earliest and within a period of three months.¹¹⁸ The Court was completely reticent on the enormous influence of the State Government in causing this delay. The silence espoused by the Court truly hampers the independent functioning of the SEC and actively contributes to the delay of local body elections.

¹¹⁰ *Id.*, 91

¹¹¹ Eeshanpriya M.S., *SEC Publishes Revised Boundaries of 236 Electoral Wards in Mumbai*, HINDUSTAN TIMES, May 17, 2022, available at <https://www.hindustantimes.com/cities/mumbai-news/sec-publishes-revised-boundaries-of-236-electoral-wards-in-mumbai-101652541627542.html> (Last visited on July 7, 2025); Anjaya Anparthi, *Govt Asks NMC to Go for Wards Delimitation with 151 Corporators*, TIMES OF INDIA, November 24, 2022, available at <https://timesofindia.indiatimes.com/city/nagpur/govt-asks-nmc-to-go-for-wards-delimitation-with-151-corporators/articleshow/95723526.cms> (Last visited on July 7, 2025).

¹¹² State Election Commission v. State of Maharashtra, Writ Petition No. 4994 of 2018.

¹¹³ *Id.*, ¶3.

¹¹⁴ *Id.*

¹¹⁵ *Id.*, ¶5.

¹¹⁶ *Id.*, ¶13.

¹¹⁷ *Id.*, ¶14.

¹¹⁸ *Id.*

Thus, overall, the delay of local body elections in Maharashtra cannot solely be attributed to the SEC, but rather to both the constant interference by the State Government and the constant disappointment of the Courts in upholding constitutional rights and obligations.

B. COURTS: THE CONFUSED FORUM?

In this part, the authors attempt to highlight the different ways in which Courts have contributed to excessively delaying the elections for the local self-governments. *First*, the authors navigate the reservation dilemma and showcase the issues with the SCI's decision to impose a triple-test. *Second*, the authors examine the wide-ranging consequences of the delay caused due to the regular adjourning practice employed by the Courts. The authors illustrate this by also providing the judicial timeline of the *Rahul Ramesh Wagh v. State of Maharashtra* ('Rahul Wagh').¹¹⁹ This case aids in attributing some responsibility for the delay in the elections of the local self-governments in Maharashtra to the Courts.

1. CONSTITUTIONAL SILENCES: BRIDGING THE GAP?

The Constitutional (73rd and 74th Amendments) Act 1992 intended to provide for adequate representation for the marginalised communities at the local self-government level.¹²⁰ The mandatory involvement of SCs, STs, and women was sought to be bolstered through affirmative action programmes. These programmes primarily provided for reservations for these communities. Article 243-D was inserted to provide for reservations in Panchayats,¹²¹ whereas Article 243-T was added to provide reservations in positions at the urban local bodies.¹²² The authors argue that while such an amendment solved several issues surrounding representation at the local governance level, there existed plaguing constitutional silences which stirred up major problems.

Articles 243-D and Article 243-T, while being similarly structured, provide for Sub-section (6), which states that “[n]othing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat/Municipality or offices of Chairpersons in the Panchayats/Municipality at any level in favour of backwards class of citizens”.¹²³ (emphasis added) Such a provision has been deemed surprising since, first, the provision explicitly provides for reservations for SCs and STs and, second, the Statement of Objects and Reasons do not provide for any specific reservation for the legally undefined community of ‘backward citizens’.¹²⁴

The authors argue that this constitutional silence has contributed enormously to delaying elections at the local body level. The absence of any indicative definition meant that, in order to bridge this gap, the Courts had to be involved to interpret this provision. The 73rd and 74th Amendments were brought in the year 1993 however there was no clarity on: (i) the categorisation of ‘backward citizens’ for the purpose of Article 243-D and Article 243-T of the Constitution; (ii) the objective metrics which could be used by the respective States to discern backwardness for the purpose of reservation for local bodies; and (iii) the potential conflict or usage of the criteria employed by Courts or provided by the Constitution to determine backwardness *vis-à-vis* other class categories, i.e., ‘socially and educationally backward

¹¹⁹ *Rahul Ramesh Wagh v. State of Maharashtra*, Writ Petition (C) No. 1316 of 2021 (Supreme Court).

¹²⁰ The Constitution (Seventy-Third and Seventy-Fourth Amendment) Acts, 1992.

¹²¹ The Constitution of India, 1950, Art. 243D.

¹²² The Constitution of India, 1950, Art. 243T.

¹²³ The Constitution of India, 1950, Arts. 243D(6), 243T(6).

¹²⁴ Alok Prasanna Kumar, *Backward Class Reservation in Local Bodies*, Vol. 57(17), E. P. W., 10 (2022).

classes'. This glaring gap and the allied interpretative issues were challenged in 2010 at the SCI in the case of *K Krishna Murthy and Ors. v. Union of India* ('Krishna Murthy').¹²⁵

Before the authors delve into the Krishna Murthy case, it becomes imperative to note that the confusion regarding 'backward classes' has spanned a long period of time. The authors argue that this ambiguity and delay have prevented the States from reserving any seats for the marginalised communities within the local bodies and broken the constitutional promise of adequate representation.

In Krishna Murthy, the Court upheld the constitutional validity of Article 243-D(6) and Article 243-T(6). The SCI stated that while these provisions did not clearly identify and delineate the beneficiaries, the provisions were just meant to be enabling provisions which allowed State legislatures to reserve seats for backwards classes.¹²⁶ The Court, however, disagreed to transpose the 'backwardness' standard from Article 15(4) and Article 16(4).¹²⁷ It was observed that reservations for local governance were starkly different from both higher education and public employment.¹²⁸ Thus, the same standard of backwardness could not be used within the context. Lastly, regarding the identification of the communities within the category of 'backward citizens', the Court stated that,

“We are not in a position to examine the claims about overbreadth in the quantum of reservations provided for OBCs under the impugned State legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court”.¹²⁹ (emphasis added)

The authors contend that such an involvement has not only accentuated confusion but also contributed to the delay due to multiple interpretations being adopted by multiple benches. As is evident from the above-mentioned paragraph, the Court in Krishna Murthy failed to bridge the gap and fill the constitutional silence. The Court delegated the obligation to the executive to “conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation”.¹³⁰

The authors argue that such an observation plunged the elections and reservation into further delay as the Court did not clarify first, the timeline to do so; second, it did not identify the meaning of 'backwardness' which would assist the State in collecting data; third, it did not clarify if 'backwardness' for the purposes of Articles 243-D(6) and 243-T(6) of the Constitution would mean the same for every State; fourth, it did not envision the issues that would arise from multiple meanings of backwardness being used across States; and fifth, it kept open the idea that the State's conceptualisation of 'backwardness' was open for challenge before the High Court.

¹²⁵ *K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr.*, (2010) 7 SCC 202 ('Krishna Murthy').

¹²⁶ *Id.*, ¶30.

¹²⁷ *Id.*, ¶82(i).

¹²⁸ *Id.*

¹²⁹ *Id.*, ¶82(iii).

¹³⁰ *Id.*

While it could be counter-argued that since the Court did not have any contemporaneous empirical data on backwardness for OBCs *vis-à-vis* local bodies, such an observation was the perfect balance between judicial activism and upholding needed affirmative action policies. In response, the authors argue that rather than plunging the question into further ambiguity, the Court should have judicially interpreted the term ‘backward citizens’. This would ensure that the States are not confused with the breadth of their power to reserve seats for OBCs in their local bodies. Additionally, the Court could have clarified and laid down the safeguards which need to be employed by the States before classifying and reserving seats for the OBCs.

Due to the confusion surrounding the interpretation of Articles 243-D(6) and 243-T(6) of the Constitution, the *Vikas Gawali* case was filed against Maharashtra’s reservation policy for the Zilla Parishads and Panchayat Samitis of certain districts, namely, Washim, Akola, Nagpur and Bhandara.¹³¹ In this case, the Court recognised the gaps left in the preconditions established by the *Krishna Murthy* case. In *Vikas Gawali*, the Court provided for a triple-test which would need to be satisfied by the State before reserving seats for OBCs in the local bodies. The triple test of reservation is as follows:

“(1) to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua local bodies, within the State; (2) to specify the proportion of reservation required to be provisioned local body wise in light of recommendations of the Commission, so as not to fall foul of overbreadth; and (3) in any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together”.¹³²

The authors argue that the SCI in *Vikas Gawali* does what the earlier bench missed in the *Krishna Murthy* case. It concretises the reservation test, which goes a long way in clarifying this ambiguous jurisprudence. Additionally, the judgment in *Vikas Gawali*, delivered in 2021, highlights the fact that the confusion from *Krishna Murthy* lasted for more than ten years.¹³³ It is clear that the possibility of delay in elections and reservations would have been reduced if the confusion, ambiguity and vagueness regarding the meaning of ‘backward citizens’ had been clarified earlier.

2. JUDICIALLY-IMPOSED DELAY: OLD HABITS DIE HARD?

In the above section, the authors have highlighted that the reason behind the delay and the confusion regarding the reservation policy was the Court’s decisions in *Krishna Murthy* and *Vikas Gawali*. However, in this section, the authors aim to showcase the ways in which remedies provided by the Court have also delayed elections at the local self-governance level. Before the authors delve into the SCI’s handling of the Maharashtra election case, it becomes appropriate to examine the High Courts and their responses towards issues surrounding local body elections. This will indicate that not only the Apex Court is to be blamed for the delay, but rather, such an issue is pervasive across several High Courts in the country.

a. High Courts

¹³¹ *Vikas Gawali*, *supra* note 45.

¹³² *Id.*, ¶12.

¹³³ The *Krishna Murthy* decision was made in 2010.

The Madras High Court had put a hold on the upcoming elections in Tamil Nadu, which were scheduled in October 2016.¹³⁴ Through the order, the Madras High Court mandated every candidate contesting the local body election to file an affidavit stating their criminal antecedents.¹³⁵ Similarly, the Andhra Pradesh High Court had suspended the SEC's order to conduct local body elections in February 2021.¹³⁶ This was done by the Court since they held that the decision was made without "any pragmatic decision, based on the decisional consultation with the State government".¹³⁷ The Court had also observed that the elections would restrict the comprehensive vaccination programme.¹³⁸ This election was also earlier suspended due to the possibility of COVID-19 spreading.¹³⁹ The Karnataka High Court also postponed the elections to the Bruhat Bengaluru Mahanagara Palike since the State Government had asked for more time from the Court to undertake delimitation, reserve seats, and restructure wards.¹⁴⁰

The one High Court, i.e., the Allahabad High Court, which had ordered the Uttar Pradesh SEC to notify the polls without conducting the OBC reservation, had its order stayed by the SCI.¹⁴¹ A two-judge bench of the SCI had stated that until the triple-test was conducted in all aspects by the State Government, no reservation could be provided.¹⁴² Surprisingly, since the term of the Municipal Body was coming to an end, the Court appointed a three-member committee headed by the District Magistrate to take up the day-to-day working and affairs of the body.¹⁴³ However, the elections were stayed overall.

Thus, it can be argued that the High Courts have, to an extent, attempted to stay the elections either due to the involvement of the SCI or based on vague, unlawful grounds ranging from the hampering of vaccination programmes to the need to provide an affidavit of the candidate's criminal antecedents.

b. The SCI in Rahul Wagh

The Rahul Wagh case was filed against the State of Maharashtra's attempt to reserve seats for OBC through an ordinance without undertaking any of the steps mandated as per the triple test. A judicial timeline of the case from December 6, 2021, is showcased below. Since the case is ongoing, the authors have included those hearings which have happened till

¹³⁴ Gireesh Babu, *Madras High Court Stops Local Body Elections in Tamil Nadu*, BUSINESS STANDARD, October 4, 2016, available at https://www.business-standard.com/article/current-affairs/madras-high-court-stops-local-body-elections-in-tamil-nadu-116100400726_1.html (Last visited on July 7, 2025).

¹³⁵ *Dravida Munnetra Kazhagam v. State of Tamil Nadu*, Writ Petition No. 33984 of 2016 (Madras High Court).

¹³⁶ *State of Andhra Pradesh v. State Election Commission*, Writ Petition No. 1158 of 2021 (Andhra Pradesh High Court).

¹³⁷ *Id.*, ¶3.

¹³⁸ Ravi Sharma, *Andhra Pradesh High Court Suspends State Election Commission's Decision to Hold Local Body Elections*, FRONTLINE, January 13, 2021, available at <https://frontline.thehindu.com/dispatches/andhra-pradesh-high-court-suspends-state-election-commissions-decision-to-hold-local-body-elections/article33559037.ece> (Last visited on July 7, 2025).

¹³⁹ *Id.*

¹⁴⁰ *State of Karnataka v. State Election Commission*, Writ Appeal No. 1225 of 2015 (Karnataka High Court); DECCAN HERALD, *High Court Puts Off Bengaluru Local Body Polls*, September 24, 2015, available at <https://www.deccanherald.com/india/karnataka/bengaluru/high-court-puts-off-bengaluru-2124070> (Last visited on July 7, 2025).

¹⁴¹ *State of Uttar Pradesh v. Vaibhav Pandey & Anr.*, SLP (C) No. 128 of 2023 (Supreme Court).

¹⁴² Padmakshi Sharma, *Supreme Court Stays HC Direction to Conduct UP Local Body Elections Without OBC Quota*, LIVELAW, January 4, 2023, available at <https://www.livelaw.in/top-stories/supreme-court-stays-hc-direction-to-conduct-up-local-body-elections-without-obc-quota-218080> (Last visited on July 7, 2025).

¹⁴³ *State of Uttar Pradesh v. Vaibhav Pandey & Anr.*, SLP (C) No. 128 of 2023 (Supreme Court), ¶10.

June 2025. Through this timeline, the authors aim to showcase the several ways through which the SCI has delayed local body elections in Maharashtra.

Sr. No.	Date of Hearing	Details
1.	December 6, 2021 ¹⁴⁴	<p>The SCI held that the State of Maharashtra had not satisfied the ‘triple test’ criteria for implementing OBC reservations in local bodies. Specifically, the prerequisite of generating empirical data was not fulfilled, despite the formation of a dedicated commission on June 29, 2021, whose report remained unsubmitted.</p> <p>Notwithstanding this non-compliance, the State Government had issued Ordinance No. IX of 2021 on September 23, 2021, and the SEC had subsequently notified election programmes on November 18, 2021, which included OBC reservations.</p> <p>The Court deemed this action impermissible without adherence to the triple test. Consequently, the SEC was directed to suspend elections for seats reserved for OBCs across all local bodies in Maharashtra until further orders, while elections for other reserved categories (Scheduled Castes/Scheduled Tribes) and general seats were permitted to proceed.</p>
2.	January 19, 2022 ¹⁴⁵	<p>By this date, the earlier ordinance had been enacted as a law. The SEC confirmed that elections for the 106 Nagar Panchayats and other local bodies, where seats were initially reserved for OBCs, had been conducted as general category seats. However, results were impending, thereby rendering the original relief sought (to halt OBC elections) moot.</p> <p>The State of Maharashtra sought permission to conduct the remaining election on the basis of information/data already available with the State concerning the OBC Category. However, the Court refused this argument and rather directed the State to submit all data to the dedicated Maharashtra State Commission for Backward Classes. This Commission was instructed to review this information and submit an interim report within two weeks. The Court again reiterated that full compliance with the triple test remained mandatory before any OBC reservation could be allowed.</p>

¹⁴⁴ Rahul Ramesh Wagh v. State of Maharashtra & Ors., SLP (C) No. 19756 of 2021 (Supreme Court) (‘Rahul Wagh’), Order dated December 6, 2021.

¹⁴⁵ Rahul Wagh, Order dated January 19, 2022.

		Thus, elections to the extent of the OBC seats were still pending.
3.	January 20, 2022 ¹⁴⁶	<p>The Court addressed a specific matter pertaining to the post of Chairperson, Panchayat Samiti, Shirampur. The Collector had proceeded and conducted elections by reserving the post for OBC category. Given that the Panchayat Samiti’s term was scheduled to conclude on February 23, 2022, the Court declined to unseat the elected Chairperson, citing the brevity of the remaining tenure. The Collector’s decision to reserve the post for OBCs in the 2021 by-election was treated as a plausible error. The Court however restricted the Chairperson from taking any policy decision until fresh elections were conducted.</p> <p>The Maharashtra SEC was consequently directed to conduct general elections for the Shirampur Panchayat Samiti promptly, ensuring that the newly elected body assumed charge by February 23, 2022.</p>
4.	May 4, 2022 ¹⁴⁷	<p>Multiple petitions challenged the constitutional validity of 2022 amendments to the Maharashtra Municipal Corporations Act, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, and the Maharashtra Village Panchayats Act, 1958. These amendments transferred delimitation powers from the SEC to the State Government. The Court stated that the constitutionality of these acts would not be delved into at the moment since it required deeper examination.</p> <p>The Court affirmed that delimitation processes conducted by the State Government under the new Acts could continue, but their application would be restricted solely to future elections.</p> <p>For the impending elections, the Court mandated their conduct without delay, utilising delimitation data as it existed prior to the 2022 amendments. The Court underscored the constitutional imperative, enshrined in Articles 243-E and 243-U, that elections to local bodies must not be postponed beyond their five-year term.</p>

¹⁴⁶ Rahul Wagh, Order dated January 20, 2022.

¹⁴⁷ Rahul Wagh, Order dated May 4, 2022.

<p>5.</p>	<p>July 20, 2022¹⁴⁸</p>	<p>The State of Maharashtra submitted that the Dedicated Commission for Reservation for Backward Classes in Local Bodies (the Justice J.M. Banthia Commission) had completed its local body-wise empirical study and recommended the proportion of reservation for OBCs as per the triple test. The Court noted this submission and directed that elections for the local bodies in Maharashtra should proceed without further delay. The local bodies herein shall not be of all the 367 bodies but only of those bodies which were pending.</p> <p>It was clarified that the elections must be conducted using the delimitation as it existed prior to March 11, 2022, as a ‘notional basis’, and that the election process could not be delayed due to pending new delimitation under the Amendment Acts.</p> <p>The Court emphasised that no further delay in holding overdue local elections was permissible, and the SEC was ordered to immediately initiate the election process for the remaining bodies and report compliance.</p> <p>This order allowed the implementation of OBC reservations based on the Banthia Commission’s report, provided the fifty percent reservation ceiling was not breached for future elections. The current elections were exempt from this ceiling.</p>
<p>6.</p>	<p>July 28, 2022¹⁴⁹</p>	<p>The Court issued a stringent directive prohibiting the SEC from re-notifying the election programme afresh to provide reservation for OBCs in respect of 367 local bodies.</p> <p>This order was issued in response to the State of Maharashtra’s attempt to implement the Banthia Commission’s data mid-process for these specific local bodies, in violation of prior court directions against re-notifying election programs once initiated without OBC reservations.</p>
<p>7.</p>	<p>August 22, 2022¹⁵⁰</p>	<p>The Court directed all parties involved to maintain the status quo for a period of five weeks from the date of the order.</p>

¹⁴⁸ Rahul Wagh, Order dated July 20, 2022.

¹⁴⁹ Rahul Wagh, Order dated July 28, 2022.

¹⁵⁰ Rahul Wagh, Order dated August 22, 2022.

8.	December 13, 2022 ¹⁵¹	The Court ordered that status quo should continue till the next date of listing.
9.	August 23, 2024 ¹⁵²	A contempt petition was dismissed by the Court.
10.	May 4, 2025 ¹⁵³	The hearing was adjourned.
11.	May 6, 2025 ¹⁵⁴	<p>The Court issued several critical directions.</p> <p>(a) Firstly, the SEC was mandated to notify elections within four weeks.</p> <p>(b) Secondly, OBC reservations were to be provided as per the law existing prior to 2022 (i.e., before the Banthia Commission report).</p> <p>(c) Thirdly, elections were directed to be concluded within four months, with provisions for extension requests if deemed necessary.</p> <p>(d) Lastly, the conduct of these elections will remain subject to the final outcome of the ongoing proceedings.</p> <p>Challenges were explicitly raised against the Banthia Commission’s report and its recommendations: including concerns about whether OBC reservations can exceed the fifty percent ceiling limit, the specific number of reserved seats per local body, and the adequacy of data pertaining to political backwardness.</p>
12.	September 16, 2025 ¹⁵⁵	A ‘one-time concession’ to complete the elections of all local bodies by January 31, 2026 was allowed.

The authors argue that this timeline not only depicts judicial ignorance but also the failure of the Courts to hold the actors responsible, thus overall playing a huge part in contributing to the delay.

First, the Court did not take any concrete steps against the erratic and inconsistent positions of the Maharashtra SEC. For instance, despite the earlier order on December 6, 2021, mandating the SEC to conduct fresh elections using OBC data collected through the triple-test,¹⁵⁶ the SEC approached the Court to conduct the remaining elections without using the OBC data.¹⁵⁷ The SEC had conducted fresh elections only in those 106 bodies which were earlier advertised to be OBC.¹⁵⁸ This was a derogation from the Court’s December order. Additionally, the SEC attempted to re-notify elections for all 367 local bodies despite the

¹⁵¹ Rahul Wagh, Order dated December 13, 2022.

¹⁵² Rahul Wagh, Order dated August 23, 2024.

¹⁵³ Rahul Wagh, Order dated March 4, 2025.

¹⁵⁴ Rahul Wagh, Order dated May 6, 2025.

¹⁵⁵ Rahul Wagh, Order dated September 16, 2025.

¹⁵⁶ Rahul Wagh, Order dated December 6, 2021.

¹⁵⁷ Rahul Wagh, Order dated January 19, 2022.

¹⁵⁸ *Id.*

Court's earlier order dated July 20, 2022.¹⁵⁹ It is imperative to highlight that these conflicting positions were adopted by the SEC, irrespective of the SCI continuously highlighting the need to conduct the elections on time. The authors contend that the SEC's actions should have been sternly dealt with by the Court, since a lot of delay could have been avoided if such stances had not been adopted.

Second, the Court failed to penalise the Collector who had reserved the seats for OBC in Shirampur against the Court's dictum in both Vikas Gawali and Rahul Wagh.¹⁶⁰ In the order dated January 20, 2022, the Court acknowledged that the Collector had unlawfully reserved seats for a Chairperson from an OBC background.¹⁶¹ The non-willingness of the Court to hold the Collector accountable for his actions showcases the little regard the Court has for its own orders. Moreover, it acts as a precedent which indicates that the Court is unwilling to prosecute people who disregard judicial orders. The authors contend that if an appropriate penalty had been levied, the constitutional actors, such as the SEC and the State Government, would not have delayed the elections to such an extent.

Third, the Court did not enforce its own rulings and orders *vis-à-vis* the conducting of the elections on time and without delay. Despite constantly highlighting the need to conduct timely elections, it failed to hold the actors accountable. Not once was the SEC or the State Government reprimanded for not discharging their duties. In addition, the contempt petition, which was filed highlighting the utter disregard of the Court's earlier orders, was dismissed through an order dated August 23, 2024.¹⁶² The authors argue that this inaction allowed the Maharashtra Government and SEC to delay the elections since they were never answerable to the Court in any manner whatsoever.

Fourth, significant questions that are closely associated with elections were delayed and kept open by the Court, making the electoral process susceptible to further delay in the future. In the order dated July 20, 2022, delimitation for certain wards was an issue.¹⁶³ Rather than solving the issue and answering the legal question, the Court proceeded to keep the question open and instructed the SEC to use the earlier delimitation data on a notional basis.¹⁶⁴ Furthermore, the question of whether such reservations can exceed the aggregate of fifty percent has also been left open to be considered in "due course of time".¹⁶⁵ This question has been kept open despite the two earlier decisions of Krishna Murthy and Vikas Gawali, which have conclusively answered the question in the negative.¹⁶⁶ The authors contend that delaying the interpretation of such imperative questions runs the risk of future delay and potential confusion.

Fifth, the Court itself has, over the course of this hearing, been inconsistent with its orders and rulings. In the last order, the Court ordered that OBC reservations were to be provided as per the law existing prior to 2022 (i.e., before the Banthia Commission report).¹⁶⁷ This represents a significant shift from the Court's previous rulings since 2022 that had allowed implementation based solely on the Banthia Commission's empirical data and struck down elections which did not follow the collection of the OBC data. The authors argue that such a

¹⁵⁹ Rahul Wagh, Order dated July 20, 2022; Rahul Wagh, Order dated July 28, 2022.

¹⁶⁰ Rahul Wagh, Order dated January 20, 2022; Vikas Gawali, *supra* note 44.

¹⁶¹ *Id.*

¹⁶² Rahul Wagh, Order dated August 23, 2024.

¹⁶³ Rahul Wagh, Order dated July 20, 2022.

¹⁶⁴ *Id.*

¹⁶⁵ Rahul Wagh, Order dated May 6, 2025.

¹⁶⁶ Krishna Murthy, *supra* note 125; Vikas Gawali, *supra* note 45.

¹⁶⁷ Rahul Wagh, Order dated May 6, 2025.

position, adopted by the Court, not only violates the Court's earlier dictum in Krishna Murthy and Vikas Gawali but also severely impedes reservation for OBCs at the local body level.¹⁶⁸ The authors contend that the Court is responsible for the delay since it has now instructed the Maharashtra SEC to provide for OBC reservation not as per the triple-test, the main reason behind filing this case in the first place.

Lastly, the Court has also been unclear with its holdings and decisions, leading to several unanswered questions. Several political leaders in Maharashtra had raised concerns regarding ancillary questions, such as the number of wards and the number of members the government and civic bodies will comprise.¹⁶⁹ The petitions concerning these were also pending before the SCI.¹⁷⁰ The authors contend that the election delay in Maharashtra is not solely due to issues surrounding reservation but rather due to other procedural problems as well. If such issues were dealt with by the Court at the earliest, it would lead to smoothing out this skewed jurisprudence.

This case has been going on since 2021. The earlier election results have also not been released due to the case being pending before the Court. Thus, the contribution of the Court to delaying the elections has also unfortunately been significant.

The authors argue that the Court in order to ensure that the elections happen on time should have, (a) provided the SEC and the Maharashtra Government, a strict timeline which must be mandatorily followed; (b) strict action ought to have been taken against the constitutional actors if the timeline is deviated from (this could even involve personal action against the officers of the SEC and the State Government); (c) substantively heard this case in order to solve the issues of delimitation and the breach of the fifty percent limit; and (d) examined the Banthia Commission report at the earliest to allow for smooth OBC reservations for the seats.

IV. UNDERMINING FISCAL AUTONOMY OF THE LOCAL SELF-GOVERNMENTS: A CONSTITUTIONAL PARALYSIS

In this part, the authors examine how the chronic postponement of local-body elections in Maharashtra has undermined fiscal federalism through two interlinked mechanisms. *First*, the authors trace the constitutional foundations of third-tier fiscal autonomy and show how delayed elections enable the State to withhold funds by classifying lapsed bodies as non-functional. *Second*, the authors explore the converse situation, where grants are released despite the absence of elected councils, and are spent by unelected administrators or overstaying office-bearers — often without institutional oversight and sometimes in a politically partisan manner. Together, these two processes — fiscal starvation and fiscal capture — signal a breakdown of constitutional decentralisation. They reflect not just administrative lapses but a structural shift in the power to govern and spend. *Lastly*, the authors explore the impact of the lack of fiscal autonomy of local bodies in day-to-day civic life and the loss of people's trust in local bodies.

A. CONSTITUTIONAL FOUNDERS OF THIRD-TIER FISCAL AUTONOMY

¹⁶⁸ Krishna Murthy, *supra* note 125; Vikas Gawali, *supra* note 45.

¹⁶⁹ Manoj Dattatreya More, *As Supreme Court Directs Holding of Long-Delayed Civic Elections, Political Leaders Confused Over When Polls Will Be Held*, INDIAN EXPRESS, June 5, 2025, available at <https://indianexpress.com/article/cities/pune/as-supreme-court-directs-holding-of-long-delayed-civic-elections-political-leaders-confused-over-when-polls-will-be-held-9986647/> (Last visited on July 7, 2025).

¹⁷⁰ *Id.*

The 73rd and 74th Constitutional amendments constitutionalised local governance structures, through the devolution of twenty-nine functions to the Panchayats, and 18 functions to Urban Local Bodies listed under the 11th Schedule and the 12th Schedule of the Constitution, respectively. This objective found expression in both enabling and mandatory constitutional provisions that the Constitution sought to create financially viable and democratically accountable units of self-government. Article 243H of the Constitution empowers State Legislatures to authorise Panchayats and Municipalities to levy, collect, and appropriate taxes, duties, tolls, and fees. This allows local bodies to generate their own revenue.¹⁷¹ In addition, Articles 280(3)(bb) and (c) of the Constitution mandate the Finance Commission to recommend measures for augmenting the Consolidated Fund of the State in order to support the finances of local bodies.¹⁷² These provisions ensure that local governments are not solely dependent on their own limited revenue sources but also receive support from higher levels of government.¹⁷³

While the constitutional architecture sought to secure financial autonomy, it left critical aspects — particularly the timing, release, and execution of such funds — within the administrative control of State Governments. Audits conducted for the States of Odisha¹⁷⁴ and Karnataka¹⁷⁵ have revealed that significant delays and shortfalls in the release of funds, financial irregularities, and a lack of adherence to recommended financial management practices persisted. In the case of West Bengal,¹⁷⁶ the tussle with the Centre over the disbursement of funds has starved local bodies from undertaking any work. Hence, the delay in the release of funds fundamentally distorts the fiscal autonomy envisioned for local bodies in three ways.

First, they disrupt the financial predictability that underpins local planning. When grants or devolutions arrive months after their due date, Panchayats and Municipalities are unable to frame realistic annual budgets, forcing them either to postpone essential works or depend on ad hoc advances from the State treasury. *Second*, delayed disbursements erode the credibility of these institutions before contractors and third-party service providers, who, in the absence of assured cash flow, are reluctant to engage in long-term development projects, leading to cost overruns and stalled infrastructure. *Third*, such irregular fund flows reinforce a culture of fiscal dependence — where local governments, rather than acting as autonomous units of self-government, must continuously petition higher tiers for timely releases. Over time, this dependence translates into diminished bargaining power, curtailed decision-making, and an erosion of accountability to local constituencies rather than to State bureaucracies.

¹⁷¹ The Constitution of India, 1950, Art. 243H.

¹⁷² The Constitution of India, 1950, Art. 280(3).

¹⁷³ NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, *Consultation Paper on Review of the Working of the Constitutional Provisions of Decentralization (Panchayats)*, Ch. 4, 4, §4.1, (September 26, 2001).

¹⁷⁴ Hemant Kumar Rout, *Audit Finds Gaping Holes in Performance of Odisha's Urban Local Bodies*, THE NEW INDIAN EXPRESS, March 24, 2022, available at <https://www.newindianexpress.com/cities/bhubaneswar/2022/Mar/23/audit-finds-gaping-holes-in-performance-of-odishas-urban-local-bodies-2433641.html> (Last visited on October 21, 2025).

¹⁷⁵ Sanath Prasad, *'Bengaluru Metropolitan Planning Committee met just 3 times since 2016': CAG Audit Slams Karnataka's Slow Progress On Local Governance*, THE INDIAN EXPRESS, November 12, 2024, available at <https://indianexpress.com/article/cities/bangalore/metropolitan-planning-committee-cag-audit-karnataka-local-governance-9665903/> (Last visited on October 21, 2025).

¹⁷⁶ Samir K. Purkayastha, *TMC Govt's Failure to Meet CSS Norms Gives Centre Upper Hand in Bengal Fund Standoff*, THE FEDERAL, August 31, 2025, available at <https://thefederal.com/the-federal-focus/tmc-govt-failure-css-norms-centre-upper-hand-in-bengal-fund-standoff-204453> (Last visited on October 21, 2025).

This institutional design was a compromise embedded in Indian federalism, driven by concerns about administrative capacity, political control, and the need to maintain vertical fiscal coordination. When the 73rd and 74th Amendments were enacted, Parliament placed the responsibility of operationalising these grants on State Governments, allowing them to determine modalities such as the timing and quantum of release, subject to recommendations of the State Finance Commissions.¹⁷⁷ This was partly because Panchayats and Municipalities were seen as constitutionally recognised, but still dependent units within a federal structure where States retained primacy over local institutions.¹⁷⁸ Scholars have described this arrangement as creating a form of “asymmetric delegation”, where local bodies are formally autonomous but functionally reliant on State Governments for funds, staffing, and administrative clearance.¹⁷⁹

This reflects the persistent belief, held by many State-level actors, that local governance is an extension of State executive authority, not an independent constitutional layer of government.¹⁸⁰ As a result, State control over financial transfers became a key lever — one that has been routinely used to weaken local autonomy, particularly when elections are delayed or councils are dissolved.

This has created a systemic vulnerability: when elections to local bodies are delayed, the State is presented with a legal and procedural excuse to deny funds to the now-expired body. Equally troubling, in cases where such funds are released, they are often disbursed to incumbent administrators or overstaying elected representatives, neither of whom has democratic accountability.¹⁸¹ The National Commission to Review the Working of the Constitution (‘NCRWC’) had identified this structural flaw as early as 2001, noting that Panchayats and Municipalities, in the absence of timely elections and reliable funding, remain “a decorative box ... that contains nothing inside”.¹⁸² It also noted that the delay in holding elections frequently coincides with an absence of proper audit, enabling unchecked expenditure by functionaries with no electoral mandate.¹⁸³

B. THE LEGITIMISATION OF THE DENIAL OF FINANCIAL TRANSFERS TO LOCAL BODIES

The first consequence of electoral delay is the denial or obstruction of financial transfers to local bodies. A report by the Accountability Initiative indicates that instances became common, wherein State Governments would use the non-conduct of local body elections as a ground for delay in the disbursement of funds to the local bodies, stripping them of any fiscal autonomy. These instances are not limited to Maharashtra alone but span several States in India.¹⁸⁴ However, in the case of Maharashtra, the prolonged delay in conducting local

¹⁷⁷ The Constitution of India, 1950, Arts. 243H, 243I, 243X, 243Y.

¹⁷⁸ George Mathew, *STATUS OF PANCHAYATI RAJ IN THE STATES OF INDIA*, 2013, 19–23 (Institute of Social Sciences 2014).

¹⁷⁹ D. Bandyopadhyay et al., *Dependency Versus Autonomy: Identity Crisis of India’s Panchayats*, Vol. 38(38), E. P. W., 20 (2003) (‘Bandyopadhyay et al.’).

¹⁸⁰ *Id.*, 22.

¹⁸¹ *Id.*, ¶8.3.

¹⁸² NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, *Consultation Paper on Review of the Working of the Constitutional Provisions of Decentralization (Panchayats)*, Ch. 1, ¶1.5.

¹⁸³ *Id.*, Ch. 8, 8–9, §8.27.

¹⁸⁴ B. V. Shiva Shankar, *Rs 18,948 Crore at Stake: Poll Delays Put Karnataka’s Central Funds in Jeopardy*, THE TIMES OF INDIA, March 27, 2024, available at <https://timesofindia.indiatimes.com/city/bengaluru/rs-18948-crore-at-stake-poll-delays-put-karnatakas-central-funds-in-jeopardy/articleshow/115548416.cms> (Last visited on July 7, 2025).

body elections led to the Central Government refusing to release over INR 3000 crore worth of funds meant for development works to urban and rural local bodies in Maharashtra.¹⁸⁵

C. MISUSE OF GRANTS BY INCUMBENTS

Equally troubling is the inverse scenario, where grants are released even in the absence of an elected body, and are spent by officials who are neither publicly accountable nor institutionally restrained.¹⁸⁶ In the case of Bangalore, it was noted that on account of no elections since 2020, and consequent lack of elected representatives, the administration appointed unelected “nodal officers” to chair Ward Committee meetings.¹⁸⁷ As per the institutional guidelines governing the Gram Panchayat Development Plan (‘GPDP’), all planning and expenditure decisions are to be approved by the Gram Sabha and executed under the authority of the elected Panchayat.¹⁸⁸ However, in cases where elections have not been held, this deliberative structure collapses. Consequently, administrators or overstaying office-bearers continue to operate GPDP accounts and authorise works. Such actions fundamentally contradict the principle that public money should be spent by those answerable to the public.

Considering that civic elections have been stalled in Maharashtra since February 2022, the Municipal Commissioner & Administrator of the Brihanmumbai Municipal Corporation, an administrator appointed on account of the lack of an elected council, has reportedly disbursed Rs. 500 crores, all to 21 MLAs belonging to the ruling alliance, while the Opposition MLAs, did not receive a single rupee for civic and developmental works within their respective constituencies.¹⁸⁹ Similar controversy emerged in Pune, wherein Opposition parties alleged that maximum funds were allocated to ruling alliance-dominated areas by the administrator of Pune Municipal Corporation, on account of the absence of elected corporators for the past three years.¹⁹⁰

D. IMPACT OF THE LACK OF FISCAL AUTONOMY OF LOCAL BODIES ON CIVIC LIFE

This problem is not unique to Maharashtra, but it is pronounced in the State’s current context of institutional vacancy. As the NCRWC had warned, delays in audit and electoral processes create “opportunities for misuse of funds”, particularly when there is no functioning local legislature to scrutinise decisions.¹⁹¹ This undermines both transparency and accountability. In such a vacuum, decentralisation becomes deconcentration, rendering local bodies toothless in addressing local issues. Critical services such as sanitation, road

¹⁸⁵ Surendra P. Gangan, *Centre Yet to Release Over ₹3,000 Crore Owed to Local Bodies in State*, HINDUSTAN TIMES, Mumbai, July 3, 2025, available at <https://www.hindustantimes.com/cities/mumbai-news/centre-yet-to-release-over-3-000-crore-owed-to-local-bodies-in-state-101748802835992.html> (Last visited on July 7, 2025).

¹⁸⁶ COMPTROLLER AND AUDITOR GENERAL OF INDIA, *Compendium of Study Reports*, Study Report No. SR-Compendium/2022, 52.

¹⁸⁷ *Id.*

¹⁸⁸ See generally Ministry of Panchayati Raj, *People’s Plan Campaign for Preparation of Panchayat Development Plan*, 19–21 (2022).

¹⁸⁹ Pratip Acharya, *BMC MLA Funding Part 1: Express Investigation—BJP, Shiv Sena Corner Lion’s Share*, THE INDIAN EXPRESS, July 3, 2024, available at <https://indianexpress.com/article/cities/mumbai/bmc-mla-funding-part-1-express-exclusive-bjp-shiv-sena-9135593/> (Last visited on July 7, 2025).

¹⁹⁰ Abhay Khairnar, *PMC Budget Sparks Row: BJP Accused of Favouritism, Commissioner Admits Pressure*, HINDUSTAN TIMES, February 1, 2024, available at <https://www.hindustantimes.com/cities/pune-news/PMC-budget-sparks-row-bjp-accused-of-favouritism-commissioner-admits-pressure-101739900626885.html> (Last visited on July 7, 2025).

¹⁹¹ NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, *Consultation Paper on Review of the Working of the Constitutional Provisions of Decentralization (Panchayats)*, Ch. 8, §8.27.

maintenance, water supply, solid waste management, and public lighting are disrupted or deferred.¹⁹² In slums and rural peripheries, where state outreach is limited, people are left with no elected representative to petition and no mechanism to demand accountability from bureaucratic administrators.

The inverse scenario is no better. As the authors have discussed above, untied grants have continued to flow in the absence of elected bodies and have been diverted or disproportionately allocated by politically influenced administrators. In Maharashtra, civic funds flowing into constituencies of ruling alliance politicians without institutional checks are likely to create structural incentives for corruption and clientelism. Administrators are not answerable to the public, and local elites aligned with the ruling alliance at the State often secure a greater share of discretionary spending.¹⁹³

The confluence of delayed elections, fiscal denial, and politicised fund allocation creates a dangerous feedback loop. When State Governments deny funds citing a lack of elected bodies, and then allow unelected actors to spend those same funds without oversight, they reinforce a governance model in which delays become profitable. Elections, instead of being constitutionally mandated milestones, become inconvenient disruptions to informal political control over public finances. This weakens the legitimacy of local self-government and emboldens State-level actors to postpone elections further, thus normalising democratic breakdown at the grassroots. Over time, the failure to hold timely elections and ensure equitable fund flows corrodes public trust in decentralisation itself. The citizen no longer sees the local body as a meaningful interface for rights and redress, but as a captured or absent institution.

V. SOLVING THE PROBLEM: A CONSTITUTIONAL ANSWER

In the preceding parts of this paper, the authors have demonstrated how the repeated postponement of local body elections in Maharashtra reveals a deeper constitutional malaise. The delay is not an isolated administrative event but an orchestrated outcome enabled by judicial ambiguity, executive overreach, fiscal capture, and institutional infirmity. The discussion above compels us to now articulate a coherent set of reforms that go beyond superficial compliance with constitutional text and instead restore the democratic and fiscal integrity of local self-governance.

The authors proceed to make five sets of recommendations that build upon the authors' prior critiques. These interventions are grounded in constitutional doctrine and the normative principle that the promise of decentralised democracy must be as much about timely elections and empowered institutions as it is about formal structures.

A. CODIFYING THE DOCTRINE OF UNPOSTPONABLE ELECTIONS

Our analysis in Part II.C and III.B highlights how Courts have failed to appreciate the constitutional weight of temporal limits placed under Articles 243E and 243U. In cases such as *Suresh Mahajan and Kishansing Tomar*, while the Court reiterated that elections must be held on time, it stopped short of crafting a judicial doctrine that renders local body elections functionally unpostponable, save for limited exceptional circumstances. This

¹⁹² CPR Report, *supra* note 73 (The Fourteenth Finance Commission mandated that grants for the delivery of core services, such as drinking water, lighting and sanitation, are to be devolved to Village Panchayats. Hence, without the presence of an elected Panchayat, the planning and delivering of these services is severely hampered).

¹⁹³ Bandyopadhyay et al., *supra* note 179.

gap has allowed state governments and SECs to invoke procedural excuses—notably around the triple test for OBC reservations or ward delimitation—to repeatedly delay polls.

The authors recommend that constitutional courts evolve and adopt a doctrine of “unpostponable elections”, wherein any delay beyond the mandatory five-year term and six-month outer limit must be considered *prima facie* unconstitutional, triggering heightened judicial scrutiny. Courts must mandate: (i) written reasons for delay by the SEC; (ii) strict judicial timelines for completion of pre-electoral formalities; and (iii) a public hearing process where citizens or civil society groups may contest delays. Such a doctrine will shift the constitutional presumption from justifying delay to justifying compliance, restoring the normative centrality of periodic elections.

Institutional accountability must accompany constitutional norms. As highlighted in Parts III and IV, SECs and State Governments often act with impunity when elections are delayed, facing little to no institutional consequences. To rectify this, the authors recommend the following enforcement and penalty measures in addition to the above-recommended judicial approach:

1. A compulsory audit by the CAG in all cases where elections are delayed beyond the six-month outer limit prescribed under Articles 243E and 243U. This audit would probe the reasons for the delay and the actors to whom the liability could be attributed.
2. Personal liability under the Contempt of Courts Act, 1971, should be imposed against the actors responsible for the delay.

These measures will ensure that electoral delays are treated not as administrative footnotes but as serious constitutional infractions, subject to transparent scrutiny and real consequences.

B. DISBURSAL OF FUNDS DESPITE ELECTORAL VACANCIES: REFRAMING THE FISCAL LOGIC

In Part IV, the authors observed how States have invoked the absence of elected bodies as justification for withholding Finance Commission grants to local governments.. This is a constitutional misreading. Articles 243H and 280(3)(c) recognise Panchayats and Municipalities as fiscal entities *per se*, not entities contingent upon current electoral composition. Withholding funds due to electoral delay amounts to punitive fiscal federalism, punishing citizens for administrative failure.

The authors recommend that, in the absence of elected bodies, funds should be disbursed to the institutional account of the local body, but with one of two safeguards: (i) interim expenditure oversight by an independent body chaired by the District Judge or Lokayukta nominee. This would restrict state functionaries associated with the incumbent government from making financial decisions; and (ii) mandatory pre-audit and post-facto disclosure of all expenditures in a publicly accessible format within a specified time period, ensuring that transparency is the foundation on which financial disbursements are based.

This recommendation ensures that the constitutional identity of the institution is preserved even amidst temporary electoral vacancy, and that fiscal transfers are depoliticised.

C. LIMITING ADMINISTRATOR DISCRETION AND PREVENTING FISCAL CAPTURE

As detailed in Part IV.C, the Maharashtra example reveals that unelected administrators have disproportionately allocated grants to MLAs belonging to the ruling alliance. This undermines both democratic representation and horizontal fiscal equity. It creates an incentive structure wherein delay becomes profitable and elections become inconvenient obstacles to political control.

The authors recommend that: (i) all untied grants (such as those under the GPDP framework) be frozen for new project sanction until an elected body is constituted; (ii) administrators be constitutionally barred from making new capital expenditures or launching new schemes during the interregnum period. This would ensure that the incumbent leaders whose terms have expired are unable to take massive financial decisions; (iii) the Comptroller and Auditor General of India ('CAG') be empowered to audit all expenditures undertaken by unelected administrators in the absence of elected bodies, with *suo motu* tabling of such audit reports before the State Assembly.

This will help prevent the misuse of developmental funds for partisan consolidation and restore electoral accountability over public expenditure.

D. LEGISLATIVE REFORM FOR INDEPENDENCE OF SEC

The authors have already discussed in Part III.A how the structural infirmities in the appointment and functioning of SECs severely compromise their independence. The example of Maharashtra, where the State Cabinet has proposed empowering the Chief Minister to appoint the Commissioner, despite the ruling in *Fouziya Sheikh*, illustrates the urgent need for a national model framework. This framework would supplement the provisions of the Constitution and could be reflected through changes in the potential state-wide legislation governing the appointment of Commissioners.

The authors recommend that:

1. Appointments must be undertaken by an independent Committee comprising the Governor (Chairperson), Leader of the Opposition, and the Chief Justice of the High Court. This committee reflects independence in the appointment of the Commissioner and follows the example set by the *Anoop Baranwal* case.¹⁹⁴ The Governor has been recommended as the Chairperson in light of Article 243K(2);
2. Finances for the SEC to be charged on the Consolidated Fund of the State, with a minimum guaranteed annual budget indexed to a percentage of State revenue receipts. This measure would ensure that local bodies are financially independent, and the delay does not impact finances detrimentally. While it is acknowledged that this process might be cumbersome since it would entail Parliament approval and disbursement through the Appropriation Bill, the authors argue that this approach is best-suited to solve the persistent problems faced by the local bodies; and

¹⁹⁴ Anoop Baranwal, *supra* note 88.

3. Mandatory publication of SEC annual performance reports, with compliance data on elections held, delayed, and the reasons thereof. This would ensure appropriate judicial action if elections are kept pending for a long time.

Such reforms will strengthen the structural and functional integrity of the SEC. It would enable preserving the free and fair election.

The above recommendations, taken together, seek to restore the constitutional commitment to periodic, participatory, and fiscally autonomous local governance. The problem in Maharashtra is not one of capacity, but of constitutional will. A recalibration of institutional incentives, judicial doctrines, and fiscal rules is necessary to ensure that local self-government is not a decorative promise but a lived democratic reality.

VI. CONCLUSION

This paper has examined the ongoing delay in holding elections to local self-government institutions in Maharashtra. In doing so, it has analysed how constitutional guarantees, institutional performance, and financial consequences have converged to create a sustained democratic deficit. The authors have found that the continued delay in holding elections reflects a structural failure that undermines the constitutional commitment to democratic decentralisation.

Three core themes have guided the authors' analysis. *First*, while the constitutional framework clearly mandates the regular conduct of elections, this mandate has been weakened through procedural exceptions and institutional silence. Judicial pronouncements, although recognising the need for periodic elections, have also introduced conditionalities such as the "triple test" for OBC reservations. This has created space for State Governments to justify repeated deferrals, often without facing effective judicial accountability.

Second, the institutional design and functioning of the SEC have contributed to the problem. The SEC has neither asserted its autonomy nor demonstrated the administrative preparedness required to enforce constitutional timelines. In practice, its conduct has been aligned with the preferences of the executive, rather than acting as a constitutional check on delayed elections.

Third, the authors have shown that the continued appointment of administrators in place of elected representatives has led to serious questions about fiscal accountability. In the absence of elected bodies, significant financial decisions continue to be taken by individuals who do not enjoy democratic legitimacy. These arrangements, originally introduced as temporary, have become entrenched and routine.

At the time of writing this paper, elections to a large number of local bodies in Maharashtra have still not been conducted. The State continues to cite pending compliance with the triple test as its primary reason, although significant time has passed since the expiry of elected terms. This situation is not limited to Maharashtra alone. Similar patterns are visible in several other States from time to time, where elections are either postponed on technical grounds. Such continuing delay is in violation of constitutional provisions and judicial directives. It also weakens the principle of representative democracy by enabling prolonged governance without an electoral mandate. This paper has accordingly proposed a set of structural reforms — doctrinal, institutional, fiscal, and legislative — that seek to reverse this democratic erosion. These include establishing clear constitutional limits on election deferral, securing fiscal autonomy for local bodies irrespective of election status, and introducing

accountability measures against those responsible for unjustified delays. Unless such reforms are implemented, the gap between the constitutional promise and the lived reality of local self-governance will continue to widen.

The continued failure to conduct timely elections to local bodies also has a more insidious consequence. It gradually erodes the trust of citizens in the institutions closest to them. When people are consistently governed by appointed administrators instead of elected representatives, the legitimacy of local bodies comes into question. Over time, this fosters a perception that these institutions are irrelevant, unresponsive, and structurally incapable of addressing everyday concerns. In such a situation, the constitutional guarantee of decentralised governance becomes ineffectual in practice. The framework may exist on paper, but it ceases to carry meaning for those it is intended to serve. A system that does not allow people to regularly and meaningfully participate in local decision-making ultimately weakens the foundations of democracy itself.