

Bill No. XLV of 2013

THE READJUSTMENT OF REPRESENTATION OF SCHEDULED
CASTES AND SCHEDULED TRIBES IN PARLIAMENTARY AND
ASSEMBLY CONSTITUENCIES (SECOND) BILL, 2013

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BILL

to provide for the readjustment of seats in the House of the People and in the Legislative Assemblies of the States and for the readjustment of territorial constituencies therefor, insofar as such readjustment is necessitated by inclusion in or exclusion from the lists of the Scheduled Castes and the Scheduled Tribes and for matters connected therewith or incidental thereto.

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

1. (1) This Act may be called the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Act, 2013.

Short title and commencement.

5 (2) It shall be deemed to have come into force on the 30th day of January, 2013.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Census Commissioner" means the Census Commissioner appointed under sub-section (1) of section 4 of the Census Act, 1948;

(b) “Commission” means the Election Commission referred to in article 324 of the Constitution;

(c) “Delimitation Act” means the Delimitation Act, 2002; 33 of 2002.

(d) “Delimitation Order ” means the Delimitation of Parliamentary and Assembly Constituencies Order, 2008; 5

(e) “last census” means the census held in India in 2001;

(f) “Scheduled Castes Orders” means the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Castes) (Union Territories) Order, 1951, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 and the Constitution (Puducherry) Scheduled Castes Order, 1964, made by the President under article 341 of the Constitution; 10

(g) “Scheduled Tribes Orders” means the Constitution (Scheduled Tribes) Order, 1950, the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 and the Constitution (Sikkim) Scheduled Tribes Order, 1978, made by the President under article 342 of the Constitution; 15

(h) “State” includes a Union territory having a Legislative Assembly but does not include the State of Jammu and Kashmir.

Estimation of population of Scheduled Castes and Scheduled Tribes. 3. (1) As soon as may be after the commencement of this Act, the population as at the last census, of the Scheduled Castes or, as the case may be, of the Scheduled Tribes, in each State shall be ascertained or estimated by the Census Commissioner. 20

(2) Where by reason of the amendments made in the Scheduled Castes Orders and the Scheduled Tribes Orders after the last census and up to 31st May, 2012, the population of the Scheduled Castes or the Scheduled Tribes as at the last census is varied in a State, the Census Commissioner shall ascertain or estimate as on the 1st day of March, 2001, the population of the Scheduled Castes or the Scheduled Tribes so varied, and also ascertain or estimate the proportion of such population of the Scheduled Castes or the Scheduled Tribes, respectively, to the total population of the State in the last census. 25

(3) The population figures ascertained or estimated under sub-section (2) shall be notified by the Census Commissioner in the Gazette of India. 30

(4) The population figures so notified shall be taken to be the relevant population figures as ascertained or estimated at the last census and shall supersede any figures previously published; and the figures so notified shall be final and shall not be called in question in any court.

Readjustment of territorial constituencies by Commission. 4. (1) After the population figures have been notified for any State under section 3, the Commission shall make such amendments as may be necessary in the Delimitation Order, having regard to the provisions of articles 81, 170, 330 and 332 of the Constitution, of section 8 of the Delimitation Act, and of this Act, for the purpose of giving proper representation to the Scheduled Castes or, as the case may be, to the Scheduled Tribes of that State, and the First Schedule and the Second Schedule to the Representation of the People Act, 1950 shall be deemed to have been amended accordingly. 35 40 43 of 1950.

(2) In making any amendments in the Delimitation Order under sub-section (1), the Commission shall, as far as may be necessary, have regard to the provisions of clauses (c) and (d) of sub-section (1) of section 9 of the Delimitation Act.

(3) The Commission shall—

(a) publish its proposals for the amendments in the Gazette of India and the Official Gazette of the State concerned and also in such other manner as it thinks fit; 45

(b) specify a date on or after which such proposals will be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified and for such consideration hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) thereafter make necessary amendments in the Delimitation Order.

5 **5.** (1) In the discharge of its functions under this Act, the Commission shall determine its own procedure and shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— Procedure and powers of Commission.

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the production of any document; and

10 (c) requisitioning any public record from any court or office.

(2) The Commission shall have the power to require any person to furnish any information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, any matter under the consideration of the Commission.

2 of 1974. 15 (3) The Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Explanation.—For the purposes of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Commission shall be the limits of the territory of India.

20 **6.** (1) The Commission shall cause the amendments made by it in the Delimitation Order to be published in the Gazette of India and in the Official Gazettes of the States concerned. Publication of amendments and their dates of operation.

(2) Upon publication in the Gazette of India, every such amendment shall have the force of law and shall not be called in question in any court.

25 (3) As soon as may be after such publication in the Gazette of India, every such amendment shall be laid before the House of the People and the Legislative Assembly of the State concerned.

30 (4) Subject to the provisions of sub-section (5), the readjustment of seats and territorial constituencies in the House of the People or in the Legislative Assembly of a State necessitated by any amendments made by the Commission in the Delimitation Order and provided for in that Order as so amended shall apply in relation to every election to the House or, as the case may be, to the Assembly, held after the publication of such amendments in the Gazette of India and shall so apply in supersession of the provisions relating to representation contained in the Representation of the People Act, 1950. 43 of 1950.

35 (5) Nothing contained in the foregoing sub-sections shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or of the Assembly, as the case may be, existing on the date of publication of the amendments made by the Commission in the Gazette of India.

40 **7.** (1) The Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned,— Certain other powers of Commission.

(a) correct any printing mistake in the Delimitation Order as amended under this Act, or any error occurring therein from any inadvertent slip or omission; and

(b) where the boundaries or the name of any district or any territorial division mentioned in the said Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Order up-to-date.

45 (2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.

50 **8.** All things done, and all steps taken, before the commencement of this Act by the Census Commissioner for the ascertainment or estimation of population of the Scheduled Castes and the Scheduled Tribes, or by the Commission for the purpose of readjustment of seats and territorial constituencies shall, insofar as they are in conformity with the provisions of this Act, be deemed to have been done or taken under these provisions as if such provisions Validation of acts done previous to the commencement of Act.

were in force at the time such things were done or such steps were taken.

Power to remove difficulties.

9. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

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Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of Parliament.

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Validation of action taken under the lapsed Ordinance 2 of 2013.

10. Notwithstanding the lapse of the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013, anything done or any action taken under the said Ordinance so lapsed shall always be deemed to have been done or taken under the corresponding provisions of this Act as if such provisions had been in force at all material time.

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Repeal and savings.

11. (1) The Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Ordinance, 2013 is hereby repealed;

Ord. 6 of 2013.

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

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STATEMENT OF OBJECTS AND REASONS

Articles 330 and 332 of the Constitution provide for reservation of seats for the Scheduled Castes and the Scheduled Tribes, respectively in the House of the People and in the Legislative Assemblies of the States, in proportion to their population. Articles 82 and 170 of the Constitution provide for readjustment of seats after each Census. Accordingly, the seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and Legislative Assemblies of the States have been readjusted as per 2001 census.

2. A Writ Petition (Civil) No. 540 of 2011, Virendra Pratap and another *V/s.* Union of India and others was filed in the Supreme Court contending that by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 (10 of 2003), several castes, which had not been included in the list of the Scheduled Tribes, were included as Scheduled Tribes and despite such inclusion their representation in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 was not done. The Supreme Court *vide* its Order dated the 10th January, 2012 directed the Election Commission of India to consider the case of the Scheduled Tribes which had been included in the list of the Scheduled Tribes by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 (10 of 2003) and to take appropriate steps for their representation in the House of the People, as well as in the State Legislative Assembly. Pursuant thereto, the Election Commission of India desired that a legislation may be enacted specifically empowering it to carry out readjustment of seats for the Scheduled Castes and the Scheduled Tribes in the light of the revised population figures of the Scheduled Castes and the Scheduled Tribes, as may be ascertained and estimated by the Census Commissioner as on 1st March, 2001, after taking into account the population figures of the castes and tribes, which have been declared as the Scheduled Castes and the Scheduled Tribes after publication of 2001 census.

3. After the Census of 2001 and up to 31st May, 2012, several castes and tribes have been included in and excluded from the lists of the Scheduled Castes and the Scheduled Tribes by eleven Amendment Acts of Parliament. Thus, there was an urgent need to review and restore the statutory rights of those castes and tribes so included and excluded all over the country.

4. As the Parliament was not in session and immediate steps were required to be taken to implement the aforesaid Order of the Supreme Court, the President was pleased to promulgate the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013 (Ord. 2 of 2013) on the 30th January, 2013. Thereafter, a Bill namely, the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Bill, 2013, to replace the said Ordinance was introduced in Rajya Sabha on the 26th February, 2013. The said Bill was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 18th March, 2013 for examination and report. The Committee presented its fifty-ninth report to the Council of States on the 2nd May, 2013 recommending that the Bill be passed.

5. As the said replacement Bill could not be passed at the expiration of six weeks from the reassembly of Parliament, in terms of sub-clause (a) of clause (2) of article 123 of the Constitution, the aforesaid Ordinance ceased to operate on the 4th April, 2013. Having regard to the fact that the work already initiated by the Census Commissioner and the Election Commission of India as per provisions of the said Ordinance has to be validated and would continue, the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Ordinance, 2013 (Ord. 6 of 2013) was promulgated on the 5th June, 2013. The said Ordinance, *inter alia*, provides as follows:—

(i) the Census Commissioner shall ascertain and estimate the varied population figures of the Scheduled Castes and the Scheduled Tribes in the States as on the last census held in 2001 and notify the same in the Gazette of India;

(ii) the Election Commission of India shall make necessary amendments in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 for the purpose of giving proper representation to the Scheduled Castes or the Scheduled Tribes in Lok Sabha and Legislative Assemblies of the States by readjustment of Parliamentary and Legislative Assemblies territorial constituencies;

(iii) the Election Commission of India shall cause publication of amendments made in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 and dates of its operation;

(iv) the Election Commission of India shall make necessary correction of the errors in the said Delimitation Order and also make necessary alterations therein, pursuant to any change in boundaries and name of any district or territorial division.

6. The Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Bill, 2013 seeks to replace the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Ordinance, 2013 (Ord. 6 of 2013).

NEW DELHI;
The 24 th June, 2013.

KAPIL SIBAL.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 7 of the Bill confers powers upon the Election Commission to make, by notification, correction of printing mistake or any error in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 and also to make necessary amendments therein, pursuant to any change in boundaries and name of any district or territorial division.

2. Sub-clause (1) of clause 9 of the Bill confers powers upon the Central Government to issue orders to remove any difficulty which may arise to give effect to the provisions of the proposed enactment within a period of two years.

3. The notification issued by the Election Commission shall be laid, as soon as, it is issued, before each House of parliament and before the Legislative Assembly of the State concerned. The order made by the Central Government shall be laid, as soon as, it is issued, before each House of Parliament.

4. The matters in respect of which the notification may be issued or the order may be made are matters of procedure and administrative detail. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

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to provide for the readjustment of seats in the House of the People and in the Legislative Assemblies of the States and for the readjustment of territorial constituencies therefor, insofar as such readjustment is necessitated by inclusion in or exclusion from the lists of the Scheduled Castes and the Scheduled Tribes and for matters connected therewith or incidental thereto.

(Shri Kapil Sibal, Minister of Law and Justice)