

“National Commission for Socially and Educationally Backward Classes: A Necessity???”

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Abstract

The demand in form of agitations and violence for reservation among various classes of people have always haunted the constitutional principles of substantive equality. . The interference by the Supreme Court has in some ways able to give a quick remedy but the gain in long run seems to be lacking. The burden for accommodating all such demands of various communities have made the Parliament to form a special class known as Other Backward Classes (OBC). In order to provide them reservation and to ensure their demands are addressed a statutory body known as National Commission for Backward Classes established in the year 1993. But the present regime wants to provide it constitutional status and has introduced the 123rd Amendment Bill I.e Article 338(b) in the Constitution and renaming it as “National Commission for Socially and Educationally Backward Classes.” The paper shall be focusing on the viability of the proposed body in our Indian Constitutional set-up along with certain discrepancies.

KEYWORDS- Article 340 of the Indian Constitution, Creamy Layer, Indira Sawhney vs. Union of India, Mandal Commission Report, Socially and Educationally Backward Class.

Introduction

“There are no necessary evils in government. Its evil exist only in its abuses.”

-Andrew Jackson

The Constitution (123rd Amendment) Bill, 2017 was introduced in Lok Sabha by the Minister of Social Justice and Empowerment, Mr. Thaawarchand Gehlot on April 5, 2017. It seeks to grant the National Commission on Backward Classes (NCBC) constitutional status, at par with the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes. The NCBC is a body set up under the National Commission for Backward Classes Act, 1993. It has the power to examine complaints regarding inclusion or exclusion of groups within the list of backward classes, and advise the central government in this regard. This Bill seeks to establish the NCBC under the Constitution, and provide it the authority to examine complaints and welfare measures regarding socially and educationally backward classes.

In the case of *Indira Sawhney vs. Union of India*¹, the Hon'ble Supreme Court directed the Government of India and respective state governments to constitute a permanent body in the nature of a Commission or Tribunals for entertaining, examining and recommending upon requests for inclusion and complaints of over inclusion and under inclusion in the list of the Other Backward Classes. The Constitution Amendment Bill states that the President may specify the socially and educationally backward classes in the various states and union territories. He may do this in consultation with the Governor of the concerned state. However, a law of Parliament will be required if the list of backward classes is to be amended. By making it a constitutional amendment means that it cannot be amended by a simple majority in Parliament. Secondly and more significantly, the earlier provision says 'The President may appoint' whereas it is presumed that there is no choice here and it will be a permanent commission in place, similar to the SC and ST. Moreover, in the Indira Sawhney judgment, the Supreme Court in 1992 found that it was not invalid to identify a group by any criteria like occupation, social, educational or economic situations. However, it noted that social and educationally backward class under Article 340² had to be construed in a limited sense and did not have the wide sweep as under the fundamental right guaranteed to backward classes in Article 16(4). This provision empowers the government to make reservations in appointments in favour of "any backward class of citizens."

Powers and Functions

Under the Constitution Amendment Bill, the NCBC will comprise of five members appointed by the President. Their tenure and conditions of service will also be decided by the President through rules. Furthermore, their remunerations shall be charged from the consolidated fund of India. The composition as well as powers are very similar to that of SC/ST Commission. The duties of the NCBC shall include (i) investigating and monitoring how safeguards provided to the backward classes under the Constitution and other laws are being implemented, (ii) inquiring into specific complaints regarding violation of rights and advising and making recommendations

¹ AIR 1993 SC 477

² Appointment of a Commission to investigate the conditions of backward classes

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament

on socio-economic development of such classes. The central and state governments will be required to consult with the NCBC on all major policy matters affecting the socially and educationally backward classes. (iii) The NCBC will be required to present annual reports to the President on working of the safeguards for backward classes. These reports will be tabled in Parliament, and in the state legislative assemblies of the concerned states.³ Moreover, the NCBC will have the powers of a civil court while investigating or inquiring into any complaints. These powers include: (a) summoning people and examining them on oath, (b) requiring production of any document or public record, and (c) receiving evidence.

Assessment of an Other Backward Class (OBC)

It is a collective term used by Government of India to classify caste which are socially or educationally or economically disadvantaged. Article 16 (4) states “Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.” It is a constitutional mandate to identify and empower these backward class of citizens. As per NSSO data, 41% of the population belong to OBC Category.⁴ The Mandal Commission Report states 11 indices to consider social, educational and economic backwardness and primarily includes **Social factor** like castes/classes considered as socially backward by others, mainly depend on manual labour for their livelihood and where the percentage of married women below 17 is 25% above the state average in rural areas and 10% in urban areas; and that of married men is 10% and 5% above the state average in rural and urban areas respectively. **Educational factor** like Castes/classes where the number of children in the age group of 5 to 15 years who never attended school is at least 25% above the state average, where the rate of student drop-out in the age group of 5-15 years is at least 25% above the state average and amongst whom the proportion of matriculates is at least 25% below the state average. Most important, the **Economic Factor** like Castes/classes where the average value of family assets is at least 25% below the state average, where the number of families living in kachcha houses is at least 25 % above the state average, where the source of drinking water is beyond half a kilometer for more than 50% of the households and where the number of the house-holds having taken a consumption loan is at least 25% above the state average.⁵

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<http://www.prsindia.org/billtrack/the-constitution-one-hundred-and-twenty-third-amendment-bill-2017-4725/>

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<https://timesofindia.indiatimes.com/india/OBCs-form-41-of-population-Survey/articleshow/2328117.cms>

⁵ The Mandal Commission Report, <https://www.pucl.org/from-archives/Dalit-tribal/mandal-2.htm>

Criticism

The proposed Commission has large number of discrepancies which seems to cater the political vendetta of ruling party. Firstly, the Act does not mention the exclusion of Creamy Layer. The class of Creamy Layer includes those person of OBC section whose parents are in the Class A or B of Government services and further more, the income slab is Rs. 8 lakh per annum.⁶ There are many chances of inclusion of creamy layer within the benefits of the proposed amendment. The creamy layer being so politically dominant rarely gets any cutbacks from the government. After all, why would any government want to take arms against a caste that can influence their votes Secondly, this is a politically motivated action the OBC category, as a whole, makes up around 50% of India's population today, thus being the largest vote bank in the country. It is, therefore, no surprise that the Bill be introduced months before the 2019 Lok Sabha elections. In order to include castes in the OBC list, they have to fulfill certain socio-economic and educational criteria laid down by the government. And based on results of decadal caste census, certain castes that meet the criteria are placed in the list. The only problem is that the government conducted its first caste census in 80 years in 2011, the results of which haven't been released yet. These results would help in justifying the OBC policy and in escalation, the Bill. The OBC provisions we follow today are a result of the Mandal report submitted back then. And even though the report was passed in the Parliament by 1983, it took a whole 10 years to implement its provisions. So chances of sluggish behaviour is very apt in its working.⁷ Thirdly, It demands an increase in seats in colleges. As more and more castes are added to the OBC list, the gap between eligible candidates and benefits available is stretching out. More OBC students are now applying to colleges and government posts but the number of seats available remains the same. This is why, through the current Bill, the government has decided to add more seats in colleges. In fact, the seven major IITs alone have been pegged to double their capacity – from the current 3,873 seats, by adding an estimated 2,000 more. This is equivalent to adding four new IITs in just one year. But it's not just about the seats, the educational provisions also need to increase. This means more faculty, science lab inventory, teaching material and bigger classrooms. Experts suggest that the cost for all this would be close to Rs 20 lakh for every new seat in the top institutes in India. In IIMs the total cost of seat increase could exceed Rs 20,000 crore or half a percentage point of India's GDP. That's three times the total amount allocated to education in the Tenth Five-Year Plan.⁸

⁶ Clarification regarding creamy layer amongst OBC's, No. 368003/2004- Estt-2013, Ministry of Personnel, Public Grievances & Pensions.

⁷ Manaal Bhombal and Jai Shroff, All Things Wrong With the OBC Bill, 2018

⁸ <https://www.toppr.com/bytes/increasing-number-of-engineering-colleges/>

Conclusion

Affirmative action is employed to eliminate substantive social and economic inequality by providing opportunities to those who may not otherwise gain admission or employment. To promote egalitarian equality, the State may classify citizens into groups, giving preferential treatment to one over another. When it classifies, the State must keep those who are unequal out of the same batch to achieve constitutional goal of egalitarian society. The Commission would be indeed very helpful to attain substantive equality and moreover we hope that such Constitutional bodies are not utilized for fulfilling political goals by the respective political leaders..