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Title:Further discussion on the motion for consideration of the Constitution (Amendment) Bill, 1998 (Amendment of Article 15, etc.) moved by Shri G.M. Banatwalla on 10th July, 1998. Bill- Withdrawn*H 1552 hours

MR. SPEAKER: Now, we shall take up further consideration of the motion moved by Shri G.M. Banatwalla. Shri N.K. Premchandran was on his legs earlier. He is not present today; then, Shri Prithviraj D. Chavan is also not present. Are there any hon. Members who want to speak on this?

... (Interruptions)

श्री राम विलास पासवान (हाजीपुर): अध्यक्ष जी, आज प्राइवेट मेम्बर्स डे है ... (व्यवधान) हमें बताएं कि मंत्री जी का स्टेटमेंट होगा या नहीं?

SHRI E. AHAMED (MANJERI): Sir, the Minister has assured that he would make a statement. It is such a sensitive issue.

SHRI G.M. BANATWALLA (PONNANI): Please send the Marshall and get the Minister here. It is a sensitive issue. He should make a statement here.

MR. SPEAKER: Is there any hon. Member who wants to speak on this motion moved by Shri G.M. Banatwalla for further consideration?

... (Interruptions)

SHRI E. AHAMED : We want to hear the statement of the hon. Minister, but the Minister has shown scant and utter disregard to the House. He should have been present. He should make a statement because he has assured us. If that Minister is not here, then he must have authorised some other Minister.

MR. SPEAKER: I am calling the Minister.

PROF. RITA VERMA (DHANBAD): The Minister for Social Welfare is here. You want the Welfare Minister, is it not?

THE MINISTER OF STATE OF THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT (SHRIMATI MANEKA GANDHI): I have been waiting here for the last half-an-hour. I am going to make a statement on Shri G.M. Banatwalla's Bill.

SHRI MOHAMMAD ALI ASHRAF FATMI (DARBHANGA): We are talking about Aligarh Muslim University.

SHRIMATI MANEKA GANDHI: But this is in response to the Private Members' Bill.

Sir, I have heard with attention the points made, in the last Session, by the hon. Member and I appreciate the concern and the constructive ideas of the hon. Member of Parliament. There is no doubt that earnest efforts are required to be made for the welfare of the backward classes as there is disparity between them and the non-backward sections of the population at every level. The Government is very much aware that a level playing field is to be provided to them in comparison to the non-backward sections of the population.

The Government of India is making efforts to review the existing criteria laid down for the identification of the creamy layer and this is sought to be suitably modified. The Supreme Court in its judgment in the case of Indira Sawhney & others versus the Union of India and others, Mandal case delivered on 16.11.92 has held that the reservations contemplated in clause (4) of article 16 should not exceed 50 per cent of the appointments in the grade, cadre or service in any given year.

The Court has further observed that while 50 per cent shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent to the great diversity of this country and the people, but in doing so, extreme caution is to be exercised and special case made out. Reservations can be made in a service or category only when the State is satisfied that the representation of backward classes of citizens therein is not adequate.

The Supreme Court in its judgment in the case of Indira Sawhney & others versus the Union of India and others, delivered on 16th November, 1992 directed the Central Government as well as the State Governments to specify the basis for applying the relevant and requisite socio-economic criteria to exclude the socially advanced persons and sections, that is the creamy layer, from the purview of reservations. Accordingly, an amended Government Order dated 8th September, 1993 was issued indicating the category of persons sections to whom the rule of exclusion will apply. In the above judgment, the Supreme Court has also stated that the reservation in appointment of posts under article 16(4) is to be confined to initial appointments only and cannot be extended to provide reservations in the matter of promotion.

In view of the above, there is no justification for such a legislation. It is therefore, requested that the hon. Member may withdraw his Private Members' Bill.

SHRI E. AHAMED : Mr. Speaker, Sir, I do not know if the hon. Minister for Health, who is sitting by her side, would agree to whatever has been said by the Minister. It is because regarding providing adequate representations, Shri Banatwalla and other Members have already pointed out that there is no proportionate reservation for many of the backward classes in the country. We have pointed out one by one, the present situation. There is no adequate representation ... (Interruptions)

>SHRI G.M. BANATWALLA (PONNANI): Mr. Speaker, Sir, the Bill that has been moved by me is of great importance and I thank all the hon. Members who have made their observations on the Bill and also the hon. Minister for her reply on the debate. The provisions of the Bill had never been controversial. Even the Government is committed to the provisions of the Bill by virtue of its National Agenda for Governance.

16.00 hrs.

The first point that the Bill makes is to protect the quota of reservations made by several States. For example, the State of Tamil Nadu, where the quota of reservation is well above 50 per cent, has come in for criticism by the Court. If an attempt is made to slash down the quota today, it will not only be unjust, it will not only be against a genuine policy of social justice, but it would also cause great unrest.

Sir, there are parties, the allied parties with the major party in the Government who have been agitating for the protection of their quota laid down by them in their States. The Government's own National Agenda for Governance says that this quota will be protected. I must, therefore, appeal to the Government to re-consider this matter. Several times, even the Prime Minister has assured that the quota, as is in existence in the several States, will be duly protected. Legislative protection is necessary in view of the Court's verdict. Today I am sure that the attitude of indifference that is being shown by the Government is going to cause great unrest in certain States in the South where the quota is in jeopardy. It is shocking to know that the Government has forgotten its own National Agenda for Governance.

Mr. Speaker, Sir, if they have an hidden agenda by which they do not want to subscribe to their declared National Agenda for Governance, then that is a different matter. But then statements are very much disappointing and not in tune with the assurances hitherto given to the entire nation and to which assurances, I have already drawn attention to at the time when I was commending the Bill for the consideration of the House.

Sir, another point that is important here is that the Court has said that reservations cannot touch certain fields. Certain fields of national activity have been removed from the pale of reservation. This is again another set back to any genuine policy of reservation and my Bill had sought to draw the attention of the Government to this particular matter.

The third point is with respect to the so called creamy layer. I have already made my submission in detail pointing out that this concept of the creamy layer, as thought of by the Court, is extra-constitutional. It does not agree with the Constitution and thus does a great injustice to the backward classes and destroys the concept of reservation for the backward classes. Even when there is no concept of the creamy layer, even then also the quota for the backward classes does not get filled up and I had given elaborate statistics before the House showing the various fields in which the quota could not be filled up even with the concept of the creamy layer. It is, therefore, wrong to say that in the so called creamy layer, the figment of imagination, does any injustice to those who are very much below in the particular backward classes.

As I said that even if you take the so-called fictitious concept of creamy layer, even then the quota reserved for the particular backward class does not get filled up. Now, with the import of the concept of creamy layer, the very plank of reservation, the very objective of the reservation, and the very policy of the reservation will get destroyed.

Sir, it is also necessary in the interest of social justice that reservations should exist in promotions. These were the various factors which were being incorporated in the Bill. With respect to the protection of reservations in several States, there has been no controversy. Every party cutting across its own party line has always been saying that the quota will be protected, and today, we find an absence of constructive attitude from the Government which seems to have jettisoned its assurances and jettisoned even its own Agenda for National Governance.

Sir, I do not want to precipitate this matter which concerns social justice to the people.

1607 hours [Shri Raghuvansh Prasad Singh in the Chair]

I still appeal to the Government to have a re-look and not to brush it aside in such a callous manner. Sir, I look forward to the day, which may not be far off when the Government will realise its own commitment made to the nation through its own Agenda for National Governance, and I look forward to the day not far off when wisdom may dawn upon the Government... (Interruptions)...if not this Government, the next Government... (Interruptions)

Therefore, with my renewed appeal for a reconsideration of the attitude on such an important question of social justice, Sir, I seek the leave of the House to withdraw my Bill...(Interruptions)

SHRI E. AHAMED : Sir, the item is still before the House and the hon. Minister is leaving. The item is not disposed of yet... (Interruptions)

SHRI P.C. CHACKO (IDUKKI): What is this, Sir? The matter is still before the House. This item is not still disposed of and the hon. Minister is leaving. ... (Interruptions)...What kind of indifference she is showing? She should understand. She has shown this indifference to this House on many occasions. Sir, this Bill is still before the House even now. It is still not disposed of.. (Interruptions)...What kind of attitude is shown by the hon. Minister? This is too much.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, the consent will have to be given by the House. Then only it can be disposed of. But the hon. Minister is leaving before that... (Interruptions)

श्री मोहम्मद अली अशरफ फातमी (दरभंगा): महोदय, इन्हें सॉरी बोलना चाहिए।

कुछ माननीय सदस्य: इन्होंने सॉरी बोला है।... (

Interruptions)

SHRI G.M. BANATWALLA : Sir, I beg to move for leave to withdraw the Bill further to amend the Constitution of India.

MR. CHAIRMAN: The question is:

"That leave be granted to withdraw the Bill further
to amend the Constitution of India"

The motion was adopted.

SHRI G.M. BANATWALLA (PONNANI): Looking forward to better days, Sir, I withdraw the Bill.

SHRI E. AHAMED (MANJERI): Sir, a little while ago, the hon. Speaker had sent for the hon. Minister of Human Resource Development to make a statement. He has not yet made the statement but he has left the House. (Interruptions)

SHRI MOHAMMAD ALI ASHRAF FATMI (DARBHANGA): It is now ten minutes past four o'clock. When is the statement going to be made?

सर, अलीगढ़ के बारे में स्टेटमेंट करवा दीजिए, बहुत सारे लोग इंतजार में बैठे हैं।

श्री चन्द्रशेखर साहू (महासुमन्द): सभापति जी, इसमें काहे की अब स्टेटमेंट की जरूरत है।

... (व्यवधान)

संसदीय कार्य मंत्री तथा पर्यटन मंत्री (श्री मदन लाल खुराना): सभापति जी, डा. जोशी स्टेटमेंट देने के लिए आये थे लेकिन साढ़े तीन बजे का समय हो गया और नॉन-ऑफिशियल टाइम शुरू हो गया तो वे चले गये।

... (व्यवधान)

अगर ये अब कहते हैं तो हम उनको बुलवा लेते हैं, नहीं तो मन्डे को स्टेटमेंट होगा।

... (व्यवधान)

इस तरह से होता नहीं है जैसे आज ये कह रहे हैं।

... (व्यवधान)

SHRI MOHAMMAD ALI ASHRAF FATMI : Why should the statement be made on Monday?

SHRI E. AHAMED : How can the Minister go away? He should be here to make the statement. (Interruptions)

श्री मोहम्मद अली अशरफ फातमी : सभापति जी, इस पर एक लड़का 'टिल डैथ' स्ट्राइक पर बैठा हुआ है।

डा. शफीकुर्रहमान बर्क (मुरादाबाद) : अगर वह लड़का मर गया तो क्या खुराना साहब जिम्मेदारी लेंगे।

श्री राम विलास पासवान (हाजीपुर) : सभापति जी, जब चेयर की तरफ से घोषणा हो गयी तो चाहे प्राइवेट मैम्बर बिजनैस हो या कुछ और हो, यह मैम्बर का अधिकार नहीं है या किसी मिनिस्टर का अधिकार नहीं है, यह अधिकार चेयर का है कि किसी भी काम को रोक कर डायरेक्शन दे सकता है, डायरेक्ट कर सकता है। जब हमने बार-बार कहा कि प्राइवेट मैम्बर डे है और सारे मैम्बर इसके लिए बैठे हैं कि मिनिस्टर बयान देंगे।

श्री भगवान शंकर रावत (आगरा) : सारे मैम्बर कहां बैठे हैं ?

... (व्यवधान)

श्री मदन लाल खुराना: जब कोई ऑफिशियल बात कहनी होती है तो आप लोग कह देते हैं कि नॉन-ऑफिशियल डे है। आज साढ़े तीन बजे तक मिनिस्टर साहब बैठे थे, तब आपने यह बात क्यों नहीं उठाई। लेकिन अगर आप अब कहते हैं तो हम उनको बुलवा लेते हैं। ... (व्यवधान)

SHRI RAM VILAS PASWAN : This is not proper.

सभापति महोदय : आपने सवाल उठाया है अब आप उन्हें सुन लीजिए।

PROF. P.J. KURIEN : What I want submit is, Shri Madan Lal Khurana said that Dr. Murli Manohar Joshi came here, he had the intention to make a statement but since the time for Private Members' Business had started he went back. Did he express that intention?

SHRI RAM VILAS PASWAN : Did he inform the Chair?

PROF. P.J. KURIEN : Did he express that intention here, in the House?

SHRI MADAN LAL KHURANA: He came to the House and informed the hon. Speaker.

SHRI RAM VILAS PASWAN : It is the duty of the Minister of Parliamentary Affairs. At least, he had to inform the Minister of Parliamentary Affairs and the Minister of Parliamentary Affairs had to inform the Chair. Did the Minister of Parliamentary Affairs inform the Chair? I cannot say that. (Interruptions) The hon. Speaker said that a statement would be made today. The hon. Speaker assured the House that a statement will be made today. You may please go through the record.

SHRI E. AHAMED : This shows the attitude of the Government.

PROF. P.J. KURIEN : The hon. Speaker has stated that a statement will be made today itself. Kindly direct the Government to call the Minister of Human Resource Development and make a statement. It is within your right, it is your prerogative to direct the Government to call the Minister and make the statement.

श्री मदन लाल खुराना: सभापति जी, उस समय चेयर पर स्पीकर साहब थे, मैंने उनको बतला दिया था।

सभापति महोदय : ठीक है, जितनी जल्दी हो सके माननीय मंत्री जी उपस्थित होकर अपना वक्तव्य दे दें। अब सदन की कार्यवाही आगे चले।

श्री राम विलास पासवान : लेकिन आज स्टेटमेंट होगा या नहीं, यह तो बतला दें।

श्री मदन लाल खुराना: होंगे तो होगा।

श्री राम विलास पासवान : सभापति जी, मंत्री जी कह रहे हैं कि 'होंगे तो होगा'। अगर आज स्टेटमेंट नहीं हुआ तो क्या होगा। जैसा मैंने कहा हंगर-स्ट्राइक पर लड़का बैठा हुआ है।

द्वारा जारी सभापति महोदय : विषय की गम्भीरता को देखते हुए सरकार की तरफ से कहा गया था कि इस पर वक्तव्य होगा। माननीय सदस्यों ने यह सवाल उठाया। अतः इसकी अहमियत को देखते हुए आसन से डायरैक्शन दिया गया कि माननीय सदस्य यथाशीघ्र वक्तव्य दें।

... (व्यवधान)

सभापति महोदय : उनके आने में समय तो लगेगा।
