

**Bill No. LXXV of 2022**

THE CONSTITUTION (AMENDMENT) BILL, 2022

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*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.

2. In article 16 of the Constitution, after clause (6) the following clause shall be inserted,  
namely:—

Amendment  
of article 16.

"(7) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall  
10 prevent the State from making any special provision, by law, for the advancement of  
any socially and educationally backward classes of citizens or for economically weaker  
sections of citizens or for the Scheduled Castes or the Scheduled Tribes, to provide in  
their favour reservation of appointments or posts in private sector."

Amendment of article 124. **3.** In article 124 of the Constitution, after clause (1), the following proviso and Explanation shall be inserted, namely:—

"Provided that such number of Judges, as nearly as may be, equal to the proportion of the population of the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes to the total population of the country, shall be appointed from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, and the Other Backward Classes. 5

*Explanation.*— In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published. 10

Amendment of article 216. **4.** In article 216 of the Constitution, the following proviso and Explanations shall be inserted, namely:—

"Provided that such number of Judges, as nearly as may be, equal to the proportion of the population of the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes in the State to the total population of the State, shall be appointed from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, and the Other Backward Classes. 15

*Explanation I*—In this article, "State" includes all States and Union Territories that share a common High Court.

*Explanation II*—In this article, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published." 20

## STATEMENT OF OBJECTS AND REASONS

The Indian Constitution was designed to provide special measures for the social and economic advancement of the historically oppressed communities in the country. The constitutional principles of distributive justice and economic upliftment are reflected through the various Fundamental Rights and Directive Principles of State Policies enshrined in the Constitution. Even after seven decades of promulgation of the Constitution, the marginalised groups in India suffer from multiple forms of discrimination in all spheres, especially in terms of employment opportunities.

With the move towards privatisation and liberalisation in the country, the scope for public sector entities has shrunk considerably, which has resulted in lesser job opportunities for the weaker sections who rely heavily on the State for their livelihood. On the other hand, the Indian private sector, which so far has been outside the purview of a quota system in recruitment, is pervaded with social exclusion and caste favouritism. The pre-existing income inequalities and unequal distribution of wealth and property in the country further exclude marginalised groups from participating in the organised private sector which forces them to engage in unskilled work. In such a scenario, affirmative action in the private sector is categorically required to ensure continuous socio-economic development of the marginalised communities.

Upliftment of the weaker sections is a stated objective of our country and thus reservation in employment opportunities is a social responsibility of the Government as well as the private sector. Reservation policy in the private sector will not only provide fair and non-discriminatory access to historically excluded groups, but at the same time would remove deterrents created by caste discrimination on labour markets, and thereby enhance competitiveness and economic growth.

Further even after 75 years of affirmative action, the disadvantaged and marginalised communities in the country are not adequately represented in the higher judiciary. As the guardian of the Constitution and the last resort to the millions of citizens, the Supreme Court of India influences the lives of each and every one in the country. Therefore, it is imperative that judges represent the broadest spectrum of society.

Since independence, a very small number of Judges belonging to marginalised communities were able to serve as Judges of the Supreme Court and High Courts. Caste-based reservation has been an integral part of the Indian principle of equality, therefore, its absence in the superior judiciary is unconvincing and needs to be rectified. Without a constitutional provision for reservation, it is highly improbable for persons from these communities to reach such eminent positions through natural means. Further, the existence of reservation in subordinate courts is reason enough for its introduction in higher courts as well.

India is a highly diverse country and its diversity should also be reflected in the higher judiciary. A more inclusive judiciary is also more likely to foster balanced and comprehensive discussions on matters related to caste, gender, access and equality. The first-hand knowledge of the issues pertaining to backward classes would also help in developing a more advanced understanding of the caste-based problems in the country.

In absence of a formal and written framework, representation in the higher judiciary could not be expanded on its own. A constitutional mandate in this regard would ensure that the superior courts are never under represented. Previously, Parliamentary Committees and National Commission for Scheduled Castes have also recommended similar provisions for the appointment of judges in the Supreme Court and High Courts. It is of utmost importance that equitable representation and fair play in the higher judiciary is secured through the channels of the Constitution.

The Bill seeks to achieve above-mentioned objectives.

PROF. MANOJ KUMAR JHA

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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Equality of opportunity in matters of public employment.

**16. (1)** There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, 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.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.

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Establishment and constitution of Supreme Court.

**124. (1)** There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

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Constitution of High Courts.

**216.** Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

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RAJYA SABHA

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*(Prof. Manoj Kumar Jha, M.P.)*