

102nd Amendment Act

The Supreme Court, in May 2021, held that the 102nd Amendment Act of 2018 removed the power of the states to identify socially and educationally backward classes under their territory for grant of quota in jobs and admissions. What is the Constitution (One Hundred and Second) Amendment Act of 2018 all about? Know more in this article. This is an important topic for the [UPSC](#) polity and governance segment.

Constitution (One Hundred and Second) Amendment Act, 2018

The 102nd Amendment Act received the presidential assent and came into effect in August 2018.

- The amendment inserted **Articles 338B and 342A** into the Indian Constitution.
 - Article 338B deals with the structure, duties and powers of the [National Commission for Backward Classes \(NCBC\)](#).
 - Article 342A deals with the power of the President of India to notify a particular caste as a Socially and Economically Backward Class (SEBC) and the power of the Parliament to change the list.
- The amendment also brings about changes in Article 366.
- This amendment **gave the NCBC a constitutional status**. The Commission was originally set up in 1993.

Article 338B

The 102nd Amendment inserted Article 338B into the Constitution.

- This article provides for the establishment of a commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes.
- The NCBC thus received a constitutional status after this amendment was passed.
- As per the article, the commission shall consist of the following members who would be appointed by the President:
 - Chairperson
 - Vice-chairperson
 - Three other members
- The article provides the duties of the commission as given below:
 - Investigating and monitoring matters related to the safeguards provided for the socially and educationally backward classes under the Indian Constitution or under any other law or order of the Government and assessing the working of such safeguards.
 - Inquiring into specific complaints regarding the deprivation of rights and safeguards of the socially & educationally backward classes.

- Participating and advising on the socio-economic development of the socially and educationally backward classes and appraising the progress of their development.
 - Presenting to the President annually or whenever required reports about the working of those safeguards.
 - Making recommendations of measures that should be taken by the central or state governments for the effective implementation of the safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes.
 - Discharging any other functions with regards to the protection, welfare and development and advancement of the socially and educationally backward classes as decided by the Parliament.
- The article also gives the Commission all the powers of a civil court while enquiring into specific complaints regarding the deprivation of rights and safeguards of the socially & educationally backward classes.

Article 342A

Article 342A, which was inserted into the Constitution of India through the 102nd Amendment, empowers the President to specify the socially and educationally backward classes with respect to a state or union territory.

The article makes it mandatory to get parliamentary approval for adding to or deleting a community from the Backward List of communities.

102nd Amendment Latest News

A Supreme Court Constitution Bench by a 3:2 verdict ruled that the 102nd Amendment did take away the power of the states to identify socially and educationally backward classes under their territory for providing reservations in admissions and employment. According to the judgement, only the President has the power to notify a particular caste as SEBC. The states had lost their power to identify backward classes under their territory after the 102nd Amendment.

- The majority judgement read, *"By introduction of Articles 366 (26C) and 342A through the 102nd Constitution, the President alone, to the exclusion of all other authorities, is empowered to identify SEBCs and include them in a list to be published under Article 342A (1), which shall be deemed to include SEBCs in relation to each state and union territory for the purposes of the Constitution."*
- The states can only make suggestions to the President or the NCBC for removing, adding or modifying the list of backward classes. But the power of the states to make reservations in favour of the communities, decide the quantum and kind of reservations, and the nature of benefits, (that is, other than identifying the communities/castes) remains intact.

- The judgement also held the 102nd Amendment to be valid and that it did not affect the federal nature of Indian polity and also did not adversely affect the [basic structure of the Constitution](#).
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