

THE CONSTITUTION (SEVENTY-SEVENTH AMENDMENT) ACT, 1995

India

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Act 077 of 1995

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Statement of Objects and Reasons appended to the Constitution (Eighty-sixth Amendment) Bill, 1995 which was enacted as THE CONSTITUTION (Seventy-seventh Amendment) Act, 1995

STATEMENT OF OBJECTS AND REASONS

The Scheduled Castes and the Scheduled Tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16th November, 1992 in the case of Indra Sawhney and Others vs. Union of India and Others, however, observed that reservation of appointments or posts under article 16(4) of the Constitution is confined to initial appointment and cannot extend to reservation in the matter of promotion. This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interest of the Scheduled Castes and the Scheduled Tribes, the Government have decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it is necessary to amend article 16 of the Constitution by inserting a new clause (4A) in the said article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes.

2. The Bill seeks to achieve the aforesaid object.

An Act further to amend the Constitution of India. BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:-

1. Short title.-

This Act may be called the Constitution (Seventy-seventh Amendment) Act, 1995.

2. Amendment of article 16.-

In article 16 of the Constitution, after clause (4), the following clause shall be inserted, namely:-(4A) 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 under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State." [The Constitution (Seventy-seventh Amendment) Act, 1995, broadened the reservation provisions for job promotions, encompassing individuals belonging to Scheduled Castes and Tribes. Since 1955, the Scheduled Castes (SC) and Scheduled Tribes (ST) have had access to the facility of reservation in the promotion. However, the Supreme Court stated in its decision dated November 16, 1992, in the issue of Indra Sawhney and Others vs. Union of India and Others that reservation of appointments or posts under Article 16(4) of the Constitution is restricted to initial appointment. Further, it cannot extend to a reservation in matters of promotion. The interests of the SC and STs will be harmed by this Supreme Court decision. It is vital to continue the current dispensation of offering reservations in promotion for the Scheduled Castes and the Scheduled Tribes since their representation in services in the States has not achieved the requisite level. The government has chosen to maintain the prevailing policy of reservations in the promotion of the Scheduled Castes and the Scheduled Tribes in light of its commitment to safeguarding the interests of these groups. To achieve this, it is necessary to change Article 16 of the Indian Constitution. This is accomplished by adding a new clause (4A) to the aforementioned article that establishes a reservation in promotion for the Scheduled Castes (SCs) and Scheduled Tribes (STs). Also refer]