

Twelfth Kerala Legislative Assembly
Bill No. 215

**THE KERALA STATE COMMISSION FOR BACKWARD
CLASSES (AMENDMENT) BILL, 2008**

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to amend the Kerala State Commission for Backward Classes Act, 1993.

Preamble.— WHEREAS, it is expedient to amend the Kerala State Commission for Backward Classes Act, 1993 (11 of 1993), for the purposes hereinafter appearing ;

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala State Commission for Backward Classes (Amendment) Act, 2008.

(2) It shall come into force at once.

2. *Amendment of section 9.*— In section 9 of the Kerala State Commission for Backward Classes Act, 1993 (11 of 1993), after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The Commission shall evaluate from time to time, the degree of backwardness of the backward classes and shall submit periodical reports to the Legislative Assembly of the State.”.

3. *Repeal and Saving.*—(1) The Kerala State Backward Classes (Reservation of Appointments or Posts in the Services Under the State) Act, 1995 (16 of 1995) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under section 5 of the said Act, shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The Kerala State Backward Classes (Reservation of Appointments or Posts in the Services Under the State) Act, 1995 (16 of 1995) was enacted to provide for the continuance of the existing system of reservation of appointments or posts in the services under the State for Backward Classes of citizens in the State of Kerala. In the case of *Indra Sawhney Vs. Union of India* [2000 (I) SCC 168] 700/2008.

it was held by the Hon'ble Supreme Court that sections 3, 4 and 6 of the said Act were unconstitutional and those provisions were struck down. The only section that remains is section 5 which empowers the State Commission for Backward Classes to examine from time to time the backwardness of the backward classes and to report to the Legislative Assembly. The Commission for Backward Classes is a permanent commission constituted as per the provisions of the Kerala State Commission for Backward Classes Act, 1993 (11 of 1993). The Law Reforms Committee had recommended to repeal the said Act 16 of 1995.

According to the doctrine of severability it is not the whole Act that should be held inoperative but only such provisions of it as are violative of Fundamental Rights in Part III of the Constitution. The decision declaring some of the provisions of the Act to be invalid does not affect the validity of the Act as it remains, if the severed part can stand independently.

Here the impugned Act minus sections 3, 4 and 6 will not remain unaffected and cannot have independent existence. Hence, in effect, the whole Act became void, that is, the invalidity of the portion of the Act has resulted in the invalidity of the whole Act even though the apex Court has not stated this expressly. Here, without sections 3, 4 and 6 the purpose of the statute will not be served. The unseverable part, that is, section 5 is thus not rendered void but has become unenforceable.

In the circumstances, since there is no legal objection to amend the Kerala State Commission for Backward Classes Act, 1993, it is decided to amend the said Act so as to retain with the Commission apart from the functions already conferred under the Kerala State Commission for Backward Classes Act, 1993 (11 of 1993), the additional function to evaluate from time to time the degree of backwardness of the backward classes and to submit periodical reports to the Legislative Assembly of the State.

FINANCIAL MEMORANDUM

This Bill if enacted and brought into operation would not involve any expenditure from the Consolidated Fund of the State.

A. K. BALAN

EXTRACT FROM THE RELEVANT PORTIONS OF THE KERALA STATE
COMMISSION FOR BACKWARD CLASSES ACT, 1993 (10 OF 1993)

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CHAPTER III

FUNCTIONS AND POWERS OF THE COMMISSION

9. *Functions of the Commission.*— (1) The Commission shall examine requests for inclusion of any class of citizens as a backward Class in the lists and hear complaints of over-inclusion of any Backward Class in such lists and tender such advice to the Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the Government.

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