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|     | NCBC to Governor or President is actually a step backward.<br><br>Hence amending Article 342 and equating identification of OBC list like SC and ST list should not be done.  |                           |  |
| 10. | There is an apprehension as to whether combined reading to amended Article 342A and 366(26C) under the Constitution 123rd Amendment Bill, 2017 would lead to taking away the rights of the Backward Classes in the State for determination of Backward Classes for State List? Whether that power vested with the State to notify on the recommendation of the State Commission is being taken away? This cannot happen for any reasons as long as federal system that we are having. This shadow has to be cleared to banish the doubts at least by Select Committee which can, if I may say so, revise the Draft Rules. | Article 342A and 366(26C) | This is a misplaced apprehension as the proposed Bill will not in any way take away the powers of the State to exclude/include communities etc. in the State's list.   |
|     |   |                           | In view of the above, the amendments proposed by the Hon. MPs may not be allowed.  |
|     | <b>Smt. Kanimozhi</b>   |                           |  |
| 11. | Therefore, any new Constitutional Body being created now must not displace the States from their traditional and integral role in the empowerment of backward classes.  |                           | The proposed Bill will not in any way take away the powers of the State to exclude/include communities etc. in the State's list.   |
| 12. | <b>Modify:</b> Sub-clause (c) to participate and advise on the planning process of socio-economic development of socially and educationally backward classes and evaluate the progress under the Union and any State.   | Article 338B, Clause 5    | All the Sub-clauses under Article 338B (5) imply a participative role of the proposed Commission.  |
| 13. | <b>Insert:</b> (g) to examine request for inclusion of any class of citizens as a backward class in the lists and hear complaints of over inclusion or under-inclusion of any backward class in such lists and tender such aside to the Central Government as it deems appropriate.   | Article 338B, Clause 5    | Hearing of complaints by the proposed Commission is provided under Article 338B (5). As regards examination of requests for inclusion of any class as a backward class, the same would be available to the NCBC as part of the modalities to be issued on enactment. |
| 14. | <b>Insert:</b> Clause 10. Notwithstanding anything provided in Clause 9, the State Government shall continue to have the powers to identify Socially and Educationally Backward Classes.  | Article 338B, Clause 10   | The proposed Bill will not in any way take away the powers of the State to include communities etc. in the State's list.   |



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| 15. | Modify the clause to replace "after consultation with Governor" with on the requests made by the Governor.  | Article 342A (1)          | The consultation with Governor takes care of not only requests emanating from the States but also such requests that may be received by the Central Government.   |
| 16. | <b>Insert:</b> The President may, on the advice of the National Commission for Backward Classes, include or exclude from the Central List of socially and educationally backward classes specified in a notification issued under Clause (1).   | Article 342A Clause 2     | The setting up of the proposed Commission will not be retrograde to the interest of the socially and educationally backward classes. The Article 342A will provide for a comprehensive examination of each case of inclusion/exclusion from the Central List. The ultimate power for such inclusion/exclusion would stand vested with the Parliament. |
| 17. | <b>Insert:</b> The Governor of a State, by public notification, specify the socially and educationally backward classes for the purposes of making provision for reservation of posts under that State or under any other authority of the State or under the control of the State or seats in the educational institutions within that State.                                    | Article 342A Clause 3     | The proposed Bill concerns only the Central List of socially and educationally backward classes to be issued by the Central Government.   |
| 18. | <b>Insert:</b> The Governor may, on the advice of the State Commission for Backward Classes, include or exclude from the State List of socially and educationally backward classes specified in a notification issued under Clause (3).   | Article 342A Clause 4     | The proposed Bill concerns only the Central List of socially and educationally backward classes to be issued by the Central Government.   |
|     |   |                           | In view of the above, the amendments proposed by the Hon. MPs may not be allowed.   |
|     | <b>Shri Husain Dalwai, MP</b>   |                           |   |
| 19. | On page 2, line 3, instead of the words 'National Commission for Backward Classes', the following words be inserted, namely:<br>'National Commission for Socially and Educationally Backward Classes'   | Article 338B(1) Clause 3  | The clause provides that there shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes. This nomenclature has been intentionally applied so as to maintain a continuum with the existing National Commission for Backward Classes.                                      |
| 20. | On Page 2, line 5, instead of the words 'Chairperson, Vice Chairperson and three other members', the following words shall be inserted, namely:<br>'Chairperson, Vice Chairperson and five other members, who are persons from socially and educationally backward classes, including a Member-Secretary who is or has been an officer of the Central Government at the rank of a | Article 338B (2) Clause 3 | The existing National Commission for Backward Classes has five members. The same strength has been proposed in the Bill.  |

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|     | Secretary to the Government of India.'  |                              |  |
| 21. | <p>On page 2, after line 7, the following proviso be added, namely:<br/>'Provided that the Chairperson shall be a retired Judge of either the Supreme Court or of a High Court, the Vice-Chairperson shall be a person from a minority community, at least one member should be a woman, at least one member should be from a community categorized as Most Backward Class or Extremely Backward Class.</p> <p>Provided further that at least two members must be persons who have expert knowledge in matters relating to backward classes.'</p>   | Article 338B(2)<br>Clause 3  | These aspects will be considered at the time of framing the Rules, on enactment of the Bill.   |
| 22. | <p>On page 2, After line 11, two new sub-clauses (a) and (b) be added and the existing sub-clauses (a) to (f) be renumbered as (c) to (h). The new sub-clauses (a) and (b) be read as follows:</p> <p>'(a)(i) To examine the draft list of socially and educationally backward classes to be submitted to President for public notification under Article 342A(1) and tender such advice to the Central Government as it deems appropriate.</p> <p>(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government.<br/>Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and submit such reasons along with the draft list to the President.</p> <p>(b) (i) To examine and advice the Central Government on the requests of inclusion or exclusion from the list of socially and educationally backward classes for the purpose of enabling the Parliament to amend this list under Article 342(2) and to hear complaints of over-inclusion and under-inclusion of any backward classes in such list and tender such advice to the Central Government as it deems appropriate.</p> <p>(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government.</p> | Article 338B (5)<br>Clause 3 | These aspects will be given due consideration at the time of framing of modalities and standard operating procedures for inclusion/exclusion of castes/communities with reference to the Central list. |



|     |   |                             |  |
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|     | Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and place the same before both Houses of Parliament'.   |                             |  |
| 23. | On page 2, for lines 41 and 42, the following shall be substituted, namely:<br>'(8) The Commission shall, while examining requests and complaints as referred to in sub-clauses (a) and (b) or investigating any matter referred to in sub-clause (c) or inquiring into any complaint referred to in sub-clauses (d) of clause (5)  | Article 338B(8)<br>Clause 3 | The powers of the Civil Court provided under the Bill covers the suggestion made.  |
| 24. | On page 3, for line 19 the following shall be inserted, namely:<br>'Provided that such public notification shall be issued on the basis of advice tendered by the Commission under Article 338B(5)(a) and shall be placed in both Houses of Parliament as soon as possible after issuance.<br><br>Provided further that the consultation with the Governor of a State shall be on the basis of advice tendered to the Governor by the State Commission of Backward Classes of that State.'  | Article 342A(1)<br>Clause 4 | The provisions of the instant Bill is limited to the Central lists.  |
| 25. | On page 3, after line 23, the following lines shall be inserted, namely:<br>'Provided that such a law is based on the advice tendered by the Commission under Article 338B(5)(b).   | Article 342A(2)<br>Clause 4 | As already stated above the modalities to be framed indicating the chain of process of cases of inclusion/exclusion with reference to the Central list, will incorporate the aspect suggested. |
| 26. | On page, 3, after Article 342A(2), a new clause be added, namely:<br>'342A(3) – The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of the list notified under Article 342A(1), and every succeeding period of ten years thereafter, on advice of the Commission, under take revision of the list with a view to exclude those classes who have ceased to be backward classes or for including in such list new backward classes.' | Article 342A(3)<br>Clause 4 | The inclusion/exclusion of castes/communities with reference to the Central lists is a continuous process.   |
|     |   |                             | In view of the above mentioned position, the amendments proposed by the Hon'ble MPs may not be allowed.  |

**MINUTES OF THE MEETING OF THE  
SELECT COMMITTEE OF THE RAJYA SABHA ON THE  
CONSTITUTION (ONE HUNDRED AND TWENTY-THIRD AMENDMENT) BILL,  
2017  
I  
FIRST MEETING**

The Committee met at 11.00 A.M. on Monday the 17<sup>th</sup> April, 2017 in Room No 62, Parliament House , New Delhi.

## PRESENT

1. Shri Bhupender Yadav - *Chairman*

## MEMBERS

2. Dr Vikas Mahatme
3. Shri Ram Narain Dudi
4. Shri B.K. Hariprasad
5. Shri Sukhendu Sekar Roy
6. Shri A. Navaneethakrishnan
7. Shri T.K. Rangarajan
8. Mir Mohammad Fayaz
9. Shri Swapan Dasgupta

**SECRETARIAT**

1. Shri J.G. Negi, Joint Secretary
2. Shri R.S. Rawat, Additional Director
3. Smt. Monica Baa, Deputy Secretary

**Representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice)**

1. Smt G. Latha Krishna Rao, Secretary
2. Shri B.L. Meena, Joint Secretary
3. Shri Prakash Tarsorakar, Director
4. Shri K. Narayanan, MD, National Backward Classes Finance and Development Corporation

**Representatives of the Ministry of Law and Justice (Department of Legal Affairs)**

1. Shri Suresh Chandra, Secretary
2. Shri Ramayan Yadav, Additional Secretary

### Representatives of the Ministry of Law and Justice (Legislative Department)

1. Dr. Reeta Vasishta, Additional Secretary
2. Shri R. Sreenivas, Additional Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee and informed them about the reference of the Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017, as passed by the Lok Sabha, to the Select Committee for consideration and report by the last day of the first week of the next session. He sought the views of the Members of the Committee on the course of action to be followed in examining the Bill and invited the Members to suggest names of experts/organizations who can be called before the Committee to share their views.

3. The Members of the Committee expressed their views on the provisions of the Bill and were of the opinion that the views of States, especially the Tamil Nadu, Kerala, Karnataka and Andhra Pradesh should be taken on the provisions of the Bill. The Committee was also of the view that opinions of different organizations, including that of trade unions and Bar Associations, should be taken into consideration.

4. Thereafter, Secretary, Ministry of Social Justice and Empowerment gave a power point presentation to the Committee wherein she dwelled at length on the background in which the Bill under consideration was drafted and the history of the reservation to the backward classes. The Committee then sought clarifications on the following issues i.e. (i) whether there was any objective criterion laid down by the Supreme Court for deciding the basis of 'inclusion' and 'exclusion' of any notified class; (ii) what would be the status of the State Backward Classes Commissions after coming into force of the Bill under consideration; (iii) what would be the status of the existing list of OBCs after coming into effect of the Bill under consideration; (iv) what would be the role of the Governor in deciding about the inclusion or exclusion of classes in the OBC list.

5. Secretary, Department of Legal Affairs, Ministry of Law and Justice informed that the eleven indicators provided by the Mandal Commission would provide the broad framework for deciding the classes to be included in the list of OBCs by the National Commission for Backward Classes. The Committee was informed that the proposed amendment was only to confer constitutional status on the National Commission for Backward Classes while the State Backward Classes Commissions will continue to function as they are. It was further informed that two Bills have been moved in the Parliament one is the Constitution (One Hundred and

Twenty-Third Amendment) Bill, 2017 and the other one is the Repeal and Saving Clause Bill which would save whatever actions have been taken so far by the National Backward Classes Commission.

6. Secretary, Ministry of Social Justice and Empowerment further clarified that under the Backward Classes, unlike the SCs & STs, there are two lists i.e. the Central List and the State List. The Central List provides for education and employment opportunities in Central Government Institutions. In the State List, the States are free to include or exclude, whoever they wish to, in their Backward Classes List. As a result, if there is a certain category which is not in the Central List, it may still be found in the State List. That is the freedom and prerogative of the State Backward Classes Commission and that would continue to be there.

7. Concluding the meeting the Chairman directed that a Press Release should be issued in all the leading national and vernacular newspapers inviting comments/memoranda on the provisions of the Bill under consideration of the Select Committee within one month of the publication of the Press Release. He further directed that all the States be requested to submit their comments/views on the Bill for the consideration of the Committee. He again invited the Members to submit the names of the experts/organizations that may be called before the Committee for oral evidence.

8. A verbatim record of the proceedings of meeting was kept.

9. The Committee adjourned at 12.31 P.M.

New Delhi  
17<sup>th</sup> April, 2017

**R.S. RAWAT**  
**ADDITIONAL DIRECTOR**

**MINUTES OF THE MEETING OF THE SELECT COMMITTEE ON THE  
CONSTITUTION (ONE HUNDRED AND TWENTY THIRD AMENDMENT) BILL,  
2017**

**II  
Second Meeting**

The second meeting of the Select Committee on the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017 was held at 11.00 am on Monday, the 24<sup>th</sup> April, 2017 in Committee Room 'D', Parliament House Annexe, New Delhi.

**Present**

- |                         |                 |
|-------------------------|-----------------|
| 1. Shri Bhupendar Yadav | <i>Chairman</i> |
|-------------------------|-----------------|

**Members**

2. Shri Chunibhai Kanjibhai Gohel
3. Dr. Vikas Mahatme
4. Shri Ram Narain Dudi
5. Shri B.K. Hariprasad
6. Shri Madhusudan Mistry
7. Shri Digvijaya Singh
8. Shri Husain Dalwai
9. Shri Sukhendu Sekhar Roy
10. Shri A. Navaneethakrishnan
11. Shrimati Kanimozhi
12. Shri Anil Desai
13. Shri Biswajit Daimary
14. Shri Rajeev Chandrasekhar
15. Shri Swapan Dasgupta

**Secretariat**

1. Shri Mahesh Tiwari, Director
2. Shri R.S. Rawat, Additional Director
3. Shri Rakesh Anand, Additional Director
4. Smt. Monica Baa, Deputy Secretary
5. Ms. Chhaya Gupta, Under Secretary

**Representatives of Ministry of Law & Justice**

1. Dr. G.Narayana Raju, Secretary (Legislative Department)
2. Shri Suresh Chandra, Secretary (Legal Affairs)
3. Dr. Reeta Vasistha, Additional Secretary
4. Shri Ramayan Yadav, Additional Secretary
5. Shri R. Sreenivas, Additional Legislative Counsel

**Representatives of Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment**

1. Shri B.L. Meena, Joint Secretary



2. Shri K. Narayan, MD, National Backward Classes Finance and Development Corporation (NBCFDC)

2. At the outset, the Chairman welcomed the Members of the Committee and informed them that as per the decision of the Committee, a Press Release has been issued on the 22<sup>nd</sup> April, 2017 inviting memoranda on the Bill within 30 days of the publication of advertisement in the newspapers. He also informed that as decided by the Committee in its last meeting, the MD, NBCFDC will make a brief presentation to the Committee and thereafter, Secretary, Legal Affairs may also brief the Committee about the major judgments starting from Indira Sawhney to other major judgments on the issue related to reservations.

3. The Committee first heard NBCFDC which made a powerpoint presentation and thereafter, the Members sought clarifications on the points made therein. A query was raised as to whether a person, who has taken a loan under MUDRA, can also apply for a loan under the Scheme of NBCFDC. A clarification was also sought as to why there is a special loan scheme for women, limited to just one lakh rupees, when everyone is eligible to take loans up to five lakh rupees under NBCFDC Scheme. While complimenting NBCFDC for imparting skill to the OBCs, Members stated that there was no monitoring or tracking of the people who have acquired the skills. Members suggested that NBCFDC should maintain a database of each beneficiary under the skill development scheme so as to know how he has been benefited, whether he is still continuing and if he has been able to take advantage of that skill.

4. MD, NBCFDC replied that if the people who have applied under the MUDRA Scheme belong to the target group of NBCFDC, the banks can re-finance through the NBCFDC Scheme as the interest rate is much less in NBCFDC Scheme, that is between five and six per cent, whereas in MUDRA Scheme, it is around 10 per cent. The channel partners, which is the banks, are given money under two schemes – one is the project finance, wherein NBCFDC give them the funds and they can give it to fresh loanees; the other is under re-finance wherein they can submit the list of the loanees who have already taken loans at higher interest rates and that gets converted into a loan with a lower interest rate. The linkages with banks happened just over the last one year and NBCFDC has been requesting the banks to check their list of people who have taken a MUDRA loan and if they are from the OBC and belong to the target group, they can get it at a lower rate of interest. Regarding the question on loans for women, he stated that women are also eligible for other loans but these loans are at a lower interest rate. He stated that they would definitely consider and see how they can increase their

coverage for women and also extend loans of higher amounts for women. They had introduced a job portal to have a database which would be available with the Corporation. It has records of the mobile number of the person and the name and phone number of the existing employer. They are planning linkage of the website information with popular job portals.

5. Members pointed out that the basic idea of the NBCFDC is to help the backward classes and that majority of the backward classes are below poverty line. In view of this, Members questioned the very concept of 'double the poverty line'. MD, NBCFDC clarified that the term 'double the poverty line' was defined by the erstwhile Planning Commission. They have fixed Rs. 49,000 as the poverty line for the rural areas and Rs.60,000 for the urban areas. Members also pointed that the rate of interest on educational loans at four per cent is on the higher side and too much for the students coming from backward classes. MD, NBCFDC stated that there is one additional policy of the Ministry of Human Resource Development wherein all the interest that is accruable on the educational loans gets paid for by the Ministry of HRD. So, NBCFDC have publicized the Scheme with their State Channel Agencies and many State Channel Agencies have also started claiming this amount. The amount received from the Ministry of HRD is given to the State Agencies who, in turn, put it into the account of the concerned student.

6. He further stated that there is a lot of scope in agriculture as most of the agriculturists come under the backward classes. They had signed up, last year, with the Agriculture Sector Skill Council but unfortunately, they could not do much. Now they are looking at other possibilities of food processing and other such areas where they can provide training because one major issue with the farmers is that they are not able to process their produce and they get lesser value. On marketing and the artisans, he stated that they have signed an MoU with the Development Commissioner of Handicrafts where they are the implementing agency. That is basically for the purpose of identifying designs which can be upgraded. The payment will be done by DC, Handicrafts. They will work with such clusters. They have tried the e-marketing concept, but that is not very popular among poor artisans because if the product is not liked by the consumer, they have to suffer the burden of the unsold goods. That is why they are concentrating more on the camp approach. He also stated that there are various States which have their own separate Corporations for looking after the Most Backward Classes. They are taking on board any State Corporation which is working for any marginalized community from

amongst the OBCs and are also providing funds. He stated that the amount of funds that they provide every year is only around Rs. 100 crores. And, using that, they are disbursing around Rs. 350 crores. Even considering an average loan of Rs. 20,000, they are not able to reach more than 1.7 or 1.8 lakh people every year. They have reached 23 lakh people which is not really a very large number, considering the size of the country. He further explained that the mandate of NBCFDC is the socio-economic development of backward classes through both finance and skill development. But the extent to which they can do depends on the funds available with them. They do evaluation studies and found that the people whom they have assisted, have definitely gone above the poverty line or double the poverty line. But, in order to reach more and more people, as part of their latest initiative, they are tying up with the DC (Handloom) and the DC (Handicraft). It can, probably, help because there the funding happens through these offices, which have definitely got large amount of funds.

7. The Members also enquired about giving stability to various nomads who come under the OBC category through financial support. They wanted to know whether NBCFDC has any scheme for them. The Committee was informed that some nomad come in SC category whereas some come in backward classes also. Some nomads even do not come in both the categories. However, it is difficult to finance all the category of OBCs, but they are concentrating on their skill development.

8. The Committee then heard the Ministry of Law & Justice. Chairman pointed out to the Law Secretary that the note from the Ministry does not clearly state which case is related to promotion and which is related to OBC reservation. He also pointed out that the Ministry's note mentioned that the Supreme Court suggested formation of a Commission but why this Commission is necessary and what is the purpose of the Constitutional Commission has also not been mentioned in the note. Nothing is also mentioned about the constitutional amendment relating to article 338B, whether it was challenged or not challenged, what the position was, etc. Chairman expressed that the Committee wanted serious work to be done as far as the legal aspect is concerned and, therefore, requested the Ministry to revise the note and to come prepared with a complete and exhaustive presentation in the next meeting.

9. A verbatim record of the proceedings of the Committee was kept.

The meeting adjourned at 12.33 p.m.

*New Delhi*  
24.04.2017

**MAHESH TIWARI**  
**DIRECTOR**



**MINUTES OF THE MEETING OF THE  
SELECT COMMITTEE OF THE RAJYA SABHA ON THE  
CONSTITUTION (ONE HUNDRED AND TWENTY-THIRD AMENDMENT) BILL,  
2017  
III  
THIRD MEETING**

The Committee met at 11.00 A.M. on Monday the 02<sup>nd</sup> May, 2017 in Main Committee Room, Parliament House Annexe, New Delhi.

**PRESENT**

1. Shri Bhupender Yadav - *Chairman*

**MEMBERS**

- 10. Shri Chunibhai Kanjibhai Gohel
- 11. Shri Madhusudan Mistry
- 12. Shri Digvijaya Singh
- 13. Shri Sharad Yadav
- 14. Shri A. Navaneethakrishnan
- 15. Shri T.K. Rangarajan
- 16. Shri C.M. Ramesh
- 17. Shri Naresh Gujral
- 18. Shri Biswajit Daimary
- 19. Shri Rajeev Chandrasekhar
- 20. Shri Swapan Dasgupta
- 21. Shri Ram Kumar Kashyap

**SECRETARIAT**

- 6. Shri J.G. Negi, Joint Secretary
- 7. Shri Mahesh Tiwari, Director
- 8. Shri R.S. Rawat, Additional Director
- 9. Shri Rakesh Anand, Additional Director
- 10. Smt. Monica Baa, Deputy Secretary
- 11. Ms Chhaya Gupta, Under Secretary

**Representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice)**

- 5. Shri N.S. Kang, Secretary
- 6. Shri B.L. Meena, Joint Secretary
- 7. Shri K. Narayan, MD, National Backward Classes Finance and Development Corporation

**Representatives of the Ministry of Law and Justice (Department of Legal Affairs)**

- 3. Shri Suresh Chandra, Secretary

4. Shri Ramayan Yadav, Additional Secretary
5. Shri R.S. Verma, Deputy Legal Advisor

**Representatives of the Ministry of Law and Justice (Legislative Department)**

3. Dr. G. Narayana Raju, Secretary
4. Dr. Reeta Vasishta, Additional Secretary
5. Shri R. Sreenivas, Additional Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee and informed them that the Secretary, Department of Legal Affairs, Ministry of Law and Justice would brief the Committee on the major judgments starting from the Indira Sawhney vs Union of India till date related to the issue of reservations and affirmative action. He also requested the Ministry of Social Justice and Empowerment to expedite the process of finalizing the names of the non-governmental experts whom the Committee could call before it to share their views on the Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017.

3. Department of Legal Affairs, Ministry of Law and Justice on the issue of constitution on National Commission of Backward Classes in 1993 informed the Committee that the Supreme Court in its judgment in Indra Sawhney case had directed that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the list of Other Backward Classes can be prepared. Such body must also be empowered to examine complaints of the said nature and pass appropriate orders. The Supreme Court also stated that the advice/opinion of Commission should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be included among the Other backward Classes, such matter must also be referred to the said body in the first instance and action must be taken on the basis of its recommendations.

4. The Committee was further informed that Supreme Court was of the view that the body must be composed of experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, a step which would go a long way in redressing genuine grievances. Such a body can be created under Clause (4) of Article 16 itself - or under Article 16(4) read with Article 340 - as a concomitant of the power to identify and specify backward

class of citizens, in whose favour reservations are to be provided. Such a body be constituted both at Central level and at the level of the States within four months. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of OBCs.” Accordingly, the National Commission for Backward Classes was constituted and the job was assigned to that Commission and the National Commission for Backward Classes Act, 1993 was framed.

5. Secretary, Legislative Department, Ministry of Law and Justice on the specific query regarding constitution of NCBC as a statutory body in 1993 rather than a Constitutional body informed that in the Statement of Objects and Reasons attached to the National Commission for Backward Classes Act, 1993 they have mentioned that the Supreme Court, in the *Indra Sawhney* case, directed the Government to constitute a permanent body within a period of four months. At that time Parliament was not in Session, and that is why they constituted this Commission by way of an Ordinance. Thereafter, this Ordinance was replaced. So, they constituted a statutory body in order to comply with the direction of the Supreme Court, and not a constitutional body.

6. The Committee thereafter sought clarifications on the following issues i.e. (i) points that cropped up relating to reservation of OBC citizens in the *Indra Sawhney* Judgment particularly with reference to the fixing of the ratio of reservation and also explain the reasons for deciding the same by the Hon’ble Court in the said judgment; (ii) to what extent do the different Judicial pronouncements have a material bearing on the Bill under consideration and what amendments are required to be included in the Bill to give overriding effect to any of the Judgments which is coming in the ways of reservation policy to OBC?; (iii) would the National Commission for Backward Classes to be constituted vide this bill have powers to summon, investigate, enquire and so on? What other provisions can be made in the bill to make its implementation and functioning more effective at the local and State level?; (iv) how certain communities have been categorised as OBC in one state like for example in Tamil Nadu and at the same time these communities are classified as forward community in Andhra Pradesh?; (v) to what extent the rights of the states would be affected after coming into effect



of the bill under consideration of the Select Committee?; (vi) Whether there are any Judicial pronouncement which prevents the National Commission for Backward Classes existing today from being elevated into a Constitutional Body? If so, provide details thereof; (vii) Whether there was any method by which the benefits of 27 percent reservation to other backward classes can be made available in those states where this has been denied so far; and (viii) There are different parameters adopted for defining creamy layer in the other backward classes in different states. In this respect, can any provision for amendment be made in this Bill to ensure that OBCs are not denied the benefits of reservation in those states where there is a majority of SCs or STs?

7. Concluding the meeting the Chairman directed the Ministry of Social Justice and Empowerment to inform the Committee in its next meeting the reasons for including the term ‘socially and educationally backward class’ under Article 340 of the Constitution. He also directed the Ministry to provide the Committee with a copy of the debates of the Parliament that took place on the First Amendment to the Constitution and Nehruji’s speech on the issue as this amendment was moved in the backdrop of the State of Madras vs Champakam Dorairajan judgment on the issue of communal reservations. He also directed the Ministries to submit their comments/clarifications raised by the Members before the next meeting of the Committee.

8. A verbatim record of the proceedings of meeting was kept.

9. The Committee adjourned at 11.51 A.M.

New Delhi  
02<sup>nd</sup> May, 2017

**MAHESH TIWARI**  
**DIRECTOR**

**MINUTES OF THE MEETING OF THE SELECT COMMITTEE ON THE  
CONSTITUTION (ONE HUNDRED AND TWENTY THIRD AMENDMENT) BILL,  
2017**

**IV  
Fourth Meeting**

The fourth meeting of the Select Committee on the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017 was held at 11.00 am on Monday, the 15<sup>th</sup> May, 2017 in Committee Room 'C', Parliament House Annexe, New Delhi.

**Present**

- |                         |                 |
|-------------------------|-----------------|
| 1. Shri Bhupendar Yadav | <i>Chairman</i> |
|-------------------------|-----------------|

**Members**

16. Dr. Vikas Mahatme
17. Shri Ram Narain Dudi
18. Shri B.K. Hariprasad
19. Shri Madhusudan Mistry
20. Shri Husain Dalwai
21. Prof. Ram Gopal Yadav
22. Shri Sharad Yadav
23. Shri Sukhendu Sekhar Roy
24. Shri A. Navaneethakrishnan
25. Shrimati Kanimozhi
26. Shri Anil Desai
27. Shri Biswajit Daimary
28. Shri Swapan Dasgupta
29. Shri Ram Kumar Kashyap

**Secretariat**

12. Shri J.G. Negi, Joint Secretary
13. Shri Mahesh Tiwari, Director
14. Shri R.S.Rawat, Additional Director
15. Shri Rakesh Anand, Additional Director
16. Ms. Chhaya Gupta, Under Secretary

**Representatives of Ministry of Law & Justice**

6. Dr. G.Narayana Raju, Secretary  
(Legislative Department)
7. Shri Suresh Chandra, Secretary (Legal  
Affairs)
8. Dr. Reeta Vasistha, Additional Secretary
9. Shri Ramayan Yadav, Additional Secretary
10. Shri K. Biswal, Joint Secretary & Legislative Counsel
11. Shri Diwakar Singh, Additional Legislative Counsel

**Representatives of Ministry of Social Justice  
and Empowerment (Department of Social Justice  
and Empowerment)**

3. Smt. G. Latha Krishna Rao, Secretary
4. Shri B.L. Meena, Joint Secretary
5. Shri K. Narayan, MD, National Backward Classes Finance and Development Corporation (NBCFDC)

**Experts/Witnesses**

1. Dr. K. Veeramani, President, Dravidar Kazhagam
2. Justice (Retd.) V. Eswaraiah, Former Chairman, National Commission for Backward Classes (NCBC)
3. Shri S.K. Kharventhan, Ex-M.P. (Lok Sabha) & Former Member, NCBC
4. Shri G. Karunanidhy, General Secretary, All India Federation of OBC Employees' Welfare Association

2. At the outset, the Chairman welcomed the Members of the Committee and informed them that the Committee had called some experts on the subject to brief the Committee. The Committee then heard Dr. K. Veeramani, President, Dravidar Kazhagam; Justice (Retd) V. Eswaraiah, Former Chairman, NCBC; Shri S.K. Kharventhan, Ex-M.P. (Lok Sabha) & Former Member, NCBC; and Shri G. Karunanidhy, General Secretary, All India Federation of OBC Employees' Welfare Association. The Chairman requested the experts to share their views on the various provisions of the Bill and related aspects, based on their practical experiences of having worked in the OBC Commission and among the OBCs. He also requested Secretary, Ministry of Social Justice & Empowerment; Secretary, Legal Affairs and Secretary, Legislative Department to provide clarifications on any points raised during the deliberations of the Committee.

3. The Committee first heard Dr. K. Veeramani who in his deposition before the Committee, stated that the same kind of constitutional powers should be given to the National Commission for Backward Classes as given to the Scheduled Castes Commission and the Scheduled Tribes Commission under the relevant Article of the Constitution. He also stated that as of now, the socially and educationally backward classes, in any of the State List, are not the socially and educationally backward for the purpose of the Central Government employment or admission to the Central Government educational institution. Many of the



SCs/BCs in a State are not included in the Central List. He was of the view that if the amendment is passed in the present form, many of the socially and educationally backward people in many States would cease to be socially and educationally backward.

4. Outlining his proposed amendments to the Bill, he stated that the proposed Clause 3, the proposed Article 338B (5)(c) have to be modified with the inclusion to participate and advise on the planning, process of socio-economic development, enabling the NCBC in the line of similar provision for National Commission for Scheduled Castes and Scheduled Tribes. The proposed Article 338B (9) has to be removed enabling the State Government to continue to have the powers to identify the socially and educationally backward classes. The proposed Article 338 (2) should be modified with the provision that the Chairperson should be a retired Judge of the Supreme Court or the High Court.

5. He further submitted that in the proposed Article 342A (1), instead of present words "after consultation with the Governors thereof", the words "on the receipt of a request from the Governor thereof" may be added. He submitted that if the words "on the receipt of a request from the Governor thereof" are put in the amendment, then automatically, they will be heard and participative democracy will be practised in this way. So, the President, with respect to any State or Union Territory, shall specify the socially and educationally backward classes for the purpose of making provisions for reservation of posts under the Government of India and under any other authorities under the Government of India, or, under the control of the Government of India. Secondly, under Article 342A(2), instead of saying that Parliament may by law, he suggested that the President may include or exclude from the Central List of socially and educationally backward classes specified in a notification issued under the clause.

6. He also suggested that new Article 342A(3) may be added empowering the Governor of the State to specify, by a public notification, the SCs/BCs for the purpose of making provisions for reservation of posts under that State or under any authority of the State or under the control of the State or seats in the educational institutions in the State because it varies from State to State. Also, Article 342A(4) may be added empowering the Governor of a State to include or exclude the State List of SCs/BCs specified in the notification issued under clause 3 on the advice of the respective States and Commission of the Backward Classes. He stated that only such amendments would be in consonance with the concept of federalism. He further stated that if the Bill becomes the law of the land in the present form, States will be

deprived of their power to declare any class as socially and educationally backward class in the States. The proposed amendment goes against the direction given by the Supreme Court in the Mandal Commission. Article 342A, as proposed, would be violating the concept of federalism. There is also a clear and present danger of many SCs/BCs, socially and educationally backward classes, in many States losing their status as socially and educationally backward classes.

7. The Committee then heard Justice (Retd.) V. Eswaraiah. He submitted before the Committee that pursuant to the Indra Sawhney vs Union of India case, the National Commission for Backward Classes Act was enacted in 1993. It is a toothless Commission, whose only power was to recommend for inclusion or exclusion in the OBC list. Every ten years, revision has to be made. But, unfortunately, no revision took place because there was no socio-economic caste census. The Mandal Commission recommended the socio-economic caste census, but the Government of India declared that it was not their policy to collect socio-economic caste census. Socio-economic caste census was collected in 2011 but even in that, there was no column for indicating whether it was a socially and educationally backward class or not. But in the caste census, all the particulars were collected in 2011. That depicted about permanent or semi-permanent, qualifications, whether he is a tenth class fail or he has done elementary education, whether he is a daily wage worker or weekly wage worker or Government employee. Twenty-one columns are there. Therefore, now the socio-economic caste census is available after 2011. Unless the socio-economic caste census is meticulously published and categorized, it is not possible even for any Constitutional Commission to identify or to recommend as to which are the socially and educationally backward classes. No doubt, caste-based identification is one thing but over a period of time, new socially and educationally backward classes can emerge. That is what the Supreme Court has stated. If a father, son and grandson, irrespective of the caste or community, continue as rickshaw puller or carpenter or washermen or fishermen, whoever takes that occupation, he can be identified. The Supreme Court has stated in Indra Sawhney vs Union of India that caste-based identification is one thing but occupation-cum-income based identification of the backward classes also has to be identified.

8. He expressed his opinion that there cannot be two lists of OBCs; one by the State and other by the Central Government and that there should be only one list. It will not affect the federal structure of the Constitution. He stated that there should be a uniform policy with the

Scheduled Castes and the Scheduled Tribes. He submitted that the Chairperson should be a High Court or Supreme Court judge. He further submitted that he has fully supported the proposed legislation and that no modification is needed in the Bill.

9. The Committee then heard Shri S.K. Kharventhan, Ex-Member, Lok Sabha. He welcomed the proposal of giving constitutional status to NCBC to redress the grievances of the backward classes. He also welcomed the creation of the post of Vice-Chairman. He stated that this Commission is at par with the SC and ST Commissions, however, pointed out an anomaly in Clause 338B 5(c). In the SC and ST Commission, there is a provision for participation in the planning process. But, in the new proposal, that is not available for NCBC. He submitted that this anomaly has to be removed. Since 1993, after creation of NCBC, even allocation of funds for the OBCs have been very low compared with the SCs/STs. That anomaly also has to be removed.

10. Another important question is regarding the appointment of Chairman. He stated that as per the majority judgment in the Indira Sawhney case, it is not mentioned anywhere that a judge is to be appointed as Chairman for the Commission. According to para 847 of the Indra Sawhney judgment, it was stated that there is a desirability of a permanent Statutory Body to examine complaints over inclusion and under inclusion. For inclusion and exclusion purpose only, it was created for the States and Centre. At that point of time, they appointed a judge as the Chairman of the National Commission for Backward Classes, but, most of the States have not appointed judges. Now, the new proposed Commission is having vast powers to redress the grievances of the OBC people. Such a person is to be appointed as the Chairman who is an expert, a person having the knowledge of the subject matter, and having grassroot level contacts.

11. He stated that according to his six years' experience in the National Commission for Backward Classes, the Chairman and Members are from the Backward Classes. He requested that Member Secretary must also be from the OBC. Then only there will be cooperation and proper administration for the welfare of the OBCs. He also opined that the proposed Act must be included in the Ninth Schedule to avoid controversy in courts.

12. Thereafter, the Committee heard Shri G. Karunanidhy, General Secretary, All India Federation of OBC Employees' Welfare Association. While supporting the Bill, he suggested

modifications, particularly in Clause 3, Article 338B (2). He was of the view that the Chairperson should be from the judiciary in line with earlier Commissions. A retired Judge from a High Court or the Supreme Court will be helpful and there will be a check and balance between the Members and the Chairperson. He stated that the functions of the Commission have not been mentioned in the Bill and suggested that the Commission should examine the requests for inclusion of any class of citizens, over-inclusion or under-inclusion and the advice of the Commission shall ordinarily be binding upon the Central Government. This has already been recommended by the Parliamentary Committee for OBC in its First Report submitted to the Parliament on 27<sup>th</sup> August, 2012. The said Report stated that the Constitution Amendment Bill should also include the existing powers of NCBC under the prevailing NCBC Act vis-à-vis power to include in or exclude from the list of OBCs and the obligation of the Government of India to consult NCBC for list revision. This aspect has not been mentioned in the Bill. He requested that this suggestion can be included.

13. In regard to Article 338B(5)(c) he suggested that the clause may be modified and 'participation and advice' on the planning process be added. He stated that the 27<sup>th</sup> Report of the Standing Committee on Social Justice and Empowerment has already recommended it. The Committee on Welfare of OBC in its Report has already suggested that there should be a separate sub-plan for the OBCs. So, in line with this recommendation of the sub-committee, this Bill has to be suitably modified so that the NCBC shall have the power to have participation in the planning process.

14. He suggested that in Clause 3, proposed Article 338B (9) has to be removed so that the State Governments shall continue to have the powers. Finally, in Clause 4, he suggested that modification should be made to 342A (1) and 342A (2) and also two additions have to be made on 343A (3) and 343A (4) so that the States shall have powers to identify the Backward Classes.

15. On the view that power of NCBC has not been prescribed in the Bill, Chairman stated that the power of NCBC is prescribed in the proposed Article 338B (5). As far as inclusion and exclusion is concerned, in Article 342, that power is with Parliament. He stated that the Committee will go through the suggestions made by the experts/witnesses. He also mentioned that the next meeting will be on 5<sup>th</sup> June wherein the Committee will hear some Ministries and experts on the subject.



16. A verbatim record of the proceedings of the Committee was kept.

The meeting adjourned at 1.05 p.m.

**MAHESH TIWARI**  
**DIRECTOR**

*New Delhi*  
*15.05.2017*

**MINUTES OF THE MEETING OF THE  
SELECT COMMITTEE OF THE RAJYA SABHA ON THE  
CONSTITUTION (ONE HUNDRED AND TWENTY-THIRD AMENDMENT) BILL,  
2017  
V  
FIFTH MEETING**

The Committee met at 11.00 A.M. on Monday the 05<sup>th</sup> June, 2017 in Room No 74, Parliament Library Building, Parliament House Complex, New Delhi.

## PRESENT

1. Shri Bhupender Yadav - *Chairman*

## MEMBERS

22. Shri B.K. Hariprasad
23. Shri Madhusudan Mistry
24. Shri Digvijaya Singh
25. Shri Husain Dalwai
26. Prof. Ram Gopal Yadav
27. Shri Sharad Yadav
28. Shri Sukhendu Sekhar Roy
29. Shri A. Navaneethakrishnan
30. Shri T.K. Rangarajan
31. Shri Dilip Kumar Tirkey
32. Shri Praful Patel
33. Smt Kanimozhi
34. Shri Anil Desai
35. Shri Naresh Gujral
36. Shri Biswajit Daimary
37. Shri Swapan Dasgupta

**SECRETARIAT**

17. Shri M.K. Khan, Joint Secretary
18. Shri Mahesh Tiwari, Director
19. Shri R.S. Rawat, Additional Director
20. Shri Rakesh Anand, Additional Director
21. Smt. Monica Baa, Additional Director
22. Ms Chhaya Gupta, Under Secretary

**Representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice)**

8. Smt G. Latha Krishna Rao, Secretary
9. Shri B.L. Meena, Joint Secretary
10. Shri K. Narayanan, MD, National Backward Classes Finance and Development Corporation

**Representatives of the Ministry of Law and Justice (Department of Legal Affairs)**

6. Shri Suresh Chandra, Secretary
7. Shri Ramayan Yadav, Additional Secretary

**Representatives of the Ministry of Law and Justice (Legislative Department)**

6. Dr. G. Narayan Raju, Secretary
7. Dr. Reeta Vasishta, Additional Secretary
8. Shri R. Sreenivas, Additional Legislative Counsel

**Representatives of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training)**

1. Shri Bhanu Pratap Sharma, Secretary
2. Ms Archana Varma, Joint Secretary

**Representatives of the Ministry of Human Resource Development (Department of Higher Education)**

1. Shri K.K. Sharma, Secretary
2. Ms Ishiya Roy, Joint Secretary
3. Prof. V.K. Malhotra, Member Secretary, ICSSR
4. Dr. Jaspal Sandhu, Secretary, UGC

**Representatives of the Ministry of Finance (Department of Expenditure)**

1. Shri Ashok Lavasa, Secretary
2. Ms Annie George Mathew, Joint Secretary
3. Shri Sandeep Dave, Joint Secretary

**Representatives of the Ministry of Finance (Department of Financial Services)**

1. Smt Anjuly Chib Duggal, Secretary
2. Shri Anil Kumar Khachi, Additional Secretary
3. Shri Madnesh Kumar Mishra, Joint Secretary

**Witnesses**

1. Shri Kapil Harishchand Patil, MLC, Maharashtra Legislative Council
2. Shri Ryaga Krishnaiah, MLA, Telangana Legislative Assembly
3. Shri Haribhau Rathod, Ex M.P. and MLC, Maharashtra Legislative Council
4. Shri P.S. Krishnan, Former Secretary, Ministry of Welfare
5. Shri Sahu Akshay Bhai, Chief Co-ordinator, National Council for Most Backward Classes
6. Shri Guduri Venkateswara Rao, President, All India BC Praja Welfare Association
7. Prof. P.C. Patanjali, Chairman, Pichada Varg Vikas Manch
8. Shri Hasib A. Aziz Nadaf

9. Prof. Prakash Sonawane
10. Shri Hansraj, President, Most Backward Classes Mahasangh
11. Shri Vishvanath Patil, President, Kunbi Sena Ram Wadi
12. Shri Shabbir Ahmed Ansari, All India Muslim OBC Organisation
13. Dr. Kailash Goud, Ex-Member, Maharashtra State Backward Class Commission
14. Shri Haji Shoukat Bhai Tamboli

2. At the outset, the Chairman welcomed the Members of the Committee and briefed them about the agenda for the meeting. He informed the Members that consequent to the publication of the Press Release inviting memoranda/suggestions from the public 72 memoranda had been received. He also briefed them about the response of the State Governments on the provisions of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017. Thereafter, he invited the Secretaries of the Ministry of Finance, Department of Expenditure and Department of Financial Services, Secretary, Ministry of Human Resource Development, Department of Higher Education, Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training to brief their views to the Committee.

3. Finance Secretary, Ministry of Finance, Department of Expenditure informed the Committee that when the Bill had come to their Department they supported it. He informed that the Ministry of Social Justice and Empowerment prepares the schemes for the backward classes and the Department of Expenditure appraises these schemes on the basis of rules/regulations. At present 9 schemes are operational for the backward classes which are operated by the National Backward Classes Finance and Development Corporation having a total budget of Rs 6,833/- crore in the Budget year 2017-18. He assured the Committee that in future also they would strive to examine the schemes sent by the Ministry of Social Justice and Empowerment as per their appraisal mechanism before furnishing their recommendations.

4. Secretary, Ministry of Finance, Department of Financial Services stated that they agreed to the provisions of the Bill. She further stated that they circulated detailed instructions in 1993 to provide 27% reservation to the backward classes in banks and other financial institutions. Then in 1997 instructions were issued to appoint a separate liaison officer for OBCs whereas earlier a single Liaison officer was looking after the SC/ST and OBCs. Recently in 2014 instructions have been issued to ensure presence of SC, ST, OBC, Minorities and Women on the Selection Board and Committees on a compulsory basis.

5. The Committee then sought clarifications on the following issues i.e. (i) number of General Managers from the OBCs in the entire banking sector; (ii) composition of the selection committee/board which conducts the interviews of the candidates in the banking sector; (iii) percentage of OBCs in Group A, B, C and D in the Nationalized banks; (iv) whether the banks are meeting the lending criteria of the priority sector and what are the short-falls and its reasons; (v) data on the loans given to SCs, STs, Minorities and OBCs from the MUDRA scheme; (vi) whether the loans given by the National Backward Classes Finance and Development Corporation are given directly to the applicants or whether the State governments are involved and State-wise details of the amount released; and (vii) steps needed to be taken to expedite the process by which funds for the welfare of the OBCs reach the State governments in time.

6. Secretary, Ministry of Human Resource Development, Department of Higher Education informed the Committee about the position regarding admission of students and also the recruitment of faculty in the Central Universities and Centrally funded Technical Institutions with regard to OBC candidates. He also briefed the Committee about the effects of the Central Educational Institutions (Reservation in Admission) Act, 2006. He informed that regarding recruitment of faculty in Central Universities a meeting is held in the conference hall of the Hon'ble President of India to discuss it and emphasis is given to ensure that weaker sections are given due importance in the recruitments. Like-wise special efforts are being made to recruit faculty from the weaker sections in the Indian Institutions of Management by going in for special recruitment drives. Secretary, UGC also briefed the Committee about the status of admission of OBC students in Central Universities and about the recruit of OBC faculty in Central Universities with special regard to JNU and Delhi University.

23. Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training informed the Committee that when the Bill had come to them for comments they had given their concurrence to it. As regards providing representation in jobs as per the reservation he informed that they were monitoring ten big departments and ensuring that reserved category seats were filled up at the earliest. This move was to ensure that representation in jobs would come close to the desired level. In fact they had even issued an O.M. on 22<sup>nd</sup> October, 2014 wherein each department was asked for in-house study to assess



the exact position regarding reserved post vacancies and the reasons for it not getting filled up. He informed further that after the Indra Sawhney judgment the Department of Social Justice and Empowerment constituted a committee to decide upon the issue of creamy layer. On the basis of the recommendations of this Committee, DoPT issued an O.M. dated 8<sup>th</sup> September, 1993 which detailed the manner in which creamy layer was to be determined. This has helped settle the issue to a large extent. The only difficulty is with regard to candidates whose parents work in the PSUs. This is because the said O.M. states that their equivalence would be determined with respect to Group 'A' Central Government officers. This equivalence has not been determined till date due to which income sealing is taken as criteria for determining the creamy layer status.

24. The Committee thereafter sought clarifications on the following issues i.e. (i) how many SC, ST and OBCs were members of UPSC; (ii) whether creation of supernumerary posts would help reduce the number of backlog vacancies; (iii) what are the parameters to assess merit of a candidate; (iv) status of the case wherein creamy layer status of qualified candidates was to be determined by the High Court; and (v) whether 400 candidates had not been sent for training despite having qualified the Civil Services examination, since OBC reservation had been implemented. The Chairman further directed the Secretary, DoPT to send the proposals suggested by the Backward Classes Commission since 1993 and what steps had been taken by the government on them. He also sought information on the recommendations of the Parliament's Committee on Backward Classes and action taken on them for consideration of the Committee.

25. Thereafter, the Chairman welcomed the experts/individuals/organizations for oral evidence. He informed them about the important provisions of the Bill and then sought their views on the same. Shri Guduri Venkateswara Rao, President, All India BC Praja Welfare Association was of the view that in the reconstituted National Commission for Backward Classes there should be one Chairman, two Vice- Chairman and six members so that the OBC population of the country is adequately represented in it. Further for any caste to be included in the OBC list it should first be recommended by NCBC before it goes to the Parliament. Dr Kailash Goud, Ex-Member, Maharashtra State Backward Class Commission was of the view that constitutional status should be provided to the State Backward Class Commissions and

before inclusion or deletion of any community from the OBC list, a report of the respective State Backward Class Commission must mandatorily be appended to it.

26. Prof. P.C. Patanjali, Chairman, Pichada Varg Vikas Manch was of the view that the Chairman of the NCB should either be a sociologist or a retired or serving Judge so that justice could be done in adding or deleting communities for the OBC list. Shri Haribhau Rathod, Ex-MP stressed on the need to use a single term 'Other Backward Class' at all places in the Bill, and was of the view that OBC should be categorized into different groups for proper distribution of benefits. Prof. Prakash Sonawale was of the view that the Chairman of the NCBC should be a retired Judge and the Vice- Chairman should be from a minority community so that they get due representation. He further requested that efforts should be made to ensure that denotified and nomadic tribes should get justice.

27. Shri Haji Shoukat Bhai Tamboli was of the view that there should be a coordination between the National and State Backward Classes Commission for more effective functioning. He highlighted the difficulties being faced by the candidates in getting OBC certificates in the States and sought a remedy for it. Shri Hasib A Aziz Nadaf was of the view that a census was needed to assess the percentage of backward classes in the country and a proper categorization of the OBCs should also be done. Shri Shabbir Ahmad Ansari, All India Muslim OBC Organisation was of the opinion that the term "socially" should be included in the name of the National Backward Classes Commission and that there should be clarity on the composition of the committee that would appoint the Chairman and members of the NCBC. Shri Hansraj, President, Most backward Classes Mahasangh also sought proper classification of the OBC. He sought a constitutional status for the State Backward Class Commissions also and that the recommendation of the State Commissions should be final on the issue of inclusion/exclusion in/from the OBC list. Shri Kapil Harischand Patil, MLC sought a constitutional status for the State Backward Classes Commission on the lines of NCBC. Shri Sahu Akshay Bhai, Chief Co-ordinator, National Council for Most Backward Classes was of the view that clarity should be there on the selection committee which would select the Chairman and members of the NCBC and the strength of the Commission should be at least 7.

28. Shri P.S. Krishnan, Former Secretary, Ministry of Welfare was of the view that for the process under Article 342A(I), where a list is going to be issued by the President after

consultation with the State Governments, before finalizing the list, the advice of the National Commission for Socially and Educationally Backward Classes should be taken. Shri Krishnan further stated that the Commission should have role in the second stage, that is under Article 342A(2). Subsequently, when any addition or deletion has taken place, even at this stage the Commission should be consulted. He was also of the view that the present composition of the NCBC should be reflected in the new Commission which would be set up after the passage of the Bill like for example presence of a judge, a social scientist, and representatives of extreme backward classes in it. Thereafter he suggested the following i.e. (i) the existing Central List of socially and educationally backward classes should be deemed to be the Presidential Order of Backward Classes for Article 342 A(I); (ii) in Article 338(5)(C) the word 'participate' needs to be inserted so that the Commission not only participates in but also advises on the planning process; (iii) the name of the Commission should include 'socially and educationally backwards'; and (iv) a cadre needs to be built up for making the NCBC more effective.

29. Concluding the meeting the Chairman thanked the delegates for sharing their views with the Committee and made a special reference to Shri P.S. Krishnan acknowledging his work in the field of affirmative action. Thereafter, the Chairman requested the members to submit their proposed amendments to the Bill, if any, before the Committee takes up the clause-by-clause consideration.

30. A verbatim record of the proceedings of meeting was kept.

16. The Committee adjourned at 1.52 P.M.

New Delhi  
5<sup>th</sup> June, 2017

**MAHESH TIWARI**  
**DIRECTOR**

**MINUTES OF THE MEETING OF THE  
SELECT COMMITTEE OF THE RAJYA SABHA ON THE  
CONSTITUTION (ONE HUNDRED AND TWENTY-THIRD AMENDMENT) BILL,  
2017  
VI  
SIXTH MEETING**

The Committee met at 11.00 A.M. on Monday the 03<sup>rd</sup> July, 2017 in Committee Room B, Parliament House Annexe, New Delhi.

## PRESENT

1. Shri Bhupender Yadav - *Chairman*

## MEMBERS

38. Dr Vikas Mahatme
39. Shri Ram Narain Dudi
40. Shri B.K. Hariprasad
41. Shri Madhusudan Mistry
42. Shri Husain Dalwai
43. Prof. Ram Gopal Yadav
44. Shri Sharad Yadav
45. Shri Sukhendu Sekhar Roy
46. Shri A. Navaneethakrishnan
47. Shri T.K. Rangarajan
48. Shri Dilip Kumar Tirkey
49. Smt Kanimozhi
50. Shri Anil Desai
51. Shri Naresh Gujral
52. Shri Biswajit Daimary
53. Shri Rajeev Chandrasekhar
54. Shri Swapan Dasgupta

**SECRETARIAT**

31. Shri J.G. Negi, Joint Secretary
32. Shri Mahesh Tiwari, Director
33. Shri Rakesh Anand, Additional Director
34. Smt. Monica Baa, Additional Director

**Representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice)**

11. Shri B.L. Meena, Joint Secretary  
12. Shri K. Narayanan, MD, National Backward Classes Finance and Development Corporation

## **Representatives of the Ministry of Law and Justice (Department of Legal Affairs)**

8. Shri Suresh Chandra, Secretary
9. Shri Ramayan Yadav, Additional Secretary

## **Representatives of the Ministry of Law and Justice (Legislative Department)**

9. Dr. G. Narayan Raju, Secretary
10. Dr. Reeta Vasishta, Additional Secretary
11. Shri R. Sreenivas, Additional Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee and briefed them about the agenda of the meeting. He informed the Members that consequent to the publication of the Press Release inviting memoranda/suggestions from the public 72 memoranda had been received. He also briefed them about the response of the State Governments on the provisions of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017. Thereafter, he informed the Members that the Committee would take up clause-by-clause consideration of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017 in the meeting and the Secretaries of the Ministries of Social Justice and Empowerment, Ministry of Law & Justice, Legislative Department and Department of Legal Affairs would provide the necessary clarifications.

3. Some of the Members raised apprehensions for bringing the Bill for consideration under Article 338 and sought clarification as to not bringing it under Article 340. It was apprehended that after this enactment Article 340 may become redundant. In response Secretary, Legislative Department, Ministry of Law & Justice informed that Article 340 is for creating ad hoc Committees by the President. Further, based on the Mandal Commission recommendations, the Supreme Court directed the Government to constitute a permanent body and in pursuance of this the National Commission for Backward Classes was created vide the NCBC Act of 1993. The present Bill is simply an effort to give Constitutional status to this Commission. Article 340 would in no way become redundant and the government would still have the powers to set-up ad hoc Committees under it. Thereafter the Committee took up the clause-by-clause consideration.

12. **The Clause 2** of the Bill was adopted without any amendments.

13. The Committee then took up **Clause 3** for consideration. The Committee took up the amendment to rename the proposed Commission as provided under sub-clause (1) of Article 338B as National Commission for Socially and Educationally Backward Classes. In response the Ministry clarified that the nomenclature of the proposed Commission had been decided after inter-ministerial consultation, where it was felt that calling it National Commission for Socially and Educationally Backward Classes was self-explanatory.

14. Some Members suggested that qualifications of the Chairman and members of the Commission should be provided in the amendment. Some members also suggested that the Chairperson could be a retired Judge of the Supreme Court/High Court and the Vice-Chairperson be from the OBC/minority community. Further, one woman member also be there and the Member-Secretary could be an officer of Secretary level to the Government of India.

Other suggestions were to include social scientist and expert with special knowledge in matters relating to backward classes and atleast one member should be from a community categorized as Most Backward Class or Extremely Backward Class.

15. The Committee then took up **sub-clause (5) of the proposed article 338B** for consideration. The Members wanted that sub-clause (c) of article 338B(5) be amended and read as follows *‘to participate and advise on the planning process of the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State.’* In response the Ministry stated that all the sub-clauses under clause (5) article 338B imply a participative role of the proposed Commission. The Committee noted the stand of the Ministry.

16. The Committee then took up the following amendments proposed by certain other Members:

*On page 2, After line 11, two new sub-clauses (a) and (b) be added and the existing sub-clauses (a) to (f) be renumbered as (c) to (h). The new sub-clauses (a) and (b) be read as follows:*

*‘(a) (i) To examine the draft list of socially and educationally backward classes to be submitted to President for public notification under Article 342A (1) and tender such advice to the Central Government as it deems appropriate.*

*(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government.*

*Provided that if the Central Government doesn’t agree with the advice of the Commission, it shall record its reasons in writing and submit such reasons along with the draft list to the President.*

*(b) (i) To examine and advice the Central Government on the requests of inclusion or exclusion from the list of socially and educationally backward classes for the purpose of enabling the Parliament to amend this list under Article 342A(2) and to hear complaints of over-inclusion and under-inclusion of any backward classes in such list and tender such advice to the Central Government as it deems appropriate.*

*(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government.*

*Provided that if the Central Government doesn’t agree with the advice of the Commission, it shall record its reasons in writing and place the same before both Houses of Parliament.’*

17. The Committee also took up the proposed amendment regarding inclusion of a new sub-clause (g) under clause (5) in article 338B stating *‘to examine request for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advise to the Central Government as it deems appropriate’*. It was clarified to the Committee that hearing of complaints by the proposed Commission is provided under article 338B(5)and regarding examination of requests for inclusion of any class as a backward class, the same would be available to the Commission as part of the modalities to be issued on enactment of the Bill.



18. The Committee then took up for consideration the amendment of Clause 5(d) of the proposed article 338B wherein the words '*and at such other times as the Commission may deem fit*' be deleted. The Committee discussed about the inordinate delay in laying the annual reports of different commissions/committees before the Parliament, hence they are not discussed in the House. In response the Ministry of Social Justice and Empowerment clarified that the Annual Reports of the commissions are submitted to the President. The Ministry obtains Action Taken Reports from the States and various Ministries and lay on the Table of the Parliament. Apart from this, the Commission also submits two- three special reports like in case of some incidence in some State. These are separate reports from the Annual Report. The Committee noted the explanations furnished by the Ministry and hoped that the proposed Commission would lay its Annual Reports and other reports well in time before the Parliament for its consideration.

19. The Committee took up for consideration the following amendments proposed by certain Members in sub-clause (8) of article 338B:

*On page 2, for lines 41 and 42, the following shall be substituted, namely:  
'(8) The Commission shall, while examining requests and complaints as referred to in sub-clauses (a) and (b) or investigating any matter referred to in sub-clause (c) or inquiring into any complaint referred to in sub-clause (d) of clause (5).'*

20. In response it was clarified that the Commission shall have, while investigating any matter referred to sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of Clause (5) have all the powers of Civil Court trying a suit.

21. The Committee discussed the amendment wherein in article 338B a new sub-clause (10) was proposed to be inserted. This sub-clause (10) would state that '*Notwithstanding anything provided in clause 9, the State Government shall continue to have powers to identify Socially and Educationally Backward Classes*'.

22. It was clarified by the Ministry to the Committee that the proposed amendment does not interfere with the powers of the State Governments to indentify the Socially and Educationally Backward Classes. The existing powers of the State Backward Classes Commission would continue to be there even after the passage of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017.

**23. The Committee held discussions on the amendments proposed and in view of the explanation given by the Ministry, the Committee adopted clause 3 without any amendments.**

24. The Committee then took up Clause 4 of the Bill for consideration. The Committee considered the following amendment proposed by certain Members:

(i) Sub-clause (1) of article 342A be modified as follows:

*“The President with respect to any State or Union Territory, and where it is a State, on the request made by the governor thereof, by public notification specify the socially and educationally backward classes for the purposes of making provisions for reservation of appointment to an office or posts under Government of India or under any authority of Government of India or under the control of the Government of India or seats in Central Government educational institutions”;*

- (ii) Sub-clause (2) of article 342A be modified as follows:

*“The President may, on the advise of the National Commission for Backward Classes include or exclude from the Central list of socially and educationally backward classes specified in a notification issued under clause (1).”;*

- (iii) In article 342A insert clause (3) as follows:

*“The Governor of a State, by public notification specify the socially and educational backward classes for the purposes of making provisions for reservation of posts under that State or under any other authority of the State or under the control of the State, or seats in the educational institutions within that State” and*

- (iv) In article 342A insert clause (4) as follows:

*“The Governor may, on the advice of the State Commission of Backward Classes include or exclude from the State list of socially and educationally backward classes specified in a notification issued under clause (3)”*

25. Another set of amendments proposed by some Members on Clause 4 were as follows:

- (i) Sub-clause (1) of article 342A be modified as follows *“The President may with respect to any State or Union territory, and where it is a State, only with prior recommendation of the State Government and giving due regard to such recommendation, by public notification, specify the socially and educationally backward classes which shall be deemed to be the central list of socially and educationally backward classes in relation to that State or Union territory, as the case may be.*
- (ii) After sub-clause (2) of article 342A the following be inserted:  
(3) *“Every state Government may, by public notification, specify the socially and educationally backward classes in that State which shall be deemed to be the State List of socially and educationally backward classes in relation to that State.*  
(4) *The State may by law include in or exclude from the State List of socially and educationally backward classes specified in a notification issued under clause (3) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification”*

18. Another set of amendments proposed by some Members on Clause 4 were as follows:

*Article 342A (1):- On page 3, after line 19, the following shall be inserted, namely:*

*‘Provided that such public notification shall be issued on the basis of advice tendered by the Commission under Article 338B (5) (a) and shall be placed in both Houses of Parliament as soon as possible after issuance.*

*Provided further that the consultation with the Governor of a State shall be on the basis of advice tendered to the Governor by the State Commission of Backward Classes of that State.*

*Article 342A (2):- On page 3, after line 23, the following lines shall be inserted, namely:*

*‘Provided that such a law is based on the advice tendered by the Commission under Article 338B (5)(b).’*

*Article 342A (3):- On page 3, after Article 342A (2), a new clause be added, namely:*

*‘342A (3) – The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of the list notified under Article 342A (1), and every succeeding period of ten years thereafter, on advice of the Commission, undertake revision of the list with a view to exclude those classes who have ceased to be backward classes or for including in such list new backward classes.’*

55. The Ministry, on the issues raised, clarified that time bound decadal revision of lists by the proposed Commission, is a continuous process. The Commission however, is empowered to enquire into specific complaints with respect to the deprivation of right and safeguards of the socially and educationally backward classes. The Ministry clarified further that the aspect of reservation of posts under that State or under any other authority of the State or under the control of the State, or seats in the educational institutions within that State was beyond the purview of the instant Bill and hence the amendments proposed are not allowed.

20. It was further clarified by the Ministry that clause (1) of article 154 and article 163 of the of the Constitution clearly state that Governor shall act on the advice of the Council of Ministers. Under above Constitutional provisions the Governor shall exercise his authority either directly or indirectly through officers of respective State Government. Article 341 of Constitution provides for consultation with Governor of State with respect to Scheduled Castes and article 342 of the Constitution provides consultation of President with Governor of State in respect of Scheduled Tribes. As is the practice at no time has the State Government been excluded in the consultation process. It is always invariably the State Government which recommends to the President the category of inclusion /exclusion in Scheduled Castes and Scheduled Tribes. Similar provision is provided for in the case of conferring of constitutional status for backward classes for inclusion in Central list of SEBC. Consultation with Governor thereby implies consultation with State Government.

21. It was further informed that the phrase “for the purpose of this Constitution” as provided in sub-clause (1) of article 342A is a legislative requirement as advised by the

Legislative Department, Ministry of Law and Justice. The setting up of the proposed Commission will not be retrograde to the interest of the socially and educationally backward classes. The article 342A will provide for a comprehensive examination of each case of inclusion/exclusion from the Central List. The ultimate power for such inclusion/exclusion would stand vested with the Parliament.

**22. The Committee held discussions on the proposed amendments and in view of the explanations furnished by the Ministry the Clause 4 of the Bill was adopted without any amendments.**

**23. The Clause 5 of the Bill was adopted without any amendments.**

**24. Clause 1: Enacting formula and the Title of the Bill were adopted by the Committee without any amendments.**

25. Concluding the meeting the Chairman thanked the Members and Officials present for sharing their views with the Committee and informed the next meeting of the Committee would be held on 14<sup>th</sup> July, 2017 to consider and adopt the draft Report of the Select Committee.

26. A verbatim record of the proceedings of meeting was kept.

27. The Committee adjourned at 12.43 P.M.

New Delhi  
3<sup>rd</sup> July, 2017

**MAHESH TIWARI  
DIRECTOR**

**MINUTES OF THE MEETING OF THE  
SELECT COMMITTEE OF THE RAJYA SABHA ON THE  
CONSTITUTION (ONE HUNDRED AND TWENTY-THIRD AMENDMENT) BILL,  
2017  
VII  
SEVENTH MEETING**

The Committee met at 11.00 A.M. on Friday the 14<sup>th</sup> July, 2017 in Committee Room A, Parliament House Annexe, New Delhi.

**PRESENT**

1. Shri Bhupender Yadav - *Chairman*

**MEMBERS**

- 56. Dr Vikas Mahatme
- 57. Shri Ram Narain Dudi
- 58. Shri B.K. Hariprasad
- 59. Shri Digvijaya Singh
- 60. Shri Husain Dalwai
- 61. Prof. Ram Gopal Yadav
- 62. Shri Sharad Yadav
- 63. Shri A. Navaneethakrishnan
- 64. Shri T.K. Rangarajan
- 65. Shri Praful Patel
- 66. Smt Kanimozhi
- 67. Shri Anil Desai
- 68. Shri Naresh Gujral
- 69. Shri Swapan Dasgupta
- 70. Shri Ram Kumar Kashyap

**SECRETARIAT**

- 35. Shri J.G. Negi, Joint Secretary
- 36. Shri Mahesh Tiwari, Director
- 37. Shri R.S. Rawat, Additional Director
- 38. Shri Rakesh Anand, Additional Director

**Representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice)**

- 13. Smt G. Latha Krishna Rao, Secretary
- 14. Shri B.L. Meena, Joint Secretary
- 15. Shri K. Narayanan, MD, National Backward Classes Finance and Development Corporation

**Representatives of the Ministry of Law and Justice (Department of Legal Affairs)**

- 10. Shri Suresh Chandra, Secretary

11. Shri Ramayan Yadav, Additional Secretary

**Representatives of the Ministry of Law and Justice (Legislative Department)**

26. Dr. G. Narayan Raju, Secretary

27. Dr. Reeta Vasishta, Additional Secretary

28. Shri R. Sreenivas, Additional Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee and briefed them about the agenda of the meeting. He recapitulated the deliberations that took place in the previous meetings of the Committee and also briefed the Committee about the background of the Bill. Thereafter it was informed that consideration and adoption of the draft Report on the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017 would be taken up in the meeting and the Secretaries of the Ministries of Social Justice and Empowerment, Ministry of Law & Justice, Legislative Department and Department of Legal Affairs would provide the necessary clarifications.

3. Some of the Members raised apprehensions for bringing the Bill for consideration under Article 338 and sought clarification as to not bringing it under Article 340. It was apprehended that after this enactment Article 340 may become redundant. Apprehensions were raised on the powers of the State Governments to include or exclude communities in the State list of Other Backward Classes after the enactment of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017. Some Members raised the concern that the recommendations of the Commission may not be taken seriously and so provisions should be made in the Bill for it. It was also suggested by some Members that like the Tribal Advisory Council a council may be created for looking into the issues of the socially and educationally backward classes. Some of the Members also suggested that the number of members in the Commission be increased and representation be ensured for the women and socially and educationally backward classes in it.

29. Secretary, Ministry of Social Justice and Empowerment clarified that when an Act is passed it will only lay down the broad policy statement. The modalities for implementation of an Act or a Constitutional Amendment comes through the process of rules. So the issues like the membership, status of the Chairperson would be covered in the rules. She further informed that under article 338 a permanent Commission can be set-up while under article 340 a permanent status cannot be conferred on the proposed Commission. The National Commission for Scheduled Tribes was created under article 338A so it naturally follows that article 338B



would need to be inserted to give permanency to National Commission for Backward Classes. She also clarified that conferring of constitutional status on the National Commission for Backward Classes would in no way take away the existing powers of the State Backward Classes Commissions. The only difference would be with regard to the Central List, where the power of exclusion or inclusion, after the Constitutional amendment, it would come to the Parliament with the recommendations of the NCBC.

30. Thereafter, the draft report was adopted. The Chairman stated that those Members who desire to give Dissent Notes, the same may be handed over to the Secretariat latest by 6.00 P.M. on 15<sup>th</sup> July, 2017.

31. Concluding the Meeting the Chairman thanked the Members for the efforts made by them in making the meetings of the Committee informative and purposeful. The Chairman on behalf of the Committee appreciated the hard work and diligence put in by the officials of the Rajya Sabha Secretariat including the Reporters and Interpreters. He also thanked the officers of the Ministries of Social Justice and Empowerment, Legal Affairs and Legislative Department who contributed in the deliberations of the Committee.

32. A verbatim record of the proceedings of meeting was kept.

8. The Committee adjourned at 12.45 P.M.

New Delhi  
14<sup>th</sup> July, 2017

**MAHESH TIWARI**  
**DIRECTOR**

