

Bill No. XLI of 2018

THE OTHER BACKWARD CLASSES (SUB-CATEGORIZATION)
BILL, 2018

A

BILL

to develop a new method of implementing reservation policy through the weighted indexing system, to achieve social justice and reservation benefits to the most deserving individuals and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

5 **1.** (1) This Act may be called the Other Backward Classes (Sub-Categorization) Act, 2018.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

10 **2.** In this Act, unless the context otherwise requires,—

Definitions.

(a) "Chairperson" means the chairperson of the Commission for Sub-Categorization of Other Backward Classes, appointed under sub-section (2) of section 4 of this Act;

(b) "Commission" means the Commission for Sub-Categorization of Other Backward Classes, set up under section 3 of the Act;

(c) "District Reservation Office" means the authority set up under section 11 of the Act, which shall implement the Weighted Indexing System;

(d) "Other Backward Classes" means such backward classes of citizens other than Scheduled Castes and Scheduled Tribes as may be prescribed by the Central Government;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "Weighted Index Score" means the score that will be assigned to every individual belonging to a group notified as an Other Backward Class by the Central Government; and

(g) "Weighted Indexing System" means the formula used for determining the Weighted Index Score, as given in sub-section (2) of section 9 of the Act.

CHAPTER II

COMMISSION FOR SUB-CATEGORIZATION OF OTHER BACKWARD CLASSES 15

Establishment of a commission for Sub-Categorization of Other Backward Classes.

3. (1) The Central Government shall, by notification in the Official Gazette, constitute a Commission for Sub-Categorization of Other Backward Classes, to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The head office of the Commission shall be at New Delhi.

Composition of the Commission.

4. (1) The Commission shall consist of a Chairperson and eight members. 20

(2) The Chairperson of the National Commission for Backward Classes shall also be the Chairperson for the Commission for Sub-Categorization of Other Backward Classes.

(3) The eight members referred to in sub-section (1) of section 3 shall be appointed by the Central Government, in consultation with the Chairperson amongst whom:—

(i) three members shall be eminent persons of ability and integrity, who have a thorough understanding and expertise of reservation policy; and have experience of working for the development of Other Backward Classes: 25

Provided that at least one such member shall be a woman; and

(ii) two members shall be eminent persons of ability and integrity, who, have a thorough understanding and experience of working in various fields of social sciences; and have experience of working for the development of Other Backward Classes; and 30

(iii) three members shall be eminent persons of ability and integrity, who, have a thorough understanding and expertise in the fields of statistics and mathematics; and have experience of working with and implementing different statistical measuring techniques: 35

Provided that at least one such member shall be a woman.

Terms and Conditions of Chairperson and members of Commission.

5. (1) The Chairperson and every member of the Commission shall hold office for a term of two years from the date on which he assumes office and shall be eligible for re-appointment:

Provided that the Chairperson or any member shall not hold office after attaining the age of seventy years: 40

Provided further that the Chairperson or any member shall not be allowed to hold office after completion of two terms.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or a member may:—

(a) resign by giving in writing to the Central Government, a notice of not less than six months; or

(b) be removed from office in accordance with the provisions given in section 6.

(3) The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other members shall be such as may be prescribed by the Central Government.

6. The Central Government may, by order, remove from office the Chairperson or a member, if the Chairperson or a member:—

(a) becomes physically or mentally unable to continue in their position;

(b) is convicted of an offence under the Indian Penal Code, 1860;

(c) acquires financial or other interests which may prejudice his decisions and functions;

(d) has, in the opinion of the Central Government, so abused his position as to render his continuance in office detrimental to the public interest:

Provided that the decision of the Central Government for removal of a member from office receives approval of the Chairperson:

Provided further that the Chairperson or a member shall not be removed from office unless the Central Government gives in writing the reasons for such removal and the Chairperson or the member is given a reasonable opportunity of being heard.

7. (1) The Commission may, at any point, associate with itself any person whose advice or assistance it may desire, in carrying out the purposes of this Act.

(2) A person associated with the Commission under sub-section (1) will have a right to take part in discussions relevant to that purpose, but shall not be a member for any other purpose.

8. (1) The Commission shall meet as and when necessary, as the Chairperson may deem fit.

(2) The Commission shall regulate its own procedure.

(3) The Commission shall have the autonomy to allocate and spend the funds on the functions assigned to it under this Act.

CHAPTER III

FUNCTIONS OF THE COMMISSION FOR SUB-CATEGORIZATION OF OTHER BACKWARD CLASSES

9. (1) The primary function of the Commission for Sub-Categorization of Other Backward Classes shall be to develop a formula, to be known as the "Weighted Indexing System" henceforth, which shall be used to implement reservation policies across India.

(2) The Weighted Indexing System shall be a formula which shall assign a score to every individual belonging to a group notified as an Other Backward Class by the Central Government, and the score shall be known as the Weighted Index Score.

(3) The Weighted Index Score shall be used to provide reservation benefits to an individual belonging to an Other Backward Class.

(4) The Weighted Index Score shall be calculated based on several parameters, including, but not limited to, social backwardness, educational environment, family background and gender.

Removal of Chairperson and members of Commission.

Association of persons with Commission.

Meeting of Commission.

Primary function of the Commission.

Other
functions of
the
Commission.

10. (1) The Commission shall also perform the following functions, namely:—

(i) determine the parameters to be adopted for the calculation of the Weighted Index Score;

(ii) review, on a periodic basis, the parameters for calculating the Weighted Index Score and revise the parameters based on the recommendations of the National Commission for Backward Classes and their own understanding;

(iii) prescribe the necessary documents required for an individual to obtain their Weighted Indexed Score under, sub-section (1) of section 13;

(iv) prescribe the time within which the Weighted Index Score shall be given to an individual;

(v) prescribe the action to be taken against the District Reservation Office under sub-section (2) of section 17;

(vi) maintain a website wherein the Weighted Index Score of every individual notified as an Other Backward Class by the Central Government shall be stored, which shall be accessible to the general public;

(vii) review and monitor the working of every District Reservation Office and every Grievance Redressal Office;

(viii) ensure coordination among every District Reservation Office and Grievance Redressal Office;

(ix) submit an annual report to the Central Government, within such time as prescribed by the Central Government, giving a full and detailed account of the activities undertaken by them in the previous year, and the Central Government shall cause every such report to be laid before both Houses of Parliament.

(x) make suggestions to the Central Government on the required financial support to implement the Weighted Indexing System and to fulfill the other functions assigned to it under this Act.

CHAPTER IV

IMPLEMENTATION OF THE WEIGHTED INDEXING SYSTEM

Establishment
of District
Reservation
Office.

11. The Commission shall set up at least one District Reservation Office in every district to implement the Weighted Indexing System:

Provided that the Commission may set up more than one District Reservation Office in a district if it deems necessary.

Appointment
and functions
of District
Reservation
Officer.

12. (1) The Commission shall appoint a District Reservation Officer in every District Reservation Office who shall be responsible for fulfilling the functions assigned to it under this Act, and any other functions as may be prescribed by the Commission.

(2) The District Reservation Officer may, with the approval of the Commission, determine the number and nature of officers and employees required by him in the discharge of the functions of District Reservation Office.

(3) The salary and allowances payable to and the other terms and conditions of service of the District Officer and other employees shall be such as may be prescribed by the Central Government.

Functions of
District
Reservation
Office.

13. (1) Any individual belonging to Other Backward Class may approach the District Reservation Office in his district with the necessary documents, as prescribed by the Commission under clause (iv) of section 10 to obtain the Weighted Index Score.

(2) The District Reservation Office in each district shall be responsible for collecting, processing and storing the documents of every individual.

(3) The District Reservation Office shall provide a Weighted Index Score Card to every individual who produces the necessary documents, which shall have his Weighted Indexed Score stored on it, within such time as prescribed by the Commission under clause (v) of section 10.

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CHAPTER V

GRIEVANCE REDRESSAL MECHANISM

14. The Commission shall establish at least one Grievance Redressal Office in every district of the country:

Establishment of Grievance Redressal Office.

Provided that the Commission may establish more than one Grievance Redressal Office in a district if it deems necessary.

15. (1) The Commission shall appoint a Grievance Redressal Officer in every Grievance Redressal Office who shall be responsible for fulfilling the functions assigned to it under this Act, and any other functions as may be prescribed by the Commission.

Appointment and functions of Grievance Redressal Officer.

(2) The Grievance Redressal Officer may, with the approval of the Commission, determine the number and nature of officers and employees required by him in the discharge of the functions of the Grievance Redressal Office.

(3) The salary and allowances payable to and the other terms and conditions of service of the Grievance Redressal Officer and other employees shall be such as may be prescribed by the Central Government.

16. (1) Any individual belonging to Other Backward Class may file a complaint with the Grievance Redressal Office in his district, within a period of thirty days from the date the grievance has occurred, for either of the following reasons, :—

Functions of Grievance Redressal Office.

(a) non-receipt from the District Reservation Office of the Weighted Index Score Card within the time prescribed by the Commission; and

(b) discrimination or denial of benefits based on the Weighted Indexed Score:

Provided that the Grievance Redressal Office may admit the complaint after thirty days if it is satisfied that the complainant was prevented by sufficient cause from filing the complaint in time.

17. If the Grievance Redressal Office determines that the complainant has been treated unfairly, it shall, :—

Remedial measures to the complainant.

(a) direct the concerned office where the complainant sought employment, to immediately provide remedial measures to the complainant; and

(b) take action against the concerned office or company, as prescribed by the Commission under clause (vi) of section 10.

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CHAPTER VI

MISCELLANEOUS

18. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds, from time to time, for carrying out the purposes of this Act.

Central Government to provide adequate funds to the Commission.

19. The provisions of this Act or the rules made there under shall be in addition and not in derogation of any other legislation, rules, orders or instructions which provides any entitlement or benefit to individuals of Other Backward Classes.

Act not in derogation of any other law.

20. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not

Power to remove difficulties.

inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to
make rules.

21. (1) The Central Government may, by notification in the Official Gazette make rules 5
for carrying out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, 10
both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Historically, there have been certain castes and groups that have faced exclusion from the mainstream due to their backwardness. The basic purpose of reservation is to provide equal opportunities to these socially and educationally backward classes, so that they can progress and be accepted in the general public. Reservation systems favoring certain castes and communities had existed in various forms in India even before independence. For example, Shahu, the Maharaja of Kolhapur had introduced reservations for backward classes, which came into force in 1902. After independence, there were policies implemented to advance the interests of Scheduled Castes and Schedule Tribes. In 1978, the Mandal Commission was set up by the then government to assess the situation of socially and educationally backward classes. The Commission recommended that a quota for Other Backward Classes of 27 per cent should apply in respect of services and in public sector bodies operated by the Union Government. The recommendations were implemented in 1992.

However, even after almost three decades, the reality is that reservation policy has not achieved its basic purpose. We have not achieved social justice and reservation benefits have not reached the most backward people. In the current system, we are facing some major challenges. Firstly, there are a few socially, educationally and economically strong castes that take almost the entire advantage of reservation. This means that the weaker backward castes barely get any reservation benefits as they are unable to compete. Similarly, there are also some families within the castes that enjoy most benefits. Another major flaw with the current system is that it assumes every individual who is entitled to get a share of the 27 per cent reservation is equally backward. Treating unequals as equals is a problem this Bill seeks to address. Importantly, we must not forget that OBC stands for Other Backward Classes not caste. This means that castes were taken into account only for ease of identification and implementation when reservation benefits were given to them. This Bill addresses the problem of identifying the social and educational backwardness of a person who is in greater need of affirmative action or benefits of reservation.

To solve this issue, this Bill proposes a new method to implement reservations to deserving individuals, the Weighted Indexing System. This method will assign a score to every individual who belongs to an OBC group, and will be available to the public through digital means, including a centrally maintained website. The Weighted Index Score will be calculated based on several parameters, including, but not limited to, social backwardness, educational environment, family background and gender. This can be explained through a few examples. A student studying in a Zilha Parishad school is at a disadvantage compared to a private school student, and so the former will be given some minus marks in his/her Weighted Index Score. Another important criteria is the educational environment the individual grew up in. For example, if the parents are illiterate, it might be the case that the conditions at home will not be conducive for education, and so, some minus marks will be given to prioritize the child of illiterate parents in availing affirmative action or benefits of reservation. The decision for what will be the final criteria for assessing social and educational backwardness, and the weightage to be assigned to each criteria will be taken by the Commission. On the basis of this score, people will be given reservation benefits. The score must be developed in such a manner that a low score indicates greater backwardness and hence, higher priority will be given to a lower score in availing reservation benefits. In this system, no one is excluded from reservation benefits, unlike in the creamy layer system. The system does not change the percentage of the OBC quota. There is no reduction of quotas or seats remaining vacant because of non-availability of eligible candidates. This system will reduce the inter-caste strain, as the deserving people will get the benefit. The general public will also not oppose deserving individuals availing benefits and will not develop hatred when reservation benefits are given to right people and individuals. This system will

help in taking reservation benefits to the most deserving people and achieved the basic purpose of reservation.

Hence, this bill.

DR. VIKAS MAHATME

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of a Commission for the Sub-Categorization of Other Backward Classes Clause 4 provides for composition of the Commission Clause 5 provides for the payment of salary and allowances to the eight members of the Commission. Clause 11 provides for setting up a District Reservation Office in every district. Clause 12 provides for the composition of the District Reservation Office. It also provides for the salary and allowances payable to the District Reservation Officer and other employees. Clause 14 provides for setting up a Grievance Redressal Office in every district. Clause 15 provides for the composition of the Grievance Redressal Office. It also provides for the salary and allowances payable to the Grievance Redressal Officer and other employees. Clause 18 provides that the Central Government shall grant funds to the Commission. The Bill, therefore, if enacted is likely to involve expenditure out of the Consolidated Fund of India. It is estimated that a recurring expenditure of rupees three hundred crore would be involved per annum.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 21 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Clause 5 empowers the Central Government to make regulations for salary and allowances payable to and other terms and conditions of the Chairperson and other members of the Commission. Clause 12 empowers the Central Government to make regulations for salary and allowances payable to and other terms and conditions of the District Reservation Officer and other employees of the District Reservation Office. Clause 15 empowers the Central Government to make regulations for salary and allowances payable to and other terms and conditions of the Grievance Redressal Officer and other members of the Grievance Redressal Office. As the rules and regulations will relate to matters of detail only, the delegation of legislative power is, therefore, of a normal character.

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to develop a new method of implementing reservation policy through the weighted indexing system, to achieve social justice and reservation benefits to the most deserving individuals and for matters connected therewith or incidental thereto.

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(Dr. Vikas Mahatme, M.P.)