2026 INSC 1193

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2026
@ SPECIAL LEAVE PETITION (C) NO. 30772 OF 2025

MANGALA BHIMRAO INGLE ...APPELLANT(S)

VERSUS

THE ADDITIONAL COMMISSIONER,
AMRAVATI DIVISION & ORS. …RESPONDENT(S)

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1. Leave granted.

2. The Appellant's election as Sarpanch of Kakoda Gram Panchayat was set aside on the ground that she was disqualified from contesting panchayat elections because she had more than two children and it is in violation of Section 14(1)(j-1) of the Maharashtra Village Panchayats Act, 1959.

3. We are of the strong opinion that laws that penalise having more than two children have lost their relevance. The foundation of such laws, i.e. the fear of overpopulation, has crumbled due to demographic changes in the past few decades. We have explained how since 2003 when *Javed v. State of Haryana*[1] (hereinafter referred to as "*Javed*") upheld such laws, India's Total Fertility Rate (TFR) has fallen from 3.0[2] to 1.9.[3] A TFR of 2.1, known as the replacement rate, would allow one

[1] (2003) 8 SCC 369.

[2] Ministry of Statistics and Programme Implementation, *Women and Men in India 2006* (Central Statistical Organisation 2006) 14, table 7 (source: Sample Registration System, Office of the Registrar General, India).

[3] Office of the Registrar General and Census Commissioner, India, *Sample Registration System Statistical Report 2024* (Ministry of Home Affairs, Government of India 2026) 85, para 3.19 <https://censusindia.gov.in/nada/index.php/catalog/47152>.

generation to completely replace itself. So, even though India's population is not yet declining, the TFR falling below the replacement rate will soon result in a demographic transition towards an older population with a declining share of the working-age population. Therefore, laws aimed at limiting population growth have now lost their significance. If we fail to take note of such demographic changes, India will face serious consequences. Adapting to change is important for achieving justice, as failure to adapt produces injustice and is, in a sense, an abuse of power. Thus, failure to use power to adapt to change is in its own way an abuse of power. This has compelled us to stay the proceedings herein, and refer the matter to a larger Bench for immediate re-visitation of the precedent in *Javed*.

4. Apart from the above, equally concerning is the reasoning employed in *Javed* to justify a manifestly arbitrary act. Allowing such laws to stand excludes an entire class of citizens from political representation on grounds bearing little rational connection to their capacity to hold public office. Further, it compels an unconscionable choice between bearing children and democratic participation, impinging on the right to reproductive autonomy under Article 21.

I. Facts

5. It was found that the appellant gave birth to a third child in 2014 but contested and got elected as Sarpanch of the Gram Panchayat in the 2022 elections. Compelled by the reality of the fact that the appellant did in fact have a third child and did contest the election, the only argument that her advocate could think of is to contend that there is no conclusive proof of the third child as the birth certificate's place of issue is allegedly not valid.

6. More than two decades ago, similar laws disqualifying citizens from participating in Panchayat and Municipal elections were upheld by this Court in *Javed.*[4] As we entertained the Special Leave Petition and issued notice, our enquiry was not about the legality and validity of the judgment of the High Court in its application of the governing laws or the precedents on the subject. We were concerned about the relevance of these laws when the very foundation for their articulation has changed, and therefore the precedents that upheld those laws would not prevent us from examining the present realities.

7. We have examined the circumstances in which the said laws, which may have been valid at the time they were enacted, have now become

[4] Supra Note 1.

unconstitutional, as the very foundation on which they were enacted has changed.

II. Decision of this Court in *Javed* in 2003

8. In *Javed,* this Court after examining the *vires* of the Haryana Panchayati Raj Act, 1994 upheld the disqualification of persons with more than two living children from running or holding panchayat positions. The validity of the provisions was considered in the context of violation of fundamental rights, particularly Article 14, by applying the twin test requiring the existence of intelligible differentia and its connection to the object sought to be achieved and it was concluded that the impugned provisions had not violated the equality clause. As regards the purpose and object of the legislation is concerned, the court relied on the then perception about population boom and its negative impact on the economy.

9. We are compelled to revisit the ratio in *Javed* for the reason that with the passage of time the very foundation of the judgment has drastically changed. The assumptions undertaken by the Court in *Javed* do not hold much ground anymore and have been proven to be false.

10. Interestingly, this Court in *Javed*, referred to the situation that existed in China as of 2000 and the measures that it had undertaken to

control the population. Referring to certain research papers,[5] this Court accepted the view that socio-economic progress is hindered by "population explosion". Referring to the successive 5 year plans that failed to alter the unabated rate of population growth from the level of 33 per thousand as of 1979, the Court observed:

> *"36. Every successive five-year plan has given prominence to a population policy. In the first draft of the First Five-Year Plan (1951-56) the Planning Commission recognized that population policy was essential to planning and that family planning was a step forward for improvement in health, particularly that of mothers and children. The Second Five-Year Plan (1956-61) emphasized the method of sterilization. A Central Family Planning Board was also constituted in 1956 for the purpose. The Fourth Five-Year Plan (1969-74) placed the family planning programme, "as one amongst items of the highest national priority". The Seventh Five-Year Plan (1985-86 to 1990-91) has underlined "the importance of population control for the success of the plan programme...". But, despite all such exhortations, "the fact remains that the rate of population growth has not moved one bit from the level of 33 per thousand reached in 1979. And in many cases, even the reduced targets set since then have not been realised". (Population Policy and the Law, ibid., pp. 44-46.)*
>
> *37. The above facts and excerpts highlight the problem of population explosion as a national and global issue and provide justification for priority in policy-oriented legislations, wherever needed.*"

11. The National Population Policy, 2000 upon which reliance had been placed to uphold the impugned legislative provisions of Haryana law, had certain stated objectives to be achieved. *Javed* refers to it and observes:

> *"7. The immediate objective of the NPP 2000 is to address the unmet needs for contraception, health care*

[5] Arcot Easwaran, 'Population Challenge' *The Hindu* (8 July 2003).

infrastructure, and health personnel, and to provide integrated service delivery for basic reproductive and child health care. The medium-term objective is to bring the TFR to replacement levels by 2010, through vigorous implementation of inter-sectoral operational strategies. The long term objective is to achieve a stable population by 2045, at a level consistent with the requirements of sustainable economic growth, social development, and environmental protection."

III. Two Decades since the ruling in *Javed*

12. Much has changed on the ground since the ruling in *Javed*. Not only have the fears and assumptions which formed the basis for *Javed* been adequately dispelled, but statistics also paint a grim picture. Population statistics about the country predict noticeable changes.

(a) Fall in the Total Fertility Rate (TFR) from 3.0 to 1.9

13. One way to attempt to understand the status of the Indian population would be by perusing the crude birth rate which has halved over the decades, however, that does not paint a complete picture for analysing population growth. For several years now, Total Fertility Rate has been an important additional metric for tracking population change.

14. The standard international definition for Total Fertility Rate used in the United Nations' population estimates and by the World Health Organization, reads:

"Average number of live births a hypothetical cohort of women would have at the end of their reproductive period if

> *they were subject during their whole lives to the fertility rates of a given period and if they were not subject to mortality."*[6]

15. India's two official sources use the same idea in their own words. The Registrar General's Sample Registration System (SRS) explains:

> *"TFR indicates the average number of children expected to be born per woman during her entire span of reproductive period assuming that the Age-Specific Fertility Rates, to which she is exposed to, continue to be the same and that there is no mortality."*[7]

16. The National Family Health Survey (NFHS) defines it as "[t]he average number of children a woman would have by the end of her childbearing years if she bore children at the current age-specific fertility rates".[8]

17. The NFHS, while calculating the TFR, takes into account the Age-Specific Fertility Rate (ASFR). An ASFR is defined as the number of live births in a specific age group of women per thousand female populations of that age group. This allows statistics to paint a better picture of the scenario as the data is adjusted for the number of women in particular age groups in the population. This also allows for adjustments based on the projected composition of the population. This has proved to be an

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[6]United Nations Department of Economic and Social Affairs, Population Division, 'Total Fertility Rate' (CSD Indicators of Sustainable Development: Methodology Sheets) <https://www.un.org/esa/sustdev/natlinfo/indicators/methodology_sheets/demographics/total_fertility_rate.pdf>.

[7] Supra Note 3.

[8] International Institute for Population Sciences (IIPS), National Family Health Survey (NFHS-6), 2023–24: India and State/UT Fact Sheets (Mumbai: IIPS, 2026).

objectively better measure of population growth than simply the Crude Birth Rate.

18. India's own data show the difference between the two measures. Between 1971 and 2024, the crude birth rate fell from 36.9 to 18.3 births per 1,000 population, while the TFR fell from 5.2 to 1.9 children per woman, as per the Sample Registration System (SRS) estimates[9] The birth rate halved; the TFR fell by almost two-thirds. The gap exists because India's population is still relatively young: a large share of the population is in the childbearing ages, which keeps the number of births (and so the crude birth rate) higher than the fertility of each woman alone would produce. The TFR strips out this age-structure effect and measures fertility behaviour directly.

19. It is not just the SRS estimates, the most recent National Family Health Survey conducted by the Ministry of Health and Family Welfare, NFHS-6, similarly estimates the TFR as of 2024 at about 2.0 children per woman.[10] The World Bank has placed India's population growth at about 0.887% in 2025, compared with roughly 1.6% around 2005.[11]

[9] Supra Note 3 para 1.2.
[10] Supra Note 8.
[11] World Bank, 'Population Growth (Annual %)-India' (World Development Indicators, 2026).

(b) India is now below replacement level fertility

20. It is well known that a rate of 2.1 is regarded as the replacement level, that is, the level at which one generation exactly replaces itself without migration.[12] Therefore, a fertility rate of 1.9, as recorded by the SRS, means that India is below replacement level fertility. This extraordinary phenomenon, and the reality of rapidly declining population growth rates, has gone unnoticed because of the simple fact that we have a large population.

21. India's total population has neither begun to decline, nor is such a decline expected immediately.[13] The continued increase in absolute numbers is, in substantial part, the result of demographic momentum: the large number of people born during earlier decades of higher fertility are now in their reproductive and working years, with the result that the number of births may remain considerable even though each woman, on average, is having fewer children.[14] The social and economic conditions accompanying this decline are equally undeniable. Contraceptive use has increased, women's education has improved, and marriage and first childbirth are occurring later.[15] The resultant decline in fertility is reflective

[12] United Nations Department of Economic and Social Affairs, Population Division, *Global Population Growth and Sustainable Development* (UN DESA/POP/2021/TR/NO 2, United Nations 2021) box 6.1.
[13] United Nations Department of Economic and Social Affairs, Population Division, *World Population Prospects 2024: Summary of Results* (UN DESA/POP/2024/TR/NO 9, United Nations 2024).
[14] Ministry of Health and Family Welfare, Department of Health and Family Welfare, *Annual Report 2023–24* (Government of India 2024) ch 1.
[15] Ministry of Health and Family Welfare, Government of India, National Family Health Survey-6 (2023–24).

of a wider and continuing transformation in family formation and reproductive choices. The consequences of all these will become increasingly pronounced as the age profile of the population changes. The share of persons aged 60 years and above has already risen from about 8.3% in 2014 to 9.7% in 2024,[16] and Government projections place that share at nearly 15% by 2036.[17]

22. India's falling fertility rate today necessarily means a smaller proportion of younger persons tomorrow, as compared to today, and, correspondingly, a larger ageing population. This is an issue which has been of significant concern in the past few years. The Economic Survey 2025-26[18] also records this decline. Referring to projections contained in the United Nations' World Population Prospects, the Economic Survey observes that nearly 65 per cent of India's population will be in the 15–59 age group around 2030, stating that:

> *"India continues to benefit from a large working-age population (in the age group 15-59), expected to exceed 98 crore in the next 10 years. According to the UN projections, India's demographic dividend is expected to peak around 2030, when nearly 65 per cent of the population will fall within the 15-59 years group. At the same time, the population is gradually ageing: the total fertility rate has fallen below replacement levels and life expectancy has steadily increased, raising the median age and signalling*

[16] Government of India, Ministry of Health & Family Welfare, Statistics Division, Health and Family Welfare Statistics in India 2023 (2024).

[17] Technical Group on Population Projections, National Commission on Population, Ministry of Health and Family Welfare, *Population Projections for India and States 2011–2036: Report of the Technical Group on Population Projections* (Government of India 2020); Ministry of Social Justice and Empowerment, 'Growth of Elderly Population' (Press Information Bureau, 24 March 2026).

[18] Government of India, Ministry of Finance, *Economic Survey 2025–26* (2026) 468 <https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf?src_trk=em67fc85eabd8609.31916767497909476&utm_source>.

> *the onset of a demographic transition towards an older population. While the expansion of the working-age population presents opportunities, the concurrent ageing trend introduces challenges for labour markets and social support systems. This demographic shift also opens the possibility of harnessing the longevity dividend."*

23. Empirical studies and United Nations demographic projections demonstrate that sustained fertility decline, accompanied by increasing life expectancy, may eventually result in a reduction in the relative size of the working-age population and a corresponding increase in the proportion of elderly persons.[19] The United Nations Population Fund projects that the proportion of elderly persons in India will nearly double by 2050.[20] These developments may adversely affect labour-force participation, increase old-age dependency and place additional pressures on economic growth and public finances.

24. It would be dangerously complacent to ignore the consequences of India's changing population growth rate merely because it already has a large population—the stakes are too high. The need of the hour is to have policies in tune with the present realities. We need to guard against potentially irreversible decline in fertility and respond to the changing demographic realities.

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[19] United Nations Department of Economic and Social Affairs (Supra Note 13); Guillaume Marois, Ekaterina Zhelenkova and Balhasan Ali, 'Labour Force Projections in India Until 2060 and Implications for the Demographic Dividend' (2022) 164 Social Indicators Research 477—497.

[20] United Nations Population Fund and International Institute for Population Sciences, *Caring for Our Elders: Institutional Responses—India Ageing Report 2023* (UNFPA 2023). The report projects that the population aged 60 and above will increase from 10.5% in 2022 to 20.8% in 2050. See also United Nations Department of Economic and Social Affairs (Supra Note 13), discussing the limited duration of the demographic dividend.

25. It seems that years of population control measures, coupled with development efforts by the State, have borne fruit faster than what one could have expected. Very soon, we may face an ageing population in which a disproportionately large share of people are beyond working age. Learnings from across the world warn us of the detrimental effects of this increase in the ageing population. We must be aware of the consequences of such a shift.

(c) Lessons from abroad

26. The rolling effect of a decelerating population growth is very hard to reverse. China itself furnishes a particularly instructive example. When this Court decided *Javed* in 2003, it referred to China as a successful instance of stringent population control. The subsequent course of events, however, tells a markedly different story. China abandoned its one-child policy in 2015 and moved towards providing incentives for having two children,[21] acknowledging the need to improve its population structure, augment labour supply and respond to an ageing population. When that relaxation failed to produce the desired demographic response, the policy was liberalised yet again in 2021 to permit three children, accompanied by the removal of earlier disincentives and the introduction of affirmative measures intended to encourage childbirth,

[21] National Health and Family Planning Commission of the People's Republic of China, 'Universal Two-Child Policy to Promote a Balanced Population Development' (30 October 2015).

including support for childcare, education, maternity protection and family welfare. More recently, those measures have been supplemented by further incentives relating to maternity insurance, childcare, housing, employment and other forms of support; yet the anticipated revival in births has, by and large, not followed.[22] The Chinese experience therefore demonstrates the danger inherent in treating fertility reduction as a policy achievement capable of being calibrated at will.

27. It is high time we recall *Javed*. We cannot ride into the future on a horse that is dead. It is not the strongest of the species that survives, nor the most intelligent, but the most responsive to change.[23]

28. Beyond China, there have been other nations that are now bearing the weight of a declining and ageing population. Japan, for instance, after years of severe population decline continues to face high public debt and high public expenditure on health and long-term care for its ageing population, all of which adds to its fiscal and developmental challenges.[24]

29. It is compelling to realise that the circumstances which informed the decision in *Javed* have undergone a material transformation. At that time, with a TFR of 3.0,[25] the prevailing concern was one of "population

[22] Standing Committee of the National People's Congress, Decision on Amending the Population and Family Planning Law of the People's Republic of China (adopted 20 August 2021), amending Art. 18.
[23] This statement of Leon C Megginson, a professor of management at Louisiana State University, is a paraphrase of the core idea of Charles Darwin's *On the Origin of Species*: Leon C Megginson, 'Lessons from Europe for American Business' (1963) 44 Southwestern Social Science Quarterly 3, 4
[24] International Monetary Fund, Asia and Pacific Department, *Japan: 2025 Article IV Consultation—Press Release; Staff Report; and Statement by the Executive Director for Japan* (IMF Country Report No 25/82, 2025) <https://doi.org/10.5089/9798229006811.002>.
[25] Supra Note 2.

explosion". The situation as it stands today gives cause for concern regarding the ageing population and diminishing share of persons of a working age. *Javed* relied on the National Population Policy, 2000, which contemplated bringing the TFR from 3.0 down to replacement levels by 2010. Today, that target has not only been reached but surpassed, with a TFR of 1.9.

30. The demographic and economic considerations which informed the decision in *Javed* can no longer be presumed to retain the same validity in contemporary circumstances. While population control and family planning were regarded as legitimate means of addressing the economic and social consequences of population growth, subsequent demographic developments have substantially altered the underlying assumptions.

IV. Role of Constitutional Courts in adapting to change

31. The constitutional validity of the applicable provision of the Maharashtra Village Panchayats Act has not been challenged before us and, as such, we may not adjudicate directly upon its validity. This, however, does not preclude us from observing that a law which was considered reasonable and justified at the time of its enactment has, with the passage of time and changes in social circumstances, lost its original rationale and effectiveness. Its continued operation may consequently

warrant reconsideration, particularly where the circumstances and objectives that once justified the law have materially changed.[26]

32. Four aspects for achieving justice are well founded and articulated as, i) distribution of advantages and disadvantages of society, ii) curbing the abuse of power and liberty, iii) deciding disputes and, iv) adapting to change. Adapting to change is important for achieving justice, as failure to adapt produces injustice and is, in a sense, an abuse of power. Thus, failure to use power to adapt to change is in its own way an abuse of power. In fact, the issue is not one of whether to change or not to change, but of the direction and the speed of change, and such a change may come in various ways, and most effectively through legislation. Legal reform through legislative correction improves the legal system, and it would require assessment of the working of the law, its accessibility, utility and abuse as well. The Executive branch has a constitutional duty to ensure that the purpose and object of a statute is accomplished while implementing it. It has the additional duty to closely monitor the working of a statute and must have a continuous and real-time assessment of the impact that the statute is having. As stated above, reviewing and assessing the implementation of a statute is an integral part of Rule of Law. The purpose of such review is to ensure that a law is working out in

[26] Joseph Shine v. Union of India, (2019) 3 SCC 39; John Vallamattom v. Union of India, (2003) 6 SCC 611; Motor General Traders v. State of A.P., (1984) 1 SCC 222; Rattan Arya v. State of T.N., (1986) 3 SCC 385.

practice as it was intended. If not, to understand the reason and address it quickly.

33. The necessity for law to respond to changing social circumstances has long been recognised in jurisprudential thought. Roscoe Pound, in his celebrated article *Law in Books and Law in Action*, distinguished between law as formally expressed and law as it actually operates in society.[27] He stated:

> *"Law has always been and no doubt will always continue to be, "in a process of becoming"…For the lawyer, the moral of the difference between law in books and law in action is not to be obsessed with the notion that the common law is the beginning of wisdom and the eternal jural order. Let us not be afraid of legislation ,and let us welcome new principles, introduced by legislation, which express the spirit of the time. Let us look the facts of human conduct in the face. Let us look to economics and sociology and philosophy, and cease to assume that jurisprudence is self-sufficient. It is the work of lawyers to make the law in action conform to the law in the books, not by futile thunderings against popular lawlessness, nor eloquent exhortations to obedience of the written law, but by making the law in the books such that the law in action can conform to it, and providing a speedy, cheap and efficient legal mode of applying it… Let us not become legal monks. Let us not allow our -legal texts to acquire sanctity and go the way of all sacred writings. For the written word remains, but man changes."*

34. Pound's approach emphasised that legal rules must be examined in light of their practical operation and consequences, rather than solely by reference to their formal existence or original objectives. A law enacted

[27] Roscoe Pound, 'Law in Books and Law in Action' (1910), 44 American Law Review 12–36.

to address a particular social problem may cease to serve its intended purpose when the circumstances underlying it have materially changed. A similar understanding was articulated by Oliver Wendell Holmes Jr. in *The Common Law*,[28] where he famously observed:

> *"The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past."*

35. These observations recognise that law is shaped by the changing needs, experiences and conditions of society rather than by abstract legal reasoning; law cannot remain static in a changing society. Enacted to address a particular social problem, law may cease to serve its intended purpose when the circumstances underlying it have materially changed. A rule which was justified in one period may require reconsideration when the social or economic conditions that sustained it no longer exist. The

[28] Oliver Wendell Holmes Jr, *The Common Law* (Little, Brown and Co 1881) 1.

continued relevance and justification of a law must, therefore, be assessed in light of contemporary social realities rather than solely by reference to the circumstances prevailing at the time of its enactment. Evolution of law to keep up with changing realities is important. Ordinarily, social change at the first instance finds expression through the legislative process and when that does not happen at a time when it should, the responsibility falls to the constitutional courts. This Court in *Yash Developers v. Harihar Krupa Co-operative Housing Society Ltd.*[29] recognised the role of constitutional courts in facilitating statutory performance audits, particularly where experience reveals deficiencies in the operation of legislation.

36. This Court in *Yash Developers* observed:

> *"37. Constitutional courts are fully justified in giving such directions as they are in a unique position of perceiving the working of a statute while exercising judicial review, during which they could identify the fault-lines in the implementation of a statute. This extraordinary capacity to assess the working of a statute is available to the judicial institution because of its unique position where, i) disputes, based on the statutory provisions unfold before it, ii) claims of rights or allegations of dereliction of duties are raised with varied, and sometimes, contradictory interpretations of the same text of the statute, iii) submissions of lawyers opens up a debate and as officers of the Court experienced lawyers would lay bare the fault-lines in the statutory scheme, iv) many a times court silently witnesses the play of statutory power relegating the deserving to the backseat, and the undeserving taking away all the benefits.*
>
> *38. Laws that are made by Parliament or the legislative assemblies create rights, entitlements, duties or liabilities.*

[29] 2024 INSC 559, subsequently followed in Rutu Mihir Panchal v. Union of India, 2025 INSC 593.

Application of such empowerments or disabilities gives rise to competing claims or conflicting interests. For resolution of these disputes, constitutional courts provide public law remedies[30] where claims and contestations are decided by High Courts on a case by case basis. Judicial review is generally episodic, and is intended to resolve the lis on a case-to-case basis. Though cases are decided on their own merit and the lis disposed of, what is left behind is the institutional memory of the Court about the working of the statute and its interpretation preserved as precedents. Over a period of time, a critical mass of adjudicatory determinations on the working of the statute is built. This critical mass, coupled with the experiences gained by the Judges and the Court on the working of the statute, is of immense value for auditing the working of the legislation. It enables the court to assess whether the purpose and object of the Act is being achieved or not.

39. The traditional perception of the constitutional role of writ courts was confined to judicial review of executive and legislative action. In that role, the courts were to decide the vires of the legislative and executive actions based on constitutional parameters. Not only have the tools of judicial review been reinvented (the rise of the proportionality and arbitrariness doctrines) but also the breadth of the judicial power has substantially expanded to areas that were hitherto forbidden (review of policy decisions, constitutional amendments and continuing mandamus being prime examples). However, even this expansive reading of judicial review does not capture the essence of the judicial branch in its entirety."

37. While *Yash Developers* dealt with the role of constitutional courts to examine the working of the statute and also direct implementation of the statutory purpose and object, we are in a different situation in a case like this, where the very foundation of the legislation has crumbled and

[30] Judicial control of administrative action in our country, effective and the most prolific, has evolved from its classical scrutiny of ultra vires exercise of power to a whole set of procedural and substantive principles, such as legality, procedural propriety, reasonableness, legitimate expectation, proportionality, transparency, legal certainty, accountability, level playing field, consultation or participation, etc. These principles are now well entrenched in our judicial review processes and are part of our administrative law. In fact, the bulk of judicial review proceedings initiated before the High Courts examine whether the power exercised is within its bounds.

the purpose and object of the legislative measure has become counterproductive. While this Court cannot direct the legislature to repeal or amend a law, it can certainly examine whether the continued operation of that law remains constitutionally sustainable in light of changed circumstances. Where the social, economic or factual circumstances underlying its justification have materially changed, this Court will examine whether the law continues to subserve the legislative objective and satisfies constitutional restraint.

38. A law which was rationally connected to a legitimate object at the time of its enactment may, with the passage of time and a material alteration in the circumstances which supplied its justification, cease to bear that connection.

39. The doctrine of temporal reasonableness recognises that the constitutional validity of legislation cannot always be determined exclusively by reference to the circumstances prevailing at the time of its enactment. In *Malpe Vishwanath Acharya v. State of Maharashtra*,[31] this Court recognised that "a statute which when enacted was justified may, with the passage of time, become arbitrary and unreasonable." The principle received more definite constitutional expression in *Satyawati Sharma v. Union of India*,[32] wherein this Court held "legislation which may

[31] (1998) 2 SCC 1.
[32] (2008) 5 SCC 287.

be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent." The reasoning in *Satyawati Sharma* was subsequently reaffirmed by a three-Judge Bench in *State of Maharashtra v. Super Max International (P) Ltd.*[33] These decisions establish that the doctrine of temporal reasonableness continues to hold ground. What is constitutionally significant is whether changing circumstances have undermined the factual or legal foundation of the statutory classification.

40. The question, therefore, is not whether the law must remain static or be permitted to change. Change is inherent in the life of the law. The constitutional inquiry is whether the continued operation of a statutory restriction remains capable of justification in the circumstances which presently obtain. Adapting to change is important for achieving justice, as failure to adapt produces injustice and is, in a sense, an abuse of power. Thus, failure to use power to adapt to change is in its own way an abuse of power.

[33] (2009) 9 SCC 772; The Court in Vinod Kumar v. Ashok Kumar Gandhi (2019 INSC 860) held that there is not "any good ground to refer" the judgment in Satyawati Sharma (Supra Note 32) "for reconsideration by a larger Bench".

41. In this regard, the concurring opinion of Justice H.R. Khanna in *Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay*[34] is particularly prescient. It was observed:

> *"22. …As in life so in law things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems, of life, must adapt itself to cope with new situations. Nobody is so gifted with foresight that he can divine all possible human events in advance and prescribe proper rules for each of them. There are, however, certain verities which are of the essence of the rule of law and no law can afford to do away with them. At the same time it has to be recognized that there is a continuing process of the growth of law and one can retard it only at the risk of alienating law from life itself. There should not be much hesitation to abandon an untenable position when the rule to be discarded was in its origin the product of institutions or conditions which have gained a new significance or development with the progress of years. It sometimes happens that the rule of law which grew up in remote generations may in the fullness of experience be found to serve another generation badly. The Court cannot allow itself to be tied down by and become captive of a view which in the light of the subsequent experience has been found to be patently erroneous, manifestly unreasonable or to cause hardship or to, result in plain iniquity or public inconvenience. The Court has to keep the balance between the need of certainty and continuity and the desirability of growth and development of law. It can neither by judicial pronouncements allow law to petrify into fossilised rigidity nor can it allow revolutionary iconoclasm to sweep away established principles. On the one hand the need is to ensure that judicial inventiveness shall not be desiccated or stunted, on the other it is essential to curb the temptation to lay down new and novel principles in substitution of well established principles in the ordinary run of cases and the readiness to canonise the new principles too quickly before their saintliness has been affirmed by the passage of time. The votaries of the pragmatic idea that principles and rules should be accommodated to ends must also take into*

[34] (1974) 2 SCC 402.

> *account the truth that of the ends to be achieved defineness and order are themselves amongst the greatest and the most obvious. The distinction between evolution of law which is permissible by process of judicial pronouncements and radical changes in law which can only be brought about as a result of legislation cannot also be lost sight of…"*

42. Justice Khanna's observations recognise that while the law must remain responsive to changing social circumstances, the means through which legal change is effected must respect the constitutional allocation of institutional responsibilities. Courts may develop legal principles and examine the continuing constitutional validity of legislation, but fundamental changes in legislative policy ordinarily remain within the domain of the legislature. The necessity for legal adaptation must therefore be reconciled with the limits of judicial power.

43. Subsequently, in *Union of India v. Raghubir Singh,*[35] a Constitution Bench of this Court recognised that the doctrine of binding precedent must remain responsive to changing social circumstances and evolving understandings of law. The Court observed:

> *"10. But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for re-adjustment in a changing society, a re-adjustment of legal norms demanded by a changed social context…*
>
> *12. …It has also to be remembered, that many occasions for new options arise by the mere fact that no generation looks out on the world from quite the same vantage-point as its predecessor, nor for that matter with the same*

[35] (1989) 2 SCC 754.

> *perception. A different vantage point or a different quality of perception often reveals the need for choice-making where formerly no alternatives, and no problems at all, were perceived. The extensiveness of the areas for judicial choice at a particular time is a function not only of the accumulation of past decisions, not only of changes in the environment, but also of new insights and perspectives both on old problems and on the new problems thrown up by changes entering the cultural and social heritage."*

44. Thus, where a statutory restriction is challenged upon constitutional grounds, the Court cannot decline scrutiny merely because the provision once answered the needs of an earlier age.

45. The earlier perception that population has a negative impact on development does not hold water anymore. Rather than society and the courts being concerned about the negative consequences of high population, it should instead focus on the need to encourage a healthy growth of population.

46. The constitutional validity of the decisions in *Javed,* or *Rajbala*, or of the relevant provision of the Maharashtra Village Panchayats Act, is not under challenge before us. But that does not stop this Court from declaring that the underlying basis of these judgments no longer holds ground.

47. The distinction between a judicial decision being erroneous when delivered and subsequently losing its relevance because of changed circumstances was also recognised in the dissenting opinion of Justice

S.B. Sinha in *State of Punjab v. Devans Modern Breweries Ltd*.[36] It was observed that "although a decision has neither been reversed nor overruled, it may cease to be 'law' owing to changed conditions and changed law": *cessante ratione cessat ipsa lex*. Referring to Dias' *Jurisprudence*,[37] the Court distinguished between a decision subsequently considered never to have represented the law and one which was accepted as law when decided but whose rationale had ceased to remain applicable because of altered circumstances. It was emphasized:

> *"336. With changes that are bound to occur in an evolving society, the judiciary must also keep abreast of these changes in order that the law is considered to be good law. This is extremely pertinent especially in the current era of globalisation when the entire philosophy of society, on the economic front, is undergoing vast changes."*

48. Thus, the discussion can be summarized as follows: Even though a case has neither been reversed nor overruled it may cease to be "law" owing to changed conditions and changed law. It is not easy to detect when such situations occur. For as long as the traditional theory prevails that judges never make law but only declare it, two situations need to be carefully distinguished: one is where a case is rejected as being no longer law on the ground that it is now thought never to have represented the law; the other is where a case which is acknowledged to have been law

[36] (2004) 11 SCC 26.
[37] See Dias Jurisprudence, 5th Edition, page 146-147.

at the time has ceased to have that character owing to altered circumstances.[38] It is the latter that is relevant to the present *lis*. When the nature of things changes, the rule of law must change.

V. Precedents discussing *Javed*

49. Not keeping the law abreast of changing times, has consequences far beyond the specific precedent or law in question. While the provisions analysed by this Court in *Javed* were repealed by an Amendment Act of 2006, the decision and the reasoning adopted in *Javed* subsequently became an important precedent for sustaining further restrictions on eligibility to contest elections to institutions of local self-government. The reasoning adopted in *Javed* also influenced the judicial approach to the Haryana Panchayati Raj (Amendment) Act, 2015, which introduced additional disqualifications, including minimum educational qualifications, outstanding dues to specified cooperative institutions, non-payment of electricity dues and the absence of a functional toilet at the candidate's residence.

(a) *Javed* followed by *Rajbala v. State of Haryana*

50. Similar provisions were upheld by this Court in *Rajbala v. State of Haryana*,[39] which expressly relied upon *Javed* while examining the constitutional permissibility of prescribing qualifications and

[38] Supra Note 37.
[39] (2016) 2 SCC 445.

disqualifications for Panchayati Raj elections. Thus, the significance of *Javed* extended beyond population control, as its reasoning subsequently provided judicial support for restrictions on political participation based upon educational and socio-economic conditions. The exclusionary consequences of the restrictions upheld in *Rajbala* were severe. On the basis of the educational data placed before it, this Court itself acknowledged that the prescribed qualifications would render approximately 68% of Scheduled Caste women and 41% of Scheduled Caste men ineligible to contest Panchayati Raj elections. The National Commission for Scheduled Castes subsequently recorded concerns that such educational requirements had deprived substantial numbers of Scheduled Caste persons, particularly women, of opportunities to contest local elections.[40]

51. The Constitution does not proceed upon the assumption that wisdom, integrity, administrative ability, commitment to public welfare or population control are the exclusive attributes of those who live in urban areas (as held in *Javed*) or those who are formally educated (as held in *Rajbala*).[41]

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[40] National Commission for Scheduled Castes, *Annual Report 2016–17* (Government of India 2016) 167–70, para 7.10.1. <https://ncsc.nic.in/storage/annual_reports/pEd5Zf93pcQuZnW5H4PPgsmWEVbAPexxcg22W5l2.pdf>; see also Anurag Bhaskar, 'Damage to Democracy: Elitist Judgment of Supreme Court in *Rajbala v State of Haryana*' (2016) 51(40) Economic and Political Weekly 47, 50.

[41] Bhaskar, 'Damage to Democracy' (Supra Note 40) 50.

(b) Discontentment with *Javed* and *Rajbala*: *Sukanya Shantha v. Union of India*

52. The constitutional understanding upon which decisions of this Court in *Javed* and *Rajbala* rest has evolved over the past two decades. In *Sukanya Shantha v. Union of India*,[42] a three-Judge Bench of this Court expressly questioned the reasoning in *Rajbala*, particularly its failure to consider the disproportionate exclusion of Scheduled Castes from contesting Panchayati Raj elections. It further recognised that the exclusionary impact of the legislation upon Scheduled Castes raised concerns of indirect discrimination. Although *Sukanya Shantha* did not directly reconsider *Javed* or *Rajbala*, it demonstrates that the constitutional framework for assessing such restrictions has evolved beyond formal equality to encompass their discriminatory consequences upon historically marginalised communities.

VI. Assessing the assumptions in *Javed*

53. The very rationale of linking population control with the right to participate in elections deserves reconsideration. Even at the time of the judgment, the reasoning employed in *Javed* was difficult to sustain in light of the evolving jurisprudence relating to representative democracy, political participation, adult franchise, education and reproductive

[42] *Sukanya Shantha v. Union of India,* 2024 INSC 753 para 39.

choices, leading to decisions that exclude political participation on the basis of a suspect classification becoming manifestly arbitrary.

(a) Impact of *Javed* on political rights of representation

54. While this Court upheld such restrictions in *Javed*, it is necessary to examine their implications for women and individuals belonging to poor and socio-economically marginalised communities. Political representation, citizenship and substantive equality are well entrenched in our constitutional philosophy. Dr Ambedkar described citizenship as a "bundle of rights", which included personal liberty, personal security, equality before the law, freedom of conscience, freedom of expression, the right of assembly, the right of representation in government and the right to hold office under the State. He attached particular importance to the last two rights, observing: "The right of representation and the right to hold office under the State are the two most important rights that make up citizenship."[43]

55. For Dr Ambedkar, citizenship was not confined to the formal recognition of legal status but extended to the effective enjoyment of civil and political rights. His understanding was informed by the historical exclusion of the marginalised communities from institutions of social and

[43] BR Ambedkar, 'Evidence before the Southborough Committee on Franchise' in Vasant Moon (ed), *Dr Babasaheb Ambedkar: Writings and Speeches*, vol 1 (Education Department, Government of Maharashtra 1979); Anurag Bhaskar, *The Foresighted Ambedkar: Ideas That Shaped Indian Constitutional Discourse* (Penguin 2024) 44.

political power. The right to participate in the selection of representatives would have limited significance if members of marginalised communities were themselves denied effective opportunities to occupy positions of political authority. Political representation was thus an essential means of challenging entrenched social inequalities and securing the interests of historically disadvantaged communities. Our first President, Dr. Rajendra Prasad, while participating in the Constituent Assembly debates, opined on the value of universal adult franchise:

> *"In my opinion, our people possess intelligence and common sense. They also have a culture which the sophisticated people of today many [sic] not appreciate, but which is solid. They are not literate and do not possess the mechanical skill of reading and writing. But, I have no doubt in my mind that they are able to take measure of their own interest and also of the interests of the country at large if things are explained to them."*[44]

56. Disqualifying individuals from contesting elections to Panchayati Raj institutions on the ground that they have more than two children rests upon the assumption that restricting access to elected office is an appropriate instrument of population policy. Such an approach also risks reinforcing the stereotype that persons seeking political representation at the village level bear a particular responsibility for population growth. The causes of higher fertility are far more complex and cannot be attributed

[44] Constituent Assembly Debates, Vol XI, 26 November 1949, para. 11.166.35 (Dr. Rajendra Prasad).

to any particular class of persons merely because they seek to participate in local self-government.

57. The origin of such laws across the country can be traced back to the K. Karunakaran Committee Report, which recommended disqualifying individuals with more than two children from contesting any election, from the "*Panchayat to the Parliament*".[45] While several states implemented this for the Panchayati Raj Institutions, no such law was brought in at the central level.

58. There were some initial attempts at the outset, with the introduction of the Constitution (Seventy Ninth Amendment) Bill, 1992 in the Rajya Sabha. The Bill was considered by the Parliamentary Standing Committee on Human Resource Development, after which it was considered for consultation amongst the political parties, but no consensus was reached. Eventually, a draft Cabinet Note was prepared in 2007 for the withdrawal of the Bill. However, no decision was taken regarding the Bill. [46]

59. The imposition of such restrictive measures only on leaders at the Panchayati Raj level is replete with prejudice and preconceived notions. This Court in *People's Union for Civil Liberties* v. *Union of India*[47] put it

[45] Arun Kumar Gupta, 'Implementation of Two Child Norm in Panchayats and its Implications' [2016] 77(1) The Indian Journal of Political Science 63-68 <https://www.jstor.org/stable/26575667>
[46] Ministry of Health and Family Welfare, 'Implementation Status of Two-Child Norm' (Press Information Bureau, 2 December 2014). <https://www.pib.gov.in/newsite/PrintRelease.aspx?lang=2&reg=48&relid=112336&utm>.
[47] (2003) 4 SCC 399.

rather pithily that “the sense of devotion to duty and the sense of concern to the welfare of the people”, if there be any with regard to population control, are “not the monopoly of well-educated persons”. It does not bode well for a democracy with universal adult franchise to create such top-down restrictions.

(b) Impact of *Javed* on rights of women

60. This Court in *Javed* dismissed the grave implications of such a restriction for the rights of women, stating that both men and women would stand equally disqualified. This does not sit in accordance with the social realities of the country. It has been apparent that women would be disproportionately impacted by such measures.

61. A 2009 study sponsored by the Ministry of Panchayati Raj, Government of India, concerning the implementation of the norm in Rajasthan, Madhya Pradesh and Gujarat noted that the application of a two-child norm in a patriarchal social framework has tended to weaken the position of women rather than empowering them as envisaged in the 73rd Constitutional Amendment. Since decisions concerning women and their reproductive choices are often driven by their husbands, a woman may suffer electoral disqualification on account of a reproductive decision over which she has little or no control. Furthermore, there have been documented instances of forced abortions, desertion of pregnant wives

and denial of paternity, all resorted to in an attempt to evade disqualification.[48]

62. The preference for male children provides an important illustration. Demographic studies have demonstrated that son preference influences reproductive decisions, including the desire to have additional children until the birth of a son.[49] These attitudes are not confined to poor, rural or marginalised communities. Studies have identified son preference and gender-biased sex selection across different socio-economic groups, including educated and economically affluent households.[50] Although their prevalence and manifestations vary, these findings demonstrate that reproductive decisions are influenced by wider gender inequalities rather than the socio-economic circumstances of any single section of society. Consequently, the social determinants of reproductive behaviour require broader policy responses rather than assumptions that associate particular sections of society with responsibility for population growth.

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[48] TM Dak, *Application of Two Child Norm for Contesting or Holding Office in Panchayati Raj Institutions in Fifth Scheduled Areas, States of Rajasthan, Madhya Pradesh and Gujarat: A Study of its Impact on Women* (Research Report for the Ministry of Panchayati Raj, Institute of Social Development 2009). <https://cdnbbsr.s3waas.gov.in/s316026d60ff9b54410b3435b403afd226/uploads/2023/02/2023022225.pdf>.

[49] United Nations Population Fund, *State of World Population 2025: The Real Fertility Crisis—The Pursuit of Reproductive Agency in a Changing World* (UNFPA 2025) 92. <https://www.unfpa.org/sites/default/files/pub-pdf/swp25-layout-en-v250609-web.pdf>.

[50] PM Kulkarni, *Sex Ratio at Birth in India: Recent Trends and Patterns* (United Nations Population Fund 2020) 43. <https://india.unfpa.org/sites/default/files/pub-pdf/sex_ratio_at_birth_in_india_-_july.pdf>.

(c) Impact of *Javed* on reproductive autonomy

63. The right to make reproductive decisions is an integral facet of the right to life and personal liberty under Article 21.[51] In *Suchita Srivastava v. Chandigarh Administration,*[52] this Court recognised that the choice to bear a child or to abstain from doing so falls within the ambit of Article 21. The liberty to bear a child and the choice of family life are intrinsic to individual dignity and privacy.[53] The choice of whether, when, and how many children to have is a decision of the most intimate and personal character, which must ordinarily remain within the autonomous domain of the individual, free from external coercion. This Court has observed in *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*[54] that the right of every woman to make reproductive choices without undue interference from the State is central to human dignity.

64. These constitutional guarantees would be rendered illusory if the State were permitted to achieve indirectly, through the imposition of adverse civil or political consequences, that which it cannot ordinarily compel directly. Reproductive autonomy is not entirely immune from

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[51] *Suchita Srivastava v. Chandigarh Administration,* (2009) 9 SCC 1 para 22; *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi,* (2023) 9 SCC 433 para 122; *K.S. Puttaswamy v. Union of India,* (2017) 10 SCC 1 paras 271, 298, 323, 650; *Supriyo @ Supriya Chakraborty v. Union of India,* 2023 INSC 920 paras 27, 29, 171; *X v. Principal Secretary, Health and Family Welfare Department,* 2022 SCC OnLine SC 905 paras 18 to 21.
[52] *Suchita Srivastava* (2009) 9 SCC 1 para 22.
[53] *K.S. Puttaswamy* (Supra Note 51).
[54] (2023) 9 SCC 433 (Supra Note 51) para 116.

regulation, but any such restriction must be continuously tested for its reasonableness. The pursuit of population control cannot, by itself, justify coercive interference with the married couple's decision to bear children. The imposition of electoral disqualification upon the birth of a third child places a person in the position of choosing between the exercise of their reproductive autonomy and continued participation in democratic governance.

VII. Conclusion

65. We have revisited the legality, propriety, as well as constitutional morality of the statutory provision imposing certain drastic disabilities and disqualifications for bearing more than two children. When this Court upheld it in *Javed*, it was under an assumption that "population explosion" is an "impediment" for "progress". Today, after more than two decades the very formulation of the policy, coupled with reasons for repelling its challenge, have collapsed. Even if the law was legal and valid at the time of its making, it has become invalid as the foundation on which it rested has changed.

66. For the reasons stated above, we deem it appropriate to refer the matter to a larger bench for reconsideration of the ratio laid down in *Javed v. State of Haryana*. Registry is directed to place our judgment and order

before the Hon'ble Chief Justice of India to constitute an appropriate bench.

67. While issuing notice in the present matter, we have stayed the judgment and order passed by the High Court, thereby permitting the appellant to continue in her elected position as Sarpanch of Kakoda Gram Panchayat. The interim order shall continue until disposal of the Civil Appeal.

68. We place on record the valuable assistance rendered by Ms. Rukhmini Bobde, learned Amicus Curiae.

……...J.
[**PAMIDIGHANTAM SRI NARASIMHA**]

……...J.
[**ALOK ARADHE**]

NEW DELHI;
NOVEMBER 04, 2026.