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Q5

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 Civil Services Mains 2022 · GS II · 10 marks · Constitutional Bodies

Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies.

Core demand of the question

- Discuss the role of the **National Commission** for Backward Classes after it became a constitutional body
- Place the 102nd and 105th Amendments and **Article 338B** against the Indra Sawhney background without confusing dates

Revision summary

Indra Sawhney (1992) led to a statutory NCBC in 1993 for the Central OBC list.

The 102nd Amendment, 2018, inserted **Article 338B** and **Article 342A** and made the NCBC a constitutional body.

Jaishri Laxmanrao Patil (2021) treated the 102nd Amendment as removing State identification of SEBCs.

The 105th Amendment, 2021, restored State lists; the Presidential list remains for Central purposes.

The Commission investigates safeguards and reports to the President; it does not by itself enact reservation.

Introduction

Indra Sawhney v. Union of India (1992) required an expert body to watch inclusions in the Central Other Backward Classes list; Parliament answered with a statutory **National Commission** for Backward Classes in 1993. The Constitution (One Hundred and Second Amendment) Act, 2018, raised that Commission into **Article 338B**; the **One Hundred and Fifth Amendment Act, 2021**, later restored the States' power over their own socially and educationally backward class lists.

Body

From Indra Sawhney to a statutory commission

- Indra Sawhney upheld Central OBC reservation, imposed the creamy-layer exclusion for OBCs, and treated identification of backward classes as an expert, periodically reviewable task, not a one-time political gazette.
- The **National Commission for Backward Classes Act, 1993**, created a statutory NCBC to examine requests for inclusion in the Central list and to advise the Union; that advice was given

statutory weight in the 1993 design.

- The Commission in that phase was not at par with the **National Commissions** for Scheduled Castes and Scheduled Tribes, which already sat in the Constitution.

The 102nd Amendment and Article 338B

- The 102nd **Amendment (2018)** inserted **Article 338B**, constituting a **National Commission** for Backward Classes with a Chairperson, Vice-Chairperson and three other members appointed by the President.
- **Article 338B(5)** gives the Commission duties to investigate and monitor safeguards for socially and educationally backward classes, to inquire into specific complaints, to advise on socio-economic development, and to present annual and special reports to the President, which are laid before Parliament.
- The same amendment inserted **Article 342A**, under which the President may, in consultation with the Governor, specify the socially and educationally backward classes for a State or Union territory, and **Article 366(26C)** defining those classes.
- **After Jaishri Laxmanrao Patil v. Chief Minister** (Maratha reservation, 2021), the 102nd Amendment was read as taking away the State's power to identify SEBCs for its own purposes, which is why Parliament moved again the same year.

The 105th Amendment and the present role

- The **Constitution (105th Amendment) Act, 2021**, amended **Articles 338B, 342A and 366** to restore the power of the State legislature and the State executive to prepare and maintain their own list of SEBCs, while the President's **Article 342A** list remains the list for the purposes of the Central Government.
- **The constitutional NCBC's core role is therefore Central:** monitoring Central safeguards, inquiring into complaints relating to those safeguards, and advising on the Central list and Central welfare, not substituting every State backward-class commission.
- It still lacks the same public visibility as the NCSC in atrocity cases; its usefulness depends on whether ministries treat **Article 338B** reports as binding politically even when they are recommendatory in form.

What the role is not

- The NCBC does not by itself create a new quota; reservation still needs a law and the Indra Sawhney 50 per cent ceiling unless a later, exceptional record is made out.
- It is not the 103rd Amendment's Economically Weaker Sections machinery; EWS is a separate 10 per cent stream under **Articles 15(6) and 16(6)**.

Flow diagram

Indra Sawhney 1992 -> Statutory NCBC 1993
 Statutory NCBC 1993 -> 102nd Amendment 2018 Art 338B
 102nd Amendment 2018 Art 338B -> Art 342A Central SEBC list
 102nd Amendment 2018 Art 338B -> 105th Amendment 2021 State lists restored

Conclusion

After 2018 the NCBC is a constitutional monitor and adviser under **Article 338B**, in the line Indra Sawhney asked for at the Centre. After the 105th Amendment, States again keep their own SEBC lists; the Commission's new status did not swallow State identification.

Facts & figures

Indra Sawhney v. Union of India (1992)

Upheld OBC reservation with creamy-layer exclusion and called for a permanent body to examine the Central backward-class list.

NCBC Act, 1993

Created the statutory **National Commission** for Backward Classes before it was constitutionalised.

Constitution (102nd Amendment) Act, 2018

Inserted **Article 338B (NCBC)** and **Article 342A (Presidential specification of SEBCs)**.

Constitution (105th Amendment) Act, 2021

Restored the power of States to identify and list socially and educationally backward classes for their own purposes.

Article 338B

Constitutional NCBC: composition, duties to investigate safeguards, inquire into complaints, advise on development, and report to the President.

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