

# THE CONSTITUTION (ONE HUNDRED AND SECOND AMENDMENT) ACT, 2018

India

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### Act 102 of 2018

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

#### 1. Short title and commencement.

(1) This Act may be called the Constitution (One Hundred and Second Amendment) Act, 2018. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

#### 2. Amendment of article 338.

In article 338 of the Constitution, in clause (10), the words, brackets and figures "to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also" shall be omitted

#### 3. Insertion of new article 338B.

After article 338A of the Constitution, the following article shall be inserted, namely:—

#### 338B. National Commission for Backward Classes.

(1) There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes. (2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule

determine.(3)The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.(4)The Commission shall have the power to regulate its own procedure.(5)It shall be the duty of the Commission—(a)to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;(b)to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;(c)to participate and advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;(d)to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;(e)to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and(f)to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.(6)The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.(7)Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the State Government which shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.(8)The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5) have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—(a)summoning and enforcing the attendance of any person from any part of India and examining him on oath;(b)requiring the discovery and production of any document;(c)receiving evidence on affidavits;(d)requisitioning any public record or copy thereof from any court or office;(e)issuing commissions for the examination of witnesses and documents;(f)any other matter which the President may, by rule, determine.(9)The Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes."

#### **4. Insertion of new article 342 A.**

After article 342 of the Constitution, the following article shall be inserted, namely:—"342A. Socially and educationally backward classes.(1)The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.(2)Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1)

any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

## 5. Amendment of article 366.

In article 366 of the Constitution, after clause (26B), the following clause shall be inserted, namely:—“(26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of this Constitution;”. [The Constitution (One Hundred and Second Amendment) Act, 2018, eliminated states’ authority in the matter to establish socially and educationally backward classes within their borders for the purpose of granting quotas in jobs and admissions in educational institutions. Many deemed some parts of the 102 Amendment of the Indian Constitution as unconstitutional. Then the Parliament made amendments to this act to live up to the values enshrined in the preamble of India. An explanation clause was also added to clarify that all the States and Union Territories of India will have the right to prepare and maintain their lists of Socially and Educationally Backward Classes apart from the Central List. As a matter of fact, we can see that the reason behind Article 102 of the Indian Constitution is to facilitate everyone with equal opportunities irrespective of other societal factors. The concept of majority and minority will hold value in them as the aforementioned Article demands this segregation to be exercised. Also Refer]