

L. C. BILL No. II OF 2021.

A BILL

to provide for reservation of seats for admission in educational institutions in the State and of appointments or posts in the public services under the
5 *State to the Special Backward Category-A (SBC-A) in the State of Maharashtra for their advancement and for matters connected therewith or incidental thereto.*

10 WHEREAS the policy of reservation for the educational and social advancement of the people belonging to the backward classes of citizens in admissions to educational institutions in the State and for reservation of appointments or posts in the public services under the State has been under implementation in the State of Maharashtra since formation of the Maharashtra State ;

15 AND WHEREAS the two notifications, providing for reservation of seats in public employment were issued in the Karveer State (Kolhapur) in the year 1902, on the 26th July 1902 and 2nd August 1902, respectively, by Rajarshi Shahu Maharaj, who is known as father of concept of reservation in India, and from whom Dr. Babasaheb Ambedkar got inspiration to make provisions for reservation in the Constitution of India, and in the said two
20 notifications of 1902, reservation was provided to Backward Classes wherein Muslims were also included ;

AND WHEREAS by Resolution of the then Government of Bombay, dated the 23rd April 1942, about 228 communities including Muslims and other castes were declared as intermediate and Backward Class, and Muslims is
25 shown at serial number 155 in the list annexed to the said Resolution ;

AND WHEREAS the Government of India has carried out a detailed study to analyse the condition of religious minority community in the country by appointing Justice Sachar Committee ;

AND WHEREAS the said Sachar Committee submitted its report to the Government of India in the year 2006 and made certain recommendations 5 for overall development of the Muslim community by providing opportunities in education and in services under the State ;

AND WHEREAS the Government of Maharashtra *vide* its Resolution, dated the 6th May 2008, constituted a Study Group under the Chairmanship of Dr. Mehmood-ur-Rehman to look into the educational, social and economic 10 backwardness of Muslims in Maharashtra and to propose remedial measures that could be taken by the Government ;

AND WHEREAS while underlying the feeling that despite several recommendations made by the different Committees on the issue of social and educational backwardness of the Muslims, no concrete steps were taken 15 to implement the recommendations and it created a feeling of utter despondency and a sense of alienation amongst Muslims, and the Dr. Rahman Committee in its report submitted in the year 2013, *inter alia*, recommended minimum eight percent reservation to the backward classes of Muslims in the educational institutions in the State and State Government Services ; 20

AND WHEREAS the sections of Muslim community are educationally and socially backward due to lack of opportunities in admissions to educational institutions in the State and are also inadequately represented in public services under the State ;

AND WHEREAS clause (4) of Article 15 of the Constitution of India 25 enables the State for making of any special provisions, by law, for the advancement of any socially and educationally backward classes of citizens ;

AND WHEREAS clause (5) of Article 15 of the Constitution of India enables the State to make any special provisions, by law, for the advancement of any socially and educationally backward class of citizens in so far as such 30 special provisions relate to their admission to educational institutions including private educational institutions, whether aided or un-aided by the State, other than the minority educational institutions referred to in clause (1) of article 30 of the Constitution ;

AND WHEREAS clause (4) of Articles 16 of the Constitution of India 35 enables the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State is not adequately represented in the services under the State ;

AND WHEREAS even otherwise Article 15(4), 15(5), 16(4) and 46 of the Constitution of India enable the State to provide reservation to a separate 40 class ;

AND WHEREAS the Maharashtra State has enacted the Maharashtra Mah. State Public Services[Reservation for Scheduled Castes, Scheduled Tribes, VIII of De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward 2004. Category and Other Backward Classes] Act, 2001, in pursuance of clause (4) 45 of Article 16 of the Constitution ;

AND WHEREAS some socially and educationally backward sections of Muslim community in the State, without being bound by religion and in the castes which they fall and if backward classes commission has made a recommendation to provide for reservation to such communities on the 50 basis of social and educational backwardness, the issue for providing reservation for such community needed consideration ;

AND WHEREAS the State Government has, after careful consideration, taken a policy decision to create a new category namely Special Backward Category-A (SBC-A) and without affecting the existing percentage of reservation currently applicable in the State, for reservation of seats for
 5 admissions to educational institutions including private educational institutions, whether aided or un-aided by the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, and in appointments or posts in public services under the State, excluding reserved in favour of the Scheduled Tribes candidate
 10 in the Scheduled Areas of the State under the Fifth Schedule to the Constitution of India, as per the notification issued on the 9th June 2014 in this behalf, there shall be a separate five percent reservation for such newly created Special Backward Category-A (SBC-A), other than the categories of Muslims to whom reservation has already been given under other categories
 15 of Backward Classes and Other Backward Classes, for their advancement ;

AND WHEREAS it is expedient to provide for to create Special Backward Category-A (SBC-A) and to provide five percent separate reservation for such category without affecting the existing percentage of reservation currently applicable in the State, for reservation of seats for
 20 admissions in educational institutions including private educational institutions whether aided or un-aided by the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, and in appointments or posts in public services under the State, excluding reservation in favour of the Scheduled Tribes candidates
 25 in the Scheduled Areas of the State under the Fifth Schedule to the Constitution of India as per the notification issued on the 9th June 2014 in this behalf, Muslims to whom reservation has already been given under other categories of Backward Classes and Other Backward Classes, for their advancement, and for the matters connected therewith or incidental thereto ;

30 NOW, THEREFORE, it is hereby enacted in Seventy-Second year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments or posts in public services under the State) for Special
 35 Backward Category-A (SBC-A) Act, 2021. Short title, extent and commencement.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force at once.

2. (1) In this Act, unless the context otherwise requires,— Definitions

40 (a) “admission authority” in relation to admissions to educational institutes means the authority having supervisory and controlling powers over the educational institutes responsible for admissions to particular educational institution ;

45 (b) “appointing authority” in relation to public services and posts means the authority empowered to make appointment to such services or posts ;

(c) “Competent Authority” means the Competent Authority appointed under section 6 ;

50 (d) “educational institutions” means, the educational institutions in the State of Maharashtra owned and controlled by the Government, which receives grant-in-aid from the Government

including a University established by or under the relevant Maharashtra Acts, including private educational institutions, whether aided or un-aided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India. 5

Explanation.—For the purposes of this clause, the expression “private educational institutions” means institutions which have been given either prior to coming into force of this Act or thereafter, aid in the form of Government land at concessional rates or any other monetary concessions by the Government, or are recognized, licensed, supervised 10 or controlled by the Government ;

(e) “establishment” means any office of the Government or of a local authority or statutory authority constituted under any Act of the State Legislature for the time being in force, or a University or a Company, or a Corporation or a Co-operative Society in which share capital is held 15 by the Government or any Government aided institutions.

Explanation.—For the purposes of this clause, the expression “Government aided institutions” shall also include institutions or industries which have been given either prior to coming into force of this Act or thereafter, aid in the form of Government land at concessional 20 rates or any other monetary concessions by the Government or are recognized, licensed, supervised or controlled by the Government ;

(f) “Government” or “State Government” means the Government of Maharashtra ;

(g) “prescribed” means prescribed by rules made under this Act ; 25

(h) “public services and posts” means the services and posts in connection with the affairs of the State and includes services and posts in—

(i) a local authority ;

(ii) a co-operative society established under the Maharashtra Co-operative Societies Act, 1960, in which the Government is a 30 share holder ; Mah. XXIV of 1961.

(iii) a Board or a Corporation or a statutory body established by or under a Central or a State Act which is owned and controlled by the Government, or a Government company as defined in the 35 Companies Act, 1956 or the Companies Act, 2013 ; 1 of 1956. 18 of 2013.

(iv) an educational institution owned and controlled by the Government, which receives grant-in-aid from the Government including a University established by or under a Maharashtra Act ; and

(v) any other establishment in respect of which reservation was 40 made applicable by the Government orders on the date of commencement of this Act and which are not covered under sub-clauses (i) to (iv) ;

(i) “reservation” means the reservation of seats for the members of Special Backward Category-A (SBC-A) for admission in educational 45 institutions in the State and of appointments or posts in public services under the State ;

(j) “Schedule” means the Schedule appended to this Act ;

(k) “Special Backward Category-A (SBC-A)” means a Special Backward Category-A (SBC-A) mentioned in the Schedule and for which 50 backward classes commission has made a recommendation to provide for reservation to such communities on the basis of social and educational backwardness.

(2) The words and expressions used in this Act, but not defined, shall have the same meanings, respectively, assigned to them in the Maharashtra State Public Services [Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes] Act, 2001 and in any other relevant Act.

3. (1) This Act shall apply to all the direct recruitments, appointments or posts made in public services under the State except,—

(a) the super specialized posts in Medical, Technical and Educational field ;

(b) the posts to be filled by transfer or deputation ;

(c) the temporary appointments of less than forty-five days duration ; and

(d) the post which is single (isolated) in any cadre or grade.

(2) This Act shall also apply, for the Special Backward Category-A (SBC-A) for admission in educational institutions including private educational institutions, whether aided or un-aided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India.

(3) The State Government shall, while entering into or renewing an agreement with any educational institute or any establishment for the grant of any aid as provided in the explanation to clause (d) and (e) of section 2, respectively, incorporate a condition for compliance with the provisions of this Act, by such educational institution or establishment.

4. (1) Notwithstanding anything contained in the Maharashtra State Public Services [Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes] Act, 2001, and notwithstanding anything contained in any judgment, decree or order of any Court or other authority and subject to other provisions of this Act, five percent of the total seats for admission in educational institutions including private educational institutions whether aided or un-aided by the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, and five percent of the total appointments or posts in direct recruitment in public services under the State, shall be reserved for Special Backward Category-A (SBC-A) amongst Muslim community which is specified in the Schedule, other than the categories of Muslims to whom reservation has already been given under other categories of backward classes and Other Backward Classes :

Provided that the above reservation shall not be applicable to posts reserved in favour of the Scheduled Tribes candidates in the Scheduled Areas of the State under the Fifth Schedule to the Constitution of India as per the notification issued on the 9th June 2014 in this behalf.

(2) The principle of Creamy Layer shall be applicable to the Special Backward Category-A (SBC-A).

Explanation.—For the purposes of this sub-section, the expression “Creamy Layer” means the person falling in the category of Creamy Layer as declared by the Government in the Social Justice and Special Assistance Department, by general or special orders issued in this behalf, from time to time.

Applicability.

Reservation of seats for admission in educational institutions, appointments or posts in public services under the State for Special Backward Category-A (SBC-A).

Reservation not to be affected. **5.** Notwithstanding anything contained in section 4, the claims of the students or members belonging to the Special Backward Category-A (SBC-A) shall also be considered for the unreserved seats, appointments or posts which shall be filled on the basis of merit and where a student or member belonging to the Special Backward Category-A (SBC-A) is selected on the basis of merit, the number of seats, appointments or posts reserved for Special Backward Category-A (SBC-A), as the case may be, shall not in any way be affected. 5

Competent Authority. **6.** (1) The Government may, by notification in the *Official Gazette*, appoint any officer not below the rank of Deputy Collector authorized by the District Collector in this behalf to be the Competent Authority for the purposes of carrying out the provisions of this Act and the rules made thereunder. 10

(2) The Competent Authority shall exercise such powers and perform such functions as may be prescribed.

Power of Government to give directions. **7.** (1) The Government may, in the public interest, by order direct the Competent Authority, from time to time, to make an enquiry or to take appropriate proceedings under this Act specified in the order, and the Competent Authority shall report to the Government the result of the enquiry made or the proceedings taken by him within such period as may be prescribed. 15 20

(2) On receipt of the report from the Competent Authority under sub-section (1), the Government shall give such directions as it deems fit and such direction shall be final.

Carrying forward of reserved vacancies. **8.** (1) If in respect of any recruitment year, any vacancy reserved for Special Backward Category-A (SBC-A) of persons remains unfilled, such vacancy shall be carried forward up to five years in case of direct recruitment : 25

Provided that on the date of commencement of this Act, if any Government Order, Resolution, Circular and Office memorandum regarding filling of posts is in force then, the same shall continue to be in force unless modified or revoked by the Government and the Government is empowered to revise such Government Orders, Resolutions, Circulars and Office memorandums : 30

Provided further that notwithstanding anything contained in section 17 of this Act, the Government Departments are hereby empowered to give effect to the provisions of this Act including revision of roster prescribed for direct recruitment, as may be necessary, by the Government orders for enforcement and implementation of this reservation : 35

Provided also that if the sanctioned posts are not adequate to allocate at least one post for each reserved category, then the reserved post shall be filled in by applying the principle of rotation in accordance with the Government roster orders or rules as may be prescribed or modified in this behalf and the Government is empowered to revise the roster points and orders or rules accordingly. 40

(2) When a vacancy is carried forward as provided in sub section (1), it shall not be counted against the quota of the vacancies reserved for the concerned category of persons for the recruitment year to which it is carried forward : 45

Provided that the appointing authority may, at any time undertake a special recruitment drive to fill up such unfilled vacancies and if such vacancies remain unfilled even after such special recruitment drive then, it shall be filled up in the manner prescribed by the Government. 50

- 9.** (1) The Government may, by order in writing, entrust upon every admission authority or appointing authority or any officer under such authority, with the responsibility of ensuring the compliance with the provisions of this Act. Responsibility and powers for compliance of Act.
- 5 (2) The Government may, in the like manner, invest the admission authority or appointing authority or officer referred with such powers or authority as may be necessary for such authority or officer, to effectively discharge such duty assigned to such authority or officer.
- 10.** (1) Any admission authority or appointing authority or officer or employee entrusted with the duty or responsibility who wilfully acts in a manner intended to contravene or defeat the purpose of this Act shall, on conviction, be punished with imprisonment for a term which may extend to ninety days or fine which may extend to five thousand rupees, or with both. Penalty.
- 15 (2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government or officer authorized in this behalf by the Government.
- 11.** When it comes to the notice of the Government or is brought to its notice that any person belonging to Special Backward Category-A (SBC-A) is adversely affected, on account of non-compliance with the provisions of this Act or rules made thereunder or the Government orders issued in this behalf, by any admission authority or appointing authority, it may call for such records and pass such appropriate orders as it deems fit. Power to call for records.
- 20 **12.** (1) The Government may by an order, provide for nomination of officers belonging to the Special Backward Category-A (SBC-A) in selections, screening, and Department committee for the purpose of selecting persons for appointment to public services and posts. Representation in selection committee.
- 25 (2) The Government may by an order, grant such monetary or other concessions as may be considered necessary in favour of the Special Backward Category-A (SBC-A).
- 30 **13.** Any admission or appointments made in contravention of the provisions of this Act shall be void. Irregular appointments void.
- 14.** The Competent Authority shall be deemed to be the public servant within the meaning of section 21 of the Indian Penal Code. Competent Authority to be public servant.
- 35 **15.** No suit, prosecution or other legal proceedings shall lie against the Competent Authority or its officers, for anything which is in good faith done or intended to be done under this Act or rules or order made thereunder. Protection of action taken in good faith.
- 16.** The provisions of this Act shall be in addition to and not in derogation of the provisions contained in any other Act, for the time being in force. Provisions of Act to be in addition to any other law for the time being in force.
- 40 **17.** (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act. Power to make rules.
- (2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in

which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the *Official Gazette*, the rule shall, from the date of publication of a notification in the *Official Gazette*, of such decision have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule. 5

Savings. **18.** (1) The provisions of this Act shall not apply to the cases in which selection process has already been initiated before the commencement of this Act, and such cases shall be dealt with in accordance with the provisions of law and Government orders as they stood before such commencement. 10

Explanation.—For the purpose of this section, the selection process shall be deemed to have initiated where, under the relevant service rules,-

(i) recruitment is to be made on the basis of written test or interview only, and such written test or the interview, as the case may be, has started ; or 15

(ii) recruitment is to be made on the basis of both, the written test and interview and such written test has started.

(2) The provisions of this Act shall not apply to admission in educational institution and the cases in which admission process has already been initiated before the commencement of this Act and such cases shall be dealt with in accordance with the provisions of law and Government order as they stood before such commencement. 20

Explanation.—For the purpose of this section, the admission process shall be deemed to have initiated where,- 25

(i) admission is to be made on the basis of any entrance test, and procedure for such entrance test, as the case may be, has started ; or

(ii) in case of admission to be made other than on the basis of entrance test, the last date for filling up the application forms is lapsed. 30

Power to remove difficulty. **19.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order published in the *Official Gazette*, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary and expedient for the purpose of removing the difficulty. 35

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

SCHEDULE*Special Backward Class - A (SBC-A)*

1 Dhobi Muslim or Muslim Dhobi or Dhobi Musalman	17 Meer
2 Garadi Muslim or Garodi	18 Hakim
3 Nai Muslim, Navid or Navik	19 Mulla or Mullaji, Bhorl Mullaji
4 Kadri or Quadri	20 Jamadar
5 Pirjade or Peerjade	21 Mukadam
6 Mirza	22 Kamli or Kasmi
7 Nakshabandi or Nakashbandi or Naqshbandi	23 Mehandi or Mehdi
8 Machimar Muslim Kharbi/Dadli	24 Haideri
9 Tandel Muslim	25 Aalvi or Alvi
10 Patawa Muslim	26 Usmani
11 Kagaji Muslim or Kagadi Muslim	27 Noori
12 Kazi	28 Rahmani
13 Takankar	29 Chaous or Chaus
14 Chishti	30 Fakih
15 Muslim Shah	31 Sufi or Warsi or Asharfi
16 Muslim Patel	32 Shutari or Satari Muslim

STATEMENT OF OBJECTS AND REASONS

The State of Maharashtra is the leading State in providing reservation for the underprivileged, and the policy of reservation for the social and educational advancement of the people belonging to the backward classes of citizens in admissions to educational institutions in the State and for reservation of appointments or posts in the public services under the State has been under implementation in the State of Maharashtra since formation of the State.

2. The initial two notifications making reservation of seats in public employment were issued in the year 1902 by Rajarshi Shahu Maharaj, who is known as the father of the concept of reservation in India. In the said two notifications of 1902, reservation was provided to Muslim community as a Backward Class. In the Resolution dated the 23rd April 1942 issued by the then Government of Bombay, about 228 communities were declared as intermediate and backward class wherein Muslim is shown at Serial No. 155 in the list annexed thereto.

3. The Government of India has carried out a detailed study to analyse the condition of religious minority in the country by appointing Justice Sachar Committee and the Sachar Committee submitted its report to the Government of India in the year 2006 and made certain recommendations for the overall development of the Muslim community by providing opportunities in education and in services under the State. The Government of Maharashtra *vide* its Resolution dated the 6th May 2008 constituted a Study Group under the Chairmanship of Dr. Mehmood-ur-Rehman to look into the educational, social and economical backwardness of Muslims in Maharashtra and to propose remedial measures that could be taken by the Government. The Dr. Rehman Committee in its report submitted in 2013, *inter alia*, recommended minimum eight percent reservation to the backward Muslims in the State Government services and educational institutions alongwith the other recommendations.

4. Clause (4) of Article 15 of the Constitution of India enables the State for making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens. Clause (5) of Article 15 of the Constitution of India enables the State for making of any special provisions, by law, for the advancement of any socially and educationally backward classes of citizens in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or un-aided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution. So also, clause (4) of Article 16 of the Constitution of India enables the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. Some sections of the Muslim communities in the State have requested for a separate reservation for the Muslim communities being socially and educationally backward in admissions to educational institutions and adequate representation in appointments or posts in the public services under the State.

5. The Maharashtra State has enacted the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (Mah. VIII of 2004). The State Government

has, after careful consideration, taken a policy decision that without disturbing the existing percentage of reservation currently applicable in the State, for reservation of seats for admissions in educational institutions including private educational institutions whether aided or un-aided by the State, and in appointments or posts in public services under the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, excluding reservations in favour of Scheduled Tribes candidates in the Scheduled Areas of the State under the Fifth Schedule to the Constitution of India, as per the notification issued on the 9th June 2014, there shall be a separate five percent reservation for the socially and educationally backward class communities amongst Muslims termed as Special Backward Category-A (SBC-A), which without being bound by religion and in the castes which they fall and a recommendation to provide for reservation to such communities on the basis of social and educational backwardness has been made by the Backward Classes Commission, other than the communities of Muslims to whom reservation has already been given under other categories of backward classes and Other Backward Classes, for their advancement.

Hence, this Bill.

Vidhan Bhavan,
Mumbai,
dated 2nd July 2021.

KAPIL PATIL,
Member-in-charge.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves following proposals for delegation of legislative powers :—

Clause 6.— (a) Sub-clause (1) empowers the State Government to appoint any officer not below the rank of Deputy Collector authorized by the District Collector as competent authority, by notification in the *Official Gazette*, for the purpose of enforcing the provisions of this Act and the rules made thereunder.

(b) Sub-clause (2) empowers the State Government to prescribe the powers to be exercised and the duties to be performed by the competent authority.

Clause 7 (1).— This clause empowers the State Government to prescribe the period, in which the report of the conclusion of inquiry or proceedings done by the Competent Authority is to be communicated to the Government.

Clause 8 (2).— The proviso to this clause empowers the State Government to prescribe the manner by which, the vacancies remained unfilled even after special recruitment drive, are to be filled.

Clause 17 (1).— This clause empowers the State Government to make rules, in *Official Gazette*, to carry out the purposes of this Act.

Clause 19 (1).— This clause empowers the State Government to remove the any difficulty, by publishing an order in the *Official Gazette*, arising while giving effect to the provisions of this Act.

The above proposals regarding delegation of powers are of a normal character.

**MAHARASHTRA LEGISLATURE
SECRETARIAT**

[L. C. BILL No. II OF 2021.]

[A BILL to provide for reservation of seats for admission in educational institutions in the State and of appointments or posts in the public services under the State to the Special Backward Category-A (SBC-A) in the State of Maharashtra for their advancement and for matters connected therewith or incidental thereto.]

**[SHRI KAPIL PATIL,
Member-in-Charge.]**

**RAJENDRA BHAGWAT,
Principal Secretary,
Maharashtra Legislative Council.**