

342 A, Clause 4	No Clause 4	Insert: The Governor may, on the advise 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).	<i>The powers of Governor with regard to State List equivalent to powers of President with regard to Central List.</i>
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The three major historical milestones in the Backward Classes Movement in this country are:

1. Issuance of Communal G.Os. in 1921 and implemented as per G.O in 1927 by the government of Justice Party
2. First Constitutional Amendment in 1951
3. Judgement of Supreme Court in IndraSawhney (1993) case

There can be little doubt that the next major milestone will be the passage of The Constitution (123rd) Amendment Bill 2017. With the weight of historical achievements guiding us and the expectations of millions of backward citizens propelling us, we must ensure that the Constitutional Amendment lives up to its promise. To this extent, I request that my suggested changes to the present Bill be considered by this Select Committee in its submission to the Parliament.

Sincerely,

Kanimozhi

80 (40)



Dear Sir

I am forwarding my proposals for the amendments to The Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017. This is for your Kind consideration to incorporate them in our report.

All the amendments which have been referred would strengthen the intent of the Bill in favour of the Backward Classes.

My suggestions are enclosed herewith.

With Regards

Yours sincerely

(B.K.Hariprasad)

03.07.2017.

Chairman

Select Committee of Rajya Sabha on the Constitution (One Hundred and Twenty Third Amendment) Bill 2017

New Delhi

Explanatory Note:

My request for modification in said bill based on;

- a) Personal observation with reference to the existing society.
- b) Nine Judges judgement of Hon'ble Supreme Court in Indra Sawhney and others Vs Union of India and others (AIR 1993, SC477).
- c) To save the federal structure of India.

Suggestions:

1. Sub-Article (2) of article 338B Clears the Members and Chairperson of the NCBC but qualification is not specified, whereas, the NCBC Act, 1993 under section 3(2), provided the qualifications and we may also refer the "para 847 of Supreme Court Judgment on (AIR 1993, SC 477), that;
Chairperson should be a Former Judge for judicial approach; member secretary should be a former secretary level officer of GOI, a social scientist and two persons with special knowledge in matters relating to backward classes.
2. Article 338B, Clause 3, Sub-clause 9 to be amended as;
"The Union and every State Government shall consult the commission on all major policy matters affecting socially and educationally backward classes and NCBC should consult the State Government for any state specific issues"
Although it is observed that State Government should continue to have powers but simultaneously it affects the powers vested in NCBC but it is to be considered that every state has different issue with specific solution and to save federal structure of our country and to address genuine grievance NCBS should consider the state recommendations for state specific issues.
3. Article 342A (2) may be modified as follows:-
"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)."
Committee on Welfare of OBC, presented its First Report to Parliament on 27.8.2012 also recommended the views in its resolution under Para 2.1 of Part II of the Report states as under:
"The Constitution amendment should also include existing powers of NCBC under prevailing NCBC Act vis., powers to include in or exclude from list of OBCs

and obligation on GOI to consult NCBC for list revision."

4. Article 338B, Clause (5) shall modified as follows;

It shall be the duty of the commission-

Sub-Clause: 5(c) to participate and advise on the planning process of socio-economic development

Insert line afterdevelopment.... "Of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State."

The suggestion and modification in Annexure I given by me in the light of Hon'ble Supreme Court Judgement in Indra Sawhney Case (1992) which will facilitate the purpose of this Amendment Bill and I am thankful for the honour participation in this historic move regarding this bill for which we are fighting for long time.

With Regards


(B. K. Hariprasad)

SS (43)

SUGGESTIONS OF THE FOLLOWING MEMBERS OF THE PARLIAMENT
RAJYA SABHA
ON
THE CONSTITUTION (ONE HUNDRED AND TWENTY THIRD AMENDMENT)
BILL, 2017.

To

The Chairman

Select Committee of Rajya Sabha on the Constitution
(One Hundred and Twenty Third Amendment) Bill 2017

The Bill was introduced for the first time in the Lok Sabha on 5.4.2017 and passed on 10.4.2017 (in 5 days). The same was placed before the Rajya Sabha immediately next day i.e., 11.4.2017. Now Rajya Sabha has referred the Bill, 2017 to the select committee. It is obvious that there was no elaborate and exhaustive discourse on the subject matter of the Constitution (One Hundred and Twenty Third amendment) Bill, 2017 in the Lok Sabha.

We have gone through the Constitution (One Hundred and twenty third amendment) Bill, 2017. At the out-set, we welcome the Bill, 2017 to the extent it proposes to grant Constitutional status to the National Commission for Backward Classes.

However it is noted that it is not the first time that a constitutional commission has been envisaged under constitution as the commission prescribed under article 340 is the original constitutional commission the constitution makers had thought for the betterment of backward classes.

First of all, when a constitutional commission has been provided for the backward classes under article 340, it is difficult to understand as to why this constitutional amendment is sought to insert another article in 338 as 338b. originally the article 338 envisages for a special officer for scheduled castes which has been converted in to the two commissions for sc and st by amending it. (65th and 89th amendment)

Ideally the ncbc constituted by ncbc act 1993 ought to have been adopted by recognising it under article 340 or else a article 340 a ought to have been inserted with the additional functions for the commission as in existence under article 338 or 338a(ncsc and ncst)

At the same time, coming straight to core issues, we quite see the deficiencies in the Bill named hereunder:

34 (44)

1. Sub-Article (2) of Article 338B spells out that the National Commission for Backward Classes shall consist of a Chair-person, Vice-chairperson and three other Members. But their qualifications are not specified except stating that the conditions of the service and tenure of office of the Chairperson, Vice-chairperson and other Members so appointed shall be such as the President may by rules determine.

Sub-article (3) states that the chairperson, Vice-chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

Whereas, the National Commission for Backward Classes Act, 1993 had made it explicitly clear about the qualification of the Chairperson and the Members. The reason for anxiety is that this body should consist of experts. Accordingly under the Act, 1993 it was specifically, under section 3(2), provided the qualifications as follows;

(a) A Chairperson, who is or has been a judge of the Supreme Court or of a High Court;

(b) A Social Scientist ;

(c) Two persons, who have been special knowledge in matters relating to backward classes; and

(d) A Member-Secretary who is or who has been an officer of the Central Government in the rank of a Secretary to the Government of India.

This was in-conformity with the view of Supreme Court opinion in IndraSawhney's case decided by Nine-Judge Constitution Bench.

2. Under the Bill, 2017 sub-article(5) of Article 338B deals with the duties of the Commission as shown hereunder:

" (5) It shall be the duty of the Commission -

(a) To investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;

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- (c) To advise on 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;
- (d) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) To make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify".

But what is surprisingly missing is, the essential function of the Commission as provided under section 9(1) and (2) of the 1993 Act. These functions were again as per the specifications in the aforesaid judgment of the Supreme Court (1992, para-847). Section 9 of the National Commission for Backward Classes Act, 1993 reads thus;

9 - Functions of the Commission:

- (i) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the list and hear complaint of over-inclusion or under-inclusion of any backward class in such list and tender such advice to the Central Government as it demands of appropriate;
- (ii) The advice of the Commission shall ordinarily be binding upon the Central Government;

This entire pivotal provision is taken away under the Constitution (One hundred and twenty third amendment) Bill, 2017. These functions are in-conformity with Article 340 of the Constitution as well. Minus these functions, other functions now provided under the Bill, 2017 are of more supervisory in nature. In the process, virtually, Article 340 which is like soul of Backward Classes would become ineffective, This cannot happen. Because the Article 340 perceived the role to 'wipe out every tear from every eye of the socially and educationally Backward Classes' by providing benefits under Articles 15, 16 and 29 of the Constitution. Article 340 not only envisages the appointment of a separate Commission to investigate the social and

educational concerning those classes and to make recommendations for the removal of the difficulties faced by them, but also the term 'backward classes' must be understood in the context of what is laid down in Article 340(1). That is the intent of the Article. The said Article also provides for defining the procedure to investigate the conditions of socially and educationally backward classes. It appears this was the exact reason for initially proposing the name to the Commission as 'National Commission for Socially and Educationally Backward Classes'.

3. Furthermore, the provision regarding periodic revision of the backward class list once in ten years and mandatory consultation with the National Commission for Backward Classes by Central Government as provided under section 11 of the National Commission for Backward Classes Act, 1993 is again totally omitted. This provision also incorporated in the National Commission for Backward Classes Act, 1993 as per the directions of the Supreme Court in Indra Sawhney's case. The idea behind the periodic revision is to make way for the deserving socially and educationally backward classes to get the special benefits like reservation, etc.,

As far as the amendment to article 342 is concerned, the idea is again misplaced as originally article 341 and 342 confers power and prescribe the procedure to include or exclude any caste in the SC list or ST list/ however there was no such OBC list at the time of framing constitution. the need was felt only after the implementation of Mandal Commission recommendations and in Indra Sahnii judgment the hon'ble supreme court envisages an expert body to carry out this job.

It is important to note that identification of SC's (as they mostly were treated as untouchables) and ST's (mostly lived in forest areas) was relatively an easy task whereas identification of castes under OBC's list requires more scientific knowledge, social studies and judicial approach.

For fulfilling the aforesaid requirement the NCBC Act 1993 has been enacted. Now giving the functions of present NCBC to Governor or President is actually a step backward.

Hence amending article 342 and equating identification of OBC list like SC and ST list should not be done.

4. There are amendments to Articles 342 and 366 also as extracted here below:

"342A.(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of Socially and educationally backward classes specified in a notification issued under clause (1) 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".

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

There is an apprehension as to whether combined reading of amended Articles 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.



5. Lastly, in addition to granting constitutional status to the National Commission for Backward Classes under the Constitution (One hundred and twenty third amendment) Bill, 2017 and the duties entrusted, the above mentioned inadequacy are to be made good so as to infuse confidence of the backward classes in the National Commission for Backward Classes proposed.


Mahatma Gandhi said: 'If means are vitiated the ends are bound to be vitiated'.

Persistence of the Bill in the current form may not stand the test of judicial scrutiny. Therefore, the necessary amendments in consonance with the spirit of the Supreme Court Judgment in Indra Sawhney's case are absolutely needed.

This is for your kind consideration.


(Husain Dalwai)
Dir. 259


Anurag Selvakrishnan

196


(KANIMOZHI)
T.K. RAMESH RAJAN
3 July 2017
(135)


(B.K. HARI PRASAD)
(239)

(38) (48)

Husain Dalwai



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Member - Committee on Government Assurance
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President - Rail Mazdoor Union (Central Zone)
President - Taximan Union, Mumbai

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3rd July, 2017

Hon'ble Shri Bhupendra Yadavji,

Sub: Suggested amendments to the Constitution (One Hundred and Twenty Third) Amendment Bill, 2017

I would like to submit some amendments to the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017 which will strengthen the provisions of the Bill meant for the welfare of the Backward Classes.

I shall be grateful if the amendments form a part of the Select Committee report to be submitted to the government. Please find the amendments attached with this letter.

Thank You

With regards,

Husain Dalwai

To,
Sh. Bhupendra Yadav
Hon'ble Chairperson,
Select Committee on the Constitution (One Hundred and Twenty Third)
Amendment Bill, 2017

H. Prasad Bh
(239)
(B. K. Hariprasad)

(39) (49)

AMENDMENTS

CLAUSE	ARTICLE	AMENDMENT	REASON
Clause 3	Art.338B (1)	On page 2, line 3, instead of the words 'National Commission for Backward Classes', the following words be inserted, namely: 'National Commission for Socially and Educationally Backward Classes'	<ul style="list-style-type: none"> It is proper that the Commission being established to look after the welfare of socially and educationally backward classes be called as such. It is also important to clarify that the criteria for identification would remain 'social and educational backwardness' and not 'social, educational or economic backwardness'.
Clause 3	Art.338B (2)	On page 2, line 5, instead of the words 'Chairperson, Vice Chairperson and three other members', the following words shall be inserted, namely: '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 Secretary to the Government of India.'	<ul style="list-style-type: none"> There were concerns raised that a 5 member Commission will not be able to adequately look after the welfare of OBCs who constitute a major chunk of the population of the country. It has been proposed that a 7 member Commission may instead be established.
Clause 3	Art.338B (2)	On page 2, after line 7, the following proviso be added, namely: '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	<ul style="list-style-type: none"> It is important to retain the provisions of the existing Act which provide for composition of the Commission. These provisions were designed keeping in mind the fact that such a body needs to be an impartial, apolitical and expert body.

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		<p>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>	<ul style="list-style-type: none"> Such provisions are substantive and must be included in the Act itself rather than be left to the Rules. The fact that such provision has not been made for the NCSC or NCST is no excuse for not making the same for NCSEBC.
Clause 3	Art.338B (5)	<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</p> <p>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>	<ul style="list-style-type: none"> This provision is inserted to ensure that Commission plays an important role in creating the initial list and subsequently amending it and to tender such advice which shall ordinarily be binding on the government. This is in keeping with the directions of the Supreme Court in the Indra Sawhney case. While issuing the notification, the President, and while amending the list, the Parliament, must be aware of the advice of the Commission because the primary role of inclusion / exclusion etc. was entrusted by the Supreme Court to the Commission.

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		<p>(b) (i) To examine and advise 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.</p> <p>(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government.</p> <p>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.</p>	
Clause 3	Art.338B (8)	<p>On page 2, for lines 41 and 42, the following shall be substituted, namely:</p> <p>'(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)'</p>	<ul style="list-style-type: none"> This provision is made to extend the powers of a civil court while examining requests for inclusion, looking into complaints of over or under inclusion and other provisions as provided for in the earlier Act also.

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Clause 4	Art.342A (1)	<p>On page 3, after line 19, the following shall be inserted, namely:</p> <p>'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.</p> <p>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.</p>	<ul style="list-style-type: none"> This provision is made to ensure that President is bound by the advice of the National Commission and the Governor is bound by the advice of the State Commission.
Clause 4	Art.342A (2)	<p>On page 3, after line 23, the following lines shall be inserted, namely:</p> <p>'Provided that such a law is based on the advice tendered by the Commission under Article 338B(5)(b).'</p>	<ul style="list-style-type: none"> This provision ensures that Parliament takes into consideration advice tendered by the Commission at the time of amending the list through a Bill.
Clause 4	Article 342A (3)	<p>On page 3, after Article 342A(2), a new clause be added, namely:</p> <p>'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.'</p>	<ul style="list-style-type: none"> As directed by the Supreme Court and as provided in the earlier Act, a periodic revision of the list must be undertaken as per the advice tendered by the Commission.

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COMMENTS RECEIVED FROM MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT,
DEPARTMENT OF SOCIAL JUSTICE & EMPOWERMENT



Comments on response received from Dr. T. Subbarami Reddy, M.P.,
Rajya Sabha

Sl. No	Name of States /UTs and their observations	Article	Comments of D/o SJE
1.	That at page 2, Line 3, -- <u>for</u> "National Commission for Backward Classes" "National Constitutional Commission for Backward Classes" be <u>substituted</u> .	Article 3	This Commission is being constituted under Article 338B of the Constitution like the National Commission for Scheduled Caste (Article 338) and the National Commission for Scheduled Tribes (Article 338A). It is implied that the new Commission is a Constitutional body. Hence no amendment called for.
2.	That at page 3, line 5, -- <u>for</u> the word "three", the word "five" be <u>substituted</u> .	Clause 338B (2)	The composition of the existing National Commission for Backward Classes also comprises five members. Therefore, there is no need to enlarge the composition of the Commission. Hence no amendment called for.
3.	That at page 2, <u>after</u> line 9 -- the following be <u>inserted</u> : "Provide that at least one Member of the Commission shall be a woman; Provided further that no post of a Member, including that of a Secretary and other principal officers of the commission, shall lie vacant for more than ninety days."	Clause 338B (2)	The inclusion of a woman member would be part of the Rules to be framed under the Act. There is no requirement of changing the modifying the Bill. Hence no amendment called for.
4.	That at page 3, line 13 -- <u>after</u> the words "backward classes", the words "and its opinion shall be given due consideration by the Union or the State Government, as the case may be ." be <u>inserted</u> .	Article 338B (9)	Article 338B (6) already provides for a report by the Commission to be laid in each House of Parliament alongwith action taken or proposed to be taken on the recommendation relating to the Union. Hence no amendment called for.
5.	That at page 3, line 16 -- <u>for</u> "after consultation with the Governor thereof", the following be <u>substituted</u> : "only with the prior recommendation of the State Government and giving due regard to such recommendation".	Article 342A (1)	Consultation with the Governor implies recommendations of the State Government. Hence no amendment called for.

44 (54)

6.	That at page 3, after line 23 - 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 educational 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, by save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification."	Article 342A (2)	The present Bill is confined to the Central Government and Central List that are to be notified by the Central Government. Hence no amendment called for.
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**Comments on response received from Dr. Dilip Kumar Tirkey, M.P.,
Rajya Sabha**

Sl. No	Name of States /UTs and their observations	Article	Comments of D/o SJE
1.	On page 3, in line 16, "after consultation with the Governor thereof" may be substituted with "only with prior recommendation of the State Government and giving due regard to such recommendation."	Article 342A (1)	Consultation with the Governor implies recommendations of the State Government. Hence no amendment called for.
2.	On page 3, in line 17 and 18, the phrase "for the purpose of this Constitution" may be omitted.	Article 342A (1)	The phrase "for the purpose of this Constitution" is a legislative requirement advice by the Legislative Department. Hence no amendment called for.
3.	On page 3, in line 18, after "deemed to be" the phrase "the central list" may be inserted.	Article 342A (1)	The public notification envisaged under this Article will be the Central List. Hence no amendment called for.
4.	On page 3, after line 23 following two paragraphs may 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 class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."	Article 342A (2)	The present Bill is confined to the Central Government and Central List that are to be notified by the Central Government. Hence no amendment called for.

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Sl. No	Observations of Hon. MPs	Article	Comments of D/o SJE
	Sh. B.K. Hariprasad		
1.	Chairperson should be a former Judge for judicial approach; Member Secretary should be a former Secretary level officer of GOI, a social Scientist and two persons with special knowledge in matters relating to backward classes.	Article 338B (2)	This is only an advisory and cannot form part of the Bill. The composition of the Commission would be incorporated in the modalities to be framed on enactment.
2.	Article 338B, Clause 3, Sub-clause 9 to be amended as; "The Union and every State Government shall consult the Commission on all major policy matters affecting socially and educationally backward classes and NCBC should consult the State Government for any State specific issues."	Article 338B Clause (3) Sub-clause (9)	One of the duties of the proposed Commission, as specified under Article 338B (5) (C), states that "to advise on 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.
3.	Article 342A (2) may be modified as follows: "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 (2)	The Bill that would be considered by the Parliament for inclusion or exclusion of communities from the Central List of socially and educationally backward classes would incorporate the views of the NCBC.
4.	Article 338B, Clause (5) shall modified as follows: It shall be the duty of the Commission-Sub-clause: 5(c) to participate and advice on the planning process of socio-economic development. Insert line after.....development..... "Off the socially and educationally backward classes and to evaluate the progress of their development 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.
			In view of the above, the amendments proposed by the Hon. MPs may not be allowed.
	Smt. Kanimozhi, S/Shri Husain Dalwai, Sh. T.K. Rangarajan. Sh. B.K. Hariprasad, A. Navaneetha Krishnan		
5.	First of all, when a constitutional commission has been provided for the backward classes under Article 340, it is difficult to understand as to why this Constitutional amendment is sought to	Article 340	The present NCBC has not been set up under Article 340 but under the National Commission for Backward Classes Act of 1993. A new article 338B is being inserted to confer

	insert another Article in 338 as 338B. Originally the Article 338 envisages for a special officer for Scheduled Castes which has been converted in to the two Commissions for SC and ST by amending it. (65th and 89th Amendment)		CONSTITUTIONAL STATUS TO THE 1993-94 since it is under article 338 and 338A that the National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCST) were given constitutional status.
6.	Ideally the NCBC constituted by NCBC Act, 1993 ought to have been adopted by recognising it under Article 340 or else a Article 340 a sought to have been inserted with the additional functions for the Commission as in existence under Article 338 or 338A (NCSC and NCST).	Article 340	The existing Commission for Backward Classes was not set up under Article 340 but was set up as a statutory body under the NCBC Act, 1993 in pursuance of the Supreme Court's orders in the Indra Sawhney case. The Hon'ble Court had directed the Union of India and the States to set up permanent bodies for the purpose of socially and educationally backward classes. Thus, the existing NCBC could not have been recognized under Article 340.
7.	This entire pivotal provision is taken away under the Constitution (One hundred and twenty third amendment) Bill, 2017. These functions are inconformity with Article 340 of the Constitution as well. Minus these functions, other functions now provided under the Bill, 2017 are of more supervisory in nature. In the process, virtually, Article 340 which is like soul of Backward Classes would become ineffective.	Article 340	The advice of the NCBC will be an integral part of any proposal for inclusion/exclusion from the Central List that would be proposed by the Government to the Parliament. This would ensure transparency in the process of inclusion/exclusion from the Central List as these would be debated and scrutinized by the Parliament.
8.	Article 340 not only envisages the appointment of a separate Commission to investigate the social and educational concerning those classes and to make recommendations for the removal of the difficulties faced by them, but also the term 'backward classes' must be understood in the context of what is laid down in Article 340 (1).	Article 340	The proposed Article 338B actually aids in the setting up of a Commission envisaged under Article 340, but on a permanent basis.
9.	It is important to note that identification of SC's (as they mostly were treated as untouchables) and ST's (mostly lived in forest areas) was relatively an easy task whereas identification of castes under OBC's list requires more scientific knowledge, social studies and judicial approach. For fulfilling the aforesaid requirement, the NCBC Act, 1993 has been enacted. Now giving the functions of present	Article 342	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.