

102nd Constitutional Amendment Act, Provisions, Controversy

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The **102nd Constitutional Amendment Act, 2018**, is an important amendment related to the National Commission for Backward Classes (NCBC) and the identification of Socially and Educationally Backward Classes (SEBCs). It gave constitutional status to the NCBC by inserting Article 338B and introduced Article 342A for specifying socially and educationally backward classes. It also inserted Article 366(26C) to define SEBCs.

The **102nd Constitutional Amendment** later became controversial during the Maratha reservation case, as the Supreme Court interpreted Article 342A as affecting the power of States to identify their own backward classes. This issue was subsequently addressed through the 105th Constitutional Amendment Act, 2021.

102nd Constitutional Amendment Act 2018 History

The 102nd Constitutional Amendment Act of 2018 was enacted to grant constitutional status to the **National Commission for Backward Classes (NCBC)**, fulfilling a long-standing demand to bring it on par with the National Commissions for SCs and STs.

- Before the 102nd constitutional amendment Act, the **NCBC** was a statutory body established in 1993, which lacked the constitutional authority to effectively protect and investigate the grievances of backward classes.
- By introducing **Articles 338B and 342A**, the Act aimed to institutionalise the identification and safeguarding of Socially and Educationally Backward Classes (SEBCs) under a robust and centralised framework.

102nd Constitutional Amendment Act Key Provisions

The 102nd Constitutional Amendment Act of 2018 altered the procedure for identifying Socially and Educationally Backward Classes (SEBCs); the Act attempted to streamline a deeply sensitive socio-political process. The major provisions of the 102nd Constitutional Amendment Act are listed below:

- **Constitutional Status (Article 338B):** It elevated the NCBC to a constitutional body with five members appointed by the President.
- **Dedicated Mandate:** The Act empowered the NCBC to monitor constitutional safeguards and investigate specific grievances for SEBCs.
- **Civil Court Powers:** It granted the NCBC the authority to summon individuals, demand documents, and receive evidence on oath.
- **Presidential Power (Article 342A):** The Act authorises the President to issue the initial notification of SEBCs for any State or Union Territory.
- **Parliamentary Control:** The 102nd Constitutional Amendment Act mandates that only Parliament can make subsequent changes (inclusions or exclusions) to the Central SEBC list.
- **Clear Definition (Article 366(26C)):** It inserted a specific constitutional definition for "socially and educationally backward classes".
- **Transfer of Jurisdiction:** The Act removes the responsibility of monitoring backward classes from the **National Commission for Scheduled Castes (NCSC)** and shifts it entirely to the NCBC.

Article 338B

Article 338B of the Indian Constitution establishes the National Commission for Backwards Classes (NCBC). Added by the 102nd Constitutional Amendment Act, 2018, it gave the commission constitutional status to protect, monitor, and investigate the rights and welfare of socially and educationally backward classes.

- **Composition:** The Commission consists of a Chairperson, a Vice-Chairperson, and three other Members.
- **Powers and Functions:** It is tasked with investigating safeguards for socially and educationally backward classes (SEBCs), enquiring into specific complaints, and advising governments on policy matters.

Article 342A

Article 342A was inserted by the 102nd Constitutional Amendment Act, 2018, to provide a constitutional framework for identifying Socially and Educationally Backward Classes (SEBCs).

- **Original Framework:** Under its original framework, the President could specify SEBCs for a State or Union Territory through public notification after consulting the Governor in the case of a State. Parliament was

empowered to include or exclude classes from the Central List through legislation.

- The original provision did not allow modification of the Presidential notification through another notification.
- **105th Amendment:** Following the Supreme Court's interpretation in the Maratha reservation case, the 105th Constitutional Amendment Act, 2021, clarified that States and Union Territories can prepare and maintain their own SEBC lists for their respective purposes.

102nd Constitutional Amendment Act Criticism

The **102nd Constitutional Amendment Act**, while successful in elevating the NCBC to a constitutional body, faced intense scrutiny over its impact on India's federal structure.

The practical implementation of the Act revealed significant drafting ambiguities and constitutional challenges, most notably the unintended erosion of state powers:

- **Loss of State Autonomy:** It stripped state governments of their historical, independent power to identify and list Socially and Educationally Backward Classes (SEBCs) within their own borders.
- **States Reduced to Advisory Role:** State governments were downgraded from decision-makers to mere advisors, only able to make recommendations to the Centre or the NCBC.
- **Over-Centralisation of Power:** By introducing Articles 366 and 342A, it concentrated the exclusive authority to specify SEBCs entirely in the hands of the President (the Central Government).
- **Severe Legal Ambiguity:** Poor drafting created massive confusion over legislative intent, leading to conflicting court rulings (e.g., the Bombay High Court initially ruled states still had power, which the **Supreme Court of India** later overturned).

102nd Constitutional Amendment Act Controversy

The major controversy arose over whether the amendment removed the power of States to identify backward classes for their own reservation policies. This issue came before the Supreme Court in the Jaishri Laxmanrao Patil v. Chief Minister case, commonly known as the **Maratha Reservation Case**.

- In May 2021, a five-judge Constitution Bench ruled **3:2** that the 102nd Amendment had taken away the power of states to identify SEBCs for reservation in State employment and educational institutions.
- According to the majority opinion, only the **President of India** could notify SEBCs under Article 342A, whereas Parliament could change the Central List.
- The judgment also overturned Maharashtra's Maratha reservation law because it exceeded the general 50% reservation ceiling without establishing extraordinary circumstances for doing so.

102nd Constitutional Amendment Act Resolution

The controversy surrounding the 102nd Constitutional Amendment Act of 2018 was resolved by the 105th Constitutional Amendment Act, which officially restored the authority of states to maintain their own state-level OBC lists.

- **Restored State Autonomy:** It amended **Article 342A** to guarantee that State Governments and **Union Territories** possess the independent power to maintain their own separate lists of SEBCs for state-level purposes.
- **Clarification of Jurisdictions:** The amendment clearly defined that the President's SEBC list applies strictly to Central Government purposes, successfully restoring the federal balance in social justice administration.

102nd Constitutional Amendment Act UPSC PYQs

Q1. Discuss the role of the National Commission for Backward Classes in the wake of its transformation from a statutory body to a constitutional body. **(UPSC Mains 2022)**

Q2. Consider the following organizations/ bodies in India: **(UPSC Prelims 2023)**

1. The National Commission for Backward Classes
2. The National Human Rights Commission
3. The National Law Commission
4. The National Consumer Disputes Redressal Commission

How many of the above are constitutional bodies?

- (a) Only one
- (b) Only two
- (c) Only three
- (d) All four

Ans: (a)

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