

# PARLIAMENT OF INDIA

## RAJYA SABHA

### DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT

#### HUNDRED EIGHTY- SIXTH REPORT

#### ON

#### THE CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN ADMISSION) BILL, 2006

(PRESENTED TO THE RAJYA SABHA ON 1<sup>ST</sup> DECEMBER, 2006)

(LAID ON THE TABLE OF LOK SABHA ON 1<sup>ST</sup> DECEMBER, 2006)

RAJYA SABHA SECRETARIAT

NEW DELHI

DECEMBER, 2006/ AGRAHAYANA, 1928 (SAKA)

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#### COMPOSITION OF THE COMMITTEE (2006-07)

1. Shri Janardan Dwivedi                      ¾                      *Chairman*

#### MEMBERS

#### RAJYA SABHA

2. Shri Dwijendra Nath Sharmah
3. Shri Shantaram Laxman Naik
4. Shri Vijay Kumar Rupani
5. Shri Laxminarayan Sharma
6. Smt. Brinda Karat
7. Shri S. Anbalagan
8. Shri Uday Pratap Singh
9. Prof. Ram Deo Bhandary
10. Shri Ali Anwar

#### LOK SABHA

11. Shri Ashok Argal
12. Shri Basudeb Barman
13. Shri Harishchandra Chavan
14. Shri Harisinh Chavda
15. Smt. Paramjit Kaur Gulshan
16. Shri R. L. Jalappa

17. Shri Ramswaroop Koli
18. Shri G.V. Harsha Kumar
19. Smt. Nivedita Sambhajirao Mane
20. Smt. Archana Nayak
21. Smt. M.S.K. Bhavani Rajenthiran
22. Prof. Rasa Singh Rawat
1. Shri Ganesh Prasad Singh
2. Shri Chengara Surendran
3. Dr. Thokchom Meinya
4. Shri K. Virupakshappa
5. Shri Ravi Prakash Verma
6. Shri Francis K. George
7. Shri Anantkumar Hegde
8. Shri Rahul Gandhi
9. Dr. Ram Lakhan Singh

(i)

### **SECRETARIAT**

Shri N.C. Joshi, Additional Secretary  
Smt. Vandana Garg, Joint Secretary  
Shri N.K. Singh, Director  
Shri J. Sundriyal, Under Secretary  
Shri Swarabji, B., Committee Officer

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### **INTRODUCTION**

I, the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development, having been authorised by the Committee, do hereby present this Hundred Eighty-sixth Report of the Committee on 'the Central Educational Institutions (Reservation in Admission) Bill, 2006'.

2. In pursuance of the Rules relating to the Department-related Parliamentary Standing Committee, the Chairman, Rajya Sabha in consultation with the Speaker, Lok Sabha had referred 'the Central Educational Institutions (Reservation in Admission) Bill, 2006', as introduced in the Lok Sabha and pending therein, to the Committee on the 4<sup>th</sup> September, 2006 for examination and report within three months.

3. The Committee considered various documents and relevant papers received from the Department of Higher Education, and heard the Chairpersons, National Commission for Backward Classes and National Commission for Minorities as well as the Chairman of the Oversight Committee on the Implementation of the New Reservation Policy in Higher Educational Institutions in a series of meetings held on the 1<sup>st</sup> and 2<sup>nd</sup> November, 2006. The Committee also heard the Secretary and other officials of the Department of Higher Education on the Bill in its meeting held on the 9<sup>th</sup> November, 2006.

4. The Committee in its sitting held on the 16<sup>th</sup> November, 2006, took up 'clause-by-clause consideration' of the Bill and adopted the draft report with amendments in Clause 2 sub-clause (e), Clause 2 sub-clause (f), Clause 2 sub-clause (j) and Clause 4 of the Bill. Besides, the Committee has also made some general recommendations/observations about certain important issues involved.

(iii)

5. On behalf of the Committee, I would like to thank all those who appeared before the Committee and those who

provided important inputs and clarifications on the provisions of the Bill.

6. A note of dissent jointly given by Prof. Rasa Singh Rawat, Shri Vijay Kumar Rupani, Shri Laxmi Narayan Sharma, Shri Ashok Argal, Shri Ramswaroop Koli and Dr. Ram Lakhan Singh is appended to the Report.

7. For facility of reference, observations and recommendations of the Committee have been provided in bold letters in the body of the report.

**NEW DELHI;**

**November 16, 2006**

**Kartika 25, 1928 (Saka)**

**JANARDAN DWIVEDI**

**Chairman,**

**Department-related Parliamentary**

**Standing Committee on Human Resource Development**

(iv)

## **REPORT**

1. The Central Educational Institutions (Reservation in Admission) Bill, 2006 seeks to provide for reservation in admission of the students belonging to the Scheduled Castes (15%), the Scheduled Tribes (7.5%) and the Other Backward Classes (27%) to the Central Educational Institutions established, maintained or aided by the Central Government, and for matters connected therewith or incidental thereto. The Bill seeks to exclude certain premier Institutions in the country from the ambit of reservation.

2. Having regard to the composition of population in the tribal areas under the Sixth Schedule of the Constitution, Central Educational Institutions established in these areas have been exempted from reservation for the Scheduled Castes or the Other Backward Classes.

3. Central Government, in consultation with the appropriate authority (statutory council for maintaining standards of education) has been empowered to exempt from reservations, certain courses or programmes of high levels of specialization including at the post-doctoral level under any branch of study or faculty.

4. For reasons of financial, physical or academic limitations to be notified by order in the Gazette, the Central Government, in consultation with the appropriate authority, has been empowered to permit an institution to implement reservation for the Other Backward Classes within a maximum period of three years beginning with the academic session commencing in the calendar year 2007.

5. Where increase in the number of seats required to maintain the level available outside reservation is not possible due to resource constraints or without affecting the standards of education, the Central Government has been empowered to permit phasing of implementation over a maximum of three years.

6. The Committee noted that the present policy of reservation in matters of admission to centrally maintained and aided institutions was limited to 15% for the Scheduled Castes and 7.5% for the Scheduled Tribes subject to the prescribed standards of eligibility in the respective categories. This policy of reservation for the Scheduled Castes and the Scheduled Tribes was being implemented through Executive Order by the Central Government. At present, there is no law for the purpose and the present Bill would provide a statutory basis for reservation of seats in admissions relating to the Scheduled Castes and the Scheduled Tribes. Besides, this Bill also seeks to provide for the first time reservation for students belonging to the Other Backward Classes (OBCs) in educational institutions maintained or funded by the Central Government.

7. In this regard during its deliberations, attention of the Committee was drawn to the following recommendation of the Backward Classes Commission:

“Seats should be reserved for OBC students in all scientific, technical and professional institutions run by the Central as well as State Governments. This reservation will fall under article 15(4) of the Constitution and the quantum of reservation should be the same as in Government services, i.e. 27%. The States which have already reserved more than 27% seats for OBC students will remain unaffected by this recommendation” (Mandal Commission Report: 1980, Vol. I, p. 53).

8. While this recommendation of the Mandal Commission was implemented by the Central government for reservation in government jobs, it could not be done for admission in educational institutions.

9. The Committee was informed that in the *PA Inamdar vs State of Maharashtra & Ors*, Supreme Court held that the State could not reserve seats in unaided educational institutions. This had led to demand from almost all State Governments, as well as from almost all political parties in Parliament, for a Central law and if need be for amending the

Constitution so as to ensure that access to the weaker sections in higher education, particularly in professional courses was not denied or curtailed. Accordingly, the Constitution (93<sup>rd</sup> Amendment) Act, 2005 was passed which introduced section (5) in Article 15 of the Constitution. It empowers the State to make special provision, by law, for the admission of students belonging to the Scheduled Castes (SCs), the Scheduled Tribes (STs) and socially and educationally backward classes of citizens in educational institutions including aided or unaided private educational institutions. Minority educational institutions established under Article 30(1) of the Constitution were exempted from it. Therefore, the Centre as well as the States have to make laws to implement this provision in respect of institutions under their purview.

10. Accordingly, the Central Educational Institutions (Reservation in Admission) Bill, 2006 has been introduced in the Lok Sabha for this purpose. It was clarified that such a law was required also in view of the fact that each higher educational institution functioned under its own law, statute, orders, etc. It was, therefore, necessary to have an enabling law by Parliament that would override such individual Acts and other legal provisions.

11. With a view to understand the key issues involved in the proposed legislation as well as implications of its provisions, the Committee decided to interact with the stakeholders. Accordingly, the Committee heard the views of the Chairmen of the National Commission for Backward Classes, the National Commission for Minorities and the Oversight Committee on the implementation of the New Reservation Policy in Higher Educational Institutions in its meetings held on the 1<sup>st</sup> and 2<sup>nd</sup> November, 2006. From the deliberations that the Committee had with these witnesses, the consensus which emerged was that the initiative taken by the Government was a welcome step for protecting the interests of socially and educationally backward classes. However, certain apprehensions and reservations were also voiced which were not confined to the provisions of the Bill but also raised certain fundamental issues and their possible implications.

12. The Committee was informed that while reservation in admission for students from the SC and ST communities was already in operation for a long time, a beginning was yet to be made for students from the backward classes. Another fact noticed was that after 1931 census, till date no comprehensive caste-based census had been carried out so as to obtain authenticated details of population- caste or community wise. Whereas in respect of SCs and STs, periodical census had been carried out. As a result, with the changes in the percentages of SCs/STs in total population, their reservation percentage had also undergone a revision. It was emphasised before the Committee that in view of there being no comprehensive caste-based survey after 1931 and different data coming from different sources, there was an urgent need for carrying out a census on caste and community basis.

13. The Committee was informed that the Mandal Commission by adopting multiple approach for the preparation of a list of OBCs arrived at the population of Hindu and Non-Hindu OBCs to nearly 52 per cent of the country's population (43.70% Hindu OBC and 8.40% of non-Hindu OBCs). However, in view of Supreme Court restricting all kinds of reservations [under Articles 15(4) and 16(4) of the Constitution] to 50 per cent, only 27 per cent reservation for OBCs was recommended by the Mandal Commission. The Chairman of the National Commission for Backward Classes was of the view that reservation proposed for the Backward Classes in the Bill was not proportionate to their population.

14. Committee's attention was also drawn to chances of anomalies arising as a result of proposed staggered increase in the number of seats in a Central Educational Institution over a maximum period of three years. As envisaged in clause 5(2) of the Bill, number of seats available to OBCs for each academic session would be commensurate with the increase in the permitted strength for each year. The Committee was given to understand that strict implementation of this sub-clause would lead to a situation where reservation of seats for OBC candidates would be staggered with increase in seats flowing to other reserved categories. It was, accordingly, emphasized that 27 per cent reservation for OBCs should be given in the first year itself.

15. With regard to application of the concept of 'Creamy layer', strong reservations were expressed by the Chairman of the National Commission for Backward Classes. It was emphasized that exclusion of a section of OBCs in the field of higher education on the economic criteria would amount to negative discrimination. Committee's attention was drawn to the fact that concept of the creamy layer did not find place anywhere in the Constitution; all the Articles relating to the Backward Classes contained the expression 'socially and educationally Backward Classes of citizens'. The witness was of the firm view that there was no justification for dividing the list of socially and educationally backward communities on economic criteria.

16. No response was forthcoming from the Chairman of the Backward Classes Commission about the query of the Committee for the need for having a creamy layer among the OBCs in view of separate categories of OBCs based on social and economic deficiencies. No categorical reply was given to the possibility of OBC seats remaining unfilled in the event of creamy layer being excluded.

17. The question about the need for such a provision for the socially and educationally backwards amongst the minorities was also raised before the Committee.

18. The Chairman of the National Commission for Minorities informed that out of the 18.4% recognized religious minorities in the total population of the country, 13.4% were Muslims. Condition of this single largest minority in higher education “was both disturbing and disquieting”. Broadly speaking, the social and educational status of Muslims in general was comparable to that of the Hindu OBCs, while the position of Muslim OBCs that constituted above 40%, was comparable to that of SCs/STs. He, therefore, made out a strong case for extending the policy of reservation for the Muslim OBCs also.

19. The Chairman, National Commission for Minorities strongly advocated about a monitoring mechanism to be included in the Bill so as to ensure equitable share for the socially and educationally backward classes of minorities in higher education. Two options for activating this monitoring mechanism were placed before the Committee. The first was a classification of the OBCs into Category I (OBCs) and Category II (MBCs). Since the majority of Muslims are falling into the OBC category, benefits of reservation would be the maximum. Second option suggested was the earmarking of a numerical sub-quota for the Muslim OBCs on the basis of the accepted criteria of identification of most backward classes. It was pointed out that such a classification of OBCs had been tried with success in Karnataka, Maharashtra, Bihar, Andhra Pradesh, Assam and Tamil Nadu. In Andhra Pradesh, even the Scheduled Caste category has been sub-divided into four categories. It was further argued that if SC category could be successfully divided into four categories, OBC category could also be sub-categorized more or less on the same pattern.

20. On a specific query about inclusion of dalit Christians or dalit Muslims, i.e. those who get converted from other communities, it was admitted that there was a need to examine this issue. As regards dalit Muslims, it was argued that they should be given Scheduled Caste status, because not being OBCs, they would not be covered under the present Bill.

21. Issue of reservation of Muslim OBCs in the minority institutions without eroding their rights guaranteed by the Constitution was also raised before the Committee. Attention was also drawn about the feasibility of having exclusion of creamy layer for all OBCs. The Committee was given to understand that among Muslims OBCs, creamy layer formed a very small segment.

22. Another aspect brought to the notice of the Committee was that the identification of the backward classes ought to have been in relation to the work conditions existing at the time of conferment of benefits for the purpose of upliftment. It was pointed out that the classification of the Mandal Commission was a combination of three or four factors which were social, economic, educational but essentially occupational. Apprehensions were raised about the sanctity of having occupation-based classification for backward classes. An obvious fallout of tremendous professional development was also the rapid change in occupation.

23. The Committee had the final recommendations made by the Oversight Committee on the Implementation of the New Reservation Policy in Higher Educational Institutions, before it. The Chairman of the Oversight Committee who deposed before the Committee gave a **brief** idea about the historical background of the reservation policy for the backward classes. The Committee was informed that the estimate of 52 per cent backward classes made by the Mandal Commission was made by excluding the percentage of SCs, STs and Forward Castes/ Communities from the total population as enumerated in the 1931 census.

24. The Committee was informed that the Central List of Backward Classes at present contained a total of 2303 castes/ communities. Several additions were made in the first Central List prepared in 1993. However, there had hardly been any exclusion so far from this list. It was emphasized that the process of inclusion of castes/ communities could not be continued indefinitely; there was a need for putting a cap on the inclusion or further additions. Task of review of the Lists of Backward Classes needed to be taken up by the Government in consultation with the Backward Classes Commission as envisaged under section 11 of the National Commission for Backward Classes Act, 1993 governing it. It was advocated that castes/ communities which had reached a certain level of advancement should yield place to those who were yet to reach that stage of development and were in greater need of reservation. The Committee was also given to understand that there had been a long pending and consistent demand from some State Governments/ State Backward Class Commissions for undertaking a comprehensive census survey of Backward Classes. It was emphasized that if this task was not accomplished, such affirmative action as extending reservations would not have legitimate and just basis.

25. Chairman of the Oversight Committee, thereafter, dwelt upon in detail on the issue of exclusion of creamy layer from reservation. While clarifying that Oversight Committee has not made any recommendation on this much debated issue, it was informed that deliberations took place among the members which have been reflected in Appendix-1 of its report. The viewpoints which emerged were :

- Inclusion of creamy layer would result in reserved seats being pre-empted by OBCs from higher income groups. Thus, almost all rural as well as urban OBCs from the northern, central and eastern regions would be deprived. Other view was that, if the creamy layer of OBCs was denied access to reservation, the reserved seats might not get filled up. However, a case study from Karnataka had shown that the OBC quotas had been utilised without any compromise with academic excellence in a situation where the creamy layer had been excluded. Another alternative formulation suggested to the Committee was that the creamy layer should be excluded in the first instance. A provision should be made that, keeping in view the prescribed threshold of qualifying marks, if after admitting non-creamy layer OBC candidates, some reserve quota seats remain vacant, access could then be given to the creamy layer candidates in order of merit.

26. In addition to the above viewpoints, the Committee was also given to understand that in some of the southern States, due to consistent reservation policy, OBCs have been adequately empowered. With the creamy layer included and absence of categorization amongst OBCs, only advantaged sections amongst them would continue to be benefited. It was also emphasized that in the event of exclusion of creamy layer from the purview of reservation, the criteria for deciding the creamy layer should be laid and periodically reviewed. It was also suggested that in the event of candidates below the creamy layer not making up, the seats could go to the creamy layer on the basis of merit. On a specific query about the need for having a proviso for retaining 27 per cent reservation for OBCs on exclusion of creamy layer, it was clarified that in view of present figure of 52 per cent OBCs, 27 per cent reservation for OBCs was still far less and should continue to be there.

27. Committee's attention was drawn towards the following study made by the Planning Commission on the status of OBCs that has been included as Appendix-2 in the Report given by the Oversight Committee.

1.4 "Indicators relevant to reservation for OBCs:

1.4.1 The Southern region has a significantly higher share of the OBC population in the country than its over-all population share. This is particularly true of Tamil Nadu (22.4% of the country's OBC population). In the Northern region, the shares are more or less balanced; whereas in the East and the West, their share of OBC population is significantly lower than their overall population share.

There is evidence to buttress the hypothesis that the ability to access reservations in Central Institutions of higher learning will be higher among : (a) the urban population; and (b) the higher income classes. The four southern states collectively account for 44% of the total urban OBC population. Of this, more than 22% is in Tamil Nadu alone. Another four states, namely Madhya Pradesh, Uttar Pradesh, Bihar and Maharashtra, account for another 40%. Thus the remaining seven major states, namely Haryana, Punjab, Rajasthan, Orissa, West Bengal, Gujarat and Assam, collectively have only 16% of the urban OBC population.

1.4.3 If we now consider the state-wise distribution of OBCs in the top two income classes in urban areas, i.e. those who stand the best chance of accessing the reservations, more than 68% are in the Southern region, with Tamil Nadu alone accounting for 37%. In fact, just 5 States, the 4 southern states plus Maharashtra, together account for nearly 80% of OBCs in this category."

28. The Committee was also given an idea about the detailed exercise and assessment made by the Oversight Committee underlying the implementation of 27 per cent reservation in a staggered form as envisaged in clause 5(2) of the Bill. Extensive deliberations had taken place with all the stakeholders likely to be brought under the new reservation policy. An in-depth study with regard to the existing faculty and infrastructure, their augmentation, additional funding required for proposed expansion with the underlying principle of retaining the level of excellence as also the number of seats available for general category was made by the Oversight Committee.

29. Opinion was also sought on the need for having reservation for OBC women. Both the Commissions did not give any clear suggestion in this regard.

30. Specific query was made about the need for excluding the institutions of excellence, research institutions, institutions of national and strategic importance specified in the Schedule to this Act as mentioned in clause 4(b). The Committee was informed that the exemption clause tended to be a little too generic and could lead to institutions of excellence being left out.

30.1 It was argued before the Committee that access to quality education is of utmost importance for ensuring advancement of persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes. This is also the objective of the Directive Principles of State Policy as laid down in Article 46 in Part IV of the Constitution.

30.2 The representatives of the Ministry submitted before the Committee that these provisions were included mainly due to the fact that the intake to these institutions and courses was generally very few and, therefore, implementing reservations will be difficult.

31. The views, suggestions and apprehensions expressed during the deliberations of the Committee were put before the Secretary of the Department of Higher Education, Ministry of Human Resource Development in the meeting of the Committee held on 9<sup>th</sup> November, 2006.

32. The Committee received a written memorandum from an organization named 'Youth for Equality'. While accepting the need for affirmative action for the upliftment of the down-trodden, the memorandum raised serious reservations about the methodology adopted by the Government for identification of Backward Classes and the steps proposed for their upliftment.

33. These extensive deliberations and the inputs from all the concerned have greatly helped the Committee in understanding the subject matter and formulating its views on various provisions of the proposed legislation.

34. The Committee wishes to make it amply clear at the outset that it is unanimously in favour of the policy of making reservation for backward communities in the educational institutions of higher and professional learning. It is not only in keeping with the constitutional provisions contained in Article 15(5) but also necessary for providing socially and educationally backward communities with equal opportunities.

35. The Committee considered arguments, for and against, presented before it as also various problems/lacunae witnessed and associated with implementation of the policy of reservation for backward communities. The Committee also notes the suggestions made before it for addressing some of the basic issues related with this policy for an effective and judicious implementation.

36. The Committee notes that there is a major limitation on data about the social, economic and educational profile of our population in general and about OBCs in particular. The last caste-based census in India was done in 1931. Accordingly, there are no periodic data available on the demographic spread of OBCs and their access to amenities. Even the Mandal Commission had used the 1931 Census data. Whatever limited data are available, pertain to surveys conducted by NSSO from 1998-99 onwards, which are only 'sample surveys'.

37. The Committee found that there exists no accepted mechanism/criteria to group the people into different categories. As a result, existing list of backward castes/communities are termed, in some cases, as inaccurate. Besides, any regular process of review is also not in place. Such a review implies both 'inclusion' and 'exclusion'. The Committee, therefore, emphasizes the need for taking urgent measures/steps for identifying and removing all such lacunae and problems by putting in place scientific and objective mechanism/benchmarks for this purpose.

38. The Committee recommends that a comprehensive survey of the total population which can bring out the social, educational and economic profile of each caste/community/sections of society, may be undertaken, followed by periodic reviews.

#### Clause 2(e) of the Bill

##### Definitions

39. Clause 2(e) defines faculty as "faculty of a university or of any other educational institution". The Committee feels that the definition is quite wide and it may include each and every educational institution. The Committee, therefore, recommends that sub-clause(e) of clause 2 may be substituted with the following:

(e) faculty means the faculty of a central educational institution as defined in sub-clause(d) of clause 2.

#### Clause 2(f) of the Bill

40. The Committee notes that the Central Government has also been given powers to declare an institution as minority educational institution. The Committee, therefore, recommends that the words "or by the Central Government" may be deleted from line 26 of page 2 [sub clause (f) of clause 2] of the Bill.

#### Clause 2(j) of the Bill

41. The Committee finds that the sub-clause (j) of clause 2 of the Bill defines "teaching or instruction in any branch of study". These words, however, do not appear anywhere in the Bill. The Committee notes that this sub-clause mentions branches of study at three principal levels of qualifications.

41.1 The Committee finds that some other fields of study have not been mentioned in this sub-clause. For example, there is no mention about Humanities & Social Sciences in this list. The Committee, therefore, recommends that instead of mentioning branches of study by name, the words 'all the branches of study' should be inserted in clause 2(j).

#### Clause 4 of the Bill

Act not to apply in certain cases

42. Clause 4(b) of the Bill provides that the provisions of section 3 shall not apply to “the institutions of excellence, research institutions, institutions of national and strategic importance specified in the Schedule to this Act”. Exception was taken by some members to the proviso to section 4(b) of the Bill that empowers the Central Government to amend the Schedule to the Act. The Schedule contains list of institutions of national and strategic importance that are sought to be exempted from the reservation.

42.1 The Committee is not aware of the basis on which the institutions contained in the Schedule have been selected.

42.2 The Committee also feels that the power of amending the Schedule provided to the Central Government needs to be exercised only with the concurrence of Parliament. The Committee, therefore, recommends that suitable mechanism be provided in the Bill so that no notification made by the Central Government in this regard becomes effective without the approval of Parliament.

42.3 Section 7 of the Bill pertains to laying of all the notifications made under this Act before both the Houses of Parliament. The Committee found the language of this Section too technical and complex to understand easily. The Committee, therefore, recommends that section 7 be re-drafted in clear and categorical manner.

Candidates admitted on the basis of open competition should not be adjusted against the reserved quota.

43. During the course of deliberations of the Committee, apprehensions were expressed about the possibility of adjusting a candidate belonging to backward classes against the reserved quota, even if the candidate was admitted to the institution on the basis of merit. The Committee appreciates the concern of the members and, therefore, impresses upon the Ministry to ensure that the candidates belonging to backward classes who get admitted to educational institutions on the basis of merit should not be adjusted against the reserved quota of 27%.

Monitoring Mechanism

44. There have also been suggestions that the Bill lacks the teeth in the absence of any provision for monitoring the implementation of the proposed legislation. The Committee also feels that a suitable mechanism to monitor the implementation of reservations envisioned in the Bill needs to be considered by the Government. While doing so, efforts may be made to see that functional autonomy of the institutions of higher learning was not impaired.

Reservation for women

45. There have been suggestions from some members of the Committee to consider fixing some quota for women students also in the reservation policy. The Committee calls upon the Government to ensure that women in this scheme of things do not get sidelined as usually happens.

Creamy Layer

46. There have been suggestions/counter-suggestions on the issue of exclusion of the 'creamy layer' amongst OBCs in the proposed legislation. On the one hand, it was argued that the concept of creamy layer did not apply in the case of reservation in admission. It was pointed out that the debate on the exclusion of the creamy layer was misplaced as the Supreme Court's observation regarding the exclusion of the creamy layer within the SCs and STs from the purview of reservation was only for public employment and promotion. The other view in this regard was that the inclusion of the creamy layer in reservation would defeat the very purpose of providing reservation to the backward classes. It was also stated that the exclusion of the creamy layer would ensure that the intended benefits of the reservation reach to the really deserving among the Backward Classes. It was further stated that this in itself would not suffice and should be supplemented by categorization of the backward classes in various groups depending upon their degree of backwardness and apportioning of appropriate percentage of reservation to each group. It was also brought to the notice of the Committee that similar experiments in States of Andhra Pradesh, Kerala, Karnataka, Tamil Nadu, Maharashtra etc. have, in fact, stood the test of time and yielded the desired results.

46.1 The Committee deliberated extensively on pros and cons of the issue of creamy layer. The Committee arrived at the conclusion that at the first instance reservation should be given to the non-creamy layer of OBC candidates. After admitting such non-creamy layer candidates, if OBC vacancies remain unfilled, these may be filled up from the creamy layer in order of merit.

47. It was argued before the Committee that the social and educational status of a large section of minorities particularly Muslims was comparable to that of OBCs. It was also argued that a mechanism may be provided in the Bill to ensure equitable share for the socially and educationally backward classes of Minorities in higher education.

47.1 Some of the Members of the Committee argued that the Muslim OBCs may be given reservation in the minority educational institutions also. However, the Committee is aware that Article 15(5) exempts minority educational



institutions from reservation.

47.2 The Committee was informed that a number of socially and educationally backwards amongst the minorities were already included in the OBC list but in reality they have had very limited access to the benefits. In view of this, the Committee is of the considered opinion that interests of the socially and educationally backwards amongst the minorities may be taken care of through suitable mechanism to ensure proper access.

48. The Committee adopts the remaining clauses of the Bill without any amendments.

49. The enacting formula and the title are adopted with consequential changes.

50. The Committee recommends that the Bill may be passed after incorporating the amendment/additions suggested by it.

51. The Committee would like the Department to submit a note with reasons on the recommendations/suggestions, which could not be incorporated in the Bill.

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### NOTE OF DISSENT

**New Delhi - 110001  
November 16, 2006**

**Member of Parliament  
5B, Parliament House  
(Lok Sabha)**



The Chairman

Standing Committee on Human Resource Development  
Parliament House, New Delhi.

Subject: Dissent note regarding using of words 'Minority O.B.C.'

Sir,

It is submitted in respect of above subject that at the end of discussion on final draft report of 'Central Educational Institutions (Reservation in Admission) Bill, 2006', We, the following members of BJP had recorded oral protest against the amendment-'special attention towards Minority OBC in the 27 percent Reservation for OBC' advocated by some members of the committee. We, the following members are submitting a dissent note to be included in final draft report for record purpose.

"We, the members of BJP fully support the 27 percent reservation for socially and educationally backward classes based on caste but we oppose the religion based reservation which is neither conforming to the Constitution nor in the interest of Backward classes".

Therefore, we do fully oppose the above amendment. Our dissent note may kindly be included in this draft report.

Thanking you,

Yours sincerely,

-sd/-

- 1.Prof. Rasa Singh Rawat
- 2.Shri Vijay Kumar Rupani
- 3.Shri Laxmi Narayan Sharma
- 4.Shri Ashok Argal
- 5.Shri Ramswaroop Koli
- 6.Dr. Ram Lakhani Singh