

TO BE INTRODUCED IN LOK SABHA

AS INTRODUCED IN LOK SABHA

Bill No. 71 of 2017

THE CONSTITUTION (ONE HUNDRED AND TWENTY-THIRD
AMENDMENT) BILL, 2017

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further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (One Hundred and Twenty-third Amendment) Act, 2017.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by
5 notification in the Official Gazette, appoint.

2. In article 338 of the Constitution, in clause (10), the words, brackets and figures "to
such other backward classes as the President may, on receipt of the report of a Commission
appointed under clause (1) of article 340, by order specify and also" shall be omitted.

Amendment of
article 338.

Insertion of
new article
338B.

National
Commission
for Backward
Classes.

3. After article 338A of the Constitution, the following article shall be inserted, namely:—

“338B. (1) There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine. 5

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure. 10

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards; 15

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;

(c) to advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State; 20

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and 25

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify. 30

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations. 35 40

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5),

have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

5 (b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

10 (e) issuing commissions for the examination of witnesses and documents; and

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting socially and educationally backward classes.

4. After article 342 of the Constitution, the following article shall be inserted, namely:—

Insertion of new article 342 A.

15 "342A. (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

Socially and educationally backward classes.

20 (2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

25 5. In article 366 of the Constitution, after clause (26B), the following clause shall be inserted, namely:—

Amendment of article 366.

‘(26C) "socially and educationally backward classes" means the backward classes as are so deemed under article 342A for the purposes of this Constitution;’.

STATEMENT OF OBJECTS AND REASONS

The National Commission for the Scheduled Castes and Scheduled Tribes came into being consequent upon passing of the Constitution (Sixty-fifth Amendment) Act, 1990. The said Commission was constituted on 12th March, 1992 replacing the Commission for the Scheduled Castes and Scheduled Tribes set up under the Resolution of 1987. Under article 338 of the Constitution, the National Commission for the Scheduled Castes and Scheduled Tribes was constituted with the objective of monitoring all the safeguards provided for the Scheduled Castes and the Scheduled Tribes under the Constitution or other laws.

2. *Vide* the Constitution (Eighty-ninth Amendment) Act, 2003, a separate National Commission for Scheduled Tribes was created by inserting a new article 338A in the Constitution. Consequently, under article 338 of the Constitution, the reference was restricted to the National Commission for the Scheduled Castes. Under clause (10) of article 338 of the Constitution, the National Commission for Scheduled Castes is presently empowered to look into the grievances and complaints of discrimination of Other Backward Classes also.

3. In the year 1992, the Supreme Court of India in the matter of Indra Sawhney and others Vs. Union of India and others (AIR 1993, SC 477) had directed the Government of India to constitute a permanent body for entertaining, examining and recommending requests for inclusion and complaints of over-inclusion and under-inclusion in the Central List of Other Backward Classes. Pursuant to the said Judgment, the National Commission for Backward Classes Act was enacted in April, 1993 and the National Commission for Backward Classes was constituted on 14th August, 1993 under the said Act. At present the functions of the National Commission for Backward Classes is limited to examining the requests for inclusion of any class of citizens as a backward class in the Lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. Now, in order to safeguard the interests of the socially and educationally backward classes more effectively, it is proposed to create a National Commission for Backward Classes with constitutional status at par with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

4. The National Commission for the Scheduled Castes has recommended in its Report for 2014-15 that the handling of the grievances of the socially and educationally backward classes under clause (10) of article 338 should be given to the National Commission for Backward Classes.

5. In view of the above, it is proposed to amend the Constitution of India, *inter alia*, to provide the following, namely:—

(a) to insert a new article 338 so as to constitute the National Commission for Backward Classes which shall consist of a Chairperson, Vice-Chairperson and three other Members. The said Commission will hear the grievances of socially and educationally backward classes, a function which has been discharged so far by the National Commission for Scheduled Castes under clause (10) of article 338; and

(b) to insert a new article 342A so as to provide that the President may, by public notification, specify the socially and educationally backward classes which shall for the purposes of the Constitution be deemed to be socially and educationally backward classes.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;

THAAWARCHAND GEHLOT.

The 30th March, 2017.

FINANCIAL MEMORANDUM

Sub-clause (2) of clause 3 of the Bill, *inter alia*, provides that the National Commission for Backward Classes shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service of tenure of the offices of the Chairperson, Vice-Chairperson and Members so appointed shall be such as the President may, by rule determine.

2. The requirement of funds for the establishment cost of the aforesaid Members of the Commission as well as for the existing staff of the National Commission for Backward Classes, who shall stand transferred to the establishment of the National Commission for Backward Classes constituted under article 338B will be the same as is budgeted and allocated for the National Commission for Backward Classes. The budget for the National Commission for Backward Classes for, the year 2016-17 is Rs. 4.80 crore. There shall be no additional financial implication on account of creation of the National Commission for Backward Classes, since it will not only be taking on the existing staff strength of the National Commission for Backward Classes without any increment, but also utilise the same office premises that was being used by the National Commission for Backward Classes.

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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338. (1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.				National Commission for Scheduled Castes.
*	*	*	*	*
(10) In this article, references to the Scheduled Castes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.				
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further to amend the Constitution of India.

(Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment)