

AS INTRODUCED IN THE RAJYA SABHA
ON 8TH DECEMBER, 2023

Bill No. XIII 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 with immediate effect.

5 2. In article 124 of the Constitution, after clause (7), the following new clause shall be inserted, namely:—

Amendment of article 124.

“(8) Notwithstanding anything in this Constitution, the Government shall provide for reservation in appointments of Judges in the Supreme Court in favour of Socially and Educationally Backward Classes.”.

Amendment of article 217. **3.** In article 217 of the Constitution, after clause (3), the following new clause shall be inserted, namely:—

“(4) Notwithstanding anything in this Constitution, the Government shall provide for reservation in appointments of Judges in all High Courts within the territory of India in favour of Socially and Educationally Backward Classes.”.

STATEMENT OF OBJECTS AND REASONS

The debate on the lack of social diversity within the judiciary is not new. Time and again, concerns have been raised regarding the high concentration of persons belonging to upper castes in the higher judiciary, which has subsequently resulted in low representation of minority communities including Socially and Educationally Backward Classes (SEBCs).

In the first 30 years of its functioning, that is, from 1950 until 1980, the Supreme Court had not seen any representation from the SEBCs. The present situation is no better out of the total sitting Judges in the Supreme Court currently, only 1 Judge belongs to the SEBC community. This is despite the fact that SEBCs constitute roughly 50% of the population in the country. Recently, the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice also highlighted the need for social diversity in judicial appointments, noting that only 11% of High Court Judges belong to SEBCs.

The Government has often defended its stance of not providing reservation in appointments to the higher judiciary by citing lack of explicit provisions under articles 124 and 217 of the Constitution, which pertain to the appointment and conditions of the office of a Judge of the Supreme Court and High Courts respectively. Since the Constitution is silent on reservation in judicial appointments in favour of backward classes, social diversity within the higher judiciary has remained and continues to remain grossly inadequate. Resultantly, the benches of the higher judiciary fall short of reflecting the social realities of the country.

Various judicial institutions across the world are making efforts to constitute a diversified judicial system that is representative of their respective population. For instance, the Canadian judicial system mandates awareness and understanding of differences arising from *inter alia* race and ethnic background. These guidelines were fundamental in establishing that the Canadian Government must strive for a gender-balanced and socially diverse pool of candidates representing all jurisdictions within their judiciary. The United Kingdom is yet another country that has made efforts to recognise under represented groups within its judiciary by implementing the Judicial Diversity and Inclusion Strategy.

There is an urgent need to make the Indian judiciary as inclusive and socially diverse as possible. Active measures must be taken to ensure the representation of SEBCs within the higher judiciary of the country. To this end, this Bill seeks to amend articles 124 and 217 of the Constitution to provide for reservation in judicial appointments in the Supreme Court and High Courts in favour of SEBCs. Such affirmative action will serve to instil public confidence among all classes of people and strengthen the delivery of justice in the country.

Hence, this Bill.

V. VIJAYASAI REDDY

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

	*	*	*	*	*	*	*
Establishment and constitution of Supreme Court.	124.	*	*	*	*	*	*
	(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.						
	*	*	*	*	*	*	*
Appointment and conditions of the office of a Judge of a High Court.	217.	*	*	*	*	*	*
	(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.						
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RAJYA SABHA

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