

127th CA Bill

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Recently, the Constitution (127th Amendment) Bill, 2021 was passed in both Houses of the Parliament. The Bill in Parliament to clarify “some provisions in the 102nd Constitutional amendment Bill” to restore the power of the states to identify backward classes.

In news: Lok Sabha clears Bill restoring States’ rights to specify OBC groups

Placing it in syllabus: Law & Policy

Dimensions

- Provisions in 127th CA Bill
- Mandal Commission and aftermath
- SC judgment in Indra Sawhney case
- Striking down of Maharashtra’s SEBC Act of 2018
- Possible misuse of the CA by States

Content:

Provisions in 127th CA Bill:

- The Constitution (127th) Amendment Bill, 2021 seeks to clarify “some provisions in the 102nd Constitutional amendment Bill” to restore the power of the states and union territories to to prepare their own list of **socially and educationally backward classes (SEBC)**.
- The amendment was necessitated after the **Supreme Court in its Maratha reservation** ruling in May **upheld the 102nd Constitutional Amendment Act** but said **the president, based on the recommendations of the National Commission for Backward Classes (NCBC), would determine which communities** would be included on the state OBC list.

Provisions of the bill:

- The 127th CA bill amends clauses 1 and 2 of Article 342A and also introduces a new clause 3.
- The amendment proposes to add clause (3) to Article 342A, which clarifies that states and union territories will have the power to identify and specify SEBCs for their own purposes and that such a list may differ from the Central list.
- The bill will also amend **Articles 366 (26c) and 338B (9)**.
- It is designed to clarify that the states can maintain the “state list” of OBCs as was the system before the Supreme Court judgment.
- **Articles 366 (26c)** defines socially and educationally backward classes.
- The **“state list” will be completely taken out of the ambit of the President** and **will be notified by the state assembly**.
- The **states** will thus be **able to directly notify SEBCs without having to refer to the National Commission for Backward Classes (NCBC)**.

Empowering the States | The 127th Constitution Amendment Bill benefits 671 castes in the country and restores the States' rights to make their own list of OBCs

1 The Bill seeks to restore the power of the States to identify OBCs that are socially and economically backward after a Supreme Court order in May 2021 empowered only the Centre for this

2 The amendment was thought necessary because the SC, in its order on Maratha reservations, upheld the 102nd Constitutional Amendment Act, which said the President of India, in consultation with Governors, would specify socially and economically backward classes, taking away the powers of the State governments to do so

3 Several parties also demanded a caste-based census to get a real idea of the number of OBCs in the country and to remove the 50% cap on reservations currently in place

You (BJP) tweaked the Constitution by bringing the 102nd Constitutional Amendment Bill, which gave people the opportunity to go to court and finally the SC removed the States' power

When the Amendment was brought, the government's intent was that both at the Central and State level, OBC lists will be maintained

ADHIR BANJARI CHOWDHURY, CONGRESS LEADER

SHUPENDRA YADAV, LADAKH MINISTER

OBC Reservation:

- According to the Constitution of India, **Articles 15(4), 15(5) and 16(4)** confer power on a state to identify and declare the list of socially and educationally backward classes.
- As a matter of practice, separate OBC lists are drawn up by the Centre and each state concerned.

102nd Constitutional Amendment:

- It inserted **Articles 338B** and **Article 342A** (with two clauses) after Article 342.
- **Article 338B** deals with the structure, duties and powers of the **National Commission for Backward Classes (NCBC)**.

Article 342A says that the **President, in consultation with the governor, would specify the socially and educationally backward classes.**

Mandal Commission and aftermath:

- In 1979, the Janata Party government constituted the Second Backward Classes Commission – popularly known as the Mandal Commission after its chairman, the Bihar MP Bindheshwar Mandal – with the mandate to identify India's socially or educationally backward classes.
- At the time, India already had reservations for Dalits and Adivasis.
- The Mandal Commission's report, submitted in 1980, called for giving reservation to the Other Backward Classes, a vast conglomeration of castes that broadly fit the "shudra" category of the caste system.
- The Mandal report identified 52% of the population at that time as "Socially and Economically Backward Classes" (SEBCs) and recommended 27% reservation for SEBCs in addition to the previously existing 22.5% reservation for SC/STs.
- Soon after the report was submitted, however, the Congress returned to power and it was put in cold storage.
- It took a decade and another non-Congress government, this time led by VP Singh, to implement the Mandal Commission's recommendations, sparking a storm of protests and a petition to the Supreme Court which came to be known as the Indra Sawhney case.

SC judgment in Indra Sawhney case:

The case came up before a nine-judge Bench of the Supreme Court and a 6:3 verdict was delivered in 1992.

Key highlights of the verdict

- It said that just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limit – and what is more reasonable than to say that reservation ... shall not exceed 50% of the appointments or posts...?”
- Citing Dr. B.R. Ambedkar’s opinion in the Constituent Assembly that reservation should be “confined to a minority of seats”, the Bench fixed the maximum permissible quota at 50%.
- While committing to the constitutional position that reservations are not an ‘exception’ but a ‘facet’ of equality, the majority in Indra Sawhney also invokes the idea of balancing the equality of opportunity of backward classes ‘against’ the right to equality of everyone else.

The landmark Indra Sawhney ruling set two important precedents.

- First, the Court said that the criteria for a group to qualify for reservation is “social and educational backwardness”.
- Additionally, the court also reiterated the 50% limit to vertical quotas it had set out in earlier judgements in 1963 (M R Balaji v State of Mysore) and in 1964 (Devadasan v Union of India), reasoning that it was needed to ensure “efficiency” in administration.
- The court said this 50% limit will apply unless in “exceptional circumstances”.
- While the social and educational backwardness criteria stemmed from interpretation of various constitutional

provisions, the 50% limit is often criticised as being an arbitrary limit.

- However, the bench did indicate that in exceptional circumstances, reservation could be extended.
- The judgement also established the concept of qualitative exclusion, such as “creamy layer”
- The creamy layer applies only to OBCs. The creamy layer criteria were introduced at Rs 1 lakh in 1993 and revised to Rs 2.5 lakh in 2004, ₹4.5 lakh in 2008 and ₹6 lakh in 2013, but now the ceiling has been raised to ₹8 lakh (in September 2017).

Striking down of Maharashtra’s SEBC Act of 2018:

- The Maharashtra State Reservation for Socially and Educationally Backward Classes (SEBC) Act, 2018, has had a rollercoaster ride till it was held to be unconstitutional by the Supreme Court in its 5 May judgment.
- 2018 Maharashtra law gave 16% reservation to the Maratha community in jobs and admissions by terming them socially and educationally backward class in the state.
- This law got past the scrutiny of the Bombay High Court in June 2019 but the quantum of reservation stood reduced to 12% in admissions and 13% in jobs.
- With the introduction of this Act, the reservation benefits in the state exceeded 50 per cent.

Court’s Verdict:

- The Bench unanimously upheld the constitutional validity of the 102nd Amendment but differed on the question whether it affected the power of states to identify socially and economically backward classes (SEBCs).
- The court said that the 50% ceiling, although an arbitrary determination by the court in 1992, is now constitutionally recognised. Exceeding the ceiling limit

above 50% without exceptional circumstances violates Article 14.

- The bench held the view that final say with regard to inclusion or exclusion (or modification of lists) of SEBCs is firstly with the President, and thereafter, in case of modification or exclusion from the lists initially published, with the Parliament”.
- They also said that while the identification of SEBCs will be done centrally, state governments retain power to determine the extent of reservation and make specific policy in the spirit of “cooperative federalism”.
- The majority opinion of the court essentially says that the National Backward Classes Commission must publish a fresh list of SEBCs, both for states and the central list.

Possible misuse of the CA by States:

- By introducing the bill, the government essentially tried to reverse what it pulled off in 2018. This bill ensures that the states get their decision-making powers back to maintain a ‘state list’ of OBCs, which became null and void after the Supreme Court’s interpretation of the 2018 amendment. If this bill does not become an ‘Act’, then the state list gets abolished and hundreds of OBC communities may lose access to reservations in educational institutions and in appointments.
- However, the Bill has political ramifications as restoring powers of the states to identify backward classes has been a demand by many regional parties and even the ruling party’s OBC leaders.
- The BJP, and the Opposition parties, including the Congress, want to get support among the OBC communities in the poll-bound states, especially in the politically crucial Uttar Pradesh.
- Notably, at least three Indian States- Haryana, Tamil Nadu, and Chhattisgarh- have introduced quotas that

breach the total 50% ceiling. On the other hand, states like Gujarat, Rajasthan, Jharkhand, and Karnataka have asked the Supreme Court to hike the quota ceiling.

- if the reservation goes above 50% limit it will be slippery slope and the political pressure will make it difficult to reduce the same.
- To dilute the 50% benchmark further, would be to effectively destroy the guarantee of equality, especially the right not to be discriminated against on the grounds of caste (under Articles 15 and 16).

Mould your thought: Critically evaluate the provisions of the 127th Constitution Amendment Bill 2021

Approach to the answer:

- Introduction
- Discuss the need for the bill (SC judgement on Maratha Reservation)
- Discuss the provisions of the bill
- Discuss the advantages of this amendment
- Discuss the scope for misuse
- Conclusion