

COMPULSORY FAMILY PLANNING BILL*

SHRI VIKRAM MAHAJAN (Kangra): I beg to move for leave to introduce a Bill to provide for compulsory family planning for all citizens of the country.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide for compulsory family planning for all citizens of the country."

The motion was adopted.

SHRI VIKRAM MAHAJAN: I introduce the Bill.

MR. DEPUTY-SPEAKER: Shri Madhu Limaye is not present here. There are so many Bills standing in his name.

PROF. MADHU DANDAVATE (Rajapur): Sir, can I move them on his behalf?

MR. DEPUTY-SPEAKER: You have not got any authorisation for that.

CONSTITUTION (AMENDMENT) BILL* (Amendment of Article 371)

SHRI VASANT SATHE (Akola): I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. DEPUTY-SPEAKER: The question is:

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

The motion was adopted.

SHRI VASANT SATHE: I introduce the Bill.

FREE LEGAL AID TO THE POOR BILL*

SHRI VISHWANATH PRATAP SINGH (Phulpur): I beg to move for leave to introduce a Bill to provide for legal aid to poor citizens and for matters connected therewith.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide for legal aid to poor citizens and for matters connected therewith."

The motion was adopted.

SHRI VISHWANATH PRATAP SINGH: I introduce the Bill.

CONSTITUTION (AMENDMENT) BILL—contd.

(Substitution of article 335)

By SHRI C. T. DHANDAPANI

MR. DEPUTY SPEAKER: We now take up further consideration of the Bill of Shri Dhandapani to further amend the Constitution of India. 4 hours were allotted. We have taken 3 hours and 5 minutes. There is a balance of 55 minutes.

Shri Darbara Singh was on his legs on the last occasion. He is not here. Anybody else who wants to speak? No. Then, I will call the Minister. Can you reply?

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): We may need some more time. We will just submit the list.

MR. DEPUTY-SPEAKER: How can you do that? Anyway, somebody can get up and catch my eye.

SHRI K. RAGHU RAMAIAH: Here is one—Shri Siddayya.

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MR. DEPUTY SPEAKER: I hope, this will not be repeated. We should take things a little more seriously.

SHRI S. M. SIDDAYYA (Chamarajanagar): Mr. Deputy-Speaker, Sir, I welcome this Bill for the simple reason that this has brought out some of the lacunae in the present rules relating to the reservations for Scheduled Castes and Scheduled Tribes.

Article 335 was intended to give certain safeguards to Scheduled Castes and Scheduled Tribes. But what is actually happening is quite the contrary. By making use of the expression "consistently with the maintenance of efficiency of administration", our Scheduled Castes and Scheduled Tribes candidates have been considered to be ineligible, unsuitable, for the posts and that is the reason why all these years they have not been able to achieve the percentage of reservations fixed for the Scheduled Castes and Scheduled Tribes. Therefore, from that point of view, I welcome the Bill. I would like to make certain suggestions in regard to this.

Firstly, even with regard to the recruitment of the general candidates, there is no such restriction so far as service matters are concerned. Only in the case of Scheduled Castes and Scheduled Tribes, this provision of "efficiency" has been put down. There seems to be a presumption that Scheduled Castes and Scheduled Tribes candidates are always inefficient and unsuitable. This article starts with that idea and, therefore, that article should be modified.

Secondly, article 309 says that the recruitment policy will have to be laid down by the State enactments in the States and by the Central

enactments at the Centre. But till such enactments are made, provisionally, it is authorised by the President to frame certain recruitment rules and other things. Now, for all these years, since 1950, this provisional arrangement has been continued and no permanent enactment has been passed on this matter. I would urge upon the Government of India to see that article 309 is strictly followed, and, so far as the recruitment policy is concerned, the States would have their own separate enactments and, similarly, the Central Government would have its own Central enactments. I want that the safeguards given to the Scheduled Castes and Scheduled Tribes under the Constitution should also be incorporated in the State enactments and also in the Central enactments.

Mr. Dhandapani, the mover of the Bill, has suggested some modifications. Perhaps, he has taken them mostly from the Report of the Ellyaparumal Committee which has recommended that the percentage reserved for the Scheduled Castes and Scheduled Tribes people is not being filled up. Actually, the percentage fixed is so low. Therefore, it should be increased. At this rate, the Scheduled Castes and Scheduled Tribes will not get their due representation even in hundred years. What is being done is not a percentage of the total strength of the cadre that is being reserved. It is only a certain percentage of vacancies that are being reserved. Suppose there are 10 vacancies this year. Only 15 per cent of the vacancies will be reserved. At this rate, it will take a very long time to give proper representation to Scheduled Castes and Scheduled Tribes. Therefore, I suggest that it should be increased proportionately so that the Scheduled Castes and Scheduled Tribes will get their due representation according to the population at least in the course of 25 years.

There is another important point. Reservation has been provided only for Scheduled Castes and Scheduled Tribes under the Constitution. But Government have found it desirable to make reservations for others also; thereby the representation given to these people is, in a way, being curtailed. I want to explain this further. In the Supreme Court, in Devadasan case, it was held that the reservation should not exceed more than 50 per cent. Under that plea, Government has fixed the percentage of reservation only upto 45, including those seats reserved for ex-service men. There is no provision in the Constitution for reservation for ex-servicemen. If Government wants to help them, there is no objection, but they can do it by other methods. For example, they can say that, other things being equal, preference may be given to ex-servicemen. But they are not prepared to do that; they want to take it out of the reserved quota, i.e., out of 50 per cent. And it is said that they cannot go beyond 50 per cent because there is the Supreme Court judgment. There is no strength in that argument. I plead with the Government that they should reconsider the whole thing and see that the quota reserved for Scheduled Castes and Scheduled Tribes is upto 50 per cent. They should not bring in the others.

To that extent I support this Bill and I again request the Government of India to take all these things into consideration and see that rules are framed in such a way that they will be embodied in the States legislations and also in the Central legislation, so that the officers who deal with the recruitment policy do not do things according to their whims and fancies.

SHRI K. SURYANARAYANA (Eluru): Sir, this Bill has been brought forward by my hon. friend, Shri C. T. Dhandapani. The object

of the Bill, as mentioned in the Statement of Objects and Reasons, is:

"to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, the Scheduled Castes and Scheduled Tribes."

The House is aware that the Government is already taking all the steps to ensure that the interests of the Scheduled Castes and Scheduled Tribes are served not only in service but in all other aspects also. Under the circumstances, when the Government is doing all these things, to come forward with a Constitutional Amendment for each and everything is not good for the country and for those Classes also. The Government has already agreed in principle to give them proper reservations, and wherever possible and wherever they are entitled to and wherever there are possibilities in all the sectors, they are given reserved seats proportionately. Therefore, generally we may agree with the objects of the Bill, but there is no necessity to bring forward in this august House a Constitution Amendment Bill in this way. So, I request the hon. Member to withdraw his Bill. The Government is already fulfilling all the objects mentioned by the Mover in his Bill.

THE DEPUTY MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI F. H. MOHSIN): Sir, I have heard the speeches of the hon. members made today, and I have also gone through the speeches made on the previous occasion on this Bill.

I very much appreciate the sentiments expressed by the hon. Member, Shri C. T. Dhandapani, and the others, while proposing an Amendment to amend article 335 of the Constitution of India. Really this has enabled the members of this House to focus attention on this important problem of reservation to Scheduled Castes and Scheduled Tribes. Many members

[Shri F. H. Mohsin] have given valuable suggestions in this regard. Hon. Mr. Stephen has pointed out what Mr. Dhandapani wants in the amending Bill that has been brought before the House.

In brief he wants amendment of the Constitution to bring the reservation to the extent of not less than 25 per cent to the recruitment to various services in the Centre and the States. In fact there is already a provision in this regard. It is not that we do not have any provision in the Constitution. The framers of the Constitution have already taken into consideration the backwardness of these communities, the Scheduled Castes and the Scheduled Tribes and Art. 335 has been provided. There are other Articles also in this direction. Our Constitution has given adequate protection to these weaker sections by even restricting the equality of opportunity provided under Art. 16(2) of the Constitution by the provisions of Art. 16(4) of the Constitution. They have also included Art. 46 in order to take care of the weaker sections of the people and given further force to the question of reservation for Scheduled Castes and Scheduled Tribes by the provisions of Art. 335 of the Constitution.

Mr. Dhandapani has now proposed amending Art. 335 to provide for reservation of not less than 25 per cent for Scheduled Castes and Scheduled Tribes. I would like to point out in this connection that any specifying of percentage of reservation in the Constitution itself would take away the discretion at present available to the Government for fixing and reviewing from time to time the percentage of reservation for Scheduled Castes and Scheduled Tribes in services under them. According to the instructions already existing today there is a total reservation of 22 1/2 per cent for Scheduled Castes and Scheduled Tribes in posts filled up on an all India basis by open competition—15 per cent for Scheduled Castes

and 7½ per cent for Scheduled Tribes and 24.16 per cent—that is 16 2/3 per cent for Scheduled Castes and 7½ per cent for Scheduled Tribes in the case of recruitment on an all India basis otherwise than by open competition. It comes to 24 per cent in fact. Thus the reservation is already quite close to 25 per cent as proposed by the hon. Member.

Moreover, according to the 1971 census, Mr. Dhandapani might be aware that the Scheduled Castes and the Scheduled Tribes form 21.54 per cent of the total population of the country—the Scheduled Castes—14.60 per cent and Scheduled Tribes—6.94 per cent. Thus, the actual reservation provided for Scheduled Castes and the Scheduled Tribes is already higher than their proportion in the total population of the country. Since it is the intention and policy of the Government to review the percentage of reservation for Scheduled Castes and the Scheduled Tribes on the basis of census figures from time to time, it may not be worth while to fix a definite percentage in the Constitution itself.

SHRI B. K. DASCHOUDHURY (Cooch Behar): What is the intake in service?

SHRI F. H. MOHSIN: I will come to that later. But these are the present directions.

The second part of the amendment proposed by Mr. Dhandapani relates to the carry-forward of reserved vacancies which cannot be filled due to non-availability of candidates belonging to the Scheduled Castes and the Scheduled Tribes in a particular year. In this connection, executive instructions have already been issued by the Government to the effect that unfilled reserved vacancies should be carried forward for a period of three years. It is stated further that during the last of these 3 years the vacancies reserved for Scheduled Castes and Tribes could be

exchanged with each other to ensure the maximum utilisation of reserved vacancies by the candidates of these communities. The hon. Member would, I think, no doubt, agree to this position that is hardly necessary to amend the Constitution for providing for such a carry-forward which is a matter of procedural detail and for which, as I have said, detailed instructions have already been issued. Under existing instructions, no Department or Ministry is allowed to de-reserve vacancies unless it obtains prior approval for such dereservation from the Department of Personnel. They have to give convincing reasons as to why it was not possible for them to fill the vacancies by candidates belonging to the Scheduled Castes and Scheduled Tribes.

The hon. Member has proposed that normal yearly reserved vacancies carried forward from previous year should not exceed 75 per cent of the total number of vacancies for one recruitment year. I would like to point out one thing. Mr. Siddayya also said about this point. The Supreme Court's decision has come in the way of such a reservation. It is held *ultra vires*. So the Government perforce comes to the conclusion that total number of vacancies including carry-forward do not exceed 50 per cent of the vacancies.

SHRI SOMNATH CHATTERJEE (Burdwan): Supreme Court may declare some law or some office instruction to be *ultra vires*; but it cannot declare the Constitution to be *ultra vires*. This is a Constitution Amendment Bill. If the Bill is passed it will be part of the Constitution which cannot be touched by the Supreme Court. An office instruction may be declared *ultra vires*, but not the Constitutional provision. How can this analogy be given?

SHRI P. G. MAVALANKAR (Ahmedabad): He says, Supreme Court comes in the way.

I want to know whether it is a correct way of putting this.

AN HON. MEMBER: Decision of the Supreme Court.

SHRI F. H. MOHSIN: Later on, I will give you a summary of the decision also.

MR. DEPUTY SPEAKER: His question is this. The Supreme Court may judge that certain rules or directions by the office can be *ultra vires* but not the Constitution itself. If the Constitution is amended, then, the question of the Supreme Court's judgment coming in the way will not arise. That is what he says.

SHRI F. H. MOHSIN: If the Constitution itself is amended it is a different matter.

SHRI SOMNATH CHATTERJEE: This is a Constitution Amendment Bill. We are not discussing any office Memorandum, or office rule.

SHRI F. H. MOHSIN: In Devadason's case, with regard to the carry-forward rule as it existed, the Court held:

"Reservation for a post/service in excess of 50 per cent of the vacancies would be *ultra vires* the provisions of Art. 16 of the Constitution."

But the hon. Member's amending Bill does not propose to amend article 16 of the Constitution.

SHRI SOMNATH CHATTERJEE: It is not necessary. That rule was challenged as violative of article 16. If article 335 is amended, as proposed, it cannot be held to be violative of article 16.

SHRI F. H. MOHSIN: In my opinion, that also would not help.

SHRI MADHURYA HALDER (Mathurapur): What is the argument?

SHRI F. H. MOHSIN: Unless article 16 itself is amended, it would not help.

The carry-forward rule was, therefore, amended by Government and the existing rule provides that the number of normal reserved vacancies and the carry-forward vacancies together should not exceed 50 per cent.

Again, there was another case also. Article 16(1) guarantees equality of opportunity to all citizens in matters relating to employment or appointment under the State. The Supreme Court in *M. R. Balaji and other vs. The State of Mysore*, while discussing article 15 (4) observed:

"Speaking generally and in a broad way, the special provision should be less than 50 per cent. How much less than 50 per cent would depend upon the relevant prevalent circumstances in each case."

That was the observation of the Supreme Court in that case.

The third part of the amendment proposed by Shri Dhandapani stipulates that the term should include the Central Government, Parliament of India and the Government and legislature of each State, or Union territory or local or other authorities within the territory of India or under the control of the Government of India or co-operative societies or companies registered or set up by an Act of Parliament or of a State legislature, which are financed wholly or partly from the Government of India or the State Government or by any local authority.

The term 'State' as defined in articles 12 and 36 of the Constitution already includes the Government of India, Parliament of India and Government and legislature of each State

and all local or other authorities within the territory of India or under the control of the Government of India. Therefore, any widening of the term 'State' only for the purpose of article 335 of the Constitution would be inconsistent with the definition already occurring in articles 12 and 36 of the Constitution relating to the Fundamental Rights and Directive Principles.

No doubt, the hon. Member has suggested the amendment in the context of proliferation of industrial undertakings, co-operative societies and extension of commercial activities of the State. I may point out that the necessary steps have already been taken by Government with a view to ensure that public undertakings under the control of Government and the statutory and semi-government bodies do make reservations for Scheduled Castes and Scheduled Tribes in the services under them, on the lines of the reservations made in services under Government. Directives have already been issued by the Central Government to various public undertakings in this regard, and all these directives have already been brought to the notice of the State Governments for issue of similar directives to the undertakings under the respective States. In these circumstances, no amendment of the Constitution is necessary to look after the reservation for Scheduled Castes and Scheduled Tribes in the public sector undertakings and autonomous bodies.

Having dealt with specific amendments proposed by the hon. Mover, I shall now go to other points made by other hon. Members while discussing the Bill. One hon. Member said that different State Governments had adopted different methods of reservation.

SHRI K. S. CHAVDA (Patan): If this Bill is accepted, this will be the uniform rule all over India.

SHRI F. H. MOHSIN: I am afraid we cannot do it. The hon. Member is quite aware of the jurisdiction of the State Governments. It is entirely within their jurisdiction.

SHRI MADHURUYA HALDER: He says whatever he likes, without replying to the points.

SHRI F. H. MOHSIN: I am replying to the points that hon. Members have made. Perhaps, the hon. Member had not heard other Members. Some members have made the point that State Governments should also be made to follow the same principle about reservation as the Central Government is following. I am dealing with that. If he has not understood it, I cannot help it.

16 hrs.

In this connection, we cannot take power into our hands for regulating the recruitment to services under State Governments because it is entirely in their jurisdiction to frame their own rules of recruitment.

SHRI SOMNATH CHATTERJEE: I do not know whether the scope of the Bill has at all been appreciated by the hon. Minister. This seeks to amend the constitution. If it is passed, it will be incumbent on every body in this country as mentioned in the Bill. It will be a constitutional requirement. It is not a question of the Centre exercising power of appointment in the State I do not know why the Minister is replying on the lines he is doing. If passed, this will be in the Constitution itself and will be applicable to State Governments, the Central Government and all other employment agencies. Therefore, why is he saying all this.

SHRI K. S. CHAVDA: He is misleading the House.

SHRI F. H. MOHSIN: I am not; he is misleading himself.

Unless we consult the States and take their opinion, can you make

such an amendment? It is not proper to do that. Shri Dhandapani as a champion of State autonomy will himself protest against it and he would not tolerate it.

SHRI SOMNATH CHATTERJEE: The Bill can be circulated for eliciting public opinion. Do that.

SHRI F. H. MOHSIN: It is for State Governments to take up this measure if they want to have reservation (*Interruptions*).

SHRI SOMNATH CHATTERJEE: The State legislatures cannot amend the Constitution.

MR. DEPUTY-SPEAKER: If the Minister says that the State Governments are to be consulted and he cannot make up his mind before doing that...

SHRI F. H. MOHSIN: We cannot make legislation for them for their reservations. It is for them to do it themselves. It is our policy not to interfere in their jurisdiction.

MR. DEPUTY-SPEAKER: Let me have it clarified. I am trying to help the discussion. The Bill seeks to amend the Constitution. If the Bill is accepted, it will cast a constitutional obligation on the Central and State Governments to follow this. He said just now that he could not undertake a measure like this without consulting the State Governments. Then would he have any objection to this Bill being sent to State Governments for their opinion?

SHRI F. H. MOHSIN: No, that will not solve the problem.

PROF. MADHU DANAVATE (Rajapur): To every question, he says 'that will not help'. Then what will help?

SHRI F. H. MOHSIN: Let him listen to me; before listening to me, he is getting up.

In this connection, different States have got different percentages of Scheduled Caste and Scheduled Tribe population. In some, the percentage of recruitment is more than in others. The percentage of direct recruitment in classes III and IV posts in Government of India offices after attracting candidates from the locality or region in Andhra Pradesh is 13 for Scheduled Castes and 5 for Scheduled Tribes. In Meghalaya, it is one per cent for Scheduled Castes and 44 for Scheduled Tribes. It all depends upon the percentage of population in each State. We cannot make a provision which would be applicable uniformly to all States. It depends on the population of each State. We can certainly make provision for the whole country because we have got the population figures; we know what is the population of the country and all that. But for the States we cannot make a provision in the Constitution.

SHRI SOMNATH CHATTERJEE: Sir, has he answered any of the points?

SHRI F. H. MOHSIN: If you cannot understand, what can I do? I have answered; you may understand if only you care to listen.

SHRI N. K. P. SALVE (Betul): Mr. Chatterjee may disagree with the views expressed, but to say that he has not understood it is not fair.

SHRI SOMNATH CHATTERJEE: He has put forward certain reasons for opposing this Bill. I was trying to have a clarification. Are you satisfied with the clarification?

SHRI F. H. MOHSIN: If you are not satisfied, we cannot help.

SHRI SOMNATH CHATTERJEE: Let the Government oppose this Bill at any cost, but do not put forward

specious reasons. You are trying to put forward a reason that it will violate the article in the Constitution. I say that a constitutional provision cannot violate another constitutional provision. Then, what is the answer? The only answer you give is, "it will not help." Then, say this Government will oppose this Bill at any cost. One can understand.

SHRI MADHURYA HALDAR: Let us take this Bill on the next day. Let him come prepared.

SHRI F. H. MOHSIN: I am fully prepared; but if you are not prepared to listen, what can I do? Be prepared for hearing at least.

As I have already said, for direct recruitment to all-India posts by open competition either through the UPSC or by means of open competitive test by any authority, reservation already exists: it is 15 per cent for the Scheduled Castes and 7.5 per cent for the Scheduled Tribes. For posts otherwise than by open competition, it is 16 2/3 per cent and 7.5 per cent respectively; it comes to 24 per cent. For posts filled by promotion, the reservation is 15 per cent for Scheduled Castes and 7.5 per cent for Scheduled Tribes. For selection in or to Class III and Class IV posts in the grades or services in which the element of direct recruitment, if any, does not exceed 50 per cent, the reservation is 15 per cent for Scheduled Castes and 7.5 per cent for Scheduled Tribes.

If the Members are interested, I can give the figures for recruitment to Class III and Class IV posts in the Government of India, attracting candidates from the locality or the region, in the States. I have already quoted the figure for Andhra Pradesh. In Assam, it is six per cent for Scheduled Castes and 13 per cent for Scheduled Tribes; it actually comes to 19 per cent again. Bihar 14 per cent for Scheduled Castes and nine per cent for Scheduled Tribes.

SHRI MADHURYYA HALDAR: That is the reservation; what is the filling?

SHRI F. H. MOHSIN: I will come to that later—what is being done. Then, Gujarat, 7 per cent for Scheduled Castes and 14 per cent for Scheduled Tribes; Madhya Pradesh, 13 per cent for Scheduled Castes and 20 per cent for Scheduled Tribes; Orissa, 15 per cent for Scheduled Castes and 23 per cent for Scheduled Tribes; Punjab 25 per cent for Scheduled Castes and five percent for Scheduled Tribes; Haryana, 19 per cent for Scheduled Castes and five per cent for Scheduled Tribes; Rajasthan, 16 per cent for Scheduled Castes and 12 per cent for Scheduled Tribes; Tamil Nadu, 18 per cent for Scheduled Castes and five per cent for Scheduled Tribes. Even in your State also, it is less. Then, Uttar Pradesh, 21 per cent for Scheduled Castes and five per cent for Scheduled Tribes; West Bengal, 20 per cent for Scheduled Castes and six per cent for Scheduled Tribes.

AN HON. MEMBER: What about Mysore?

SHRI F. H. MOHSIN: This is for recruitment to the Government of India services, in Class III and Class IV posts.

SHRI R. P. ULAGANAMBI (Vellore): What about the States?

SHRI F. H. MOHSIN: We do not have the figures for all the States. Many Members have asked me about implementation. (Interruptions). For Maharashtra it is 6 per cent for Scheduled Castes and 6 per cent for Scheduled Tribes. I have got a whole statement here showing the progress of representation of Scheduled Castes and Tribes in Central Government services for the years 1962—1971. It is a long list and it will take sometime

if I read it; if Members want I shall lay* it on the Table of the House. These figures show that there has been a serious attempt to take as many of these persons as possible. It is true that in the I.A.S., I.P.S. and other All India Services, recruitment has not been satisfactory in Class I and even in Class II. That may be, because till 1954 when the order was issued recruitment to these services was almost nil or very meagre. But, of late, it is heartening to note that for Class I and Class II services sufficient number of people are being recruited from SC & ST. Some relaxation in age, qualifications and physical fitness have been made, so that they are recruited in larger numbers. All this goes to show the earnestness of the Central Government in this matter. In the future also it will be the effort of the Central Government to see that the weaker sections are taken in sufficient numbers. It may be 22.5 per cent or 24 per cent; it may become even more than 30 per cent, if the percentage of population to the total population increases.

What is required is implementation. I see that the hon. Members have no quarrel with the rate of reservation as it is being provided today. But the complaint is that it is not being implemented properly. Where such complaints come we look into them and proper action is taken.

SHRI K. S. CHAVDA: At the time of oral examination SC and ST candidates are made to fail. Could you not do away with oral examination?

SHRI F. H. MOHSIN: In the oral examination, why should they fail? I cannot understand.

SHRI K. S. CHAVDA: In the name of suitability. Suppose I am the examiner, I will say that 90 per cent of them are unsuitable. That is what they do.

*Placed in Library. See No. LT-5216/73.

SHRI N. K. P. SALVE: It is the other way round. 90 per cent of the people are accepted.

SHRI K. S. CHAVDA: Let the Minister reply.

SHRI F. H. MOHSIN: When such complaints are received we look into them. If you point out any specific instance where a person has been disqualified in oral examination, we will look into it.

In as many as 85 public undertakings, this policy of reservation for scheduled castes and tribes has been accepted and they are implementing it. The other undertakings also are on the way to implementing it. We will see that all the public undertakings accept the policy laid down by the Government of India.

The mover wanted the reservation principle to be made applicable to private companies, factories, joint stock companies, etc. We got it examined by the Law Ministry and we have been advised that such a legislation may not be valid or legal. We cannot force the private companies to follow this reservation principle. All the same, we have been persuading the various Chambers of Commerce to direct their constituents to give due representation to the scheduled castes and tribes. I am happy to point out that they have given directions to their constituents to follow this procedure.

We hope that our persuasive methods and sometimes directions also will go a long way in implementing the policy laid down by the Government of India in regard to the recruitment of the weaker sections of the community. The Government of India is very keen and desirous to see that the scheduled castes and scheduled tribes population get their due share of the services in the Government of India and the public undertakings. We will make all efforts to

see that this is implemented. If there are any complaints received, we will look into them and take proper action. We will not allow any scheduled caste or tribe candidate who is otherwise qualified to be rejected because of any prejudice against the scheduled castes and scheduled tribes population.

With these words, I would say, I appreciate the spirit behind the Bill and I agree that more and more scheduled castes and scheduled tribes should be recruited and I would be the happiest person if that is done. With these words, I would request the mover not to press this amendment.

SHRI R. P. ULAGANAMBI: If the Government agree with the spirit and principle of the Bill, will they themselves bring forward a similar Bill?

SHRI B. K. DASCHOWDHURY: The main problem is this. Notwithstanding the reservation orders up to certain percentages in the technical posts and even in class 3 and class 4 posts, the required number of candidates with the minimum technical qualifications are not available from among the Scheduled Castes and Scheduled Tribes to fill those posts. As the hon. Minister has just now mentioned that it is the desire of the Government of India to maintain reservation up to this per cent, a desire which we all share, let this Ministry issue some orders and instructions that all persons belonging to the Scheduled Castes and Tribes who have got the minimum qualifications for appointment as telephone operators, punch operators, drivers etc. who are living in far away places and rural areas where they have no opportunity to get this experience from commercial institutions, let those persons be put into service and then given some in-service training for four to six months so that they can be absorbed in those

posts and thereby the required percentage can be fulfilled. Will the hon. Minister consider that?

SHRI F. H. MOHSIN: We will examine that suggestion.

SHRI C. T. DHANDAPANI (Dhara-puram): Sir, I am thankful to the hon. Members who have taken part in this debate and supported this Bill which I have moved for consideration. I want to quote from the speech of Shri Basumatari, one of the so-called leaders of the Harijans. He says:

"I cannot say that the amendment brought by the opposition member may be accepted or I can support it, because it is from the opposition."

This is the attitude of the Congress members. Even though it is a measure which is beneficial for the entire society, specially for the backward communities, they are not prepared to accept it because it is brought forward by the opposition. This is the attitude of not only the Congress members but even of a person who was once the Chairman of the Scheduled Castes and Tribes Commission. I really wonder how he could make such a statement.

Then I come to the speech of Shri Stephen. The Congress Party has selected 10 or 15 members who can out-shout the opposition members. Shri Stephen is one of those whose voice is loud. He has stated:

"There is reservation for them. The Constitution has got certain provisions, articles 16(2) and 16(4) which very specifically point out that the equality of opportunity for appointment is subject to the consideration that the weaker sections of the communities are taken care of. Article 335, which is now sought to be substituted by this new provision, also calls upon States to take into consideration the claims of the Scheduled Castes and Tribes. Article 46 takes care of the weaker sections of the people." •

1112 LS—12.

Article 16(1) speaks of equality of opportunity for all citizens in the matter relating to employment or promotion while clause (4) of article 16 empowers the State to make provision for reservation of posts for backward classes which, in the opinion of the State, are not adequately represented in the services under the State. It is worthwhile to note that clause (4) of article 16 is not only an exception to clause (1) but it also finds its place in Part I of the Constitution, thereby guaranteeing the weaker sections the minimum safeguards in relation to public appointments. That is why article 16 enjoins on the State not only to promote the educational interests but also their economic interests, which term must necessarily include public employment under the State. If that is the position and under articles 16 and 46, which come under Parts III and IV of the Constitution respectively, there is no reason why the Treasury Benches should not support the present Bill, because the present amendment merely seeks to guarantee the percentage of posts, appointments and promotions to the weaker sections, and in particular to the Scheduled Castes and Tribes. I do not understand why the ruling party is giving a cold shoulder to such an important measure. Am I to understand that the ruling party merely gives false promises to the weaker sections when they want their support? If the ruling party does not support this Bill, the only inference I would draw is that the ruling party is not at all interested in promoting the welfare of weaker sections on whose support this Government stands today.

SHRI F. H. MOHSIN: What is the representation given in your State?

SHRI C. T. DHANDAPANI: I am coming to that.

SHRI R. P. ULAGANAMBI: Why don't you come forward with a Bill and apply it to the whole of India?

THE DEPUTY MINISTER IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI B. SHANKARANAND): How many of you are present today to support the Bill?

SHRI R. P. ULAGANAMBI: Are you prepared to support the Bill?

SHRI C. T. DHANDAPANI: I know Mr. Shankaranand also belongs to a Scheduled Caste. After he has got elected, he does not look back to Scheduled Castes and Scheduled Tribes.

SHRI B. SHANKARANAND: It is not that because it is an Opposition Bill, we are trying to oppose it. How many Opposition Members are there to vote for the Bill?

SHRI R. P. ULAGANAMBI: Are you prepared to vote for the Bill.

SHRI B. SHANKARANAND: How many Members are present from your party to support the Bill?

SHRI SOMNATH CHATTERJEE: Is it that because there are not sufficient number of Members on the Opposition side that the Government is not supporting the Bill? Is that the reason?

SHRI C. T. DHANDAPANI: I know he used to make very good points. But this time, unfortunately, I am disappointed with his argument which is neither sensible nor acceptable to us.

About promotions, he said that promotions have been given to the Scheduled Castes and Scheduled Tribes people. He said, it is 15 per cent and 27 per cent. At the same time, the Government of India, the Ministry of Home Affairs, has published a book about it. I quote:

"If any Scheduled Castes and Scheduled Tribe employee has been categorised by the Committee on the basis of his record of service

as "good", he should be re-categorised by the Committee as "very good".

You know how a Government Department works. The Committee has to see whether a particular employee has been categorised as "good" or "very good". In Government service, even a Clerk or a Head-clerk or a Superintendent, if he wants to get a promotion, has to manoeuvre his officer. He has to go to his house and render service like a slave. This is the position in a Government Department. Some peons, Class IV employees, have to go to the officers' houses and they have to work for hours together. Sometimes, they have to wash sarees of officers' wives and other things. You know better. So, if a Scheduled Castes boy or a Scheduled Tribe boy has to be "good" or "very good", he has to work not in the office but in the house of the officers. Even if he is prepared to work in the house of the officer, he will not be allowed because he is an untouchable.

SHRI F. H. MOHSIN: The Scheduled Castes and Scheduled Tribes candidates get one grade higher. If he is "good", he will be considered as "very good"; if he is "very good", he will be considered as "excellent".

SHRI C. T. DHANDAPANI: Please read it carefully. It says:

"On the basis of the record, he will be categorised as "outstanding". Of course, if any Scheduled Caste and Scheduled Tribe employee has been categorised on the basis of his record of service as "outstanding", no re-categorisation will be needed in this case".

For promotions also, this Committee has been instituted and they have to get a good hit from high officers. This is the position. I do not want to go into the details of all these things. But our Minister has stated that candidates are not available from Scheduled Castes and Scheduled Tribes. I wonder how this can be so.

This is only a calculated conspiracy against both the communities. Scheduled Castes and Scheduled Tribes. All of us know that the population of India is increasing every day. But in the case of Scheduled Castes and Scheduled Tribes, the number is decreasing! This is what they say. How can we understand this? They say that between 1961 and 1971, in the case of Andhra Pradesh, there has been 12.6 per cent decrease, in the case of Kerala 18.85 per cent decrease, in the case of Madhya Pradesh 8.75 per cent decrease, in the case of Mysore 20.68 per cent decrease, in the case of Punjab 18.57 per cent decrease, in the case of Himachal Pradesh 15.16 per cent, Delhi 27.19 per cent and Manipur 53.31. This is the position. There is a general increase in the population of India, but in the case of Scheduled Castes and Scheduled Tribes, it has decreased considerably because there is a calculated conspiracy against these communities not to give them more representation and jobs.

The Minister has said about non-availability of candidates. It is absurd because there are candidates available, there are educated people available. Then I want to ask another question. They are spending a lot of money and are giving incentives to Scheduled Castes and Scheduled Tribes for education and other things. You are spending a lot of money on education for these people, but at the same time you say that candidates are not available. What does it mean? It means that your expenditure on their education is useless. You must accept that or you have to admit that there are candidates but the Government is not recruiting them.

I want some figures from the hon. Minister; though not today at least later let him give the figures to the House as to how many have been recruited so far all over India and why the reservation has not been fulfilled. He must give a statement. He has said that the Supreme Court gave a statement. He has said that the Sun-

reme Court gave a judgement that it should not exceed 50 per cent. Nowadays it is easy for the Government to approach the Supreme Court also because the judges belong to the Congress party, they are appointed by the Congress party...

MR. DEPUTY-SPEAKER: Let us not cast any aspersion on judges.

SHRI C. T. DHANDAPANI: They are nominated by the Congress party, Sir. In the very same House it was said that the philosophy of the judges should be suitable to the ruling party. I think, it will be suitable to the ruling party. They can go to the Supreme Court or they can amend the Constitution against the judgement made by the Supreme Court.

The Minister has said that they are not going to give instructions to State Governments because it will be an interference into the administration of the State Governments. He has said, 'I am a man for State autonomy' and all that. If he accepts the theory that the Central Government should not interfere in the matter of State Governments, then he should follow it in all respects and not only in this. In order to escape from the responsibility, he is saying that he is a man who pleads for State autonomy. For example, if we want to employ one or two or three lakhs of Scheduled Castes people in our State or if we want to start an industry with the collaboration of a foreign country, will you allow that? We have to get permission from you for that. Will you in that case say that that is not your job?

MR. DEPUTY-SPEAKER: This is a different question. It has nothing to do with reservation. This is the larger question of the State autonomy and all that sort of thing. What has it got to do with the reservation of posts to Scheduled Castes and Scheduled Tribes?

SHRI C. T. DHANDAPANI: About the public undertakings he has said—I have already said it in my introductory speech—that as far as the Central Government Departments are concerned, it is allright. I want to quote one thing. Even the Elayaperumal Committee—you know Mr. Elayaperumal was a Congressman—has said on page 281:

“The Ministries are not maintaining the prescribed percentage of reservation for Scheduled Castes by filling up the reserved quota in various classes. Even the register for recruitment is not being maintained and scrutinised properly. The Ministries were not in a position to supply even complete information in respect of the Departments attached to offices under their control. Whatever information has been supplied about the Ministries is also incomplete and lacks in detail.”

Sir, this is the position. Even the Central Government Ministries are not keeping, not only not keeping, but they are of at all following what the hon. Minister has said.

Another thing. He has said about the Central Government public undertakings. He said that. Here I just want to reiterate what I said earlier for the benefit of the Minister:

“Neither the Central Government nor the State Governments keep in mind the Directive Principles of the Constitution when they make reservations in the matter of recruitment or promotion. For example, take LIC. The percentage of representation as on 31st March 1971 was as follows: Class I officers—0.13 per cent, Class II—0.16 per cent, Class III—1.24 per cent and Class IV—14.3 per cent. At the same time, they have appointed some officers on a temporary basis. The percentage there is: Class I—nil, Class II—nil, Class III—1.4 per cent and Class IV—25 per cent. In the same manner, the position in Central

Government industrial and commercial undertakings, as on 1970, is as follows; Class I officers—0.5 per cent, Class II officers—0.77 per cent, Class III employees—5.2 per cent and Class IV employees—80.06 per cent (because all of them are scavengers)—a majority of them here are Scheduled Castes and Scheduled Tribes; this is what Central Government or any Government entrust such type of work to Scheduled Castes people!

I want to quote the position in the nationalised banks also. They, of course, conduct examination, but it is a farce. The position here is: Dena Bank—nil, Allahabad Bank—nil, Indian Bank—nil, Bank of Maharashtra—nil, Indian Overseas Bank—nil, Central Bank of India—0.08 per cent, Punjab National Bank—0.5 per cent, Bank of Baroda—0.08 per cent, United Commercial Bank—0.05 per cent and Canara Bank—0.1 per cent, and the United Bank of India—0.23 per cent.”

Not only that, Sir, same is the case with regard to the 103 public undertakings in our country. I do not want to quote all these. This is the position actually. They want to escape from this problem. Therefore, I want to request this House and the Government to pass this Bill. Congress Members from other States have said that actually they wanted to give more percentage, but that Mr. Dhandapani has stipulated only 25 per cent. That is why I have brought an amendment to my own Bill that is, page 196, after ‘Constitution’ insert ‘not less than’. So, it is not 25 per cent. It is ‘not less than 25 per cent.’ Therefore, I request the Government to accept this Bill and it may be passed by this House.

I thank you for giving me this opportunity.

MR. DEPUTY SPEAKER: Mr. Dhandapani, I would like to make one thing clear, that your amendment to

your own Bill that you gave notice of, was not moved. You had only given notice. It was not moved, but you had only given notice and that was in the last session. Therefore, it has lapsed according to the rules. For the present, there is no amendment from you that is before us, at this stage.

Now, this being a Constitution Amendment Bill, it will require the majority of the total membership of the House and not less than two-thirds of the Members present and voting, to be passed. The voting has got to be recorded.

Now, let the lobby be cleared.—

The lobby has been cleared. The voting will be recorded on the vote-recorder. Division.

The question is:

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

The Lok Sabha divided:

Division No. 2] [16.47 hrs.

AYES

Bade, Shri R. V.
*Banamali Babu, Shri
Bhattacharyya, Shri S. P.
Chatterjee, Shri Somnath
Chavda, Shri K. S.
Deo, Shri P. K.
Dhandapani, Shri C. T.
Guha, Shri Samar
Haldar, Shri Madhuryya
Karni Singh, Dr.
Mavalankar, Shri P. G.
Mody, Shri Pilo
Muruganatham, Shri S. A.
Ramkanwar, Shri

Reddy, Shri B. N.
Saha, Shri Gadadhar
Somasundaram, Shri S. D.
Uluganambi, Shri R. P.
Vajpayee, Shri Atal Bihari.

NOES

Ambesh, Shri
Ankineedu, Shri Maganti
Ansari, Shri Ziaur Rahman
Austin, Dr. Henry
Barua, Shri Bedabrata
Bhattacharyya, Shri Chapalendu
Chandrika Prasad, Shri
Chaturvedi, Shri Rohan Lal
Chhotey Lal, Shri
Chikkalingaiah, Shri K.
Choudhury, Shri Moinul Haque
Daga, Shri M. C.
Das, Shri Anadi Charan
Daschowdhury, Shri B. K.
Dumada, Shri L. K.
Engti, Shri Biren
Gavit, Shri T. H.
Gogoi, Shri Tarun
Gokhale, Shri H. R.
Gomango, Shri Giridhar
Goswami, Shri Dinesh Chandra
Gowda, Shri Pampan
Jeyalakshmi, Shrimati V.
Jitendra Prasad, Shri
Kadannappalli, Shri Ramachandran
Karan Singh, Dr.
Kaul, Shrimati Sheila
Kedar Nath Singh, Shri
Kinder Lal, Shri
Krishnappa, Shri M. V.
Kureel, Shri B. N.
Kushok Bakula, Shri

*Wrongly voted for 'AYES'

Lakshmikanthamma, Shrimati T.
 Lutfal Haque, Shri
 Malaviya, Shri K. D.
 Mallanna, Shri K.
 Mirdha, Shri Nathu Ram
 Modi, Shri Shrikishan
 Mohapatra, Shri Shyam Sunder
 Mohsin, Shri F. H.

Painuli, Shri Paripoornanand
 Pandey, Shri Krishna Chandra
 Paokai Haokip, Shri
 Parashar, Prof, Narain Chand
 Paswan, Shri Ram Bhagat
 Patil, Shri Anantrao
 Patil, Shri S. B.
 Patnaik Shri J. B.
 Peje, Shri S. L.
 Qureshi, Shri Mohd. Shah
 Raghu Ramaiah, Shri K.
 Raju, Shri P. V. G.
 Ram Sewak, Ch.
 Rana, Shri M. B.
 Rao, Shri M. S. Sanjeevi
 Raut, Shri Bhola
 Reddy, Shri P. V.
 Roy, Shri Bishwanath
 Rudra Pratap Singh, Shri

Saini, Shri Mulki Raj
 Salve, Shri N. K. P.
 Samanta, Shri S. C.
 Sathe, Shri Vasant
 Sayeed, Shri P. M.
 Sethi, Shri Arjun
 Sankar Dayal Singh, Shri
 Sharma, Shri A. P.
 Shenoy, Shri P. R.

Shivnath Singh, Shri
 Shukla, Shri B. R.
 Singh, Shri Vishwanath Pratap
 Suryanarayana, Shri K.
 Swaminathan, Shri R. V.
 Swamy, Shri Sidrameshwar
 Unnikrishnan, Shri K. P.
 Verma, Shri Ramsingh Bhai
 Yadav, Shri D. P.
 Zulfiqar Ali Khan, Shri

MR. DEPUTY-SPEAKER: The result* of the division is as follows:

AYES: 19; Noes: 78.

The motion has not been adopted by the requisite majority. It is, therefore, lost.

The motion was negatived.

16.45 hrs.

CONSTITUTION (AMENDMENT)
 BILL

(Amendment of Seventh Schedule)
 by Shri S. C. Samanta

SHRI S. C. SAMANTA (Tamiluk):
 I beg to move:

"That the Bill further to amend the Constitution of India, be referred to a Select Committee consisting of 15 members, namely Dr. Henry Austin, Shrimati Mukul Benerji, Shrimati Jyotsna Chanda, Shri Khemchand Bhai Chavda, Shri M. C. Daga, Shri B. K. Daschowdhury, Shri Jagannathrao Joshi, Shri M. Kathamuthu, Shri H. N. Mukerjee, Shri Narain Chand Parashar, Shri H. M. Patel, Dr. V. K. R. Varadaraja Rao, Shri Arjun Sethi, Shri D. P. Yadav and Shri S. C.

*The following Members also recorded their votes:

AYES: Shri Sarjoo Pandey;
 NOES: Shri Banamali Babu.