

Bill No. XXI of 2023

THE CONSTITUTION (AMENDMENT) BILL, 2023

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further to amend the Constitution of India.

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

1. (1) This Act may be called the Constitution (Amendment), Act, 2023.

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 the Seventh Schedule to the Constitution:—

Amendment of the Seventh Schedule.

(a) In List I-Union List, entry 69 shall be omitted;

(b) In List III-Concurrent List, after entry 47, the following entry shall be inserted,
namely:—

STATEMENT OF OBJECTS AND REASONS

1. An objective and thorough census across the country will give a correct picture of the representation of castes and communities in mainstream education and employment. Only based on such a scientific and empirical data can we make targeted, effective, affirmative action policies to uplift the really backward communities.

2. The states are not in a position to grant any reservation to any class or communities for want of empirical data and any reservation laws enacted by the states are being struck down by Constitutional Courts on the ground of lack of empirical data. Thus, the mandate of reservation by the Constitution is being defeated.

3. The states are in need of an accurate caste census data to enact targeted welfare measures on the basis of caste and community. Ultimately, this leads to perpetuating the *status quo* and social injustice. The data collected 92 years back cannot determine the entitlement and share of communities in this country.

4. The 73rd and 74th constitutional amendments advocated the need of strengthening the local bodies and parts IX and IXA of the Constitution provided for a robust framework for conducting local body elections. The prime objective was democratic decentralization of power and participation of the oppressed and backward classes in governance. The amendments provided for mandatory reservation for Scheduled Caste and Schedule Tribe communities and women belonging to these communities. On the other hand, for backward classes, the articles 243-D(6) and 243-T(6) were only enabling in nature. When States have attempted to apply these provisions, there were legal obstacles due to which reservations granted to Other Backward Classes (OBC) communities in local bodies have been struck down by the Hon'ble Supreme Court. The impediment to the states to grant OBC reservations was due to want of 'empirical data'. With the advent of 105th constitutional amendment and insertion of article 342A(3), a State or a Union Territory can gather information for ascertaining political backwardness of the backward classes and can specify the proportion of the reservation required local body-wise and can prepare and maintain for its own purposes, a list of socially and educationally backward classes.

5. However, the entry 69 in List I of the Seventh Schedule of the Constitution empowers only the Union to conduct census. Since, a state or a Union Territory is not empowered to conduct their own census, the population of each class or community on the basis of local units cannot be ascertained by the states and consequentially, maintaining an accurate head count based upon the list of backward classes contemplated under article 342A(3) would not be possible.

6. The objectives of democratic decentralization are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of the society. Reservations in local self-government are intended to directly benefit the community as a whole rather than just the elected representatives. Despite the fact that Parts IX and IXA were introduced in the Constitution 30 years ago, reservation in politics and sharing of political power is still a distant dream, leaving the OBCs unrepresented in the local self-governments.

7. Therefore, placing the entry "census" in the Concurrent List would enable both the Union and the states to conduct their own census. The power to conduct a headcount by

the states themselves will not only be useful for maintaining an accurate list of all classes including backward classes under article 342A(3), and collect empirical data of communities on the basis of the local units and to grant reservations in local bodies, but also for other targeted welfare measures. This will enable the states to implement appropriate affirmative and welfare measures for all castes and communities based upon their due entitlement and share. The states can then grant reservations in accordance with this data, which would be constitutionally and legally tenable and therefore avoid judicial intervention in the grant of reservations.

8. It is therefore proposed to amend the Constitution to achieve the above objectives.

P. WILSON

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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SEVENTH SCHEDULE

(Article 246)

List I—Union List

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69. Census

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List III—Concurrent List

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47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

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(Shri P. Wilson, M.P.)