

Bill No. XLVIII of 2012

THE CONSTITUTION (ONE HUNDRED SEVENTEENTH
AMENDMENT) BILL, 2012

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further to amend the Constitution of India.

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

1. (1) This Act may be called the Constitution (One Hundred Seventeenth Amendment) Act, 2012. Short title and commencement.

5 (2) It shall be deemed to have come into force on the 17th day of June, 1995.

2. In the Constitution, in Part III, in article 16, for clause (4A), the following clause shall be substituted, namely:— Amendment of article 16.

10 “(4A) Notwithstanding anything contained elsewhere in the Constitution, the Scheduled Castes and the Scheduled Tribes notified under article 341 and article 342, respectively, shall be deemed to be backward and nothing in this article or in article 335 shall prevent the State from making any provision for reservation in matters of promotions, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes to the extent of the percentage of reservation provided to the Scheduled Castes and
15 the Scheduled Tribes in the services of the State.”

STATEMENT OF OBJECTS AND REASONS

The Scheduled Castes and the Scheduled Tribes have been provided reservation in promotions since 1955. This was discontinued following the judgment in the case of *Indra Sawhney Vs. Union of India*, wherein it was held that it is beyond the mandate of Article 16(4) of the Constitution of India. Subsequently, the Constitution was amended by the Constitution (Seventy-seventh Amendment) Act, 1995 and a new clause (4A) was inserted in article 16 to enable the Government to provide reservation in promotion in favour of the Scheduled Castes and the Scheduled Tribes. Subsequently, clause (4A) of article 16 was modified by the Constitution (Eighty-fifth Amendment) Act, 2001 to provide consequential seniority to the Scheduled Castes and the Scheduled Tribes candidates promoted by giving reservation.

The validity of the constitutional amendments was challenged before the Supreme Court. The Supreme Court while deliberating on the issue of validity of Constitutional amendments in the case of *M. Nagaraj Vs. UOI & Ors.*, observed that the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation in promotion.

Relying on the judgment of the Supreme Court in *M. Nagaraj* case, the High Court of Rajasthan and the High Court of Allahabad have struck down the provisions for reservation in promotion in the services of the State of Rajasthan and the State of Uttar Pradesh, respectively. Subsequently, the Supreme Court has upheld the decisions of these High Courts striking down provisions for reservation in respective States.

It has been observed that there is difficulty in collection of quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment. Moreover, there is uncertainty on the methodology of this exercise.

Thus, in the wake of the judgment of the Supreme Court in *M. Nagaraj* case, the prospects of promotion of the employees belonging to the Scheduled Castes and the Scheduled Tribes are being adversely affected.

Demands for carrying out further amendment in the Constitution were raised by various quarters. A discussion on the issue of reservation in promotion was held in Parliament on 3-5-2012. Demand for amendment of the Constitution in order to provide reservation for the Scheduled Castes and the Scheduled Tribes in promotion has been voiced by the Members of Parliament. An All-Party Meeting to discuss the issue was held on 21-08-2012. There was a general consensus to carry out amendment in the Constitution, so as to enable the State to continue the scheme of reservation in promotion for the Scheduled Castes and the Scheduled Tribes as it existed since 1995.

In view of the above, the Government has reviewed the position and has decided to move the constitutional amendment to substitute clause (4A) of article 16, with a view to provide impediment-free reservation in promotion to the Scheduled Castes and the Scheduled Tribes and to bring certainty and clarity in the matter. It is also necessary to give retrospective effect to the proposed clause (4A) of article 16 with effect from the date of coming into force of that clause as originally introduced, that is, from the 17th day of June, 1995.

NEW DELHI;
The 4th September, 2012.

V. NARAYANASAMY

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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16. (1) * * * * *

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

Equality of opportunity in matters of public employment.

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further to amend the Constitution of India.

*(Shri V. Narayanasamy, Minister of State for Personnel, Public
Grievance and Pensions)*