

STATES' APPROVAL NOT NEEDED FOR QUOTA BILL

Relevant for: Indian Polity & Constitution | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

The Constitution (One Hundred and Twenty Fourth Amendment) Bill of 2019 providing up to 10% reservation for economically weaker sections of society may be notified as the law of the land sooner than expected.

The proviso to Article 368 (power of Parliament to amend the Constitution and procedure thereof) holds that an amendment to a fundamental right coming under Part III of the Constitution need not be ratified by the Legislatures of one half of the States. So, this Bill may be notified by the Central government as soon as it gets the assent from the President.

Right to equality

The Bill, passed by both the Houses of Parliament, adds new clauses to Articles 15 and 16 of the Constitution. Both the Articles come under the part of 'Fundamental Rights' in the text of the Constitution. They are part of the 'right to equality' section of the fundamental rights envisaged in the Constitution.

The new clause (6) to Article 15 allows the government to carve reservation for the economically weaker sections of society in higher educational institutions, including private ones, whether they are aided or not by the State. Minority educational institutions are exempted. Likewise, the new clause (6) to Article 16 provides for quota for economically deprived sections in the initial appointment in government services.

"The proviso to Article 368 makes it clear that when a Constitution amendment of a fundamental right is in question, the Bill concerned need not be sent to the States' Legislative Assemblies for ratification. Only Constitution amendments which affect the Centre-State relations or division of powers in a federal structure require subsequent ratification by the States' Legislatures before the Presidential assent," Professor R. Venkat Rao, constitutional expert and Vice-Chancellor of National Law School India University at Bengaluru, said.

To a query by Rajya Sabha MP M.K. Kanimozhi on exactly this point, Union Law Minister Ravi Shankar Prasad had, on the floor of the House, confirmed that there was no need for States' ratification of the Bill.

"If Parliament is amending the Fundamental Rights, under Article 368, there is no obligation to go to the State Vidhan Sabha. This was a part of the Constitution, as framed by them in 1949 and 1950. That needs to be appreciated," Mr. Prasad had responded to Ms. Kanimozhi's query during the Parliament discussions on the Bill.

Open to judicial review

Experts, however, agree that the economic reservation law is open for judicial review. "Primarily, it affects the basic structure of the Constitution. The Constitution does not provide for economic reservation. The Indira Sawhney judgment has capped the reservation limit to 50%. Now, the new Bill increases reservation to 60%. The court has said economically-deprived is not a homogenous group. It has held that economic backwardness cannot be the sole criterion for reservation," former Solicitor-General Mohan Parasaran said.

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