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The Constitution (One Hundred and Fifth Amendment) Act, 2021: CLAT Explainer

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Context and Background of the Amendment

- In the case of Jaishri Laxmanrao Patil v. The Chief Minister [i], the Court interpreted the 102nd Constitution (Amendment) Act, 2018 [ii]–the intent of which was said to expand the powers of National Commission for Backward Classes.
- This Act amended Article 338 and inserted new Articles 338A and 342A, the former of which attributed a constitutional status to the National Commission for Backward Classes and the latter provision was titled “Socially and Educationally Backward Classes”.
- Later, the State of Maharashtra enacted a law to give reservation to the Marathas. This law came to be challenged in the High Court, and later came before the Supreme Court.
- The Apex Court, after hearing this challenge, struck down the Maratha Reservation, on certain grounds. Additionally, in this case, the Court held by a majority, that the States no longer have the power to recognize ‘socially and educationally backward classes’ [SEBCs].
- The Amendment mentioned the ‘Central List’ but didn’t say anything about the ‘State List’. The majority judgment interpreted the text literally.
- Majority opinion was given by Justice Ravindra Bhat and minority opinion was given by Justice Bhushan.

The Issue

- The Central Government claimed that the Court has misunderstood the 102nd Amendment, and it was never its intention to take away the power of the States.
- Historically as well, it has been the States and not the Centre that took the key-role in determining the SEBCs.
- Despite the express statement of the Union-Minister, the majority judgement interpreted the Amendment literally and gave a judgment that took away the power of the States.

- There was no ambiguity among political parties regarding the intention of the 102nd

105th Constitution (Amendment) Act, 2021[iii]

- This Amendment has restored the powers of State/Union Territories to identify SEBCs.
- The Act came into force on 15.08.2021 [August 15, 2021].
- The Act amended Articles 338B, 342A and 366.
- The Parliament specifically added that even States and Union Territories are permitted and empowered to create a list in this regard:

"Notwithstanding anything contained in clauses (1) and (2), **every State or Union territory may, by law, prepare and maintain, for its own purposes, a list of socially and educationally backward classes,** *entries in which may be different from the Central List."*

- Presently, the Amendment Act of 2021 is the operative law in this regard and the power to identify SEBCs subsist in the Centre as well as the States/ Union Territories.

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[i] 2021 SCC OnLine SC 362, decided on 05.05.2021 (Supreme Court of India)

[ii] Full text available at https://egazette.nic.in/WriteReadData/2018/188471.pdf (last accessed 23.12.2021)

[iii] Full text available at https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/707/229155.pdf (last accessed 23.12.2021)