

**Title:** Further discussion on the Constitution (Ninetyth Amendment) Bill ,2000 moved by Shrimati Vasundhara Raje on 9 May, 2000 (Concluded). (Bill passed)

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RAM JETHMALANI): Mr. Speaker, Sir, after a marathon debate, which went well into midnight yesterday, it is my pleasant duty to reply.

MR. SPEAKER: The debate was for six hours and thirty-four minutes.

SHRI RAM JETHMALANI: I believe that 38 distinguished Members of this House participated, starting with my friend Shri Buta Singh and ending with Shri Bwiswmuthiary, our colourful friend from the North-East.

It is very gratifying that every Member of this House who spoke has supported the Bill.

I must also compliment all Members of this House for having generally kept the discussion at a very high level and nobody except two or three, tried to make any political advantage out of those speeches. Since every Member of this House has supported this Bill, I will be extremely brief. But I would be failing in my duty if I do not at least deal with those friends of ours who tried to make some political points, prominent amongst them being my friend, Shri Banatwalla.

In a very very powerful and impatient speech, he accused my Prime Minister and my Government of what he called, the great national betrayal. I do not know where from he got this. If it was just the result of an over-heated mind or because of the late hour of the day or the night, I would excuse him, but, Sir, I think, he meant it seriously. ...*(Interruptions)*

My friend, Sardar Buta Singh also tried to make a grievance; and so did, my friend, Shri Muniyappa. I do not know whether he is present now or not. I will be dealing with the points that they made.

We are today dealing with one out of the five offending circulars. ...*(Interruptions)*

**श्री मुलायम सिंह यादव (संभल) :** महोदय, मंत्री जी से मैंने भी एक सवाल किया है, जवाब देने के लिए। फ्रांस में जब राष्ट्रपति जी गए, तो उनको अछूत माना गया।

...*(Interruptions)*

MR. SPEAKER: The Minister has just now started his reply. What is this?

...*(Interruptions)*

**श्री मुलायम सिंह यादव :** इस बारे में न प्रधान मंत्री जी ने, न किसी वरिष्ठ नेता ने कोई टिप्पणी की। आज मानसिकता बनी हुई है। क्या उनको अछूत और छोटा मानेंगे। फ्रांस में हमारे राष्ट्रपति जी का अपमान हुआ है। इस बारे में मुलायम सिंह के प्रश्न का जवाब दें, क्यों टिप्पणी नहीं की गई ?

**श्री राम जेठमलानी :** आप बैठिए। आपने जो कल कहा, उसको मैंने दोनों कानों से सुना और उसके बारे में मुझे जो कुछ कहना है, वह मैं बता दूंगा।

**श्री मुलायम सिंह यादव :** धन्यावाद। उच्च मानसिकता तो बदलनी चाहिए।

SHRI RAM JETHMALANI: Sir, first of all, it is necessary to point out when these five offending Circulars came into existence. They came into existence between January and August of 1997. The hon. Members of this House will recall that our thirteen-day Government had been demolished in the earlier years. We came back in 1998. I do not know who benefited by this act of demolition, but at least, the Scheduled Castes and the Scheduled Tribes did not. The result of that senseless act of demolition was the five Circulars, which are not our handiwork, but we have now been asked to demolish the unsavoury results of that unsavoury demolition.

I remember, Sir, that in October 1999, I came before this House to move a Bill for extending the period of reservation by ten years. On that occasion, though again the Bill was non-controversial, several speeches were made – about twenty of them. All the Members of this august House were unanimous – that the expectations of the founding fathers of the Constitution have been totally frustrated during the last fifty years.

SARDAR BUTA SINGH (JALORE): Is it not a political statement? ...*(Interruptions)*

MR. SPEAKER: Sardar Buta Singh, please do not interrupt the hon. Minister. First listen to him.

...*(Interruptions)*

MR. SPEAKER: This is too much.

...*(Interruptions)*

SHR RAM JETHMALANI: I, at least, expect one thing from this august House that it should always be prepared to listen to a few unpleasant truths from your opponents, and listen with patience as we have listened yesterday. I sat here till midnight. Did I interrupt even a single Member of the House?

Sir, the speeches are there, including that of Sardar Buta Singh. He can read them himself. On the contrary, not wanting to make political mileage out of what was being said here, I said that it is not right to say that nothing has happened in favour of the Scheduled Castes and Scheduled Tribes. Certain results have certainly been achieved. But the full expectations have not fully materialised and we have a long way to go. It is in that spirit, on the floor of the House I said that I am going to call within a very short time a Convention of all Members of this House as well as the other House and we will sit and discuss for three days threadbare all the problems and the ills that afflict our Scheduled Caste and Scheduled Tribe friends. I do not wish to go into the dispute about some Members attending and some not attending, but by and large there was an excellent attendance and the problems were discussed for full three days. Hon. Prime Minister personally came and inaugurated that Convention. I would only quote two sentences from the Prime Minister's speech which he delivered during the inaugural address. He said,

"I am aware that the operational guidelines issued by the Ministry of Personnel regarding reservation in Government jobs have created some discontent among Scheduled Castes and Scheduled Tribes. These guidelines were issued by the then Government after certain pronouncements of the Supreme Court. I would like to inform you all that in pursuance of my assurance to Parliament, this Government had already taken steps for reviewing the guidelines. "

These steps were not only taken but were given concrete shape and one concrete shape which one of the proposals had received is the present Bill which this House is considering.

Sir, we sat through all three days. The hon. Members who attended that Convention will at least give me the credit of having sat there for all the three days. Valuable contributions were made. Ultimately, as a result of these deliberations, an agreed paper was drawn up, unanimously prepared by the Drafting Committee that came into existence. My sister, Kumari Mayawati was present there. She is one of the signatories to that document. I am very happy about one thing. In the debate yesterday, I found that in the heart of my sister, Kumari Mayawati, I had received a promotion. The promotion that I had received was that previously she used to consider me a *Manuwadi*, but now she publicly admits that she recognises in me a good friend of the Scheduled Castes and Scheduled Tribes. I am proud of this promotion and I am proud -- may I call it love and affection -- she showed me while the Convention was on. I proposed to call the Members of the Drafting Committee again.

I have got a full report, as to the steps which have been taken by various Ministries to whom these proposals were addressed -- what steps have been taken, what are expected to be taken and what cannot be taken for some reasons -- with me. We will call a meeting of this Drafting Committee again and we will discuss threadbare where we have failed to implement this and what requires to be done. I promise that it will happen soon after the Budget Session of Parliament. In the meantime I will circulate this compliance report to the distinguished members of the Drafting Committee.

Sir, the main purpose of this Bill today is to make one provision to undo one Circular. The judgements of the court have provided that if there is a failure to fill up the reserved vacancies because sufficiently qualified persons are not available in a particular period of time, we can carry forward those in the next year and fill them up in the next year. We can do it the next year, the next one after the next year and so on. But, the Supreme Court says that ultimately we will not be able to go on adding this beyond 50 per cent.

Now, I wish to remind my friend, Shri Banatwalla, who has said that in this Bill we are accepting this 50 per cent. He has also said that this is a great betrayal. First of all, my friend is misinformed. The State of Tamil Nadu, an enlightened Government there which is committed to the cause of the Scheduled Castes and the Scheduled Tribes, has paved the reservation at about 69 per cent. Unfortunately, the validity of this provision was challenged in the Madras High Court. The High Court has declared that provision as *ultra vires*. Now, the matter is pending in the Supreme Court by way of appeal. The Union of India is supporting the action of the Tamil Nadu Government. We have given instructions to the Attorney-General and to his law officers that a special petition must be made to the Supreme Court. This matter must be brought to the...*(Interruptions)*

SHRI T.M. SELVAGANPATHI (SALEM): Sir, this 69 per cent reservation was brought not by the present Government but by the previous Government....*(Interruptions)*

MR. SPEAKER: The Minister is not yielding. Please take your seat.

...*(Interruptions)*

SHRI RAM JETHMALANI: Whichever Government did it, the credit goes to that Government....*(Interruptions)*

MR. SPEAKER: Shri Palanimanickam, please take your seat. We are discussing an important subject. You are not supposed to reply to them.

...(Interruptions)

MR. SPEAKER: Nothing should go on record except what the Minister says.

(Interruptions)\*

SHRI RAM JETHMALANI: May I say, Sir, that the credit for that enlightened measure...(Interruptions)

\* Not recorded.

SHRI MANI SHANKAR AIYAR (MAYILADUTURAI): Sir, why have you taken it out of the record? How is it not in order? The hon. Minister has replied that the credit for ...(Interruptions)

MR. SPEAKER: The Minister is not yielding. If you want any clarification, you can have it after the Minister's reply, not now.

...(Interruptions)

MR. SPEAKER: The Minister is not yielding. Why are you bringing in a new procedure in the House? If you wish to seek any clarification, you can have it after the Minister's reply.

SHRI RAM JETHMALANI: I do not even know what they are quarrelling about...(Interruptions)

MR. SPEAKER: How can you disturb the Minister?

SHRI RAM JETHMALANI: Let me make it clear...(Interruptions)

MR. SPEAKER: The Minister is not yielding. Please take your seat.

MR. SPEAKER: Shri Pandiyan, he is not yielding.

...(Interruptions)

MR. SPEAKER: Shri Mani Shankar Aiyer, please take your seat.

...(Interruptions)

MR. SPEAKER: How can you raise it without the permission of the Chair?

...(Interruptions)

SHRI P.H. PANDIYAN : Sir, let the record be straight.

MR. SPEAKER: Shri Pandiyan, please take your seat. He is not yielding.

SHRI P.H. PANDIYAN: Mr. Minister, do you want the record to be straight? Please let me speak for one minute.

Mr. Speaker, Sir, during 1991-96, the then AIADMK Government headed by Dr. Jayalalitha, brought out 69 per cent reservation and it was put in the Ninth Schedule. Then, it was challenged and now it is pending. So, that credit goes to her.

SHRI RAM JETHMALANI: Did I give credit to anybody? I have said: "the Tamil Nadu enlightened Government". If you want to say that it was Dr. Jayalalitha then let it be Dr. Jayalalitha.

Sir, I am prepared to say that the whole credit goes to Shri Mani Shankar Aiyer.

SHRI MANI SHANKAR AIYAR : You have got the wrong person to give the credit. It belongs to her.

SHRI RAM JETHMALANI: Sir, when did this question of 50 per cent limitation arise of which Shri Banatwalla so eloquently spoke yesterday? It arose for the first time in the decision of the Supreme Court delivered in 1963 in the Balaji Case.

Sir, my friend Shri Buta Singh will excuse me. I consider him a friend in spite of the fact that no other Member in Parliament has abused me more than he has. मैं आपको कहता हूँ कि यदि आप सिर्फ इसी पाप का प्रायश्चित करेंगे तो हिन्दू जाति दो हजार बर्सों का पाप प्रायश्चित करने के लिए तैयार हो जाएगी। I have suffered his abuse for the last 20 years in this House and yet he is my friend.

Now, I wish to tell those who think that we have accepted the limit of 50 per cent, that we have not accepted it because it is under challenge in the Supreme Court and we are trying to see that the 50 per cent limitation goes. Yesterday, I informed this House and I read a paragraph from the Indra Sawhney Judgement which says that Shri Jethmalani argued that 100 per cent reservation is permissible. Where were the lawyers for that party? Except Shri Lalu Prasad Yadav's Party and the Party from Tamil Nadu, I must say that everybody tried to defeat the rights of the Scheduled Castes...(Interruptions)

MR. SPEAKER: Nothing should go on record.

*(Interruptions) \**

MR. SPEAKER: Shri Pandiyan, you cannot force the Minister to sit.

SHRI P.H. PANDIYAN (TIRUNELVELI): Sir, my learned senior friend has said that nobody from Tamil Nadu had agitated in the Indra Sawhney Case.

It was petition No.1114/90. As a petitioner in that case I argued the case to implement the Mandal Commission report. I was the first to file the case before the Supreme Court and I argued myself as a party in person. It is in that judgment of 1990.

*...(Interruptions)*

\* Not Recorded.

MR. SPEAKER: Mr. Minister, please understand that the entire House has agreed to pass the Bill unanimously.

*...(Interruptions)*

MR. SPEAKER: Shri Prakash Ambedkar, please take your seat.

*...(Interruptions)*

MR. SPEAKER: Shri Bwiswmuthiary, please take your seat.

*...(Interruptions)*

SHRI SOMNATH CHATTERJEE (BOLPUR): Since there is a unanimity and the Minister himself said that politics should not be injected, he may try to avoid it himself and get it passed.

SHRI RAM JETHMALANI: I have not grown grey in the sun. I have known that truth always hurts. It does not matter. If you do not want to hear the unpleasant truth, let us proceed with the business of the House.

*...(Interruptions)*

MR. SPEAKER: Nothing will go on record except the Minister's reply.

*(Interruptions) \**

SHRI RAM JETHMALANI: There are five Circulars. *...(Interruptions)*

I am sorry, I am not yielding. *...(Interruptions)*

MR. SPEAKER: Shri Mani Shankar Aiyar, please take your seat.

...(Interruptions)

MR. SPEAKER: Let the Minister complete his reply. He has not completed his reply.

...(Interruptions)

MR. SPEAKER: It is very unfortunate that you are behaving like this when we are discussing a very important subject.

...(Interruptions)

SHRI SATYAVRAT CHATURVEDI (KHAJURAH): Sir, when we are ready to pass the Bill unanimously, the Minister is trying to make it controversialâ€¦...(Interruptions)

MR. SPEAKER: Nothing should go on record except the Minister's reply.

(Interruptions) ... (Not recorded)

SHRI RAM JETHMALANI: These obnoxious rules were laid down both in 1963 and 1964. I just want to ask as to what steps were taken by those who are beating their breasts all the time that their heart is bleeding about the Scheduled Castes. What were they doing in 1963-64? When our Government came to power and the moment we had brought the Prime Minister of our Government to power, he immediately took steps and he took steps within a matter of a few months. For 40 years, these rules have prevailed.....(Interruptions)

MR. SPEAKER: Nothing should go on record except the Minister's reply.

(Interruptions) ... (Not recorded)

MR. SPEAKER: Please understand that when we are discussing a very important subject, the entire nation is watching your behaviour.

...(Interruptions)

\* Not Recorded

SHRI RAM JETHMALANI: Now, hear one more fact.....(Interruptions) There is one technical demand which has been made by Shri Buta Singh and Shri Muniappa that we should use the word 'backlog' in the operative part of the Section. Sir, as a person who has something to do with the drafting of statutes, I wish to assure the hon. Members of the House, particularly those who are taking keen interest in the subject, that the word 'backlog' in the body of the text will make the statute ambiguous. Then, we will have to put another definition of 'backlog'. Moreover, this statute, in its practical operations, will apply only to Scheduled Castes and Scheduled Tribes because that is the only area where there is a real backlog. There is no backlog in OBCs. But the statute, as it is, has to apply to OBCs, SCs and STs. Therefore, use of the word 'backlog' in common parlance has come to be associated with only SCs and STs.

SARDAR BUTA SINGH (JALORE): There is some mischief here.

SHRI RAM JETHMALANI: There is no mischief, Shri Buta Singh. What mischief can be there here? I am making a statement on the floor of the House. The Statement of Objects and Reasons which is appended to this Bill is a part of the statute itself.

That Statement of Objects and Reasons uses the word "backlog", defines backlog in the very Statement of Objects and Reasons and that is a part of the statute. It is settled law today that when an authoritative statement is made on behalf of the Government which pilots the Bill, that binds everybody including the courts which will take judicial notice of the fact. So, you may take it that there is no mischief. We have no secret agenda of the kind which you suspect all the time.....(Interruptions)

Therefore, I hope hon. Members will give up this backlog demand. I hope Shri Banatwalla will not press his amendment because the 50 per cent reservation is under challenge in the Supreme Court. We are trying to do whatever we can and be sure that even if the Supreme Court decides against us, we shall still introduce legislation but subject to the basic features doctrine. There is no declaration by anybody yet that 50 per cent is a basic feature of the Constitution. So, the House can rest assured that we will do everything to see that the validity of over 50 per cent reservation is sustained in every quarter.....(Interruptions)

MR. SPEAKER: Mr. Minister, you need not reply to this.

...(Interruptions)

SHRI RAM JETHMALANI: For every other Circular, steps have been taken to undo the effect of those Circulars. The House can rest assured that all the Circulars will be undone so long as it is constitutionally within the power of this Government.

With these words, having told the House the truths which I wanted to tell, I commend that the Bill be taken into consideration and passed....(Interruptions)

(ends)

SARDAR BUTA SINGH : Sir, I would like to seek a small clarification....(Interruptions)

MR. SPEAKER: No, not now. Let the hon. Minister Shrimati Vasundhara Raje speak.

1257 hours

THE MINISTER OF STATE OF THE MINISTRY OF SMALL SCALE INDUSTRIES, AGRO AND RURAL INDUSTRIES, MINISTER OF STATE IN THE DEPARTMENT OF PERSONNEL AND TRAINING, DEPARTMENT OF PENSIONS AND PENSIONERS WELFARE OF THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE DEPARTMENTS OF ATOMIC ENERGY AND SPACE

(SHRIMATI VASUNDHARA RAJE): Sir, I would like to thank the House for the response and the support extended by all the hon. Members to the Government and the Constitution (Amendment) Bill. This is a measure which reflects the fulfilment of the promise that the hon. Prime Minister had made to this House on the 18<sup>th</sup> March, 1999. It also reflects the commitment of the Government to the cause of the welfare of the Scheduled Castes and the Scheduled Tribes.

The ambit of the reservation policy itself is very wide and the hon. Members have all raised very valid points. I appreciate their concern for the welfare of the Scheduled Castes and the Scheduled Tribes. But I would like to just say that this is a limited ambit. The scope is very limited to exclude the "Backlog Vacancies" from the ceiling of the 50 per cent limit on reserved vacancies to be filled in one year. The Government has been going into all the legal and constitutional aspects with regard to the various Office Memoranda. The review of another Office Memorandum has also been completed and a Constitutional Amendment Bill for restoring the relaxation in the qualifying marks as well as the standards of evaluation in matters of promotions already stands introduced in the Rajya Sabha on the 23<sup>rd</sup> December, 1999. I would, therefore, request the hon. Members to appreciate the scope of this Bill so that persons from the Scheduled Caste and Scheduled Tribe communities restart enjoying the benefits by way of accelerated filling up of the backlog vacancies that are available to them before the issue of this Office Memorandum of August 29, 1997.

With these words, commend the Bill for the passage of this House....(Interruptions)

(ends)

SARDAR BUTA SINGH (JALORE): Sir, I would like to seek a clarification.

MR. SPEAKER: No. He has already given the reply.

...(Interruptions)

MR. SPEAKER: Before I put the motion for consideration of the Bill to the vote of the House, I would like to inform the House that this being a Constitution (Amendment) Bill, voting has to be by division.

1259 hours

Let the Lobbies be cleared--

**300. hrs.**

अध्यक्ष महोदय : मुलायम सिंह जी, आप बैठ जाइये। The Minister has already replied, Shri Mulayam Singh Yadav.

...(Interruptions)

MR. SPEAKER: This will not go on record.

*(Interruptions\*)*

MR. SPEAKER: Lobbies are cleared.

*...(Interruptions)*

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION TECHNOLOGY (SHRI PRAMOD MAHAJAN): Hon. Speaker is saying that lobbies are cleared. *...(Interruptions)*

MR. SPEAKER: Now, the lobbies have been cleared.

Kind attention of the Members is invited to the following points in the operation of the Automatic Vote Recording System:

1. Before a Division starts, every Member should occupy his or her own seat and operate the system from that seat only.

2. As may kindly be seen, the "Red bulbs above display boards" on either side of my chair are already glowing. This means the voting system has been activated.

3. For voting, press the following two buttons simultaneously immediately after sounding of first gong, viz.,

(i) One "Red" button in front of the Member on the head phone plate; and

(ii) Any one of the following buttons fixed on the top of desk of seats:

`Ayes' -- Green colour

`Noes' -- Red colour

`Abstain' -- Yellow colour

1. It is essential to keep both the buttons pressed till the second gong sound is heard and the red bulbs are "off".

\* Not Recorded.

The hon. Members may please note that the vote will not be registered if both buttons are not kept pressed simultaneously till the sounding of the second gong.

5. Do not press the amber button (p) during Division.

6. Members can actually "see" their vote on display boards and on their desk unit. In case vote is not registered, they may call for voting through slips.

The question is:

"That the Bill further to amend the Constitution of India, be taken into consideration."

13.05 hrs.

*The Lok Sabha divided:*

MR. SPEAKER: Subject to correction, the result\* of the division is:

Ayes: 409

Noes: 2

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

*The motion was adopted.*

MR. SPEAKER: Now, the House will take up clause-by-clause consideration of the Bill.

### **Clause 2 Amendment of**

#### **Article 16**

SHRI G.M. BANATWALLA (PONNANI): Sir, I beg to move:

Page 1,--

*after line 12 insertâ€*

"Explanation:- In determining reservation under the article, no economic criterion shall apply." (1)

MR. SPEAKER: I shall now put amendment no.1 moved by Shri G.M. Banatwalla to the vote of the House.

*The amendment was put and negatived.*

MR. SPEAKER: The lobbies are already cleared. I shall now put clause 2 to the vote of the House. The question is:

"That clause 2 stand part of the Bill."

*The Lok Sabha divided:*

\* The following Members also recorded their votes through slip:

Ayes : 409 + Prof. Chawan Lal Gupta, Shri Chandresh Patel, Shri Dileep Sanghani, Shri Dinesh Chandra Yadav, Kumari Bhavana Pundlikhao Gawali, Shri Deepak Kumar, Shri Somnath Chatterjee, Shri P.C. Thomas, Shri basu Deb Acharia, Shri Pawan Kumar Bansal, Shri Abdul Hamid, Shri Atmaram Bhai Patel= 421

Noes: 1 (2- Shri Pawan Kumar Bansal (corrected by slip to Ayes)=01

13.07 hrs.

MR. SPEAKER: Subject to correction, the result\* of the division is:

Ayes: 405

Noes: 1

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

*The motion was adopted.*

*Clause 2 was added to the Bill.*

### **Clause 1 Shorttitle**

*Amendment made:*

**Page 1, line 3,--**

for "(Ninetieth Amendment) Act, 2000"

*substitute* "(Eighty-first Amendment) Act, 2000". (2)

(Shrimati Vasundhara Raje)

MR. SPEAKER: I shall now put clause 1, as amended, to the vote of the House.

The question is:



"That clause 1, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 1, as amended, was added to the Bill.*

*The Enacting Formula and the Long Title were added to the Bill.*

\*The following Members also recorded their votes through slip:

Ayes: 405+ Kumari Uma Bharti, Prof. Chaman Lal Gupta, Shri Chandra Pratap Singh, Shri Bahadur Singh, Dr. Ramesh Chand Tomar, Shri Chhatrapal Singh, Shri G. Mallikarjunappa, Shri Satyavrat Chaturvedi, Shrimati Santosh Choudhary, Shri Basudeb Acharia, Shri Jitendra Prasada= 416

Abst.: 1- Shri Bahadur Singh )Corrected to Ayes)= Nil

SHRIMATI VASUNDHARA RAJE: Sir, I beg to move:

"That the Bill, as amended, be passed."

MR. SPEAKER: The lobbies are already cleared. I shall now put the motion.

The question is:

"That the Bill, as amended, be passed."

1309 hrs.

*The Lok Sabha divided:*

MR. SPEAKER: Subject to correction, the result\*of the division is:

Ayes: 418

Noes: 1

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

The Bill, as amended, is passed by the requisite majority, in accordance with the provisions of article 368 of the Constitution.

*The motion was adopted.*

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\* The following Members also recorded their votes through slip:

Ayes : 418+ Prof. Chaman Lal Gupta, Shri Kishen Lal Diler, Shri Ram Sagar Rawat, Shri Ram Ragunath Choudhary, Shri Ambareesha = 423