

AS INTRODUCED IN THE RAJYA SABHA  
ON 9TH DECEMBER, 2022

**Bill No. LXXXV of 2022**

THE CONSTITUTION (AMENDMENT) BILL, 2022

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BILL

*further to amend the Constitution of India.*

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2022.

Short title and  
commencement.

(2) It shall come into force on such date as the Central Government may, by notification  
5 in the Official Gazette, appoint.

Amendment of article 270.

**2.** In article 270 of the Constitution,—

(i) for clause (1), the following clause shall be substituted, namely:—

"(1) All taxes and duties referred to in the Union List, the surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2):

Provided that this clause shall not apply to duties and taxes referred to in articles 268, 269 and 269A."

(ii) after clause (1B), the following shall be inserted, namely:—

"(1C) Any cess levied and collected by the Government of India under clause (1) shall be:

(a) imposed for a specific purpose clearly stated in the law imposing such cess;

(b) earmarked for a purpose that does not fall within List II of the Seventh Schedule of the Constitution; and

(c) subject to a periodic review by the Finance Commission at the end of two years of being levied to assess whether funds are being appropriately utilized and dispersed for the purpose for which it is being levied."

(iii) for clause (2), the following shall be substituted, namely:—

"(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty or cess or surcharge in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty or cess or surcharge is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3)."

Substitution of article 271.

**3.** For article 271, the following article shall be substituted, namely:—

Surcharge on certain duties and taxes.

"271. Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles except the goods and services tax under article 246A, by a surcharge for a definite period of time and the whole proceeds of any such surcharge shall be distributed between the Union and the States in such manner and from such time as may be prescribed in the manner provided in article 270."

Amendment of article 280.

**4.** In article 280, in clause (3), for sub-clause (a), the following shall be substituted, namely:—

"(a) the distribution between the Union and the States of the net proceeds of taxes, cess and surcharge, which are to be, or may be divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds."

Insertion of new article 342B.

**5.** After article 342A of the Constitution, the following new article shall be inserted, namely:—

Enumeration and census of socially and educationally backward classes.

"342B.(1) Notwithstanding anything in this Constitution or any law for the time being in force, the Central Government shall enumerate the socially and educationally backward classes and ascertain their respective population in the census conducted under the Census Act, 1948.

(2) Wherever any reservation is provided for socially and educationally backward classes in this Constitution or any other law for the time being in force, the number of seats to be reserved for such socially and educationally backward classes shall be in proportion to their respective population.

5           *Explanation.*—In this clause, the expression “population” shall mean the population as ascertained at the last preceding census of which the relevant figures have been published.”

## STATEMENT OF OBJECTS AND REASONS

The Constitution of India gives immense revenue-generating powers to the Central Government but puts more welfare obligations on the State Governments. The report of the 15th Finance Commission noted that the Central Government had about 62.7% of the resources but incurred only 37.6% of the expenditure, whereas the State Governments had only 37.3% of the resources but incurred 62.4% of the expenditure. A report by the Reserve Bank of India also noted that more than 60% of India's capital expenditure came exclusively from the State Governments. A comparison of the lists in the Seventh Schedule of the Constitution would also reveal that the State List enumerates more welfare obligations than the Union List.

Nonetheless, the Constitution has made provisions under article 270(1) for distributing the tax revenue collected by the Central Government between itself and the States to help them effectively carry out their welfare obligations. However, article 270(1) also permits the Central Government to levy cesses and surcharges, which it is not obligated to share with the States. Owing to this reason, over the past few years, there has been significant over-reliance of the Centre on cesses and surcharges. In 2012-13, cesses and surcharges formed 8.76% of the Centre's gross tax revenue whereas in 2020-21, this share has crossed 20%. This has caused the divisible pool of central tax revenue that is shareable with the States to shrink considerably. Both the 14th and 15th Finance Commissions recommended fixing the share of the States in the divisible pool to 42% and 41% respectively but due to the disproportionate increase in cesses and surcharges, the effective share of States has reduced to just 29 to 32%.

The matter of imposing cess has become contentious due to many reasons. First, although cesses can be implemented only for specific purposes, the Centre is levying cesses for purposes that are wide and open-ended. Recent purposes for cesses include financing of national highways, basic education, environment and infrastructure projects, which already come under the ambit of the duties of the Central Government in its discharge of general administration and are broad heads of expenditure rather than specific purposes. Second, cesses are being levied for purposes within the State List, which are *per se* not the functions of the Central Government for which it requires earmarked funds including health, agriculture and rural roads, among others. Third, the language used for levying cess is also often open-ended. For instance, the Swachh Bharat and Krishi Kalyan cess were levied to "finance and promote Swachh Bharat initiatives or related purposes" and "to finance and promote initiatives to improve agriculture or related purposes" respectively.

Objections have also been raised with respect to the imposition of surcharges. The Expert Commission on Financial Provisions appointed by the President of the Constituent Assembly envisaged that the Centre's need for imposing surcharges would arise only on rare occasions and that surcharges would not be continued for unduly long periods of time. The 8th Finance Commission also expressed concerns regarding the indefinite imposition of surcharges and recommended their withdrawal. The 10th Finance Commission noted that surcharges on income tax should not be levied except to meet emergent requirements for a limited period of time. However, historically speaking, surcharges have formed a consistent part of India's direct tax regime, which is in contradiction with the foregoing objectives and recommendations. Following the adoption of the Constitution, surcharge has been imposed every year except 1998-99.

At the same time, the Comptroller and Auditor General (CAG), in its reports, has flagged the lack of sufficient transparency in the reporting and the utilisation of the funds collected through cess and surcharges as well as discrepancies in the utilisation of the proceeds. In 2018, the CAG, through an affidavit in the Supreme Court, revealed that a majority of the funds collected under the Building and Other Construction Workers Welfare

Cess Act, 1996 were spent on buying laptops and washing machines and that less than 10% was spent on the welfare of construction workers. In many cases, the cess collected was not transferred to its respective Reserve Fund. During 2020 and 2021, nearly 1.28 lakh crore rupees was collected through cess on crude oil but was not transferred to the Oil Industry Development Board.

The disproportionate imposition of cesses and surcharges has only exacerbated the vertical fiscal imbalance between the Central Government and the State Governments. As evinced by the responsibilities in the State List, adequate financial resources must be made available to the States to maintain the overall economic health of the States as well as of the country as a whole.

Therefore, this Bill seeks to amend the Constitution to ensure that the proceeds of cess and surcharge are made shareable with the States. Additionally, it establishes definite parameters to determine how cess should be levied and collected and to limit the imposition of surcharges for a limited period of time, for ensuring greater fiscal transparency.

Furthermore, India is home to a diverse population belonging to a broad array of castes. This necessitates the availability of latest and extensive data on caste so that the Central and State Governments can design effective policies for affirmative action and resource redistribution. The caste data was first enumerated in India within the general census undertaken in 1872 and continued for the next six decades until 1931. However, in the post-independence era, in every census conducted so far from 1951 to 2011, no caste data, apart from that relating to Scheduled Castes and Scheduled Tribes has been collected. Although, the Government conducted the Socio-Economic and Caste Census (SECC) in 2011 to obtain data regarding the economic position and caste status of the Indian population, only the economic data has been made public whereas the caste data has not been released.

Our country is home to a significant population of backward classes that do not fall under the category of Scheduled Castes and Scheduled Tribes, referred to as Socially and Educationally Backward Classes (SEBCs). The Mandal Commission (1980) assessed the population of SEBCs to be 52%, back when the Indian population was at 68 crores. Since that time, the Indian population has more than doubled to 138 crore but we still do not have any updated, comprehensive and categorised data on the SEBC population in the country.

Across the world, countries have taken steps to enumerate different sections of people within their societal structure. For instance, the USA enumerates all races within its multi-racial population. The UK does a similar enumeration for immigrants having varying origins and hailing from different social backgrounds. However, India is yet to enumerate caste data on SEBCs within its demography, creating an information vacuum that has negated the formulation of objective and proportionate welfare schemes.

It is imperative to conduct a nationwide caste census to understand how various castes have progressed economically, to assess which castes have been left behind, and to devise appropriate policies for filling the existing gaps. The need for a caste census is further buttressed by the fact the proper implementation of articles 15(4) and 16(4) of the Constitution, dealing with reservations for Other Backward Classes in educational institutions and Government services, is not possible without enumerating the population of Other Backward Classes to understand the proportion of their representation in relation to various socio-economic and geographical parameters.

There has been a long-standing demand supported by wide consensus across political factions for conducting a caste census. While the Government had declared that a caste census of SEBCs is administratively difficult and cumbersome, in 2018, the then Home Minister assured that a caste-based survey would be conducted. In April 2021, the National Commission for Backward Classes also requested the Ministry of Social Justice and Empowerment to collect information on the population of Other Backward Classes in the country as a part of the 2021 general census. Similar recommendations have been made by the Parliamentary

Standing Committee on Welfare of Other Backward Classes. But no efforts have been undertaken by the Central Government in this regard so far.

In light of the aforementioned, the Bill seeks to amend the Constitution to ensure that the Central Government enumerates the SEBCs and ascertains their respective population within the census conducted under the Census Act, 1948. It also provides that wherever reservation is provided for SEBCs under any law, due consideration shall be given to the population of such SEBCs in determining the number of seats to be reserved for them. This Bill will ensure much-needed caste-wise enumeration of SEBCs, which in turn, will create the foundation for scientific and rational policies for the welfare and upliftment of SEBCs.

Hence, this Bill.

V. VIJAYASAI REDDY.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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**270.** (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268, 269 and 269A, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2). Taxes levied and distributed between the Union and the States.

(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means,—

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

**271.** Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles except the goods and services tax under article 246A, by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India. Surcharge on certain duties and taxes for purposes of the Union.

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**280.**(3) It shall be the duty of the Commission to make recommendations to the President as to— Finance Commission.

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

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further to amend the Constitution of India.

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*(Shri V. Vijayasai Reddy, M.P.)*