

STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT
(2005-2006)

(FOURTEENTH LOK SABHA)

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

**THE CONSTITUTION ONE HUNDRED AND THIRD
(AMENDMENT) BILL, 2004.**

AND

THE NATIONAL COMMISSION FOR MINORITIES (REPEAL) BILL, 2004.

FOURTEENTH REPORT

Presented to Lok Sabha on 21.2.2006

Laid in Rajya Sabha on 21.2.2006



LOK SABHA SECRETARIAT
NEW DELHI

14

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NEW DELHI

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**COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL
JUSTICE AND EMPOWERMENT (2005-2006)**

Smt. Sumitra Mahajan - CHAIRPERSON

**MEMBERS
LOK SABHA**

2. Shri M. Appadurai
3. Shri Ashok Argal
4. Shri Mahaveer Bhagora
5. Shri Eknath M. Gaikwad
6. Shri Sanat Kumar Mandal
7. Shri Kailash Meghwal
8. Shri Rupchand Murmu
9. Shri Jual Oram
10. Shri Rameshwar Oraon
11. Shri Asaduddin Owaisi
12. Shri T. Madhusudan Reddy
13. Shri Daroga Prasad Saroj
14. Shri R. Senthil
15. Shri Mohd. Shahid
16. Smt. Pratibha Singh
17. Shri Lalit Mohan Suklabaidya
18. Smt. Krishna Tirath
19. Smt. Usha Verma
20. Shri K. Yerrannaidu

RAJYA SABHA

21. Smt. Jamana Devi Barupal
22. Shri Silvius Condpan
23. Shri R.S. Gavai
24. Dr. Narayan Singh Manaklao
25. Shri Abdul Wahab Peevee
26. Shri Dharam Pal Sabharwal
27. Shri Ram Narayan Sahu
28. Shri Tarlochan Singh
29. Shri Veer Singh

SECRETARIAT

- | | | | |
|----|---------------------|---|-------------------|
| 1. | Shri. John Joseph | - | Secretary |
| 2. | Shri. A.K. Singh | - | Joint Secretary |
| 3. | Shri. R.K. Saxena | - | Deputy Secretary |
| 4. | Shri. Bhupesh Kumar | - | Under Secretary |
| 5. | Shri. Vanlalruata | - | Committee Officer |

INTRODUCTION

I, the Chairperson of the Standing Committee on Social Justice and Empowerment having been authorized by the Committee to submit the Report on their behalf, present the Fourteenth Report of the Committee on “The Constitution One Hundred and Third (Amendment) Bill, 2004” and “The National Commission for Minorities (Repeal) Bill, 2004” of the Ministry of Social Justice and Empowerment.

2. The Bill was introduced in the Lok Sabha on 23rd December, 2004 and was referred to the Committee by the Hon'ble Speaker, Lok Sabha on 23rd December, 2004 under Rule 331 E(b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and Report.

3. Written views/memoranda were received from various individuals/experts and representatives of various organizations concerned with the welfare of minorities.

4. The Committee, at their sittings held on 13th and 14th September, 2005 heard the views of the experts/individual representatives of various organizations etc.

5. The Committee wish to express their thanks to the representatives of the Ministry of Social Justice and Empowerment and others for tendering evidence and placing their considered views before the Committee and also for furnishing written notes and information as desired by the Committee in connection with the examination of the Bills.

6. The Committee considered and adopted the report on the Bills at their sitting held on 17th January, 2006.

7. For facility of reference and convenience, observations and recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi
17 January, 2006
27 Pausa, 1927 (Saka)

SMT. SUMITRA MAHAJAN
CHAIRPERSON,
Standing Committee on Social
Justice and Empowerment.

REPORT

Background relating to setting up of the National Commission for Minorities.

1.1. The Minorities Commission was first set up as a non-statutory body vide Ministry of Home Affairs Resolution. With the enactment of the National Commission for Minorities Act, 1992 it became a statutory body and was renamed as 'National Commission for Minorities. The first Statutory National Commission for Minorities was set up on 17.5.1993. Vide a Gazette notification issued on 23rd October, 1993 by the erstwhile Ministry of Welfare, Government of India. Five religious communities viz., the Muslims, Christians, Sikhs, Buddhists and Zorastrians (Parsis) were notified as minority communities.

Powers and Function of the National Commission for Minorities

1.2. The National Commission for Minorities (NCM) performs a number of functions for effective implementation of safeguards provided under law for protection of interests of minorities and makes recommendations in this regard to the Central Government as well as the State Governments. As per Section 9 of the Act, the Commission has the following functions, namely:

- a. "evaluate the progress of the development of minorities under the Union and States;
- b. monitor the working of the safeguards provided in the Constitution and in laws enacted by the Parliament and the State Legislatures;
- c. make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Government;

- d. look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
- e. cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;
- f. conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- g. suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
- h. make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and
- i. any other matter which may be referred to it by the Central Government.”

1.3. As per Section 9(4) of the NCM Act, the Commission while performing its functions has all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:

- (i) “summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (ii) requiring the discovery and production of any document;
- (iii) receiving evidence on affidavits;
- (iv) requisitioning any public record or copy thereof from any Court or office;
- (v) issuing commissions for the examination of witness and documents; and
- (vi) any other matter, which may be prescribed.”

1.4. The Constitution does not define the term “Minorities” though it refers to religious and linguistic minorities in the context of their educational and cultural rights. However, the following religious communities have been notified as Minorities under the NCM Act: Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis). A copy of the Notification dated 23rd October, 1993 is attached at Annexure II. As per the latest data from the Census Commissioner, they form 18.4% of population of the country. The

percentage of Muslims to the total population is 13.4% of Christian 2.3%, of Sikhs 1.9%, of Buddhists 0.8% and of Zoroastrians .007.

1.5. The Commission consists of a Chairperson, a Vice-Chairperson and five Members nominated by the Central Government from amongst persons of eminence, ability and integrity. The present Statutory Commission (4th One) was constituted by the Government on 7th February, 2003.

1.6. The Chairperson and the Vice-Chairperson of the Commission have been conferred the status of Union Minister of the Cabinet and the Union Minister of State respectively.

Need to confer Constitutional status on the National Commission for Minorities.

1.7. The Ministry have stated that the National Common Minimum Programme inter-alia states “The Government will examine the question of providing constitutional status to the Minorities Commission.” The Address of the Hon’ble President of India to

the Parliament on 7th June, 2004 inter-also provided “the Government will examine the question of providing constitutional status to the Minorities Commission.”

1.8. In pursuance of the National Common Minimum Programme and the President’s Address to provide constitutional status to the National Commission for Minorities, the Government of India have introduced the Constitutional (One Hundred and Third Amendment) Bill, 2004 in Lok Sabha on 23rd December, 2004 to insert an Article 340 A after Article 340 (Article 340 provides for appointment of a Commission to investigate the conditions of backward classes). It is felt that the constitutional provision would inspire greater confidence amongst minorities and the Commission would be more effective in safeguarding their interests.

1.9. The proposed Article 340 A provides for a seven member Commission consisting of a Chairperson, a Vice-Chairperson and five Members. It further provides that at least five Members including the Chairperson shall be from amongst Minorities. The Commission shall inter-alia evaluate the progress of development of minorities, monitor the working of safeguards, make recommendations for effective implementation of safeguards to the Central Government and State Governments and look into specific complaints. The Commission while performing certain functions shall have powers of a civil court trying a suit. No change is proposed in composition, functions and powers, secretariat staff, etc. of the existing Commission.

1.10 There will be no financial implication as the terms and conditions of the proposed Commission will be the same as exist for the present Commission.

1.11. The Government of India has also introduced the National Commission for Minorities (Repeal) Bill, 2004 in Lok Sabha on 23rd December, 2004. The Bill envisages dissolution of the existing Commission set up under Section 3 of the NCM Act, 1992. On dissolution of the Commission, the Members including Chairperson, Vice-Chairperson and Members of the Commission shall vacate their offices. No compensation for pre-mature termination of the office is envisaged. It is envisaged to

utilize the services of the Secretary and other officers and employees of the existing National Commission for Minorities for the proposed Commission. An amount of Rs. 303 lakhs has been provided for the National Commission for Minorities for the year 2004-05 (Non-Plan). The Repeal Bill will be effective after the Constitutional (One Hundred and Third Amendment) Bill, 2004 is enacted and come into force.

Clause 2 of the Bill:

1.12 Clause 2 of the Bill seeks to insert a new article 340A after article 340 of the Constitution as under:

'340A. (1) There shall be a Commission for the Minorities to be known as the National Commission for Minorities.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of the office of the Chairperson, Vice-Chairperson and other Members shall be such as the President may by rule determine:

Provided that at least five Members including the Chairperson shall be from amongst the Minorities.

(3) The Chairperson, Vice-Chairperson and other Members shall be appointed, by the President by warrant under his hand and seal, from amongst persons of eminence, ability and integrity.

(4) The Commission shall have the powers to regulate its own procedure.

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

(a) to evaluate the progress of the development of Minorities under the Union and the States;

(b) to monitor the working of the safeguards provided in the Constitution and the laws enacted by Parliament and the State Legislatures;

(c) to make recommendations for the effective implementation of safeguards for the protection of the interest of the Minorities by the Central Government and the State Government;

(d) to look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities;

(e) to cause studies to be undertaken into problems arising out of any discrimination against the Minorities and recommend measures for their removal;

(f) to conduct studies, research and analysis on the issues relating to socio-economic and educational development of the Minorities;

(g) to suggest appropriate measures in respect of any Minority to be undertaken by the Central Government and the State Governments;

(h) to make periodical or special reports to the Central Government on any matter pertaining to the Minorities and in particular the difficulties confronted by them; and

(i) to discharge such other functions in relation to the protection, welfare, development and advancement of the Minorities as the President may, subject to the provisions of any law made by Parliament, by rule, specify.

(6) The President shall cause the recommendations referred to in sub-clause (c) of clause (5) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any recommendation referred to in sub-clause (c) of clause (5) or any part thereof is such with which any State Government is concerned, the

Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendation or part thereof.

(8) The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy there of from any court of office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) For the purposes of this article, "Minority" means a community which the President may, by public notification, specify to be a minority.'

I. Clauses 2 and 3 of the Bill (Composition and Appointment)

1.13 Clauses 2 and 3 of The Constitution One Hundred and Third (Amendment) Bill, 2004 seek to amend Clause 3 of The National Commission for Minorities Act, 1992 by substituting “The Central Government shall constitute a body to be known as the National Commission for Minorities to exercise the powers conferred on, and to perform the functions assigned to it under this Act. The Commission shall consist of a Chairperson, a Vice-Chairperson and five members to be nominated by the Central Government. Provided that five members including the Chairperson shall be amongst the Minority Committee” with “Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of the office of the Chairperson, Vice-Chairperson and other Members shall be as such the President may by rule determine. Provided that at least five Members including the Chairperson shall be from amongst the Minorities. The Chairperson, Vice-Chairperson and other Members shall be appointed by the President by warrant under his hand and seal, from amongst persons of ability and integrity.

1.14 During the course of oral evidence it was stated that:-

“The draft provides that the Vice-Chairperson could be from a non-minority community. I have a slight objection to this because in the absence of the Chairperson, the Vice-Chairperson does perform the function of the Chairperson. So my submission is that he should be one of the members of the minority community who are there in the Commission. I also submit that the posts of Chairperson and Vice-Chairperson should not be given to one or two of the minority communities of the country, but they should be rotated. I do not see why a Buddhist or a Parsi cannot be the Chairperson or Vice-Chairperson. The practice has been that only one or two minority communities have been given the status of Chairperson or Vice-Chairperson”.

1.15 During the course of oral evidence, when asked about the same, the Secretary Ministry of Social Justice and Empowerment stated “As far as selection of Chairperson is concerned, persons of eminence, ability and integrity are to be appointed as Chairperson and the Government while selecting the Chairperson keeps in mind these factors and they make the selection of the Chairperson accordingly. Although it is not prescribed that the Chairperson should rotate, but it is kept in mind”.

1.16 The Committee note that the main reason for bestowing Constitutional status on the present statutory National Commission for Minorities was to inspire greater confidence amongst the minorities. The Ministry have informed that persons of eminence, ability and integrity are appointed as Chairperson. However, the Government does keep in mind to rotate the post of Chairperson amongst all minority communities, though it is not prescribed. The Committee desire that the Ministry should not only ensure the post of Chairperson is rotated amongst the five notified minorities, but also the pivotal post of Vice-Chairman be from a minority community member as in the absence of the Chairperson, the Vice-Chairperson performs the functions of the Chairperson. The Committee feel that such a step would go a long way in inspiring greater confidence amongst the five notified minorities. The Committee, therefore urge the Ministry to incorporate this provision in the proposed Constitutional Amendment Bill.

II Clause 5 of the Bill (Duties of the Commission)

1.17 The Committee have been apprised that the proposed Constitutional National Commission for Minorities would have the following duties:

- (a) to evaluate the progress of the development of Minorities under the Union and the States;
- (b) to monitor the working of the safeguards provided in the Constitution and the laws enacted by Parliament and the State Legislatures;
- (c) to make recommendations for the effective implementation of safeguards for the protection of the interest of the Minorities by the Central Government and the State Government;
- (d) to look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities;
- (e) to cause studies to be undertaken into problems arising out of any discrimination against the Minorities and recommend measures for their removal;
- (f) to conduct studies, research and analysis on the issues relating to socio-economic and educational development of the Minorities;
- (g) to suggest appropriate measures in respect of any Minority to be undertaken by the Central Government and the State Governments;
- (h) to make periodical or special reports to the Central Government on any matter pertaining to the Minorities and in particular the difficulties confronted by them; and

(i) to discharge such other functions in relation to the protection, welfare, development and advancement of the Minorities as the President may, subject to the provisions of any law made by Parliament, by rule, specify.

1.18 The Committee while examining the comparative Statement indicating the provisions of the National Commission for Minorities-Constitutional One Hundred and Third (Amendment) Bill, 2005 and other Constitutional Commissions under the Ministry of Social Justice and Empowerment, namely the National Commissions for Scheduled Castes and Scheduled Tribes respectively furnished by the Ministry noted the following omissions with regards to the duties of the proposed Constitutional National Commission for Minorities, which were there in the other two Constitutional Commissions. These are namely:

(i) To investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(ii) To inquire into specific complaints with respect to deprivation of rights and safeguards of Scheduled Castes;

(iii) To participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;

1.19 During the course of oral evidence, the Secretary when asked to explain the reasons for not bestowing the two vital powers of inquiring and investigation here, replied “ Madam, no other Commission also has the power of investigation in the sense that can lead to challan and can lead to arrest. The investigative powers

under the IPC or CrPC are not there. Even in the Scheduled Castes Commission, the word has been used to investigate, but the power of investigation is not power of investigation under IPC or CrPC. What actually it refers to is more of a fact-finding kind of investigation. Investigation cannot logically lead to a prosecution. Similarly, here also the same provisions are here". On being requested by the Committee to ensure that the powers of inquiring and investigation be conferred upon the National Commission for Minorities to make it at par with the SC and ST Commission the Secretary replied that the Ministry would examine the matter and put it up for approval.

1.20 The Committee note with concern that though the Ministry has time and again emphasized that the main reason for the proposed amendment was to instill greater confidence amongst the minorities, yet in the absence of vital powers of inquiring and investigation the NCM, even with a Constitutional status, would be a toothless tiger and be hampered a great deal in carrying out its mandate. The Committee therefore strongly recommend that section (d) of clause 5 be suitably amended as "To inquire into specific complaints with respect to deprivation of right and safeguards of Minorities and to investigate and monitor all matters regarding safeguards provided for the Minorities under this constitution or under any law.

1.21 The Committee also urge the Ministry to add another section in clause 5, namely "To participate and advise on the planning process of socio-economic development of the Minorities and to evaluate the progress of their development under the Union and any State". The Committee are of the firm opinion that by incorporating the above-mentioned clause, the NCM would

play a far more effective role in accelerating the socio-economic development of the Minorities.

III. Clauses 6 and 7 of the Bill (Tabling of Reports of the Commission)

1.22 The Committee observe that the clause 6 of the Amendment Bill States that “The President shall cause the recommendations referred to in sub-clause (c) of clause (5) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations”. Similarly clause 7 of the Amendment Bill states that “Where any recommendation referred to in sub-clause (c) of clause (5) or any part thereof is such with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendation or part thereof”.

1.23 In their written memoranda furnished to the Committee on various provisions of the Bill, the National Commission for Minorities, brought to the notice of the Committee that the last Annual Report of the Commission which was placed before Parliament was of 1995-96. As far as 7 annual Reports of NCM for 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01, 2001-02 and 2002-03 have not been placed before Parliament, with the result that Members of Parliament were denied the opportunity to through the recommendations of NCM in these report, as such the Commission’s recommendations have not been debated on the floor of either Houses of parliament. This was so, as no time limit is prescribed for placing these Annual Reports.

1.24 While giving their suggestions on various provision of the Bill, the Secretary, National Commission for Minorities during the course of oral evidence stated as follows in respect of the aforesaid clause:

1. “The Commission shall prepare in such form and at such time for each Financial Year as may be prescribed its Annual Report giving a full account of its activities during the previous Financial year and present it to the President of India.
2. After the presentation of the Annual Report to the President, the Central Government shall lay the same in both Houses of parliament in its next Session.
3. As soon as possible thereafter but within a period of one year from presentation of the annual Report to the President, the Union Government will place a memorandum of action taken on the recommendations contained therein insofar as they relate to the Central Government and the reasons for non-acceptance if any of such recommendations to each House of Parliament;
4. Similarly, with regard to the recommendations pertaining to a State, such memorandum will be placed in the Legislature by the State Government.”

1.25 During the course of oral evidence, the Secretary Ministry of Social Justice and Empowerment on being asked the reasons for non-tabling of the Reports of NCM by the Government in both Houses of Parliament, and the last report of NCM tabled the Secretary replied:

“As regards the reports are concerned, it is right that there are a number of reports of the Commission which have yet to be placed before the House. We are making all efforts to place them as soon as possible. What happened was that reports from 1993 to 1998, were submitted us between April and July 1998. Then we started doing one report and the other report simultaneously also it carried on.

The recommendations of the Commission relate to many departments. So, then we have to call for the comments of all these departments and the comments of the departments are received. Then we process them and then we finally compile the report. Then it needs the approval of the Cabinet before it is laid on the

Table of the House. Then, out of these reports which were received in 1993, three reports were laid on 20th December 2002 and the fourth report, which is for the period 1996-97, has been finally compiled and the Cabinet Note has been prepared. Once the Cabinet Note is prepared, it is again circulated to the Ministries for their comments. Now, we are awaiting the comments of one or two Ministries. Then, we will take it to the Cabinet. We will place the fourth report in the ensuing session of Parliament. The fifth report is also nearly ready. But there are still four Ministries from which we are awaiting the response. In case, we get the response, then we will try that we place it before the next session. But we will certainly place the fourth report before the next session. Others also, of course, we are in the process of circulating.”

1.26 During the course of evidence Hon'ble Chairperson enquired about the criteria being adopted by the Government to classify a particular community in the list of “Minority” when the Constitution does not defined the term (minorities). The Secretary Ministry of Social Justice and Empowerment replied:

“Madam, as regards the criteria for notifying the minorities, this has actually historically evolved and five communities are being treated as minorities now. The Minorities commission, in its Annual Report for the period ending 31st December, 1980, had stated that the Commission has been treating Muslims, Christians, Sikhs, Buddhists and Zoroastrians as religious minorities at the national level. In March, 1984, in the context of the 15-point programme, the Ministry of Home Affairs had also clarified that these are the five minorities at the national level. As you know, this Commission was first set up in 1978 through a Resolution of the Ministry of Home Affairs. Subsequently, when the Act was passed by Parliament in 1992 and the Commission was set up in 1993, under Section 2(c), again the five communities which had been notified as minorities were again declared as minorities.

Madam, recently there was question of including the Jains in the list of minorities and the Government had taken a stand before the Supreme Court that the Supreme Court, already in another case, stated that the State will be declared as the unit. Therefore, the States can determine as to who are the minorities in that

particular State. Subsequently, the Supreme Court delivered a judgment on 8th August, that the Jains should not be declared as minorities at the national level and no more communities should be declared as minorities at the national level. So, it is up to the State Governments to declare communities as minorities”.

1.27 The Committee express their deep concern over the tardiness exhibited by the Government in tabling the Annual Reports of the NCM in Parliament. The Committee are alarmed to be apprised that the last Annual Report tabled by the Government in Parliament pertains to the year 1995-96. The Committee note the reply of the Ministry that Annual Report of NCM for the period 1993-98 were submitted only in 1998 as the recommendations of the Commission relate to many departments and the comments of all these departments have to be received. Once recommended, the information is processed and the report compiled. Then it is placed before the cabinet for its approval. After the Cabinet Note is prepared, it is again circulated to all Ministries for their comments. But, the Committee are not at all satisfied with their reply and strongly feel that non-tabling of the reports on a regular basis negates the effectiveness of the working of the NCM. The Committee, therefore, strongly recommend that the Government insert the following new clauses in “The Constitution One Hundred and Third (Amendment) Bill, 2004:-

(i) The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual Report, giving a full account of its activities during the previous financial year and present it to President of India.

(ii) After presentation of the Annual Report to the President, the Central Government shall lay the same in both Houses of the parliament in its next session.

(iii) As soon as possible thereafter but within a period of one year from presentation of the Annual Report to the President, the Union Government will place a Memorandum of Action Taken on the recommendations contained therein, in so far as they relate to the Central Government, and the reasons for non-acceptance, if any, of any of such recommendations to each House of Parliament. Similarly, with regard to the recommendations pertaining to a State, such Memorandum will be placed in the Legislature by the State Government.

The Committee strongly view that such a step on the part of the Government would inspire a sense of confidence amongst the Minorities and would portray real commitment on the part of the Government to work for the welfare of the Minorities.

1.28 The Committee note that the Hon'ble Supreme Court has delivered a judgment on 8th August, 2005 stating that Jains should not be treated as a Minority at the National Level, and no more communities should be declared as minorities at the national level. So, it is up to the State Government to declare communities as minorities. The Committee, therefore, desire the Government to keep in view the observations made by the Supreme Court in

its entirety, while finalizing the Constitution One Hundred and Third (Amendment) Bill, 2004.

1.29 The Committee desire that the Ministry of Social Justice and Empowerment make the above-mentioned changes in light of the modifications suggested by the Committee in the present Constitution One Hundred and Third (Amendment) Bill, 2004.

1.30 The Committee note that after the Constitutional One Hundred and Third (Amendment) Bill, 2004 is enacted and comes into force The National Commission for Minorities (Repeal) Bill will be effective. The Bill envisages dissolution of the existing Commission set up under Section 3 of the NCM Act, 1992. On dissolution of the Commission, the Members including Chairperson, Vice-Chairperson and Members of the Commission shall vacate their offices. No compensation for pre-mature termination of the office is envisaged. The Committee approve the National Commission for Minorities (Repeal) Bill, 2004 without any amendment.

NEW DELHI;
17 January , 2006
27 Pausa, 1927 (Saka)

SUMITRA MAHAJAN,
Chairperson,
Standing Committee
on Social Justice and
Empowerment

ANNEXURE-I

ANNEXURE I

INTRODUCED IN LOK SABHA ON 23.12.2004

Bill No. 104 of 2004

THE CONSTITUTION (ONE HUNDRED AND THIRD
AMENDMENT) BILL, 2004

A

BILL

further to amend the Constitution of India.

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

1. (1) This Act may be called the Constitution (One Hundred and Third Amendment) Act, 2004.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After article 340 of the Constitution, the following article shall be inserted namely:—

Insertion of new article 340A.

'340A. (1) There shall be a Commission for the Minorities to be known as the National Commission for Minorities.

National Commission for Minorities.

21

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of the office of the Chairperson, Vice-Chairperson and other Members shall be such as the President may by rule determine: 5

Provided that at least five Members including the Chairperson shall be from amongst the Minorities.

(3) The Chairperson, Vice-Chairperson and other Members shall be appointed, by the President by warrant under his hand and seal, from amongst persons of eminence, ability and integrity. 10

(4) The Commission shall have the powers to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to evaluate the progress of the development of Minorities under the Union and the States;

(b) to monitor the working of the safeguards provided in the Constitution 15 and the laws enacted by Parliament and the State Legislatures;

(c) to make recommendations for the effective implementation of safeguards for the protection of the interest of the Minorities by the Central Government and the State Governments;

(d) to look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities; 20

(e) to cause studies to be undertaken into problems arising out of any discrimination against the Minorities and recommend measures for their removal;

(f) to conduct studies, research and analysis on the issues relating to socio-economic and educational development of the Minorities; 25

(g) to suggest appropriate measures in respect of any Minority to be undertaken by the Central Government and the State Governments;

(h) to make periodical or special reports to the Central Government on any matter pertaining to the Minorities and in particular the difficulties confronted 30 by them; and

(i) to discharge such other functions in relation to the protection, welfare, development and advancement of the Minorities as the President may, subject to the provisions of any law made by Parliament, by rule, specify.

(6) The President shall cause the recommendations referred to in sub-clause (c) 35 of clause (5) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any recommendation referred to in sub-clause (c) of clause (5) or any part thereof is such with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such 40 recommendation or part thereof. 45

(8) The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

5 (d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

10 (9) For the purposes of this article, "Minority" means a community which the President may, by public notification, specify to be a minority.

STATEMENT OF OBJECTS AND REASONS

The National Commission for Scheduled Castes and the National Commission for Scheduled Tribes have been constituted in pursuance of article 338 and article 338A respectively of the Constitution. Article 350B of the Constitution provides for appointment of a Special Officer for linguistic minorities. The Central Government set up a Minorities Commission in January, 1978 for providing an institutional arrangement for evaluating the safeguards provided in the Constitution and to make recommendations for effective implementation of the safeguards given to the Minorities. Subsequently, in May, 1993, the Central Government constituted the National Commission for Minorities as a statutory body under the National Commission for Minorities Act, 1992.

2. There has been a persistent demand for giving constitutional status to the National Commission for Minorities. It is felt that the constitution of the National Commission for Minorities under a constitutional provision would inspire greater confidence amongst the minorities and the Commission would be more effective in safeguarding their interests. It is, therefore, proposed to amend the Constitution by way of insertion of a new article 340A in the Constitution.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 16th December, 2004.

MEIRA KUMAR.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to insert a new article 340A in the Constitution for setting up of a Commission for the Minorities to be known as the National Commission for Minorities. The proposed Commission shall consist of a Chairperson, Vice-Chairperson and five other Members.

2. It is proposed to repeal the National Commission for Minorities Act, 1992 and dissolve the Commission constituted thereunder by enacting the National Commission for Minorities (Repeal) Bill, 2004 introduced separately. It is also proposed to utilise the services of the Secretary and other officers and employees of the National Commission for Minorities constituted under the said Act for the proposed Commission.

3. An amount of Rs. 303 lakhs has been provided for the National Commission for Minorities constituted under the National Commission for Minorities Act, 1992 for the year 2004-05 under Non-Plan. It is estimated that no additional recurring or non-recurring expenditure is likely to be involved during the said financial year for setting up the Commission under the proposed new article 340A of the Constitution, when enacted.

LOK SABHA

**A
BILL**

further to amend the Constitution of India

(Shrimati Meira Kumar, Minister of Social Justice and Empowerment)

MGIPMRND—3666LS—17.12.2004.

26

ANNEXURE II

INTRODUCED IN LOK SABHA ON 23.12.2004

BILL No. 185 of 2004

**THE NATIONAL COMMISSION FOR MINORITIES
(REPEAL) BILL, 2004**

A
BILL

to repeal the National Commission for Minorities Act, 1992.

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

1. (1) This Act may be called the National Commission for Minorities (Repeal) Act, 2004. Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

19 of 1992. 2. The National Commission for Minorities Act, 1992 is hereby repealed and the National Commission for Minorities constituted under section 3 of the said Act shall stand dissolved. Repeal.

Consequential
provision

3. On the dissolution of the National Commission for Minorities, the person appointed as the Chairperson and every other person appointed as Member of the National Commission for Minorities and holding office as such immediately before the commencement of this Act, shall vacate their respective offices and no such Chairperson or Member shall be entitled to claim any compensation for the premature termination of the term of his office. 5

STATEMENT OF OBJECTS AND REASONS

A Minorities Commission was set up for the first time in January, 1978, *inter alia*, to provide an institutional arrangement for evaluating the safeguards provided in the Constitution for protection of the minorities, to make recommendations for ensuring implementation of the safeguards and the laws, etc. Subsequently, in May, 1993, the Central Government constituted the National Commission for Minorities as a statutory body under the National Commission for Minorities Act, 1992. With a view to inspire greater confidence of the Minorities in the effectiveness and working of the Commission, it has been decided to give constitutional status to the National Commission for Minorities by suitably amending the Constitution. Accordingly, it is proposed to insert a new article 340A in the Constitution *vide* the Constitution (One Hundred and Third Amendment) Bill, 2004, which has been introduced in Parliament. It is, therefore, proposed to repeal the National Commission for Minorities Act, 1992 and dissolve the Commission constituted under the said Act.

2. The Bill seeks to achieve the above objects.

NEW DELHI;

MEIRA KUMAR

The 16th December, 2004.

LOK SABHA

A
BILL

to repeal the National Commission for Minorities Act, 1992.

(Shrimati Meira Kumar, Minister of Social Justice and Empowerment)

MGIPMRND—3668LS(S-3)—17.12.2004.

ANNEXURE III

MINUTES OF THE SECOND SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON 13TH SEPTEMBER, 2005.

The Committee met from 11.00 hrs. to 13.00 hrs and again 1415 hrs to 1500 hrs in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Smt. Sumitra Mahajan - Chairperson

MEMBERS

LOK SABHA

2. Shri M. Appadurai
3. Shri Ashok Argal
4. Shri Mahaveer Bhagora
5. Shri Sanat Kumar Mandal
6. Shri Rupchand Murmu
7. Shri Jual Oram
8. Smt. Pratibha Singh
9. Shri Lalit Mohan Suklabaidya
10. Smt. Usha Verma

RAJYA SABHA

11. Smt. Jamana Devi Barupal
12. Shri Silvius Condpan
13. Dr. Narayan Singh Manaklao
14. Shri Dharam Pal Sabharwal
15. Shri Tarlochan Singh
16. Shri Veer Singh

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri R.K. Saxena - Deputy Secretary

NON-OFFICIAL WITNESSES

1. Dr. Amrik Singh, President, The Sikh Forum, New Delhi.
2. Shri R.S. Chatwal, Secretary, The Sikh Forum, New Delhi.
3. Dr Maheep Singh, Member, The Sikh Forum, New Delhi.
4. Doctor Zafrul Islam Khan, Editor - The Milli Gazet, New Delhi.
5. Dr. Sarita J.Das, Former Secretary, National Commission for Minorities, New Delhi.
6. Shri M.R. Shroff, Chairman, Parsi Punchyat Funds and Properties, Mumbai.
7. Shri Shakeel Ahmed Syed, Member Jamiat-Ulama-I-Hind, New Delhi.
8. Shri Sajjan K. George National Convenor, Global Council for Indian Christians, Bangalore

2. *** *** *** ***
3. *** *** *** ***

4. The Committee then held discussion with the non-official witnesses on the "Constitution One Hundred and Third (Amendment) Bill, 2004. The witnesses welcomed the move on the part of the Government to give constitutional status to the National Commission for Minorities, However, it was stated that unless more powers were conferred upon the NCM, like powers to investigate into specific complaints, the proposed Amendment would not achieve the desired results of safeguarding the interests of minorities. There were suggestions also for rotating the post of Chairperson amongst the notified Minority Communities, having investigation cell under an officer of the level of Director General of Police in order to investigate atrocities against the Minorities and endowing NCM with suo-moto powers to enquire and call for evidence.

5. Hon'ble Chairperson then expressed her gratitude to the non-official witnesses for their valuable suggestions on the proposed Amendment Bill.

6. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

ANNEXURE IV

MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON 14TH SEPTEMBER, 2005.

The Committee met from 11.00 hrs. to 13.00 hrs and again from 1415 hrs to 1630 hrs in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Smt. Sumitra Mahajan - Chairperson

MEMBERS

LOK SABHA

2. Shri Ashok Argal
3. Shri Mahaveer Bhagora
4. Shri Eknath M. Gaikwad
5. Shri Sanat Kumar Mandal
6. Shri Rupchand Murmu
7. Shri Jual Oram
8. Smt Pratibha Singh
9. Shri Lalit Mohan Suklabaidya
10. Smt. Usha Verma

RAJYA SABHA

11. Smt. Jamana Devi Barupal
12. Shri Silvius Condpan
13. Dr. Narayan Singh Manaklao
14. Shri Abdul Wahab Peevee
15. Shri Dharam Pal Sabharwal
16. Shri Tarlochan Singh
17. Shri Veer Singh

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri R.K. Saxena - Deputy Secretary

NON-OFFICIAL WITNESSES

1. Shri Ashfaq Hussain Ansari, Former MP, Gorakhpur.
2. Shri Hafeez Mohammed, Chairman, Rajasthan Minority Commission Jaipur.
3. Shri S.N.H. Razvi, Secretary, Karnataka State Minority Commission Bangalore.
4. Dr. S.K. Aggarwal, Chhatisgarh, Korba.
5. Shri Tirlochan Singh, Former Secretary, National Commission for Minorities, New Delhi.
6. Syed Ibrahim Qureshi, Chairman, M.P. State Minority Commission Bhopal.
7. Dr. M.S. Usmani Vice-Chairman, National Commission for Minorities, New Delhi.
8. Shri Ahmad Rashid Shervani Member, National Commission for Minorities, New Delhi.
9. Lt. Gen.(Retd.) A.M. Sethna, Member, National Commission for Minorities, New Delhi.
10. Shri Dev Swarup Secretary, National Commission for Minorities, New Delhi.

2. Hon'ble Chairperson welcomed the Members and witnesses to the sitting of the Committee and requested them to give suggestions/their views to the Committee on the "Constitution One Hundred and Third (Amendment) Bill, 2004.

3. The witnesses impressed upon the need to link the National Commission on Minorities with the various State Commissions to ensure that both work in tandem for the welfare and upliftment of the Minorities to ensure a harmonious and peaceful co-existence with the majority community. It was also suggested to ensure that the Annual Report of the NCM is placed before Parliament by the Government on a regular basis, otherwise the purpose of having NCM would be defeated. They further requested for a fixed time frame for tabling the Report as well as its Action taken by the Government to Parliament.

4. Hon'ble Chairperson then thanked the witnesses for their valuable suggestions on the proposed Amendment Bill.

(The witnesses then withdrew)

5. *** *** *** ***

6. *** *** *** ***

7. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

ANNEXURE V

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON 5TH OCTOBER, 2005

The Committee met from 11.00 hrs. to 12.20 hrs in Committee Room 'E' Parliament House Annexe, New Delhi.

PRESENT

1. **Smt. Sumitra Mahajan** - **Chairperson**

MEMBERS

LOK SABHA

2. Shri M. Appadurai
3. Shri Ashok Argal
4. Shri Mahaveer Bhagora
5. Shri Eknath M. Gaikwad
6. Shri Sanat Kumar Mandal
7. Shri Kailash Meghwal
8. Shri Daroga Prasad Saroj
9. Shri Lalit Mohan Suklabaidya
10. Smt. Usha Verma
11. Shri K. Yerrannaidu

RAJYA SABHA

12. Smt Jamuna Devi Barupal
13. Shri Silvius Condpan
14. Shri Dharam Pal Sabharwal
15. Shri Tarlochan Singh

SECRETARIAT

1. Shri A.K. Singh Joint Secretary
2. Shri R.K. Saxena Deputy Secretary
3. Shri Bhupesh Kumar Under Secretary

WITNESSES

- | | | |
|----|-----------------------|------------------------------------|
| 1. | Smt. Sarita Prasad | Secretary, M/o SJE |
| 2. | Dr. Sundeep Khanna | Additional Secretary, M/o SJE |
| 3. | Dr. G. Prasanna Kumar | Joint Secretary, M/o SJE |
| 4. | Shri. R. N. Shastri | Managing Director, NMDFC |
| 5. | Shri K.K. Manchanda | General Manager, NMFDC |
| 6. | Shri S.C. Gulati | Deputy Secretary |
| 7. | Dr. Sanjay Singh | JointSecretary, M/o Law & Justice. |

At the outset, Hon'ble Chairperson welcomed the Members and witnesses to the sitting of the Committee convened to have oral evidence of the representatives of the Ministry of Social Justice and Empowerment on the "Constitution One Hundred and Third (Amendment) Bill, 2004." and the "National Commission for Minorities Repeal Bill, 2004."

2. The Chairperson enquired from the Secretary the main intention of the Government for introducing "Constitution One Hundred and Third (Amendment) Bill, 2004" as it did not propose to give any new power to the present National Commission for Minorities. It only intended to change the status of the Commission from the present Statutory one to a Constitutional one.

3. She pointed out that the proposed Constitution Amendment Bill did not intend to bestow the powers of inquiry and investigation in the reconstituted National Commission for Minorities and asked as to how in the absence of those vital powers the Government hopes to inspire more confidence amongst the Minorities. She also asked the reasons for not tabling Annual Reports of NCM in the Parliament on a regular basis.

4. The Secretary then responded to the queries put forward by the Hon'ble Chairperson and other members of the Committee.

6. Hon'ble Chairperson then thanked the witnesses for their valuable suggestions on the proposed Amendment Bill.

7. A Verbatim record of the proceeding has been kept.

The Committee then adjourned.

ANNEXURE VI

MINUTES OF THE FIFTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON 26TH OCTOBER, 2005

The Committee met from 15.00 hrs. to 16.10 hrs in Committee Room 'E' Parliament House Annexe, New Delhi.

PRESENT

1. **Smt. Sumitra Mahajan** - **Chairperson**

MEMBERS

LOK SABHA

2. Shri M. Appadurai
3. Shri Ashok Argal
4. Shri Mahaveer Bhagora
5. Shri Eknath M. Gaikwad
6. Shri Sanat Kumar Mandal
7. Shri Kailash Meghwal
8. Shri Rupchand Murmu
9. Shri Jual Oram
10. Shri Asaduddin Owaisi
11. Shri Daroga Prasad Saroj
12. Dr. R. Senthil
13. Smt. Usha Verma

RAJYA SABHA

14. Smt Jamana Devi Barupal
15. Shri. Silvius Condpan
16. Dr. Narayan Singh Manaklao
17. Shri. Abdul wahab Peevee
18. Shrr. Dharam Pal Sabharwal
19. Shri. Tarlochan Singh
20. Shri. Veer Singh

SECRETARIAT

- | | | |
|----|--------------------|------------------|
| 1. | Shri A.K. Singh | Joint Secretary |
| 2. | Shri R.K. Saxena | Deputy Secretary |
| 3. | Shri Bhupesh Kumar | Under Secretary |

WITNESSES

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|----|------------------------|--------------------------------|
| 1. | Smt. Sarita Prasad | Secretary, M/o SJE |
| 2. | Dr. Sundeep Khanna | Additional Secretary, M/o SJE |
| 3. | Shri. S. C. Gulati | Deputy Secretary, M/o SJE |
| 4. | Shri. S.L. Nampoothiry | Joint Secretary and LC M/o Law |
| 5. | Shri. R. Sreenivas | ALC, M/o Law & Justice |

At the outset, Hon'ble Chairperson welcomed the Members and witnesses to the sitting of the Committee convened to have oral evidence of the representatives of the Ministry of Social Justice and Empowerment on "The Constitution One Hundred and Third (Amendment) Bill, 2004" and the "National Commission for Minorities (Repeal) Bill, 2004."

2. The Chairperson pointed out that the National Commission for Scheduled Castes and Scheduled Tribes respectively have a provision which inter alia states that "The Union and every State Government shall consult the Commission on all major policy matters affecting the Scheduled Castes and Scheduled Tribes." She, therefore, asked the reasons for not including the such provision for the National Commission for Minorities in the proposed Constitution Amendment Bill.

3. She further asked whether Minorities not presently notified at national level but declared as Minority in a particular State could approach the National Commission for Minorities directly in case of any grievances faced by them.

4. The Secretary then responded to the queries put forward by the Hon'ble Chairperson and other members of the Committee.
5. Hon'ble Chairperson then thanked the witnesses for their valuable suggestions on the proposed Amendment Bill.
6. A Verbatim record of the proceeding has been kept.

The Committee then adjourned.

ANNEXURE VII

MINUTES OF THE NINTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON 17TH JANUARY, 2006

The Committee met from 15.00 hrs. to 15.45 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

1. **Smt. Sumitra Mahajan** - **Chairperson**

MEMBERS

LOK SABHA

2. Mohd. Shahid Akhlaque
3. Shri M. Appadurai
4. Shri Ashok Argal
5. Shri Mahaveer Bhagora
6. Shri Eknath M. Gaikwad
7. Shri Sanat Kumar Mandal
8. Shri Kailash Meghwal
9. Shri Rupchand Murmu
10. Shri Daroga Prasad Saroj
11. Smt. Pratibha Singh
12. Shri Lalit Mohan Suklabaidya
13. Smt. Usha Verma

RAJYA SABHA

14. Shri Silvius Condpan
15. Dr. Narayan Singh Manaklao
16. Shri Dharam Pal Sabharwal
17. Shri Ram Narayan Sahu
18. Shri Tarlochan Singh

SECRETARIAT

1. Shri A.K Singh - Joint Secretary
2. Shri R.K. Saxena - Deputy Secretary
3. Shri Bhupesh Kumar - Under Secretary

2. At the outset, Hon'ble Chairperson apprised the Members that they were meeting to consider and adopt three Draft Reports of the Committee.

3. **** **** ****

4. **** **** ****

5. The Committee also took up the draft Fourteenth Report on "The Constitution One Hundred and Third (Amendment) Bill, 2004" and "The National Commission for Minorities (Repeal) Bill, 2004" and adopted the same without any amendment.

6. The Committee authorized the Chairperson to finalise the Reports and present the same to Parliament on their behalf.

The Committee then adjourned.