

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

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## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# THE CONSTITUTION (105<sup>th</sup> AMENDMENT)

## ACT, 2021

Authored By-Pranay Jindal  
(Final Year, Faculty Of Law, University Of Delhi)

### The 127th Amendment Bill Of 2021

#### The Objective:

Earlier state governments were vested with the power to prepare the list of the *Socially and Educationally Backward Classes* but such power to prepare the list was snatched by **102th Amendment Act**, which empowers the parliament to prepare such list. But by this Amendment states are again empowered to prepared such list for granting reservation to Socially and Educationally Backward Classes.

#### What Was 102nd Amendment?

- Our Constitution does not refer to the word OBC (Other Backward Classes), it refers to the “Socially and Educationally Backward Classes”.
- Reservation of OBC ‘s in India is 27 % recommended by Mandal Commission in the year 1992 via its report, based on the 1931 census.
- 27% OBC’s + 23% SC/ST equal to 50% overall reservation
- As to Indra Sawhney’s judgement, in any case reservations 50% cap shall never be exceeded.
- Previously the state governments were having the power to identify that which class and community must be added in the list of OBC’s, but when this 102<sup>nd</sup> Amendment came in

2018. This amendment took away the power of state government and empowered the Centre and President to identify that which class and community will be added in OBC's list

- So, the power rest upon the Centre and the president that which class and community to be included or deleted from the OBC's list
- This amendment also provided the constitutional status to NCBC ie; National Commission for Backward classes under Article 338B
- NCBC was setup in the year 1993 by the NCBC Act.

### **Article 338 B Added Via 102<sup>nd</sup> Amendment**

- Inquiring complaints regarding infringement of rights and provided safeguards thereof.
- Advising on social economic development
- Investigate matters relating to safeguard of SEBC.
- Report to president about working off safeguards
- Recommendation for effective implementation of safeguards (protection, welfare)
- Any other functions

### **Article 342A Added Via 102<sup>nd</sup> Amendment**

- This is this is the second article inserted via 102<sup>nd</sup> Amendment
- President notifies communities to be added
- Parliament can include or exclude names from the list
- This amendment brings a huge disparity because only centre have the power to prepare OBC's list but there are different states having different OBC's list but after this amendment they do not have power to include them in the OBC's list

## Maratha Reservation

1. In 2018 Maratha community reservation up to 16% end was challenged in the Supreme Court in the year 2019 which is in violation of 1992 *Indra Sawhney judgement*<sup>1</sup> in which maximum cap of 50% was provided subsequently Hon'ble Supreme Court scrapped the quota of 16% provided by Maharashtra government<sup>2</sup>.
2. Hon'ble Supreme Court stated that as per 102<sup>nd</sup> Amendment centre have the power to make such list and provided for the reservation.

This 127<sup>th</sup> amendment bill Surpass the Supreme court's judgement in Maratha reservation case because this 127<sup>th</sup> Amendment Bill again gives power to states to make the list of OBC's.

After enforcement of constitution the president exercising power under **Article 340** and appointed *Kaka kalekar Commission* to investigate the conditions of all Socially and Educationally Backward classes.

- This Commission was *first National Commission* for backward classes
- And as per the report of Kaka Kalekar Commission the Marathas were dominant ruler in most of the parts of Maharashtra so, therefore it did not Considered them as backward class community.
- This Commission recommended 20% reservation for backward classes but their report was never considered.

*Thereafter 2<sup>nd</sup> NCBC was appointed* under the name *Mandal Commission*. The Mandal Commission report was the stepping stone for **27% reservation** for OBC category.

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<sup>1</sup> Indira Sawhney vs Union Of India And Ors on 13 December, 1999

<sup>2</sup> Jaishri Laxmanrao Patil vs The Chief Minister And Ors. on 5 May, 2021

What is **Cast based census** and what will it change?

- It was last published Cast based census of India held in the year 1931.
- Thereafter, in 1941 it was also done but not published.
- Since 1951 only SC/ST's are recorded.
- And NCBC is demanding for cast based census. So, states must know how much of the population belongs to OBC's.

**Why opposition supported this move?**

- OBC's forms substantial voter percentage.
- Opposed to the people from this category.
- In India politics has always been around reservations.

