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RESERVATION

By Sneha Singh

1. Introduction

The socially and religiously-imbedded caste system in India created schisms among the Indian population, forming large groups of ethnic and caste minorities. Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Class (OBC) constitute about half of the country's population. Due to beliefs that the historically low castes are impure by birth and association with stigmatized occupations such as butchers and day laboures, the lower castes - SC, ST, and OBC - have been socioeconomically marginalized. Quota systems favouring certain castes and other communities existed before independence in several areas of British India. Demands for various forms of positive discrimination had been made, for example, in 1882 and 1891 Shahu, the Maharaja of the princely state of Kolhapur, introduced reservation in favour of non-Brahmin and backward classes, much of which came into force in 1902. He provided free education to everyone and opened several hostels to make it easier for them to receive it. The depressed classes were assigned a number of seats to be filled by election from constituencies in which only they could vote, although they could also vote in other seats. The proposal was controversial: Mahatma Gandhi fasted in protest against it but many among the depressed classes, including their leader, B. R. Ambedkar, favoured it. After negotiations, Gandhi reached an agreement with Ambedkar to have a single Hindu electorate, with Dalits having seats reserved within it. Electorates for other religions, the basis of caste. However the merit as well as the economic condition should be taken into consideration so that a rich SC ST student with good marks and a poor general category with good marks could avail the same quality of education. In terms of the reservation in the job promotion as per given in article 16 clause 4[A] and 16 clause 4[B] which adds to provide more of reservation in the promotion in government services.

Caste Based Reservation System in India

In India caste is being considered as the major factor to identify any person, in early period certain class of people were considered as untouchables i.e. dalits who were deprived of their duties and banned from all sort of social gatherings, these untouchables are now being divided in a list of schedule known as the schedule caste and the schedule tribes. SC's and ST's get reservation in different sector for their better upliftment and to fulfil their basic needs. The reservation scheme exists to provide opportunities for the members of the SCs and STs to increase their representation in the State Legislatures, the executive appendage of the Union and States, the labour force, schools, colleges, and other 'public' institutions.

Reservation was given to improve the condition of the social and instructive position of unprivileged communities and thus allow them to make a equitable position and status in the Indian society, but giving them more and more of reservation in different sectors the privileged community i.e general candidates are being further deprived of their social needs. In the need of their upliftment there is a downfall of general candidates in every sector, the exact necessity of reservation is not being completed rather than misuse is being done. In 1982, the Constitution specified 15% and 7.5% of vacancies in public sector and government-aided educational institutes as a quota reserved for the SC and ST candidates respectively for

a period of five years, after which the quota system would be reviewed. This period was routinely extended by the succeeding governments. The Supreme Court of India ruled that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) and put a cap on reservations. However, there are state laws that exceed this 50% limit and these are under litigation in the Supreme Court. For example, the caste-based reservation stands at 69% and the same is applicable to about 87% of the population in the State of Tamil Nadu. In 1990, Prime Minister V. P. Singh announced that 27% of government positions would be set aside for OBC's in addition to the 22.5% already set aside for the SCs and STs.

Reservation for Backward Classes:

Article 16(4) is the second exception to the general rule embodied in Articles 16(1) and (2). It empowers the State to make special provision for the reservation of appointments of posts in favour of any backward class of citizens which in the opinion of the State are not adequately represented in the services under the State. Thus, Article 16(4) applics only if two conditions are satisfied:

(1) the class of citizens is backward; and

(2) the said class is not adequately represented in the services of the

State,The second test cannot be the sole criterion.

In **Balaji v. State of Mysore**, the Supreme Court has held-The 'caste' of a person cannot be the sole test for ascertaining whether a particular class is a backward class or not Poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. Though the caste of a person cannot be the sole test for determining the backwardness of a class, yet if an enitre caste is found to be socially and educationally backward, it may be included in the list of Backward Classes. It does not mean that once a caste is considered backward class, it should continue to be backward for all the times. The Government should review the test and if a class reaches the state of progress where reservation is not necessary, it should delete that class from the list of the Backward Classes.

Article 16(4) must be interpreted in the light of Article 335 which says that the claims of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration. The reservations for backward classes should not be unreasonable. It should be considered having regard to the employment opportunities of the general public.

Carry forward Rule

The scope of Article 16(4) was considered by the Supreme Court in **Devadason v. Union of India**. In that case the constitutional validity of the "carry forward rule", framed by the

Government to regulate appointment of persons of backward classes in Government services was involved. This rule provided that i sufficient number of candidates belonging to the Scheduled Castes and Scheduled Tribes were not available for appointment to the reserved quota, the vacancies that remained unfilled would be treated as unreserved and filled by the fresh available candidates, but a corresponding number of posts would be reserved in the next year for Scheduled Castes and Scheduled Tribes in addition to their reserved quota of the next year. The result was to carry forward the unutilised balance, that is, unfilled vacancies in the second and third years at one time. In actual effect 68 per cent of the vacancies were reserved for Scheduled Castes and Scheduled Tribes. The Supreme Court by a majority of 4 to 1 struck down the "carry-forward rule" as unconstitutional on the ground that the power vested in Government under Article 16(4) could not be exercised so to deny reasonable of opportunity in matters of public employments for members of classes other than backward. The Court said that each year of recruitment must be considered by itself and equality the reservation for the backward communities each year should not be excessive so as to create a monopoly or to interfere unduly with the legitimate claims of other communities. Accordingly, the Court held that the reservation ought to be less than 50 per cent, but how much less than half would depend upon prevailing circumstances in each case.

Indra Sawhney v. Union of India, the Supreme Court overruled Devadason v. Union of India, on this point-and held the 'carry forward rule' valid so long as it did not in a particular year exceed 50% of vacancies. The 50% limit can only be exceeded in an extraordinary situation prevailing in a State, i.e., (far flung States Nagaland etc.).

"Carry forward' not to apply in absence of any rule or regulation-A medical seat has life only in the year it falls and that too till the cut-off date fixed by the Court. Carry-forward principle is unknown to the professional courses like medical, engineering, dental etc. In the absence of any rule or regulation conferring power on the Board to carry forward a vacant seat to a succeeding year indulgence in it will be at the expense of other meritorious candidates waiting for admission in the succeeding years.

Indra Sawhney v. Union of India, popularly known as Mandal case.

Facts of the case were as follows:

On January 1, 1979 the Government appointed the second Backward Classes Commission under Article 340 of the constitution under the Chairmanship of Sri B.P Mandal (MP) to investigate the socially and educationally backward classes within the territory of India and recommend steps to be taken for their advancement including desirability for making provisions for reservation of seats for them in Government jobs. The Commission submitted its report in December, 1980. It had identified as many as 3743 castes as socially and educationally backward classes and recommended for reservation of 27% Government’s jobs for them. In the meantime, the Janta Government collapsed due to internal dissensions and

the Congress Party came to power at the Centre. The Congress Government did not implement the Mandal Commission report till 1989. In 1989, the Congress Government was defeated in the Parliamentary elections and the Janta Dal again came to power and decided to implement the Commission's report as it had promised to the electorate. Accordingly, the Government of India, issued the Office Memoranda (called O.M.) on August 13, 1990 reserving 27 per cent seats for backward classes in Government services on the basis of the recommendations of the Mandal Commission. The acceptance of the report of the Mandal Commission threw the Nation into turmoil and a violent anti-reservation movement rocked the nation for nearly three months resulting in huge loss of persons and property. A writ petition on behalf of the Supreme Court Bar Association was filed challenging the validity of the O.M. and for staying its operation. The Five Judge Bench of the Court stayed the operation of the OM till the final disposal of the case on October 1, 1990. Unfortunately, the Janta Government again collapsed due to defections and in 1991 Parliamentary elections the Congress party again came to power at the Centre.

The Government issued another Office Memoranda on September 25, 1991 but made two changes in the OM of Janta Dal Government issued on August 13, 1990; (i) by introducing the economic criterion in granting reservation by giving preference to the poorer sections of SEBCs in the 27% quota, and (ii) reserved another 10% of vacancies for other Socially and Educationally Backward Classes (SEBCs) economically backward sections of higher castes. The economic criterion was to be specified separately. The Five Judge Bench referred the matter to a special Constitution Bench of 9 Judges in view of the importance of the matter to finally settle the legal position relating to reservations as in several earlier judgments the Supreme Court did not speak in the same voice on this issue. Despite several adjournments the Union Government failed to submit the economic criteria us mentioned in Official Memoranda of September 25. 1991.

The 9 Judge Constitution Bench of the Supreme Court by 6:3 majority (Justice B.P. Jeevan Reddy. CJ. M.H. Kania, M.N. Venkatachaliah, A.M. Ahmadi with S.R. Pandian and S.B. Sawant concurring by separate judgments held-The decision of the Union Government to reserve 27% Government jobs for backward classes constitutionally valid provided socially advanced persons-Creamy layer among them are eliminated. vald constitutionally and not to valid. The reservation of seats shall only confine to initial appointments and to promotions and the total reservation shall not exceed 50 percer The Court struck down the Congress Government's OM reserving 10% Government jobs for economically backward classes among higher classes. The majority also held that the reservation should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and people. In such situation, some relaxation of this rule may be necessary.

The dissenting judgment, given by Justice T.K. Thommen, Kuldip Singh and R.M. Sahai struck down the two OMs issued by the Union Government as unconstitutional. It also held the Mandal Report unconstitutional and recommended for the appointment of another Commission for identifying the SEBC's of citizens.

The Court examined the scope and extent of Article 16(4) in detail and clarified various aspects on which there was differences of opinion in various earlier judgments. The majority opinion of The Supreme Court may be summarised as follows:-

1. Backward class citizen in Article 16(4) can be identified on the basis of caste and not only on economic basis but caste alone cannot be basis for consideration.
2. Backward Classes in Article 16(4) are not similar to as socially and educationally backward in Article 15(4)
3. Creamy layer must be excluded from backward classes.
4. Article 16(4) permits classification of backward classes into backward and more backward classes.
5. A backward class of citizens cannot be identified only and exclusively with reference to economic criteria.
6. Reservation shall not be exceed 50%
7. Permanent Statutory body to examine complaints of over- inclusion/ under-inclusion.

In **K.C Vasanth Kumar v. State of Karnataka (AIR 1985)** the state of Karnataka had requested the Supreme Court to give clear guidelines to be followed in the of matter of reservation for SC's and ST's. Although the Judges of the Supreme Court expressed five separate opinions , a clear guidelines is discernible from their opinion. They are as follows:-

1. The reservation in favour of the SCs and STs must continue as at present, that is, without the application of a means test, for a further period of 15 years. Another 15 years will make it 50 from the commencement of the Constitution, a period reasonably long for these classes to overcome the baneful effects of social oppression, isolation and humiliation;
2. The means test, that is, the test of economic backwardness ought to be applicable even to the SCs and STs after 15 years (after 2000 AD);
3. So far other backward classes are concerned two tests should be applied:-
   (a) That they should be comparable to the SCs and STs in the matter of their backwardness;
   (b) That they should satisfy the means test such as the State Government may lay down, in the context of prevailing economic conditions;
4. The policy of reservations in employment, education and legislative institutions should be reviewed every five years or so. This will afford an opportunity to the state to rectify distortions arising out of particular facts of the reservation policy.

Creamy layer

It is a concept that sets a threshold within which OBC reservation benefits are applicable. While there is a 27% quota for OBCs in government jobs and higher educational institutions, those falling within the "creamy layer" cannot get the benefits of this quota.

Based on the recommendation of the Second Backward Classes Commission (Mandal Commission), the government on August 13, 1990 had notified 27% reservation for Socially and Educationally Backward Classes (SEBCs) in vacancies in civil posts and services that are to be filled on direct recruitment. After this was challenged, the Supreme Court on November 16, 1992 (Indra Sawhney case) upheld 27% reservation for OBCs, subject to exclusion of the creamy layer.

The Constitution 77th Amendment Act, 1995

This amendment has added a new Clause (4-A) to Article 16 of the Constitution which provides that "Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services of the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State"

Thus, the reservation in promotion in government jobs will continue in favour of SC's & ST's even after the verdict of Indra Sawhney case if the government wants to do so.

In M. Nagaraj v. Union of India

A five Judge Bench comprising (CJI, YK Sabharwal, K.G. Balkrishnan, S.11. Kapadia, C.K. Thakker and C.K. Balasubramanyam

11.) has unanimously held-The provisions of Articles 16 (4A) and 16 (48) flow from

Article 16 (4) which do not alter the basic structure of Article 16 (4) and are valid. Clauses (4A) and (4B) inserted in Article 16 do not alter Article 16 (4). They do not obliterate constitutional requirements namely, 50% ceiling, creamy layers, Post bised roster, and efficiency Administration under Article 335, subject to above limitations Constitution 77th Amendment, 81st Amendment and 82nd Amendment are valid. The above constitutional amendments providing reservation are enabling provisions and do n alter the structure of Article 16 (4). They retain the controlling factors namely backwardness and inadequacy of

representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These amendments are confined only to SCs and STs. They do not obliterate constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs and SCs and STs, the concept of post based roster with inbuilt concept of replacement (as held in R.K. Sabharwal case). The impugned amendments are not beyond amending power of Parliament. In the matter of application of the principle of basic structure, twin tests, have to be satisfied, namely, the "width test and the test of identity' Neither the 'width test' nor the identity test has been violated. Hence there is no violation of basic structure of the Constitution by any of the impugned legislation. The constitutional limitation has been relaxed but not obliterated by the 82nd Amendment Act

The concept of 'catch up rule' and 'consequential seniority are not constitutional requirements and are not implicit in clauses (1) and (4) of Article 16 and are not constitutional limitations. Obliteration of these rule do not change the equality code indicated by Articles 14, 15 and 16 of the Constitution. Clause (1) of Article 16 cannot prevent the State from taking cognizance of the compelling interests of Backward Classes in the society. Clause (4) of Article 16 refers to affirmative action by way of reservation under which the Government is free to provide reservation if it is satisfied on the basis of quantifiable data that Backward Classes is inadequately represented in the service. Therefore, in every case where the States decide to provide reservation there must be two circumstances, namely, "backwardness" and "inadequacy of representation. These limitations have not been removed by the impugned amendments. If the States fail to apply these tests, reservation would be invalid. These amendments do not alter the structure of Articles 14, 15 and 16 (equality code). The parameters mentioned in Article 16 (4) are retained. These amendments do not change the identity of the Constitution.

Thus, the Court held that subject to the above limitations the State can make. reservation but it has to show in each case the existence of compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before. making provision for reservation. Clauses (4A) and (48) of Article 16 are enabling provisions. The State is not bound to make reservation. However, if they wish to exercise their discretion for making such provision they have to collect quantifiable data showing the two grounds backwardness and inadequacy of representation of that class in Government services. The Court however made it clear that even if the State has compelling reasons, it has have to see that the reservation does not lead to excess of 50% ceiling limit or obliterate creamy layer or extend the reservation indefinitely.

A fresh exercise in the light of the judgment of Constitution Bench in M. Nagraj case is a categorical imperative in which Articles 16 (4-A) and 16 (4-B) were held to be

constitutionally valid as enabling provisions for the reservation in promotion with consequential seniority and the State can make reservations for the same on certain basis or foundation. The condition precedent has not been satisfied. No exercise has been undertaken. The argument that it is not necessary as the reservation is already in vogue is unacceptable for when the provisions of the Constitution are treated valid with certain conditions or riders, it becomes incumbent on the part of the State to appreciate and apply the test so that its amendments can be tested and withstand the scrutiny of parameters laid down therein.

The Court on the basis of its previous decisions carved out the following principles.

(i) Vesting of the power by an enabling provision may be constitutionally valid and yet 'exercise of power' by the State in a given case may be arbitrary. particularly, if the State failsto identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.

(ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equalityunder Article 14.

(iii) Each post gets marked for the particular category of candidates to be appointed against itand any subsequent vacancy has to be filled by that category candidate.

(iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling limit of 50% is not violated. Further roster has to be post-specific and not vacancy based.

(v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of Article 16 is an enabling provision. It gives freedom to the state to provide for reservation in matters of promotion. Clause (4A) of Article 16 applies only to SCs and ST's. The said clause is carved out of Article 16(4A). Therefore, Clause (4A) will be governed by the two compelling reason backwardness and "inadequacy of representation, as mentioned in Article 1664). If the said two reasons do not exist, then the enabling provision cannot be enforced

(v) If the ceiling-limit on the carry-over of unfilled vacancies is removed, the other alternative time-factor comes in and in that event, the time-scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact situation,

(vi) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation. (viii) The constitutional limitation under Article 335 is relaxed and not obliterated As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case,

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercisedepends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment.

(x) Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment.

Maratha Reservations Judgment

A five-judge Constitution Bench of the Supreme Court unanimously declared a Maharashtra law which provides reservation benefits to the Maratha community, taking the quota limit in the State in excess of 50%, as unconstitutional.

The Bench led by Justice Ashok Bhushan found there was no “exceptional circumstances” or “extraordinary situation” in Maharashtra which required the Maharashtra government to break the 50% ceiling limit to bestow quota benefits on the Maratha community.

The Supreme Court struck down the findings of the Justice N.G. Gaikwad Commission which led to the enactment of Maratha quota law and set aside the Bombay High Court judgment which validated the Maharashtra State Reservation for Socially and Educationally Backward Classes (SEBC) Act of 2018.

The High Court had, in June 2019, reduced the quantum of reservation for Marathas from the 16% recommended by the Gaikwad Commission to 12% in education and 13% in

employment. The Supreme Court concluded that even the reduced percentages of reservation granted by the High Court were ultra vires.

In fact the Supreme Court held that a separate reservation for the Maratha community violates Articles 14 (right to equality) and 21 (due process of law).

Most importantly, the Supreme Court declined to re-visit the its 1992 Indira Sawhney judgment, which fixed the reservation limit at 50%.

"We don't find any substance to revisit the Indira Sawhney judgment or referring it to a larger bench. The judgment has been upheld by at least four Constitution Benches," Justice Ashok Bhushan read from his lead opinion on the question of validity of the Maratha quota law.

In 1992, a nine-judge Bench of the court had drawn the "Lakshman rekha" for reservation in jobs and education at 50%, except in "extraordinary circumstances". However, over the years, several States like Maharashtra and Tamil Nadu have crossed the rubicon and passed laws which allows reservation shooting over 60%. The five-judge Bench had decided not to confine the question of reservation spilling over 50% limit to just Maharashtra. The Bench had expanded the ambit of the case by making other States party and inviting them to make their stand clear on the question of whether reservation should continue to remain within the 50% boundary or not.

The Indira Sawhney judgment had categorically said "50% shall be the rule, only in certain exceptional and extraordinary situations for bringing far-flung and remote areas population into mainstream said 50% rule can be relaxed".

Justice Bhushan said that appointments made under the Maratha quota following the Bombay HC judgment endorsing the State law would hold, but they would get no further benefits. Students already admitted under the Maratha quota law would continue. Students admitted to postgraduate courses would not be affected since they were not given reservation.

In the second part of the judgment on the validity of the 102nd Constitution Amendment, Justice S. Ravindra Bhat held a “different view” from the one held by Justices Bhushan and S. Abdul Nazeer.

The Bench had looked into the question whether the Constitution (One Hundred Second Amendment) Act of 2018, which introduced the National Commission for Backward Classes,

interfered with the authority of State Legislatures to provide benefit to the social and educationally backward communities in their own jurisdiction.

The Constitution Amendment Act had introduced Articles 338B and 342A in the Constitution. Article 338B deals with the newly established National Commission for Backward Classes. Article 342A empowers the President to specify the socially and educationally backward communities in a State. It says that it is for the Parliament to include a community in the Central List for socially and backward classes for grant of reservation benefits. The court had delved into whether Article 342A stripped State Legislatures of their discretionary power to include their backward communities in the State Lists.

Justice Bhat agreed that only the President could make changes to the Central List of socially and backward classes based on data given from various sources, including the National Commission for Backward Classes. The States could only make "suggestions". The "final exercise" of including castes and communities was done by the President alone.

Justices Bhushan and Nazeer however concluded that the Parliament did not intend to take away from the States its power to identify their backward classes. But they nevertheless upheld the validity of the Amendment Act.

102nd Constitutional Amendment

The 102nd Constitution amendment Act of 2018 inserted Articles 338B, which deals with the structure, duties and powers of the NCBC, and 342A which deals with power of the President to notify a particular caste as SEBC and power of Parliament to change the list.

103rd Constitutional Amendment

The Constitutional 103rd Amendment Act got assent from the President of India on 13th January 2018 and it was passed in the Lok Sabha by 323 members who were in favour of it and 3 members who were against it. It was passed in Rajya Sabha with 165 members in favour and 7 against.

This provides for reservation in the Central Government jobs as well as the government education institutions.

This amendment applies to citizens who belong to the economically weaker section from the upper castes.

This was passed in addition to the already existing reservations.

The main objective was to include people from economically weaker sections of the society to attend the higher education institutions and jobs in public employment which remain unfulfilled due to their financial incapacity.

It was drafted with a will to make Article 46 compulsory that urges the Government of India to provide protection to all the educational and economic interests of the weaker section of society. Since socially disadvantaged sections have enjoyed the privilege, there was relief provided to economically disadvantaged sections as well.

Articles amended

Article 15(6) is added to protect economically weaker sections of the society and provide them admission to educational institutions including private institutions except minority educational institutions. This amendment basically aims to provide reservation to those who do not fall in 15(5) and 15(4).

Another article 16(6) was added to provide an economically weaker section, reservation in government posts.

The term economic weakness will be decided based on family income.

Criteria for reservation

The annual income of the person should be less than 8 lakh.

The person should have no less than 5 acres of farmland.

People who have a house but less than 1000 square feet in a town.

SEBCs Bill

In the statement of objects and reasons for passing the bill, the government has mentioned that the 102nd Constitution Amendment Act has inserted three new Articles — 342A, 366(26C) and 338B — in the Constitution.

While Article 338B has constituted the National Commission for Backward Classes, Article 342A has dealt with the central list of the socially and educationally backward classes (OBCs) and Article 366 (26C) has defined the socially and educationally backward classes.

"The legislative intent at the time of passing of the Constitution (One Hundred and Second Amendment) Act, 2018 was that it deals with the central list of the socially and educationally backward classes (SEBCs). It recognises the fact that even prior to the declaration of the Central List of SEBCs in 1993, many States/Union territories are having their own State List/Union territory List of OBCs," the statement in the bill notes.

However, the 2018 Act had raised questions on whether the amendments "mandated for a single central list of SEBCs specifying the SEBCs for each state, thereby taking away the powers of the state to prepare and maintain a separate state List of SEBCs".

The Supreme Court on 5 May also had a similar view. It had ruled that after the amendment, states do not have the power to identify SEBCs. The Centre had filed a review petition challenging the apex court ruling, which was dismissed by the latter.

That's why the Centre came out with the new bill to amend Article 342A.

"In order to adequately clarify that the state government and union territories are empowered to prepare and maintain their own state list/ union territory list of SEBCs and with a view to maintain the federal structure of this country, there is a need to amend article 342A and make consequential amendments in articles 338B and 366 of the Constitution," said the statement of objects and reasons of the bill.

What powers will the states get?

Following the amendment in Articles 366 (26C) and 338B (9), states will be able to directly notify OBC and SEBCs without having to refer to the NCBC, and the OBC lists prepared by states will be taken out of the domain of the President and notified by the Assembly. "The Amendment is found necessary to restore the powers of the state governments to maintain state list of OBCs which was taken away by a Supreme Court interpretation," The Indian Express quoted a ministry official as saying.

"Nearly 671 OBC communities would have lost access to reservation in educational institutions and in appointments if the state list was abolished. Moreover, nearly one-fifth of the total OBC communities would have been adversely impacted by this," the official added.

Highlights of Bill

Bill was introduced by Union minister of Social Justice and Empowerment, Virendra Kumar.

It was introduced in the Parliament to clarify some provisions of the 102nd Constitutional Amendment Bill, restoring the power of states to identify backward classes.

Constitutional provisions

Articles 15 (4), 15 (5), and 16 (4) of the Indian constitution confer power on the State Government to declare and identify a list of socially and educationally backward classes. Central and state governments draw separate OBC lists as a practice.

Background of the 127th Bill

The need for latest amendment aroused after the Supreme Court in its Maratha reservation ruling of May 2021 upheld the 102nd Constitutional Amendment Act. SC also stated that, the President will determine which communities will be included on state OBC list, on the recommendations of the National Commission for Backward Classes (NCBC). A five-judge Constitution bench, on May 5, had unanimously set aside a Maharashtra law granting quota to Marathas. The bench had refused to refer the 1992 Mandal verdict — which put a 50% limit on quotas — to a bigger bench.

About 127th Constitution Amendment Bill

The 127th Constitutional Amendment Bill will amend clauses 1 and 2 of Article 342A.

It will introduce a new clause 3.

It will also amend Articles 366 (26c) and 338B.

The bill has been designed to clarify that, State Governments can maintain state list of OBCs, restoring the system prior to SC judgment.

Under the amendment, latest ‘State List’ will be taken out of the purview of the President completely and it will be notified by State Assembly

What are Article 338B, 342A and Article 366?

Article 338B covers the structure, duties and powers of the National Commission for Backward Classes.

Article 342 A deals with the powers of the president to notify a particular caste as an SEBC. It also deals with the power of Parliament to change the list.

Article 366 (26C) defines SEBCs.

These articles were inserted into the statutes by the 102nd Constitution Amendment Act, 2018