



सत्यमेव जयते

**PARLIAMENT OF INDIA
RAJYA SABHA**

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

(PRESENTED TO THE RAJYA SABHA ON THE 19th JULY, 2017)



**RAJYA SABHA SECRETARIAT
NEW DELHI**

July, 2017/Ashadha, 1939 (Saka)

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COMPOSITION OF THE COMMITTEE

1. Shri Bhupender Yadav - *Chairman*

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. Prof. Ram Gopal Yadav
10. Shri Sharad Yadav
11. Shri Sukhendu Sekhar Roy
12. Shri A. Navaneethakrishnan
13. Shri Satish Chandra Mishra
14. Shri T.K. Rangarajan
15. Shri Dilip Kumar Tirkey
16. Shri C.M. Ramesh
17. Shri Praful Patel
18. Srimati Kanimozhi
19. Shri Anil Desai
20. Shri Naresh Gujral
21. Mir Mohammad Fayaz
22. Shri Biswajit Daimary
23. Shri Rajeev Chandrasekhar
24. Shri Swapan Dasgupta
25. Shri Ram Kumar Kashyap

SECRETARIAT

1. Shri J.G. Negi, Joint Secretary
2. Shri Mahesh Tiwari, Director
3. Shri R.S. Rawat, Additional Director
4. Shri Rakesh Anand, Additional Director
5. Ms Chhaya Gupta, Under Secretary
6. Shri Mohit Misra, Committee Officer
7. Shri Thang Joyful Tonsing, Committee Officer

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 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. G. Narayan Raju, Secretary
2. Dr. Reeta Vasishtha, Additional Secretary
3. Shri R. Sreenivas, Additional Legislative Counsel

INTRODUCTION

I, the Chairman of the Select Committee on the Constitution (One hundred and Twenty-third Amendment) Bill, 2017 having been authorized by the Committee to submit the Report on its behalf, present this Report on the Bill.

2. The Constitution (One hundred and Twenty-third Amendment) Bill, 2017 was introduced in the Lok Sabha on the 05th April, 2017 further to amend the Constitution of India. It was passed in the Lok Sabha on the 10th of April, 2017. The Bill, as passed by the Lok Sabha, was referred to the Select Committee comprising 25 Members of the Rajya Sabha on a motion adopted by the House on the 11th April, 2017 for examination of the Bill and report thereon to the Rajya Sabha by the last day of the first week of the next Session (Annexure I).

3. While considering the Bill, the Committee examined and took note of the following documents/papers placed before it:-

- (a) The Constitution (One Hundred and Twenty-third Amendment) Bill, 2017 as passed by Lok Sabha on the 10th April, 2017;
- (b) Brief on the Bill furnished by the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment);
- (c) Information/papers on the Bill furnished by the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department);
- (d) Information/papers on the Bill furnished by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training);
- (e) Information/papers on the Bill furnished by the Ministry of Finance (Department of Financial Services);
- (f) Information/papers on the Bill furnished by the Ministry of Human Resource Development (Department of Higher Education);
- (g) Information/papers on the Bill furnished by the Anthropological Survey of India;
- (h) Memoranda furnished by the State Government and Union Territories;
- (i) Memoranda submitted by the Experts and other stakeholders

4. The Committee in its sittings held seven meetings in all.

5. The Committee in its first sitting held on the 17th April, 2017 deliberated upon the course of action and procedure for examination of the Bill. The Members also expressed their views and concerns on the provisions of the Bill and decided to discuss the issues with the concerned Ministries. It was also decided that apart from seeking opinion of the concerned Ministries, the views of eminent experts and organizations should be taken for the consideration of the Committee. The Chairman thereafter sought names of the individuals and organizations on which the Committee wanted to take the views into consideration on the subject and directed that they be called for discussion in the subsequent meeting. The Committee also decided to obtain the views of the State Governments and Union territories on the Bill. It was further decided to issue a Press Release inviting comments and memoranda from the public. In response, the Committee received 72 memoranda from the public on the provisions of the Bill and 23 State Governments and Union territories submitted their views on the Bill.

6. In its second sitting held on the 24th April, 2017, the Committee heard the views of Secretary, Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment on the provisions of the Bill. The Managing Director, National Backward Classes Finance and Development Corporation made a presentation on the functioning of the Corporation and its future course of action.

7. In its third sitting held on the 2nd May, 2017 the Committee was briefed on the various judgments starting from the Indra Sawhney judgment to the present day related to reservations. The Committee sought clarifications on a number of issues ranging from the reasons for lack of constitutional status to the present National Commission for Backward Classes to ensuring about giving protection of the present day OBC list under the Bill.

8. In its Fourth meeting held on the 15th May, 2017 the Committee heard the views of Justice (Retd.) V. Eswaraiah, Former Chairman, National Commission for Backward Classes, Dr. K. Veeramani, President, Dravidar Kazhagam and Shri S.K. Kharventhan, Ex. M.P. and Former Member, National Commission for backward Classes.

9. In its fifth meeting held on the 5th June, 2017 the Committee had wide ranging discussions with the Secretaries of the Ministry of Human Resource Development, Department of Higher Education, Ministry of Finance, Department of Revenue and Department of Financial Services and Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training regarding affirmative action. Thereafter, the Committee heard the views of fourteen individuals and representatives of a wide spectrum of organizations working for the empowerment of backward classes, coming from different walks of life and also from different parts of the country on the provisions of the Bill.

10. The Committee in its meeting held on the 3rd July, 2017 took up for clause-by-clause consideration of the Bill. The Ministries of Social Justice and Empowerment (Department of Social Justice and Empowerment) and Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) also furnished their comments/clarifications wherever needed on the issues raised by the Members of the Committee. The Committee, after detailed discussion, adopted all the clauses of the Bill without any amendments.

11. Accordingly, a draft Report was prepared and circulated to the Members.

12. The Committee in its meeting held on the 14th July, 2017 took up the draft Report for consideration. After a brief discussion, the Committee adopted the Report without any amendments.

13. The amendments moved by a Member in the Rajya Sabha on the said Bill during its introduction were also referred to this Committee. The same were forwarded to the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment for their comments/clarifications. The comments/clarifications have since been received from the Ministry and are annexed (Annexure IV).

14. The Committee wishes to place on record its gratitude to the representatives of Ministries of Social Justice and Empowerment (Department of Social Justice and Empowerment) and Law and Justice (Legislative Department and Legal Affairs) for furnishing necessary information/documents and rendering valuable assistance to the Committee in its deliberations. The Committee also wishes to express its gratitude to all the distinguished persons who appeared before the Committee and gave their valuable views on the Bill and furnished written notes and information in connection with the examination of the Bill.

BHUPENDER YADAV
Chairman,
Select Committee on the Constitution
(One Hundred and Twenty-third Amendment) Bill, 2017

NEW DELHI
The July, 2017

ACRONYMS

OBC	Other Backward Classes
SC	Supreme Court
NCSC	National Commission for Scheduled Caste
SEBC	Socially and Educationally Backward Classes
NBCFDC	National Backward Classes Finance and Development Corporation

REPORT

Background

Statement of Objects and Reasons appended to the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017, which was introduced in the Lok Sabha, states that the National Commission for the Scheduled Castes and Scheduled Tribes came into being consequent upon passing of the Constitution (Sixty-fifth Amendment) Act, 1990. The said Commission was constituted on the 12th March, 1992 replacing the Commission for the Scheduled Castes and Scheduled Tribes set up under the Resolution of 1987. Under article 338 of the Constitution, the National Commission for the Scheduled Castes and Scheduled Tribes was constituted with the objective of monitoring all the safeguards provided for the Scheduled Castes and the Scheduled Tribes under the Constitution or other laws.

2. Vide the Constitution (Eighty-ninth Amendment) Act, 2003, a separate National Commission for Scheduled Tribes was created by inserting a new article 338A in the Constitution. Consequently, under article 338 of the Constitution, the reference was restricted to the National Commission for the Scheduled Castes. Under clause (10) of article 338 of the Constitution, the National Commission for Scheduled Castes is presently empowered to look into the grievances and complaints of discrimination of socially and educationally backward classes also.

3. The first Commission for Backward Classes was set up in January, 1953 under article 340, which was chaired by Shri Kaka Saheb Kalelkar. The Report was submitted in 1955 by the Commission, which was placed before Parliament in September, 1956. The Commission recommended that census should be undertaken on caste basis. The second Backward Classes Commission under the chairmanship of Shri Bindeshwari Prasad Mandal was set up under article 340 in

1978. The Report was submitted in December, 1980. The Commission evolved eleven criteria for determining the socially and educationally backwardness.

4. Government of India accepted major recommendations of the Mandal Commission and issued orders in August, 1990 providing 27 per cent reservation for Other Backward Classes (OBC) in Central Civil posts.

5. The O.M. providing 27 per cent reservation of OBC in Central Government posts was challenged in the Indra Sawhney case. In the year 1992, the Supreme Court of India in the matter of Indra Sawhney and others Vs. Union of India and others (AIR 1993, SC 477) had observed the following, namely:-

“The Government of India, each of the State Governments and the Administration of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the list of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.”

6. Pursuant to the said Judgment, the National Commission for Backward Classes Act was enacted in April, 1993 and the National Commission for Backward Classes was constituted on the 14th August, 1993 under the said Act. At present the National Commission for Backward Classes (NCBC) examines the requests for inclusion of any class of citizens as a backward class in the Central List and hear complaints of over-inclusion or under-inclusion of any backward class in such list and tender such advice to the Central Government as it deems appropriate. Now, in order to safeguard the interests of the socially and educationally backward classes more effectively, it is proposed to constitute a National Commission for Backward Classes with constitutional status at par with

the National Commission for Scheduled Castes and the National Commission for the Scheduled Tribes.

7. Parliament constituted the first Committee on Welfare of the Other Backward Classes under the chairmanship of Shri B.K. Handique. The Committee in its first Report presented on the 27th August, 2012 recommended that NCBC should be granted constitutional status by insertion of new article 338B and also be conferred the powers similar to that of National Commission for Scheduled Castes (NCSC). The Committee in its second Report on 25th April, 2013 recommended deletion of clause (10) of article 338 and insertion of new article 338B. In its third Report, the Committee reaffirmed its amendment proposed earlier regarding giving constitutional status to the NCBC.

8. The National Commission for the Scheduled Castes has also recommended in its Report in the year 2014-15 that the hearing of the grievances of the socially and educationally backward classes under clause (10) of article 338 should be given to the National Commission for Backward Classes.

9. The proposed amendments in the Constitution are as follows:-

- (i) Omission of reference to "such other backward classes" in clause (10) of article 338;
- (ii) Insertion of new article 342A to provide for the process of notification of socially and educationally backward classes;
- (iii) Insertion of clause (26C) in article 366 for defining the socially and educationally backward classes.

Deliberations of the Select Committee:

10. In its first meeting held on the 17th April, 2017 the Committee was briefed at length on the background in which the Bill under consideration was drafted and the

history of the reservation for the backward classes. The Committee then sought clarifications on the following issues namely:-

(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.

11. The Committee was informed that the eleven indicators provided by the Mandal Commission would provide the broad framework for deciding the classes to be included in the Central list of socially and educationally backward classes (SEBCs) by the National Commission for Backward Classes. The Committee was informed that the proposed amendment was only to confer constitutional status to the National Commission for Backward Classes while the State Backward Classes Commissions would continue to function as earlier without any modifications. It was further informed that two Bills have been introduced in the Parliament, namely (i) the Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017; and (ii) the National Commission For Backward Classes (Repeal) Bill, 2017 which provides for saving of the actions taken under the said Act.

12. It was further clarified that in respect of the backward classes, 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 as per laid down procedures. In the State List, the States are free to include or exclude in their backward classes List. This Constitutional amendment does not affect or alter in any way the present powers or functions of the State Backward Classes

Commissions and their powers for exclusion or inclusion of backward classes in the State Backward classes list shall remain unchanged.

13. In its second meeting held on the 24th April, 2017 the Committee was briefed on the working of the National Backward Classes Development and Finance Corporation (NBCFDC). The Committee was of the opinion that conferring constitutional status to the NCBC would enable effective monitoring of the socio-economic development of the backward classes.

14. In its third meeting held on the 02nd May, 2017 the Committee was informed that the Supreme Court in its judgment in Indra Sawhney case had observed that “The Government of India, each of the State Governments and the Administration of Union territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the list of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government”

15. Accordingly, the National Commission for Backward Classes Commission Act, 1993 was enacted and the National Commission for Backward Classes was constituted under the said Act.

16. In its fourth meeting held on the 15th May, 2017 the Committee held extensive discussions with experts working for the welfare of the backward classes. A brief synopsis of the issues are discussed in the subsequent paras:

17. Several experts and organisations felt that no changes or amendments are required to be made and any changes in the bill for further discussions will only delay the process to the detriment of the socially and educationally backward classes. Other suggestions like inclusion of women member in the Commission

and number of members to be included in the Commission may be taken care of while framing the appropriate rules under the proposed provisions.

18. It was also submitted that the powers and functions of the State Government and the State Backward Classes Commissions with regard to identification, exclusion and inclusion of classes in the State List should be clarified. Further, the process of consultation with the Governor should also be clarified in the Bill.

19. In response to the above issues raised, the Ministry clarified that sub-clause (9) of article 338B does not in any way interfere with the powers of the State Governments to prepare their own list. The Committee was further informed that classes so included in the State Backward Classes List do not automatically come in the Central List of OBCs.

20. In its fifth meeting representatives/Members raised a concern about sub-clause (1) of article 342A, whether the list would be issued by the President after consultation with the State Government or consultation with only Governor of the State. It was clarified by the Ministry that clause (1) of article 154 and article 163 of the of the Constitution clearly state that the Governor shall act on the advice of the Council of Ministers. It is also clarified that under the 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 socially and educationally backward classes. Consultation with Governor thereby implies consultation with the State Government.

21. In its Sixth meeting the Committee took up the clause-by-clause consideration of the Bill as well as certain other concerns raised by the Members.

Clause-by-Clause consideration of the Bill

22. The Committee held clause-by-clause consideration of the Bill, the details of which are given below:

23. At the outset some members raised concerns over the constitutionality of the new Commission to be set up under article 338B instead of the creating it under the existing article 340. It was clarified that article 340 of the Constitution provided for creation of ad-hoc/temporary commissions like the Mandal Commission and Kaka Saheb Kalekar Commission. It was further explained that when constitutional status was conferred on the National Commission for Scheduled Tribes article 338A was inserted. Similarly, as a natural corollary, constitutional status is being conferred on the National Commission for Backward Classes under article 338B.

24. The Committee agreed to the explanations furnished by the Ministries and a view was taken that in order to provide Constitutional mechanism to hear the grievances of other backward classes, at appropriate place, article 340 is available in the Constitution for the purpose. So article 338B is considered to be the most appropriate place for providing constitutional status to the socially and educationally backward classes.

25. The Committee thereafter took up clause 2 for consideration:

Clause 2: amendment of article 338

26. Clause 2 of the Bill proposes to amend the clause (10) of article 338 of the Constitution so as to omit the words, brackets and figures “*to such other backward classes as the President may, on the receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also*” .

27. **Clause 2 of the Bill was adopted without any amendment.**

Clause 3: insertion of new article 338B

28. Sub-clause (1) of article 338B provides for setting up of the National Commission for Backward Classes.

29. Some Members suggested the amendment to rename the proposed Commission as provided under sub-clause (1) of article 338B and which may be re-named as the National Commission for Socially and Educationally Backward Classes.

30. In response, the Ministry clarified that the nomenclature of the proposed Commission had been decided after inter-Ministerial consultation, and it was felt that calling it National Commission for Backward Classes was self explanatory in nature.

Composition of the Commission

31. **Sub-clause (2) of the article 338B** provides for the composition of the Commission and **sub-clause (3) of the article 338B** states that the proposed Commission shall consist of a Chairperson, Vice-Chairperson and three other Members to be appointed under the President’s hand and seal.

32. 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 should also be there and the Member-Secretary could be an officer of the level of Secretary 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.

33. In response, the Ministry of Social Justice and Empowerment clarified that once the National Commission for Backward Classes Act, 1993 would be repealed, new rules will be framed and the views expressed by the Members would be given due consideration.

34. The Committee noted the clarification given by the Ministry in this regard.

Duties of the Commission

35. **Sub-clause (5) of the article 338B** provides the duties and functions of the Commission.

36. The Members suggested that sub-clause (c) of clause (5) of article 338B 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.’

37. In response the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment stated that all the sub-clauses under clause (5) of article 338B imply a participative role for the proposed Commission.

38. The Committee noted clarification given by the Ministry in this regard.

39. 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 342 A(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.’

40. The Committee also took up the proposed amendment regarding insertion of a new sub-clause (g) in clause (5) of article 338B:

‘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 advice to the Central Government as it deems appropriate’.

41. It was clarified by the Ministry of Social Justice that hearing of complaints by the proposed Commission has been provided under sub-clause (5) of article 338B and regarding examination of requests for inclusion of any class as a backward class, the same would be available to the Commission as a part of the modalities to be issued on enactment of the Bill.

42. The Committee then took up for consideration the amendment proposed by some Members in sub-clause (d) of clause (5) article 338B that 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.

43. In response to this 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 report on some incidence in a particular State. These are separate reports from the Annual Report.

44. The Committee noted the explanations furnished by the Ministry and hoped that the proposed Commission would lay its Annual Reports and other reports as well in time before the Parliament for its consideration.

45. 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)’

46. In response to this, 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), all the powers of Civil Court trying a suit.

47. The Committee discussed the amendment wherein in article 338B a new sub-clause (10) was proposed to be inserted. This sub-clause (10) would read as follows:

‘Notwithstanding anything provided in clause 9, the State Government shall continue to have powers to identify Socially and Educationally Backward Classes’.

48. It was clarified by the Ministry of Social Justice and Empowerment to the Committee that the proposed amendment does not interfere with the powers of the State Governments to identify 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.

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

Clause 4: Insertion of New article 342A

50. The proposed article 342A provides the procedure for notification of socially and educationally backward classes.

51. The Committee then took up for consideration the following amendments proposed by certain Members namely :-

(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)”

52. 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 namely:-

(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”*

53. 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.'

54. The Ministry, on the amendments moved, 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.

55. The Ministry clarified 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.

56. It was 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. It was informed that under the 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 by the President with Governor of State with respect to Scheduled Castes and article 342 of the Constitution provides consultation by the

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 the State Government.

57. The Ministry also clarified to the Committee that the phrase “for the purpose of this Constitution” as provided under clause (1) of article 342A is on lines similar to articles 341 and 342 of the Constitution. 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.

58. The Committee held discussions on the proposed amendments and in view of the detailed explanations furnished by the Ministry, the Committee adopted the Clause 4 of the Bill without any amendments.

Clause 5: Provides for amendment of article 366

59. This Clause proposes to insert a new clause (26C) in article 366 which reads as under:-

“(26C) socially and educationally backward classes” means such backward classes as are so deemed under article 342A for the purposes of this Constitution;”

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

Clause 1: Enacting formula and the Title of the Bill

61. Clause 1 provides the Short Title of the Bill and commencement of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017.

62. The Clause 1 Enacting Formula and the Title of the Bill was adopted without any amendments.

GENERAL OBSERVATIONS

63. The Committee took into consideration the concerns of the Members regarding timely submission of the Annual Report and other special reports of the proposed National Commission for Backward Classes. The Committee noted that in many instances such reports come before the Parliament after a long gap and by the time the issue has lost relevance and the matter is not discussed in the House. The Committee therefore advises the Ministry of Social Justice and Empowerment to ensure that keeping in view the social significance of the proposed Commission its Annual Report and other Reports may be prepared in time and laid before the Parliament and for the information of public at large.

64. The Committee also noted the views of the Members and other experts/organizations who appeared before the Committee that the proposed National Commission for Backward Classes should have a participative role in the planning process of the socio-economic development of the socially and educationally backward classes. The Committee also noted the explanation furnished by the Ministry of Social Justice and Empowerment that all the sub-clauses under article 338B(5) imply a participative role for the proposed Commission.

65. The Committee accepted the explanations furnished by the Ministry. However, the Committee was of the view that the Ministry should ensure that the proposed Commission plays an active participative role in the planning process of