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Constitutional Status for National Commission for Backward Classes

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The Lok Sabha has passed the 123rd Constitutional Amendment Bill which seeks to grant constitutional status to the National Commission for Backward Classes (NCBC) at par with the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST).

- The government has accepted two of the amendments moved by Rajya Sabha including appointing one woman member in the NCBC and giving power to state governments to frame policies for betterment of the OBCs.
- 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.

The Procedure for the Amendment of the Constitution: Article 368

- A Bill for the amendment of Constitution can be introduced only in either House of Parliament and not in the state legislatures.
- The Bill must be passed in each House by a **special majority**, that is, a majority (more than 50%) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- **Each House must pass the Bill separately.** In case of a disagreement between the two Houses, there is **no provision for holding a joint sitting** of the two Houses for the purpose of deliberation and passage of the bill.
- The Bill **must also be ratified by the legislatures of half of the states by a simple majority** (a majority of the members of the House present and voting) if it seeks to amend the federal provisions of the Constitution.

Key Points

- The Bill inserts **Article 338 B** in the Constitution, which provides for a National Commission for Backward Classes (for the socially and educationally backward classes) with a Chairperson, Vice-Chairperson and three other members, all of whom shall be appointed by the President of India.
Their tenure and conditions of service will also be decided by the President through rules.
- Currently, under the Constitution, the **National Commission for Scheduled Castes** has the power to look into complaints and welfare measures with regard to **Scheduled Castes, backward classes and Anglo-Indians**.
The Bill seeks to remove the power of the NCSC to examine matters related to backward classes.
- The 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.
- The duties of the NCBC will include:
 - investigating and monitoring how safeguards provided to the backward classes under the Constitution and other laws are being implemented,
 - inquiring into specific complaints regarding violation of rights, and
 - advising and making recommendations on socio-economic development of such classes.
- The amended Bill will give the Commission powers equivalent to that of a civil court. It will be able to summon any person, ask for a document or public record, and receive evidence on affidavits. Union and state governments will have to consult the Commission on all significant policy matters affecting the socially and educationally backward classes.
- 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.

National Commission for Scheduled Castes

- The National Commission for Scheduled Castes (NCSC) is a constitutional body established by **Article 338** of the Constitution.
- The separate National Commission for SCs came into existence in 2004.
- It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

NOTE: A committee under Justice G Rohini has been set up to examine sub-categorisation of Other Backward Classes. The sub-categorization of OBCs can ensure increased access to benefits such as reservations in educational institutions and

government jobs for less dominant OBCs.

Concerns

- The Bill makes Parliament the final authority on inclusion of communities in the OBC list and, therefore, takes away the authority of states which can now send requests to the NCBC – which, however, may or may not forward them to the union government.
- Until now, the NCBS's recommendations with regard to inclusions and exclusions in the list are binding on the government.

A Brief History of OBC Reservations

- The **Kalelkar Commission, set up in 1953**, was the first to identify backward classes other than the Scheduled Castes and Scheduled Tribes at the national level. Its conclusion that caste is an important measure of backwardness was rejected on the ground that it had failed to apply more objective criteria such as income and literacy to determine backwardness.
- The **Mandal Commission report (1980)** estimated the OBC population at 52% and classified 1,257 communities as backward. It **recommended increasing the existing quotas**, which were only for SC/ST, from 22.5% to 49.5% to include the OBCs. A decade later, its recommendations were implemented in government jobs, a move that sparked major agitations.
- To assuage the anti-reservation protesters, the P V Narasimha Rao government in 1991 introduced a 10% quota for the “economically backward sections” among the forward castes.
- The Supreme Court struck this down in the **Indra Sawhney vs Union of India case (1993)**, where it held that the Constitution recognised only social and educational – and not economic – backwardness.
- The apex court, however, held reservation for OBCs as valid and directed that the creamy layer of OBC (those earning over a specified income) should not avail reservation facilities.
- The overall reservation for SCs, STs and OBCs was capped at 50%. Based on the order, the central government reserved 27% of seats in union civil posts and services, to be filled through direct recruitment, for OBCs. The quotas were subsequently enforced in central government educational institutions.