

Title: Introduction of the Constitution (Ninetieth Amendment) Bill, 2000 (Amendment of article 16).

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): I beg to move for leave to introduce a Bill further to amend the Constitution of India.

This is to incorporate Clause 4B under article 16 of the Constitution with a view to enabling the State to provide that 50 per cent limit on reservation shall exclude the backlog vacancies. It may be recalled that the Government has issued an Office Memorandum dated August 29, 1997 to provide that 50 per cent limit on reservation shall apply to current as well as backlog vacancies.

MR. SPEAKER: Madam, you are supposed just to seek leave of the House to introduce the Bill and not to make a speech.

Motion moved:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

...(Interruptions)

* Published in the Gazette of India, Extraordinary, Part-II section-2 dated 8.5.2000

MR. SPEAKER: In this regard, Shri Varkala Radhakrishnan and Shri Prakash Yashwant Ambedkar, Members of Parliament, have given notices to oppose the introduction of this Bill.

...(Interruptions)

SHRI RAMESH CHENNITHALA (MAVELIKARA): Sir, in the Papers Laid on the Table, there is inordinate delay in placing these papers before the House. This is a very serious matter. These papers have been laid on the Table after 34 years. ...(Interruptions)

MR. SPEAKER: The notice of Shri Prakash Ambedkar is time-barred as it was received after 10 a.m. So, I am allowing Shri Varkala Radhakrishnan to oppose the introduction of the Bill.

...(Interruptions)

SHRI RAMESH CHENNITHALA : Sir, this is a very serious issue.

MR. SPEAKER: We have already gone to the next item and I have called Shri Varkala Radhakrishnan to speak.

...(Interruptions)

MR. SPEAKER: Nothing should go on record.

(Interruptions) €*

MR. SPEAKER: Shri Chennithala, how can you raise it now? We are already on item No.10.

SHRI RAMESH CHENNITHALA : Sir, I have given notice on this matter. The Speaker should direct the Government not to do such a thing in future....(Interruptions)

MR. SPEAKER: Please understand that I have called Shri Radhakrishnan to speak.

...(Interruptions)

- Not recorded

SHRI RAMESH CHENNITHALA : Sir, this is a very serious issue. You should direct the Government on this matter.
...(Interruptions)

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I fully support the principle involved in the Bill....(Interruptions)

MR. SPEAKER: After Shri Radhakrishnan concludes, I will allow you.

...(Interruptions)

SHRI VARKALA RADHAKRISHNAN : I would like to raise objection because the Government is not sincere. If the Government is sincere in giving due representation to the Scheduled Castes, Scheduled Tribes and the backward communities, they would have done much more. In the case of Tamil Nadu, they have not adhered to 50 per cent limit enunciated by the Supreme Court. Without taking a final decision in regard to the ceiling of reservation, what the Central Government has extended may not find a legal footing because the Supreme Court has taken a very clear decision about 50 per cent. Why don't you take a decision about that? It is because the Tamil Nadu Legislature has gone beyond 50 per cent. They have gone to the extent of 65 per cent. When that is the situation, then I think the Government will be able to give much moreâ€¦(Interruptions) I strongly support the Bill.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION TECHNOLOGY (SHRI PREMED MAHARANI): Sir, if a Member is supporting the Bill, then how can he object to the introduction of the Bill? I really do not understand.

MR. SPEAKER: Shri Radhakrishnan, you are not opposing the introduction, you are supporting it.

...(Interruptions)

SHRI SOMNATH CHATTERJEE (BOLPUR): He wants a foolproof Bill. He says that there are some mistakes in the Bill which you should take note of. ...(Interruptions)

SHRI PRAMOD MAHAJAN: He can do that at the time of discussion. He can make suggestions at that timeâ€¦(Interruptions) I have a point of order, Sir. Rules permit the Members to object the introduction of a Bill but that opportunity should not be used to make speeches on the merits of the Bill. If he thinks that we are not having legislative competence about the Bill, then he can oppose it.

Now, if he is supporting, it means that he has no objection to the introduction of the Bill. He should not be allowed to use this opportunity to discuss things and whatever he has said should be expunged from the proceedings.

MR. SPEAKER: Now, he is supporting you.

SHRI PRAMOD MAHAJAN: All of us have to observe the rules....(Interruptions)

SHRI VARKALA RADHAKRISHNAN : Sir, I have my own doubts about the legislative competence of the Government. When you are talking about 50 per cent here, the Tamil Nadu Legislature has gone to 65 per cent....(Interruptions)

MR. SPEAKER: Please hear me. You have given notice to oppose the introduction of the Bill. But you are supporting the Bill.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): No. I have specifically stated that the Tamil Nadu Legislature has given 65 per cent....(Interruptions)

MR. SPEAKER: But your notice is for opposing the introduction of the Bill.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): The legislative competence is in doubt and the Central Government is bringing this Bill half-heartedly.

Mr. Minister, you are really supposed to protect the interests of the Scheduled Castes and the Scheduled Tribes and help them. If you are honest and sincere, you have to take a decision about the Tamil Nadu Bill and the other statutes. But you have not done that. That is why, I question the legislative competence of the introduction of this Bill....(Interruptions)

MR. SPEAKER: Though the notice given by Shri Prakash Ambedkar to oppose the introduction of the Bill was time-barred, that is, it was received after 10 a.m., yet I am allowing him as a special case to oppose the introduction of the Bill.

SHRI PRAKASH YASHWANT AMBEDKAR (AKOLA): Thank you, Sir. Both these matters were referred before the Supreme Court in the Indira Sawhney *versus* the Union of India case. There were two points which were raised. One was the decision given in 1962 regarding the definition of the word "appointment" in which it was said that "appointment" includes promotion also. ...(*Interruptions*) I am coming to the question of why I oppose the introduction of this Bill.

MR. SPEAKER: Shri Prakash Ambedkar, just now, you have heard the reply of the Parliamentary Affairs Minister. Again, you are going into the theory of it. Why are you opposing the introduction of this Bill? You should tell about it.

SHRI PRAKASH YASHWANT AMBEDKAR : I am on a specific issue. I am just coming to that. I am just giving the background.

MR. SPEAKER: You can say why you are opposing the introduction of the Bill. This is the introduction stage only.

SHRI PRAKASH YASHWANT AMBEDKAR : I am coming to that only. To overcome this decision, Parliament itself had amended article 16 of the Constitution and article 16 (4) (a) was added to it. Even the article 16 (4) (a) was challenged before the Supreme Court and the decision given by the Supreme Court was that it neither creates right in favour of the Scheduled Castes nor it casts a duty on the Government to give them reservation or promotion....(*Interruptions*)

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RAM JETHMALANI): Well, if my hon. Friend yields for a second, I would like to say that we are trying to fulfil a promise which we have made to the Scheduled Castes and the Backward Classes. We have made a promise on the floor of the House. We are trying to fulfil it. But he is trying to oppose it. I cannot understand it. Why did he give notice for opposing the introduction of the Bill?

SHRI PRAKASH YASHWANT AMBEDKAR : I know that you have made a promise. I am opposing only the introduction of the Bill. I am trying to say that whatever efforts which the Government are making are a farce....(*Interruptions*)

MR. SPEAKER: Shri Prakash Ambedkar, please understand that this is not a debate.

SHRI PRAKASH YASHWANT AMBEDKAR : I am only saying that the hon. Prime Minister assured this House that he would protect the interests of the Scheduled Castes. The hon. Prime Minister categorically assured that article 335 would be amended. Now, what is coming up before the House is a matter which has already been decided by the Supreme Court. So, I am opposing it.

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MR. SPEAKER: I have to inform the House that it is well-established that the Chair does not decide whether a Bill is constitutionally within the legislative competence of the House or not. The House also does not take a decision on a specific question of *vires* of a Bill. In the circumstances, I am now putting the question to the vote of the House.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India. "

The motion was adopted.

SHRIMATI VASUNDHARA RAJE: Sir, I introduce the Bill.
