

[Dr. Jinendra Kumar Jain]

being a promoter, which is going to see that the goods received from one end reach the other end and they will be legally responsible for it. The goods will be carried by the Shipping Corporation on other shipping lines which are being used now. The Shipping Corporation is not going to be the loser. As regards the second part which the hon. Member has asked, regarding containers, container is not a new phenomenon in our country. It is an international phenomenon. Rather, we are able to carry more cargo by containers. We have handled more cargo and I am glad to say that in spite of all the crisis we have had in the country, we have broken all records. Even when Bombay was burning, my port had a record handling of cargo tonnage that day also. So, it is not going to be hampered in any way.

The third thing, the hon. Member had said on stuffing and destuffing. We are privatising stuffing and destuffing also and our efficiency has increased. I was rather very unhappy because the number of people employed for stuffing and destuffing had come to be a record number but it does not come anywhere near the world standard. But, anyway, efficiency had to be brought about. We have talked to the unions. We have talked to the dock labourer and we have also started coaching for stuffing and destuffing outside the port. And it has helped the exporters in a big way. And, I don't think that the labour is going to be affected in any way.

THE VICE-CHAIRMAN (SHRI MD. SALIM): I shall now put the Resolution moved by Shri Satya Prakash Malaviya to vote.

SHRI SATYA PRAKASH MALAVIYA: Sir, I would like to withdraw the Resolution.

The Resolution was by leave, withdrawn

THE VICE-CHAIRMAN (SHRI MD. SALIM): I shall now put the motion moved by the Minister to vote. The question is:

"That the Bill to provide for the regulation of the multimodal transportation of goods from any place in India to a place outside India, on the basis of a multimodal transport contract and for matter connected here, with or incidental thereto, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI MD. SALIM): We shall now take up clause by clause consideration of the Bill.

Clauses 2 to 32 were added to the Bill.

Clause 1, the Enacting Formula the Schedule and the Title are added to the Bill.

SHRI JAGDISH TYTLER: Sir, I move:

That the Bill be passed."

The question as put and the motion was adopted.

STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE NATIONAL COMMISSION FOR BACKWARD CLASSES ORDINANCE, 1993.

II. THE NATIONAL COMMISSION FOR BACKWARD CLASSES BILL, 1993

THE VICE-CHAIRMAN (Shri Md. Salim): We will take up the Statutory Resolution and the Bill to constitute a National Commission for Backward Classes together I request Dr. Jinendra Kumar Jain to move the Resolution.

DR. JINENDRA KUMAR JAIN (Madhya Pradesh): I am here to move the Resolution but I do not find the Minister.

AN HON MEMBER: The Minister is here.

DR. JINENDRA KUMAR JAIN: With your permission, I move the following Resolution:

"That the House disapproves of the National Commission for Backward Classes Ordinance, 1993 (No. 23 of 1993) promulgated by the President on the 1st February, 1993."

Sir, before I list here the reasons for my moving this Resolution of disapproval, let me first of all express in no uncertain terms the full support of my party and myself for any or all measures which are intended for the alleviation of the sufferings of the backward classes and the backward castes in our country. Anything which the Government proposes to do or any other person wishes to do to help the backward classes is most welcome and will receive our total support. Now this support is extended to this specific strategy of reservations also. So we are not opposed to this and we fully support both the concept of giving preferential treatment to help our backward communities and the concept of reservations for them. But I am opposing the Ordinance for the following reasons:-

One is, this Government is trying to subvert the parliamentary democracy into one of democracy by ordinances. You may recall in the last Session I had opposed some of the Ordinances because as many as eight Ordinances were introduced during the last Session and this Session as many as 24 Ordinances were put before us. We should run the legislative process through the floor of this House and not by issuing Ordinances one after the other. So, I am opposed to the politics of laws by Ordinances.

Sir, we are also opposed to the politics of lip sympathy, of shedding crocodile tears, of creating vote banks, of raising some slogans. The whole country is opposed to the politics of creating vote banks by raising slogans. While we want to support this, we want to decry their efforts in that instead of doing substantial things to uplift the unfortunate sections of our Indian society on the strength of their backwardness, some people are trying to play their politics. We are opposed to that. Sir, we are also committed to a cohesive, unified and casteless society and we must put in all our efforts. While

trying to bring about an improvement in the quality of their life, we should also aim at building up of the principles which are enshrined in the Directive Principles in our Constitution.

Sir, my opposition is because I see a lack of sincerity on the part of the Government and they have not done enough for the backward classes. I see that either they do nothing or if they do something, they don't take it to its logical conclusion and, in the process, they leave many loopholes so much so that things are not implemented.

The National Commission which is proposed now is not the first Commission. The first Commission was set up and it was called the Kaka Kalekar Commission. It was appointed in 1950 and its Report came in five years. The Congress Government, which was there in power for a long time, did nothing till we came with the Mandal Commission. Then the Mandal Commission submitted its Report and it became a subject of public controversy because it was found that there were inconsistencies in the Report. It was because of that that it was challenged in the Supreme Court and the Supreme Court as said that the criteria adopted by Mr. Mandal were not scientific and there were flaws in those criteria. While setting up the third Commission, we should also consider the fact that, after all, the first two Commissions failed and why they failed. In the first two Commissions, there was a lack of thoroughness, there was a lack of scientific attempt, leaving many loopholes, and there was a lack of specificity and there was a lack of criteria. It is because of this lack of criteria that any number of people got included and any number of people got left out.

Sir, the Kalekar Commission had listed 2,399 castes and Mandalji recommended 3,743 castes and he had also said that this list was not exhaustive. One of the things which has held up these efforts is the lack of clear-cut criteria which would determine what constituted a

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backward caste or backward class and what would not. Now, who is to determine these criteria is the moot question. If you allow these criteria to be decided on the basis of arbitrariness of one individual or a small committee, then that will again go wrong and it will again be challenged in the Supreme Court and like this time, when the Supreme Court came with the pretext of "creamy layer", it will come up with some other pretext. So why can't we decide all these criteria once and for all? I want to say that it is not the prejudice and preference of any individual or some individuals or a commission that should define the criteria for backwardness. These are all issues which Parliament alone, as the representative of the entire nation, has the right to decide. These criteria must be debated in Parliament, they should be defined and then incorporated in the proposed National Commission for Backward Classes Bill because only clear-cut directives will give the scope of functions and powers and the terms of reference. I am sorry to say that the proposed Commission that we are discussing and which I am disapproving of and also the Bill which the honourable Minister, Kesriji, has brought forward, have no specific reference and have no criteria and my fear is that in the absence of proper criteria, this again may be bogged down. The criteria have to be decided. I think the Report of Justice Prasad Committee was laid on the Table of the House by the Minister only yesterday. Sir, going through this Report, we find that it only gives the criteria of exclusion as to what sections of people out of the Backward Classes will not be included. Only the criteria of exclusion are enlisted in this Justice Prasad Committee Report. I am debating and I am asking: Where are the criteria for inclusion? There are no criteria given as to who will be included in these Backward Classes. You are saying that certain castes will be included. I am aware that the last Census conducted in this country which had the caste as basis was conducted in 1931. A lot has changed since

1931. Sir, 45 years have passed since independence, four Census operations were held during this period. If they are sincere about this reservation concept, if this is the basis for deciding the jobs, at the time of Census why did this Government not include that criterion? You have no data, you have no scientific surveys, and you have nothing substantial on the basis of which you can decide this important issue. And when you give this important function to a small committee, they will include the thing on the basis of arbitrariness. And when these criteria will be challenged in the courts, I am afraid, the same retrograde way, the same cycle will get into and nothing substantial will happen. Sir, that is the reasons why I am challenging and disapproving this, and I do not find sincerity in the Government's efforts. This report of Justice Prasad says that they are aware that many people who do not belong to the Backward Classes will not into....

THE MINISTER OF WELFARE (SHRI SITARAM KESRI): Sir, I would like to know whether he is talking on the Bill or he is seeking clarification on my previous statement.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Minister, you were not here and your Junior Minister was here and you are supposed to be told by him. Now, we have taken up the Bill and the Statutory Resolution together. And Mr. Jain is moving the Statutory Resolution.

SHRI SITARAM KESRI: I wanted to know that because he is mentioning about the Expert Committee's Report. I am only asking. I have no objection.

DR. JINENDRA KUMAR JAIN: If the hon. Minister had been here in time, he would not have wasted two minutes of my time.

SHRI SITARAM KESRI: I understand that you have to move the Re-

solution. But since you are talking about this Committee's Report, and since I had already made a statement yesterday and it was decided that clarifications would be sought from me today, I was asking him whether you are seeking clarifications or speaking on the Resolution.

SHRI SATYA PRAKASH MALA-VIYA (Uttar Pradesh): Sir, you have already told the Minister that he is speaking on the Bill and the Resolution. Why should he again and again ask?

THE VICE-CHAIRMAN (SHRI MD. SALIM): There is no confusion.

SHRI N. E. BALARAM (Kerala): Sir, the Committee's Report will become a part of the Bill. Both are together. He can reply the same. Whatever he has got in his mind, he can say. Let there be a debate on it.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Dr. Jain, please continue.

DR. JINENDRA KUMAR JAIN: Sir, this Report admits that many undeserving people do get certificates. So, even if they do not belong to the Backward Classes, they can get the certificates. So, people who are influential can also get certificates. And, Sir, the strategy that they have adopted to help the educationally and socially backward people is to publish this in the form of some Government records. Sir, is it not matter of public knowledge that the levels of illiteracy of those sections whom we are trying to help are so high—and how much access do they have to the Government records?—that this kind of thing will not help them? Sir, I believe, this remedy will become more serious than the disease. Sir, the publication of non-deserving people in the Government records would give these people authenticity so that they can quote those Government records to have the benefits which do not come to them. Sir, as I said, I have a feeling that the entire ethos of this country today wants to help anybody including the Government and to do something substantial for the backward castes. But how do we do that

when this Government is not sincere about doing it and it leaves behind many loopholes? What I want to say is, this reservation business itself is only one of the steps which should be regulated and should be aimed at improving or ameliorating the living conditions of the backward people. After all, how many government jobs are there? They are very few, and with your new economic policy and programme, this sector of government jobs is shrinking still further. These are very few jobs and there are more than three thousand castes. What are we offering to them? This is just a slogan. So my point is, the Government and all of us should not forget that this Bill for reservations is not going to be enough for our people and we need to do something more for them. We have to think of a strategy in addition to this measure which could bring real improvement for them. And while making our strategy, we should keep in mind what Swami Vivekananda said almost a century ago, and I quote:

"If Brahmins are more inclined towards knowledge because of their collective inheritance, then spend your entire funds on the education of the untouchables and spend nothing on the education of the Brahmins. Help the poor because he alone is in need of all assistance. If the Brahmin is gifted by birth, he will manage to educate himself without any help. If others have been born with lesser gifts, give them complete education according to their inclination. In my opinion, this alone is right and just."

This is what Swami Vivekananda said more than a century ago, much before this kind of vote bank had taken birth in this country.

The soul of this country wants improvement for the backward people but this insincere Government which comes out with deceptions one after another, and tries to trade on the miseries of our unfortunate brethren is what disappoints me, and this is the reason that

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though I support the essence of this Commission, the measures proposed are not adequate and they are full of such possibilities that they will be blocked on the way by judicial processes and litigation. I suggest that the Government should do a more thorough job and spell out the criteria that will determine the inclusion and in the event of no criteria being given, the whole exercise becomes incomplete and meaningless. The criteria to be decided need not be left to a small group or a committee. It has to be decided by having a nationwide debate, and I suggest that Parliament is the right forum to decide the right criteria when all of us will have an opportunity to give our thought to it and offer our suggestions and support to the Government. There has to be a time-bound programme. After all, 45 years is not a small time. What have we done so far?

I would have liked to say many more things but I would like to leave some time for my other colleagues. I thank you for allowing me to speak.

SHRI ASHIS SEN (West Bengal): You allow me to say something in the context of what he said, just for half a minute.

THE VICE-CHAIRMAN (SHRI MD. SALIM): No, later on. Now, the Minister will move the Bill.

कल्याण मंत्री (श्री सीताराम केसरी) :
 उपसभाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ,

“कि अनुसूचित जातियों और अनुसूचित जनजातियों से भिन्न राष्ट्रीय पिछड़ा वर्ग आयोग का गठन करने और उससे संसक्त या उसके आनुषंगिक विषयों का उपबन्ध करने वाले विधेयक पर विचार किया जाए।”

मान्यवर, यह विधेयक समाज के उन वर्गों के कल्याण को ध्यान में रखते हुए निर्मित किया गया है जो सदियों से सामाजिक और शैक्षिक रूप से पिछड़े रहे हैं। यह दिन हमारी सामाजिक

न्याय यात्रा का एक गौरवशाली दिन है और निःसंदेह मेरे लम्बे राजनीतिक जीवन का भी। यह विधेयक सभ्यतामूलक समाज के कल्याण को दिशा में एक महत्वपूर्ण पहल है और मुझे विश्वास है कि हम एक न्याय और स्वस्थ समाज की संरचना में कामयाब होंगे। मैं इस सदन का ध्यान पंडित जवाहर लाल जी के 13 दिसम्बर, 1946 को संविधान सभा में रखे एक प्रस्ताव की ओर आकृष्ट करना चाहता हूँ, जिसमें अन्य बातों के साथ-साथ यह कहा था कि वे ऐसा संविधान बनायेंगे जो अल्पसंख्यकों पिछड़े तथा आदिवासी क्षेत्रों, दलितों और अन्य पिछड़े वर्गों को पर्याप्त सुरक्षा प्रदान करेगा। उन्हीं के शब्दों में, मान्यवर, परन्तु इस समय वर्तमान स्थिति में भी यह वांछनीय है कि हम स्वयं अपने लिए, उनके लिए जो इस सभा की ओर आशा भरी निगाहों से देख रहे हैं, लाखों-लाखों उन देशवासियों के लिए जिनकी निगाहें हम पर हैं, तथा संपूर्ण विश्व के लिए कुछ संकेत देते हैं कि हमारा आशय क्या करने का है, हम क्या करना चाहते हैं और हम कहाँ जा रहे हैं। इस प्रयोजन के लिए मैंने यह प्रस्ताव सदन में रखा है।

यह एक संकल्प है, परन्तु संकल्प से भी अधिक है। यह एक घोषणा-पत्र है। यह हमारा दृढ़ निश्चय है, यह वचन है और यह प्रतिबद्धता है और मैंने आशा है कि हम सभी के लिए समर्पण का आलेख है। मंडल आयोग की रिपोर्ट से पिछड़े वर्गों के पक्ष में आरक्षण की मांग को एक नया बल मिला है तथा राज्य विशेषकर भारत सरकार के अधीन सेवाओं में पिछड़े वर्गों को अप्रत्याप्त प्रतिनिधित्व की समस्या पर ध्यान केन्द्रित हुआ है।

उपसभाध्यक्ष महोदय, आज हमें इस बात से प्रसन्नता है कि पिछड़े वर्गों के पक्ष में सरकारी नौकरियों में आरक्षण अब तक संविधान में उल्लिखित एक धारणा मात्र थी। जहाँ तक केन्द्रीय सरकार की नौकरियों का संबंध है, अब यह वास्तविकता बन गई है इस संदर्भ में उच्चतम न्यायालय का निर्णय एक महत्वपूर्ण और ऐतिहासिक एवं सामाजिक क्रांति का सब से बड़ा उदाहरण

है। इस निर्णय ने पिछड़े वर्गों के लिए सार्वजनिक सेवाओं के द्वार खोल दिए हैं और जिससे इन वर्गों की विकास प्रक्रिया में उचित भागीदारी सुरक्षित करने के अलावा उन्हें देश के शासन में वह भागीदारी मिलेगी। मान्यवर, इससे वे सभी संदेह दूर हो गए हैं जो पिछड़े वर्गों के क्षि में आरक्षण उपलब्ध कराए जाने की अवस्था में उठाए जाते रहे हैं और वे सारे भ्रम भी विलीन हो गए हैं जो कि अनेक उच्च न्यायालयों तथा उच्चतम न्यायालय की विभिन्न पीठों के परस्पर विरोधी निर्णयों के कारण पैदा हो गए थे। हम उच्चतम न्यायालय के समक्ष आरक्षण की अवधारणा के औचित्य के लिए अकादमिक तर्क दे सके और साथ ही अपने इस दृष्टिकोण को भी सफलतापूर्वक साबित कर सके कि अन्य पिछड़े वर्गों के बीच अधिक पात्र वर्गों की वरीयता दिए जाने की आवश्यकता है यह वास्तव में हमारे पिछड़े वर्ग के लोगों के लिए तथा सरकार के लिए एक महान उपलब्धि है।

मान्यवर, आरक्षण की अवधारणा के विरुद्ध एक दलील दी जाती है कि आरक्षण एक बार शुरू करने पर स्थायी बन जाता है और आरक्षण का लाभ उठाने वाले लोग अपना निहित हित विकसित कर देते हैं और यह सुनिश्चित कर देते हैं कि संपन्नता तथा सामाजिक उन्नति का निश्चित स्तर प्राप्त करने पर भी आरक्षण का लाभ प्राप्त करते रहें। आज सदन, के साम जो विधेयक है, उसका उद्देश्य एक स्थायी निकाय स्थापित करने का है, जो अन्य पिछड़े वर्गों की सूचियों में गलत समावेश या समाविष्ट करने संबंधी शिकायतें जांच करेगा। आयोग सिर्फ उन लोगों के अलग करने के लिए जिनका पिछड़ापन समाप्त हो गया है या उन नए वर्गों को शामिल करने यदि वे अनुच्छेद 16/4 के मानदंडों के भीतर पिछड़ों के रूप में वर्गीकृत किए जाने के योग्य हैं।

अन्य पिछड़े वर्गों की सूची के संशोधन के मामले पर समय-समय पर परामर्श किया जाएगा। उच्चतम न्यायालय के निर्देशानुसार मान्यवर, राष्ट्रीय पिछड़ा वर्ग आयोग की सिफारिशों को सामान्यतः सरकार के लिए बाध्यकारी बनाने का प्रावधान हमने विधेयक में रखा है तथापि जहाँ सरकार इसकी

सिफारिशों से सहमत नहीं होगी वहाँ इसके बारे में उसे स्पष्ट कारण बताने होंगे। मान्यवर, आयोग का पर्याप्त अधिकार दिए जायगे ताकि वह अपना काम सुचारू रूप से चला सके। इन सभी शक्तियों का विस्तृत उल्लेख विधेयक के खण्ड-10 में किया गया है। अपने कार्यकलापों में आयोग की स्वायत्तता सुनिश्चित करने के लिए यह व्यवस्था की गई है कि वह अपनी कार्य-विधि स्वयं तैयार करे। उच्चतम न्यायालय के निर्देशों के जरिए आयोग में सरकारी और गैर-सरकारी दोनों क्षेत्रों के विशेषज्ञों को शामिल करने के लिए विधेयक में व्यवस्था की गई है कि इस आयोग में न्यायिक पृष्ठभूमि वाले व्यक्ति, समाज वैज्ञानिकों, प्रशासनिक अनुभव रखनेवाले तथा पिछड़े वर्गों से संबंधित जानकारी रखने वाले व्यक्ति लिए जाएंगे। मान्यवर, आयोग उन सभी मुद्दों पर सरकार को सलाह देगा जो उसके समक्ष रखे जायेंगे। इसके साथ ही आयोग को एक वार्षिक रिपोर्ट देनी होगी। आयोग द्वारा दी गई सलाह के बारे में सरकार द्वारा की गई कार्यवाही के ज्ञापन तथा कोई सलाह स्वीकार न किए जाने के कारणों सहित एक रिपोर्ट संसद के प्रत्येक सदन के समक्ष रखने का प्रावधान इस विधेयक में है। मान्यवर, मुझे आशा है कि इस विधेयक के अधीन स्थापित किए जानेवाला यह आयोग अन्य रूप से उन जातियों और समुदायों को जो संविधान द्वारा निर्धारित मानदण्डों के अनुसार वस्तुतः आरक्षण के पात्र हैं, आरक्षण का लाभ प्राप्त करने में तथा पिछड़ों में जो संपन्न और विकसित हो चुके हैं, उन्हें आरक्षण की कोटि से हटाने में एक प्रभावकारी कदम सिद्ध होगा।

अंत में, मैं एक बार फिर स्पष्ट करना चाहूंगा कि यह विधेयक इस बात का द्योतक व स्पष्ट प्रमाण है कि हमारी पार्टी के मनिफेस्टो में निहित सामाजिक संरचना तथा सोशलिस्ट इंजीनियरिंग की नीति के प्रति हमारी वचनबद्धता है। सामाजिक और शैक्षिक रूप से पिछड़े वर्गों के लिए आरक्षण का निर्णय हमारा कर्म और प्रतिबद्धता है जिसकी ओर पंडित जवाहर लाल नेहरू ने संविधान सभा में इश्वर किया था इन्हीं शब्दों के साथ सदन त आग्रह करेगा कि इस विधेयक पर विचार

The questions were proposed

SHRI RAM JETHMALANI (Karnataka): Sir, I oppose the motion of disapproval moved by my friend Dr. Jain and I fully support the Bill that is before the House. But, Sir, there are a few pertinent observations which I wish to make, which I hope will not fall on deaf ears so far as the Minister is concerned and so far as the Members of the Treasury Benches are concerned.

Sir, today is, in fact, a historic day that so far as this House is concerned we are doing something which is going to have a tremendous impact upon that class of our society which constitutes more than 52 per cent of the population. The Supreme Court has now recognised that this is the section of society which for thousands of years has been condemned to the ghettos of our social life, they have been humiliated, they have been tortured, oppressed, and they have been kept out of the comforts which civilized existence must afford to every sections of the society. And, Sir, when we adopted the policy of reservations, we were not creating a poverty-alleviating programme, but we were creating an institution of historic compensation for historic injustice. So, this whole argument which was being raised for so many years has now been finally debunked. Reservations are a method of giving compensation to those whom you have unfairly and unjustly treated for thousands of years. But, Sir, I happen to be one who knows the conflicts and tensions that have gone on within the ruling party. My friend, Mr. Kesri, is here, to whom I wish to pay a particular and special compliment. I know he has mastered all those tensions, got over all those obstacles and ultimately brought the whole ruling party to his way of thinking. Sir, it must not be forgotten even now that Ministers are temporary. Mr. Sitaram Kesri may no longer be in charge of this Ministry, and somebody else may come who may not have the same commitment as he has.

It must not be forgotten and this is a day of introspection for the Mem-

bers of the ruling party, that judgement after judgement has said that reservation is a constitutional mandate, that it is not a favour but it is an order of that great galaxy that constituted our Constituent Assembly that you must do something for these people whom you have treated harshly and unjustly for thousands of years. It is a matter of shame. It is a matter for which some people must really pay some price.

Today, Sir, in the year 1993 this Bill is being brought. This Bill should have been brought in the year 1951.

What happened during this long period? So many dependes have passed. You had one commission which gave its report in 1955. So subtle and corrupt is the influence of vested interests in the society that that first Backward Classes Commission Report was never even placed before Parliament for its consideration. So subtle and corrupt is the influence of vested interests that the Chairman of that Commission turned hostile, and in his own forwarding letter which he wrote to the Government he said, "I want this Commission report to be rejected," though only a few days before he had himself signed it along with his colleagues. So, Sir, these are the ways of the rich and the powerful and those who have political clout.

Whereas the Chairman of the first Backward Classes Commission might have betrayed the backward classes, what was the Government of the day

doing? From 1953 onwards, 22 years went by. I have examined the records of the Social Welfare Ministry. I have examined the records of the Government of India. I find that no less a person than the late Pt. Jawaharlal Nehru went on record to say that he was against reservations and that the reservations were ultimately dropped in 1964 as one of the attempts of the Central Government's policy. It is the brave State Governments which have been carrying on these programmes and projects of justice to the backward classes, but so far as the Central Government is concerned, under the influence of that great colossus who dominated like a colossus the whole of the

Shri Ram Jethmalani Contd.

Indian political society and also the social society, the backward classes, were totally forgotten. What is worse is that the so-called self-proclaimed leaders of the backward classes throughout this period maintained complete silence. They would go back to their people and betray them and tell them, "The ruling party is doing its best for you," but they know perfectly well that the ruling party was not prepared to do what the Constitution-makers had ordained to be done. This history of gross betrayal of the backward classes by their own leaders, must be borne in mind today, a day which, I say, is a day of introspection.

It is not a matter without significance that the Mandal Commission was appointed in 1979 when this ruling party was not in power. The Commission made its report in 1980 by which time, of course, the Morarji Government had gone. I am sure, my friend, Sitaramji, must have tried to find an answer to what happened for the next one whole decade, from 1980 to 1990. The Mandal Commission Report was gathering dust in the Government's Archives. People at that time were talking about this great Report, its non-implementation and the betrayal of the backward classes.

Foreign scholars like Mark
4.00 p.m. Jalantor, came to this country and examined this problem. They brought it to the notice of the people of this country in books written by them to show as to what the gross betrayal of the backward classes was and what kind of jettisoning of the Constitution had taken place during this one decade.

Sir, I must compliment Mr. V. P. Singh that he resurrected this Report. It may be that he did it for some political reasons, it may be that while he was a Congressman and in bad company, he never thought of the Mandal Commission's Report, but Sir, sometimes you do a good thing out of a bad motive.

One thing must at least be said that when he got out of the clutches of these gentlemen on that side, who had decided to bury the backward classes along with the Mandal Commission's Report, at least V.P. Singh rose to the stature which he was capable of and resurrected this document and gave it a statutory form and threatened to enforce it. But, Sir...

श्री रजनी रंजन साहू : (बिहार) :
देवी लाल को बधाई दीजिए।

श्री संघ प्रिय गौतम : (उत्तर प्रदेश) :
करे भई, अच्छी बात है—कोई करे, लागू
कैसे ही करे।

श्री राम जेठमलानी : कुछ सुनो, कुछ
गौर करो और कुछ उसके लिए प्रायश्चित्त
करो।

So, Sir, in 1990, the Janata Dal brought this into force.

Sir, I have been a personal witness of the vacillation of the ruling party and its legal advisers between 1990 and 1992, when the matter came to be argued before the Supreme Court.

Sir, this is a tribute, which I want to pay to Kesriji, that Kesriji mastered all those internal obstacles and ultimately put even his legal advisers on a correct footing, because even the legal advisers were vacillating for the first two years.

Again, I hope Kesriji will not deny this that if the Mandal Commission's Report has ultimately survived the judicial onslaught, it has done so because of the excellent work done by the Government of Tamil Nadu and the Government of Bihar and those who represented these two Governments. I do not wish to say anything more about the performance of the lawyers of the Central Government, but I will leave it unpaid and I hope some day Kesriji will at least have a word of appreciation for those who have made this Report survive the greatest galaxy of lawyers which the vested interest on the other side could secure.

[श्री जेठ मलानी]

So Sir, the Report is now accepted for its principles. This is why I do not support my friend, Dr. Jain's Resolution of disapproval, because he proceeds upon a misconception of what the Mandal Commission's Report is. He said: You have appointed a Commission for the purpose of excluding the creamy layer, but what is the criterion of inclusion? To that the answer is very simple. The criteria for inclusion were laid down by the Mandal Commission's Report. Those criteria have now been accepted despite a judicial challenge to the contrary, as good. So, the principles of exclusion are in the Mandal Commission's Report. But the Supreme Court said that they were accepting the whole of the Mandal Commission's Report, but the creamy layer must be excluded. So, what this new Report that you find, which has been tabled...

DR. JINENDRA KUMAR JAIN: Mr. Jethmalani, will you yield for a moment?

SHRI RAM JETHMALANI: Certainly, I would.

DR. JINENDRA KUMAR JAIN: Sir, I would like to be corrected, because Mr. Jethmalani argued this case in the Supreme Court also. Is it not true that the Supreme Court observed that the criteria adopted by the Mandal Commission were unscientific and flawed?

SHRI RAM JETHMALANI: Thank you for asking me. No. The Mandal Commission's criteria have been fully accepted, except on one point. The Supreme Court said that it is better that the creamy layer must be skimmed off. The Central Government was directed to appoint a Commission or at least find out the criteria within four months. That has already been done by this document. Sir, I have studied this document during the short time that I had. I got possession of this document only yesterday. Probably it was tabled

document as far as it goes. Within the short time that they had at their disposal they have done a fairly good job. I compliment even these three or four gentlemen who have put a lot of endeavours. But, Sir, there are one or two objectionable features in the criteria which have been laid down for the creamy layers. However, they are not a matter of such significance, which should make me either dissent from the Report or probably induce any court to disapprove of them. These are good. With one or two defects in the name, which will soon be removed, this is a good working document. Sir I heartily endorse it.

But, Sir, so far as the Bill is concerned, there is something wrong with the Bill. In the Bill you have created a Commission. All other clauses are purely machinery. The most important and the only important clause is clause 9. In clause 9 you have sub-clause (2) The first part is all right. The second part is, "The advice of the Commission shall ordinarily be binding upon the Central Government." Now, it is true that the advice of the Commission will only be ordinarily binding. The Supreme Court itself has said so. But this clause omits the other part of the Supreme Court's advice and direction and that Supreme Court's advice and direction is in recommendation 13 at page 769 of the judgement which I wish to read to the hon. Minister so that he should, in due course, see to it that this part of the direction is complied with by adding words in sub-clause (2). The Supreme Court said, "which advice shall ordinarily be binding upon the Government." The next sentence says, "Where, however, the Government does not accept the advice, it must record its reasons therefore". I want to second part of the Supreme Court's direction to be incorporated in clause 2 because...

SHRI H. HANUMANTHAPPA (Karnataka): He has already said about it in his introductory remarks.

SHRI RAM JETHMALANI: You must impose a statutory obligation on only day before or so. Sir, it is a good

your Government and future Governments that when you do not accept the advice of these Commissions, you shall have to record your reasons so that we know whether the work has been done for good reasons or for bad reasons.

Sir, with this small amendment to the Bill, I support it wholeheartedly. But there has already been a delay of 45 years in doing justice to the backward classes. You have now laid down the criteria. But laying down the criteria is only the first step in a more complex process. The more complex process is the application of this criteria. When are you going to do that? Kesriji, are you in a position to extend an assurance to this House that just as you have finished the task of prescribing the criteria, you will finish the task of application of this criteria within the next three months? Within the next three months, please identify...

SHRI SITARAM KESRI: Even before that.

SHRI RAM JETHMALANI: I will be proud of you, more proud of you than I am already today. If you do that task within the next two months or at least less than three months, identify the 'creamy layer' and skim it off. Then I want the first batch of backward classes to be appointed to class one services of the Government of India as a result of the policy of reservation. Mr. Kesriji, when you have done that, that will be the day of the greatest glory in your life, that will be the greatest glory of the spiritual satisfaction to all of us. It will be of great satisfaction to those who have sworn loyalty to the Constitution because the Constitution does not mean that part of the Constitution which you approve of and jettison the rest which you don't like. When the Constitutional mandate is obeyed, then, the soul of Gandhiji would have been satisfied, then, the soul of the great Members of the Constituent Assembly would have been satisfied. I am looking forward to the day—while you are still a Minister—when this task will be done. So with this I extend to you my fullest possible support. Thank you.

श्री रजनी रंजन साहू : उपसभाध्यक्ष महोदय, राष्ट्रपति द्वारा स्वीकृत नेशनल कमिशन फार बैकवर्ड क्लासेज आर्डिनेंस, 93 को आज विधेयक का रूप दिया जा रहा है, इसका मैं समर्थन करता हूँ। साथ ही मैं अपने को पहली बार इस सदन में जेठमलानी साहब के साथ सम्बद्ध करता हूँ जिन्होंने आज तहे दिल से हमारी सरकार के मंत्री श्री सीताराम केसरी जी की प्रशंसा की है और श्री उनकी राजनीतिक इच्छा... (अव्यवधान) की सराहना की है।

श्री राम जेठमलानी : बावजूद इसके कि मेरे को माली दिया था, जब मैं यहाँ शुरू में आया था।

डा. जियोन्ड कुमार बैन : देर आयद दुस्त आयद।

श्री रजनी रंजन साहू : इनकी प्रबल राजनीतिक इच्छा का यह फल है कि आज इस विधेयक पर हम विचार-विमर्श कर रहे हैं लेकिन यह एक अजीब विडंबना है कि 52 परसेंट के हक के लिए आज इस सदन में आर्डिनेंस को विधेयक का रूप दिया जा रहा है जो पिछले दिनों काफी कंट्रोवर्शियल इश्यू रहा है। जिस देश में पिछड़े वर्ग की बहुतायत हो, उसके हक के लिए तो विधेयक लाया जा रहा है और उसको नीकरी देने से लेकर शासन में हिस्सेदारी देने की बात की जा रही है पर जो साइनेचरिटी है वे मजे में हैं। दरअसल बनना तो उनके हक के लिए कमिशन चाहिए था। खैर लेकिन देर आयद दुस्त आयद। कसजोर वर्ग के हक की कल्पना हमारे संविधान निर्माताओं ने की थी, हमारे नेताओं ने आजादी के पूर्व की थी, उसकी एक रूपरेखा आज इस सदन के समक्ष रखी गई है और उम्मीद की जाती है कि आने वाले दिनों में इसके अनुरूप कार्यक्रम इस देश में और हमारी पार्टी द्वारा नरसिंह राव जी के नेतृत्व में चलाया जाएगा।

इसकी आवश्यकता क्यों पड़ी, इसके विवेचन में न जाकर मैं इतना जरूर कह सकता हूँ कि कांग्रेस पार्टी और खासकर आजादी के पूर्व के इतिहास को, आजादी की लड़ाई के समय से अगर देखा जाए

तो यह पागे कि गरीबों को उठाने की प्रबल इच्छा हमारे नेताओं के बीच में थी। जो पिछड़े हैं, जो गरीब हैं, जिनकी मानसिकता कमजोर है, उनके लिए कुछ किया जाए। गांधीजी इसी मुद्दे को लेकर आजादी की लड़ाई में आगे बढ़े थे। आजादी के बाद 1953 में वैकवर्ड क्लास कमिशन बनाया गया था। 1953 से कांग्रेस पार्टी की नीति रही है कि पिछड़ा वर्ग, जिसकी अवहेलना होती रही है, अंग्रेजों के जमाने में, सैकड़ों वर्षों की गुलामी के दरम्यान या उसके पूर्व भी जब कि राजा-महाराजाओं का राज इस देश में था। आजादी मिलने के बाद तत्काल 1953 में इस बात की कल्पना की गई और एक कमिशन बनाया गया। बहुत सी बातों को इस आयोग के सिफारिश को देश के समक्ष रखा गया जैसे पिछड़े वर्ग की उन्नति, भूमि सुधार, गांव की आर्थिक उन्नति, लैंड रिफॉर्म, कुटीर उद्योग, रूरल वाटर सप्लाई, तो तमाम बातें उस कमिशन में सिफारिश की गई।

महोदय, नौकरी में आरक्षण के मामले में हो सकता है कि कुछ असहमति हुई हो लेकिन जवाहरलाल जी के नेतृत्व में यह काम आगे बढ़ता रहा और मंडल कमिशन की स्थापना 1978 में की गई जिसकी रिपोर्ट 1980 में आई, इस बीच हमारे माननीय साथी जेठमलानी जी ने कहा कि ये अलमारियों में गर्द खा रही थी। अंग्रेजी में उन्होंने इसको कहा और यह रिपोर्ट पड़ी हुई थी लेकिन क्यों पड़ी हुई थी इसके बारे में उन्हें जानकारी प्राप्त करनी चाहिए थी। इसकी चर्चा हमारी पार्टी में हुआ करती थी।

श्री संघ प्रिय गौतम : इसका कारण था इच्छा शक्ति का अभाव... (व्यवधान)

श्री रजनी रंजन साहू : मैं बता रहा हूँ। इतनी बड़ी-बड़ी समस्याएँ देश के सामने थीं। 1990 के बाद तीन साल में जो हुआ वह आपके सामने है। 1980 के बाद आपको मैं याद दिलाता चाहता हूँ कि 1980 में जब इंदिरा गांधी आसने में आई थी तो

उस समय अनेकों समस्याएँ देश के सामने थीं। आप गौर से देखें तो पता लगेगा कि पंजाब की समस्या, असम की समस्या और कई समस्याएँ देश के सामने खड़ी थीं... (व्यवधान)

श्री संघ प्रिय गौतम : इसका क्या संबंध है पिछड़ा वर्ग आयोग से, आप आर्डर जारी करते....

उपसभाध्यक्ष (श्री मोहम्मद सलीम) : गौतम जी, आप अपनी बारी में अपनी बात कहियेगा... जब आपकी बारी आयेंगी तब बोलियेगा... (व्यवधान)

श्री रजनी रंजन साहू : उन समस्याओं का समाधान देश को एक रखने के लिये करना जरूरी थी। 1977 के बाद 1979 में देश की आर्थिक स्थिति इतनी खराब थी जिसको सुधारने में उन्होंने समय लगाया। इसके बाद इस पर विचार विमर्श होता रहा और 1980 से लेकर जो राजनीतिक उथल-पुथल होता रहा उसको आप देख ही रहे हैं। आपने काम करने का मौका कहाँ दिया? कभी काम करने का मौका दिया होता तो बात आगे बढ़ती। वी०पी० सिंह का शासन आया और उनके शासन काल में जब विषाक्त वातावरण होता चला गया और जब उन्होंने देखा कि उनकी भी गद्दी जाने वाली है और जब देवीलाल की रैली सामने आई तो उनको अस्मारी से इसे निकालने का ख्याल आया अन्यथा इसका ख्याल भी नहीं आया होता।

श्री संघ प्रिय गौतम : आपकी भी तो गद्दी कई बार चली गई थी, आप को क्यों नहीं ध्यान आया... (व्यवधान)

SHRI GOPAL SINH G. SOLANKI (Gujarat): This Commission was neither constituted by you merit is the creation of the Congress party.

श्री रजनी रंजन साहू : आपकी पार्टी ने क्या किया, वह आप को बतायेंगे

आगे चलकर । अगर कहियेगा ती उस पर भी बताऊंगा... (व्यवधान) जिस तरीके से नंगा नाच आपने करवाया, वी०पी० सिंह ने मंडल कमिशन का एनाउंसमेंट किया, उसके बाद वह सारा देश जानता है । यह मत कहिये, आपने क्या कार्यवाही की इस देश में, विशेषकर हमारे प्रांत में, वह मैं बताऊंगा... (व्यवधान)

श्री अनंतराय देवशंकर दवे (गुजरात) :
जो हुआ उसे तो स्वीकार लीजिये...
(व्यवधान)

[उपसभाध्यक्ष (संयद सिन्हे रज़ी) पीठासीन हुए]

श्री रजनी रंजन साहू : आज तो हम ही ने किया । आप उन परिस्थितियों को नहीं देख रहे हैं जिनमें यह नहीं हो सका । लेकिन किया तो आखिरकार इस सरकार ने आपकी सरकार ने तो नहीं किया । उत्तर प्रदेश में आपकी सरकार थी तो आपने क्या किया ? हमारे प्रदेश में मुंगेरी लाल कमिशन बनाया गया जब कर्पूरी ठाकुर के पहले कांग्रेस की सरकार थी । प्रदेश सरकार ने सारी समस्याओं का समाधान किया जो आज यहां हो रहा है । मुंगेरी लाल कमिशन बहाल हुआ था । 1967 में जब एस० वी०डी० सरकार में आप डिस्टेदार थे तो उस समय भी आपने कुछ नहीं किया आप अपनी आत्मा को देखिये कि आपने क्या किया । लेकिन यह हमारी इच्छा रही है । हमारे मैनिफेस्टो में यह बात रही है और हमेशा से इसको हम आगे बढ़ाने की कोशिश करते रहे हैं । फल-स्वरूप हम यहां पर आज इस कमिशन के आर्डिनेंस को बिल का रूप दे रहे हैं । आज जो विधेयक आया है यह ऐतिहासिक विधेयक है । इस विधेयक के पीछे जो बैकग्राउंड था वह मंडल कमिशन की रिपोर्ट में जो खामियां थीं उन सारी खामियों को दूर करना था । मंडल कमिशन की जो रिकमेंडेशन थी वह यह थी :

"So to examine the criteria for finding the socially and educationally backward classes to recommend steps to be

taken for the advancement of the socially and educationally backward classes for citizens, so identified, to examine the desirability, or otherwise, of making provision for reservation for appointment of posts in favour of such backward classes of citizens which are not adequately represented in the public services..."

मंडल कमिशन की जो मुख्य रिकमेंडेशन थीं उनमें जो खामियां थीं उसके लिये सुप्रीम कोर्ट में मामला गया था । सुप्रीम कोर्ट ने जो फैसला दिया है वह फैसला भी ऐतिहासिक फैसला है । उसी फैसले के आधार पर आज यह विधेयक हमारे समक्ष है । इसके मेमोरेडम में है :

"The Supreme Court had also observed that the permanent body must be empowered to examine complaints relating to such matters and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government."

जैसा बताया गया है कि क्लॉज 9 में नहीं है लेकिन इसका मेमोरेडम में उल्लेख है । इसकी बाइंडिंग सरकार के ऊपर है । मैं मंत्री जी को धन्यवाद देना चाहता हूं जिन्होंने निश्चित समय में अपनी इच्छा शक्ति से पिछड़े वर्ग के विकास के लिये सभी बातों का समावेश किया है और जो उलझने आई थीं उन सभी को समाप्त करके आज इस सदन के समक्ष विधेयक रखा है ।

मैं उन सब बातों को दोहराना नहीं चाहता, जो यहां अनेकों बार वही के समय आई हैं । उसमें कुछ खामियां थीं । उन सारी खामियों को दूरकर कर एक पालिटिकल बिल से इस सदन के समक्ष इस विधेयक को रखा है । मैं समझता हूं कि इसमें किसी पालिटिकल पार्टी को एतराज नहीं होना चाहिये । न किसी पालिटिकल पार्टी की ओर से इसमें कोई विरोध होना चाहिए । यह अलग बात है कि कुछ खामियां रहीं, तो इस बिल में उस ओर निर्देश करना चाहिए । जैसा कि मेरा अपना निजी अनुभव है इस देश

में अनेक कमीशन बनाये जाते रहे हैं। कमीशन बनाने के लिये उसका एडवाइस या उसका डायरेक्शन सरकार को जाता रहा है। लेकिन ब्यूरोक्रेट का सैटअप हमारे देश में कुछ ऐसा है, जहाँ पर इसे कटआफ कर दिया जाता है। मैं मंत्री महोदय से निवेदन करना चाहूंगा कि कुछ ऐसे प्रावधान भी होने चाहिये, जहाँ पर ब्यूरोक्रेसी का कब से कम हस्तक्षेप इस बिल के कार्यान्वयन में हो सके। क्योंकि यह बिल ऐसा है, यह विधेयक ऐसा है, जिसमें गरीबी के लिए, पिछड़ों के लिए बहुत दिनों से लम्बित जो उनकी इच्छा थी, जिसकी अवहेलना की जाती रही, उस ओर इसकी निगाह लगी हुई थी। आज सामाजिक न्याय दिलाने की आवश्यकता है और यह विधेयक है जो सामाजिक न्याय दिला सकता है और अपनी राजनैतिक इच्छा शक्ति और सरकार की राजनैतिक इच्छा शक्ति को मदद नजर रखते हुए कि सरकार की राजनैतिक इच्छा के अनुसार मंत्री महोदय ने "समता मूलक" शब्द का इस्तेमाल किया है। इस विधेयक के बारे में, तो मैं चाहूंगा कि कहीं इस बिल से घोषण मुक्त समाज की स्थापना में भी मदद मिलनी चाहिये। घोषण मुक्त समाज की स्थापना की ओर यह विधेयक क्या कर रहा है। इसके ऊपर भी मंत्री महोदय के विचार हम जानना चाहेंगे। यह संकल्प है, एक तरह का घोषणा-पत्र भी कहा जा सकता है। आरक्षण को इससे काफी बल मिलेगा और सार्वजनिक सेवा में हिस्सेदारी के साथ-साथ शासन में भी हिस्सेदारी मिलेगी, ऐसा मेरा अनुमान है। इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ।

SHRI N. E. BALARAM: Mr. Chairman, Sir, today is a very important day, according to me, because now we are debating a very important piece of legislation as my friend Mr. Jethmalani has said. This issue is an issue on which there was a big controversy in the country for the last three or four years. I

don't forget that. But ultimately I understand that there is a consensus on this question. I don't want to disturb that consensus. But I must express my views on this vital question. I heard the speeches from all sides. To us, the Members of Parliament from the southern side of the country—this country has got two or three sides; I am coming from the southern side—this question of reservation is not a new thing. Even before Gandhiji was born, even before the Constituent Assembly was envisaged, even before the formation of the Indian National Congress, we got reservation because we fought for it, our forefathers fought for it. But some people sitting here started from the Constituent Assembly. So many things were spoken. All those were true. I am not underestimating all those things, the institution of Constituent of Assembly, the Supreme Court judgment or the role of Gandhiji. I am not underestimating all these things. But we got reservation long back, at the end of the 19th century from Ganjam to Cape Comorin. We got a Public Service Commission in the 1930s, not now. We got reservation even for backward communities long back, in the 1940s. But as Mr. Jethmalani has pointed out, that sort of justice doesn't help them unfortunately. The Central Government has been functioning here for the last 45 years after independence. They had set up commissions. They were honest. I don't want to question their honesty. But they were not able to do justice to the backward communities. I must put it bluntly, to the Backward Classes, in this country. Sometimes, they never speak the truth. They even avoid the word 'caste'. They are afraid of the word 'caste'. But caste is there in the heart of everybody, even everybody sitting inside the Parliament. But not even one of them admits that. They will never admit that. They say, "We are above caste." That is the reality of the Indian society. It was there for the last minimum 2600 years. But we are not going to the past. So, injustice must be removed. When I was a Congress worker and going round the villages in 1930s, the old people

asked us, "Why do you want to send the Britishers out? What would these upper caste Brahmins and Nairs do when they get the power?" I told them, "No, the power will be in the hands of the people. You will get your right." They told me that I was a young boy and did not know about the Brahmins and Nairs. The Brahmins and Nairs were the landlords, upper castes in our country. They told me that I did not know what they were doing. I promised them, "No, after gaining independence everything will be over, everything will be satisfactory and a solution will be found out." But unfortunately, we could not find the solution. We are trying to find the solution at the Central level only in 1933. Please don't forget that past. We have got a past. But now, we are at a stage where we are almost unanimous on this question. If we make an earnest effort—I underline that point—we can find some solution. But don't mix up the reservations with jobs. I am totally against that. We are destroying the very idea of reservations. The reservation is not for jobs. If anybody says giving the backward classes or the Scheduled Caste and Scheduled Tribes the right of reservations means you are giving them right of jobs, I am totally opposed to that idea. No, reservation is not for jobs. How can you give jobs to all the people in Government offices? I don't think you can do that. There is no job reservation in the private sector. How can you give jobs to all the people through this reservation? It is not that they want reservation because they want jobs. That is not the whole question. The question is, they are not very near to power. They are far away from power. I completely agree with Shri Ram Jethmalani that if Shri Kesri can pass this legislation, he can implement this legislation. By implementing this legislation if he can bring at least 10 backward people on the basis of this reservation as Class I officers in the Central Government, that is what they want. They want to go nearer to power because they were deprived of power for the last so many centuries. It is not that they are demanding reservations for the sake of jobs. On the basis of this understand-

ing I am supporting this Bill, the implementation of this Bill. But as far as this piece of legislation goes I think it is a very simple thing. Its main job is to identify complaints of over-inclusion or under-inclusion of the sections belonging to the backward classes. They have to identify it and report it to the Government. Generally, the Government is bound to implement this. This is the meaning of this piece of legislation. But I would like to say that some more power should be given to this Commission. And it can be given. There is no harm in giving more powers to this Commission, like monitoring the implementation of reservation itself. Why I am saying this is because I was a member of the Scheduled Castes and Scheduled Tribes Committee of the Parliament and while we were going round and examining, we found that in several States through reservation policy was there and in spite of the availability of a large number of candidates, recruitment was not made. It was not made in many, many areas. It was not implemented. So there is a policy of non implementation, I should say. Though there is a legislation, though there are rules and orders, what is being implemented is the non-implementation of the same policy. That is what is going on inside our country. I am not saying everybody is going it. But the tendency is very much there. So check this up. This is what I am saying. This Commission must have powers to monitor. It should have monitoring powers over the implementation of this policy. If possible, this should be included in the legislation. I must say one or two words about the report because the report has some connection with this legislation. On the question of reservation. I am very sorry to say, on three points I differ from the Supreme Court judgement. I am not questioning it. I am only differing. One is, they want to add another criterion for reservation and that is finding out the creamy layer of the backward classes. This Committee was trying to find out what this creamy

[Shri N. E. Balam]

layer is. If one goes through this Committee's report, one can see how difficult the job assigned to them was. They themselves said that it is a very difficult job. But somehow they managed to do it because of the Supreme Court orders. The second point is, on the basis of the Supreme Court judgement, Scheduled Castes and Scheduled Tribes were denied promotion. I do not agree with that. But now what can we do? Nothing can be done. It requires a Constitutional amendment. I do think we can even think about it. But in the immediate future we must think about it. These are not small issues. So I am not going into that question. About the creamy layer, the Committee itself expressed its concern. They have gone into the problem. They have explained it in the report itself. They made some suggestions. They were very much concerned about it. When they saw the total picture they said they got worried about the whole business. I do not want to read the entire paragraph. I will read a portion of it to draw the attention of the House. "Apprehension has been expressed and rightly so." They also had apprehensions, "...that applying the rule of exclusion..." The rule of exclusion is the creamy layer. "...rule of exclusion on grounds of social advancement may be counter-productive in as much as by excluding those who have become capable of facing fierce competition for appointment in the services, what will remain are those of the socially backward who are simply not equipped and ready to face the competition and this will have the effect of many of the reserved seats being left vacant." What is the answer on the part of the Government to this question? If the creamy layer means people who have some financial background, who have some educational facility, who have some cultural background — naturally people with some finances will have cultural background—if this section is excluded, how will you fill up the va-

cancies? Suppose, others cannot compete in this very competitive world—it will be very difficult for the other section to compete—what will happen to the seats which are vacant? Nothing has been said about it. If the reserved seats are to be given to the same communities or the same castes, I mean, if there has been an assurance or a legislation to that effect, I can understand something about it. But nothing has been said so far about it. So, this question still remains to be unanswered. Until this question is answered, the talk about reservation for the backward classes, is bogus, according to me. Therefore, in spite of all these things, I think, the Government must try to find solutions for all these lapses. Otherwise, we will be continuing the old thing again and we will be blamed by the coming generation, that we were not very serious about the entire thing. Thank you, Sir.

SHRI DIPEN GHOSH: Mr. Vice-Chairman, just a minute. In the morning, you were also present, the Minister of State for Parliamentary Affairs assured that the Minister of Home Affairs would make a statement on Calcutta bomb blast and its threat to Delhi, according to the U.S. information. The Deputy Chairman also wanted to know by what time, whether at 5 o'clock or 5.30 p.m., they would make a statement. Now, we are approaching 5 o'clock and the House may not sit beyond 6 o'clock. We have not yet been informed whether at all the Minister of Home Affairs is going to make a statement. None of the two Ministers of State for Parliamentary Affairs is present now. Do you mind taking care to call one of them and let us know what exactly has happened?

श्री संघ प्रिय गोतम : इतना तो बताना चाहिये। बयान दे सकते हैं।

THE VICE-CHAIRMAN (SYED SIBTEY RAZI): As the Parliamentary Affairs Minister is not here, I request one of the Members of the Cabinet to check up the matter regard-

ing the statement on Calcutta bomb blast and let the House know about it. (Interruptions)...

SHRI DIPEN GHOSH: At least one Minister of State for Parliamentary Affairs should have been present here.

THE VICE-CHAIRMAN (SYED SIBTEM RAZI): Yes, I have instructed and the matter is over.

SHRI H. HANUMANTHAPPA (Karnataka): Mr. Vice-Chairman, Sir, I stand here to support the National Commission for Backward Classes Bill brought forward by the Government in pursuance of the Supreme Court order. We have a proverb in Kannada: If anything is difficult to implement or be done, form a committee and entrust it to it... (Interruptions).

SHRI P. UPENDRA (Andhra Pradesh): Why Kannada? Everywhere it is there.

SHRI MENTAY PADMANABHAM (Andhra Pradesh): This is national.

SHRI H. HANUMANTHAPPA: Okay, this is a universal one. It means, if anything cannot be done or has to be postponed, form a committee and entrust it to it. What is the publicity that we are giving to the backward classes today? I am sorry to say these words. This Bill has come only in pursuance of the Supreme Court order only for deletion and inclusion of the names of the communities in the list. Nothing beyond that... (Interruptions).

SHRI SANGH PRIYA GAUTAM: Not for the implementation of the Bill.

THE VICE-CHAIRMAN (SYED SIBTEM RAZI): Please don't interrupt, Mr. Gautam. You have got your chance... (Interruptions) We are short of time please don't interrupt the speaker.

SHRI H. HANUMANTHAPPA: My point is, I request the Government, if at all we want to do something to

the people, let us be fair and honest. If you want to implement the Mandal Commission Report, if you want to have the reservation quota look at the implementation part of it. Sir, we have already a Commission in the name of Scheduled Castes where you have given some powers to them to look into the reservation aspect. In spite of this, in the last 42 years, not even 50 per cent of reservations had been given to the Scheduled Castes and Scheduled Tribes. There was a Parliamentary Committee; there was a Commission for Scheduled Castes; there was a Commission for Scheduled Tribes, etc. to monitor things. Over and above, the Home Ministry was supervising and every party, in or out of power, was, day in and day out, advocating the welfare and amelioration of the Scheduled Caste and Scheduled Tribe people. In spite of all this propaganda, publicity for whatever purpose, even after 45 years of Independence, the net result is not even 50 per cent. That is the situation. Somewhere we speak something of which we are not convinced or which we are not willing to implement. Some hitch will be there. When the implementation part comes, we read between the lines and somehow we will try to postpone it or defer it. I will give you one example. In 1972, an order was issued by the Finance Ministry providing for reservation in promotions and it was sent to its Departments for implementation. Some banks asked the Finance Ministry to clarify as to how to go about it. Somewhere some clerk who could not interpret the order, sought a clarification from the Finance Ministry. That letter slept for nearly eight years in the Finance Ministry without any clarification being given. After eight years, it saw the light of day, some clarification was given, promotions were given subsequently. There are some elements who feel that they are the masters, they are holding the power. I entirely agree with what Mr. Balaram has said. Reservation being given. After eight years, it livelihood. Livelihood they are having.

What is most required is the sharing of power, involvement in the affairs of the State, in the affairs of the Government. That is the urge of the backward classes and not of livelihood. That is how this creamy layer comes. Now we think of only removing the creamy layer and saying that only the other people are entitled for the reservations. The point

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is, have got to do anything with this country, with this State, with the administration, with the governing of this country? That is the feeling which started this demand for reservations. Much is talked about and even the Supreme Court had decided about the creamy layer. Why should this creamy layer be applicable to only this 27 per cent? Why not this creamy layer principle be applicable to the other 51 per cent also? Yesterday, a clarification came stating that if both the father and the mother are IAS or Class I officers, their children will not get the reservation. In the other 51 per cent, even if both the father and mother are IAS officers, their son will be entitled to get into government service. Why has the Supreme Court lost sight of this? Why this creamy layer principle is applicable only for the 27 per cent or the 22 per cent? If Hanumanthappa is a Member of Parliament, his son should not get reservation. Yes, let us accept. Mr. Yashwant Sinha is a former Minister, so his son should not get reservation. Why is this applicable only to this 27 per cent or 22 per cent? Why is this not made applicable to the other 51 per cent which is left over? Why have you not brought that criterion? Why did the Supreme Court not observe this? When the Supreme Court could decide the aspect of reservations in promotions to the members of the Scheduled Castes and Scheduled Tribes which was not referred to it, saying that reservation was only to be at the entry point and not at the promotional point when it could pass an order behind the back of a party without it being consulted, without it being made a party and without even

hearing the party why not the Supreme Court take note of this also? The administration of justice requires us to do justice even to those who were not represented. Here is a class constituting 51 per cent which is left over wherein this creamy layer is not applicable. If this is the situation, in what way are we going to do any benefit to the backward classes? In an upper class, even if both the parents are IAS or Class I officers, their children can enter the government service whereas the children of a backward caste whose parents happen to be both IAS officers or Class I officers do not get this reservation. Why should this creamy layer confine itself to this 27 per cent at this level or at this point of time? If there is a competition, if there are more applicants than the 27 per cent, then this creamy layer formula should be applied. You have not been able to implement the 27 per cent. Please fill up that 27 per cent. When there is more competition, when you require a hundred people and if there are 400 or 500 people who apply, then you apply the "creamy layer" criterion. But, as it is, you have not even given the reservation and it has been started in the reverse direction by the elimination of the "creamy layer" and then it has to be applied and then they have to get the reservation. I know that this will be applied to the Scheduled Castes also. They will come up saying that an IAS officer's son should not get this. First apply this 27 per cent, the 15 per cent and the 7 1/2 per cent and then apply the "creamy layer" criterion. As Mr. Balaram has said, which I have supported, it is involving oneself in the administration, in the governance of the State. First, you give the share.

SHRI SUKOMAL SEN (West Bengal): Mr. Hanumanthappa, you said that they will start applying this to the Scheduled Castes also. But the reservation for the Scheduled Castes is already there in the Constitution. You have said that they will apply this to the Scheduled Castes also, the criterion of "creamy

layer". But this has come only now and it is not in the Constitution. So, the Supreme Court can enter and say that.

SHRI N. E. BALARAM: He is talking about promotions, you see.

SHRI H. HANUMANTHAPPA: This is only about promotion; it is at the level of promotion. My argument is that if the promotion or the facility given by one hand is taken away by another, by judicial pronouncements, then the very confidence that we have in the judicial system will be shaken, particularly when you do not give them an opportunity, do not make them a party. So, the Government, which is implementing this scheme under the Presidential orders and which has time and again stood up for reservation, should come forward with a Constitutional amendment as early as possible, because these doubts should not continue any longer. If you are talking of the amelioration of the conditions of the weaker sections, if you are talking of reservation, you should all be honest and you should exercise your political will and accept it and bring forward a Constitutional amendment in this Session itself. We have already submitted a memorandum to the honourable Prime Minister that this is going to shake the very confidence of the people. If you have not completed the reservation, at least restore confidence.

Sir, there is one more dangerous thing. What has happened because of the recent Supreme Court judgment is that certain categories have been taken away from the purview of reservation. That means that they have no right to enter certain categories of jobs. Even the post of a laboratory attendant will not be given to a Scheduled Caste individual. Scientific institution and laboratories have been excluded. What is this? Scheduled Caste people were fighting because they were considered as untouchables, as outcastes, and now you are saying that they are outcastes for certain

categories of jobs. That means you are saying, "You fellows are not fit to rule, but are fit to be ruled." The Supreme Court has given that judgment implying, "You are only fit to be ruled and not fit to rule." I am sorry to say that the Government has to think over this and set right the injustice that has been done to him. Let us not be carried away because the highest organ of judiciary has pronounced it. It is going to be a law. But it is the duty of the Government and the people in the Government to think over this matter and see how best these things can be remedied. Sir, I would like to make one or two points. Of course, I have all praise for Shri Ram Kesriji, and I join Mr. Ram Jethmalani in extending our compliments. And with his efforts, this could see the light of the day. I also thank all those who are responsible, from this side or that side, for bringing this legislation. But I request the Government that if they are sincere in their efforts, they should come out with further amendments and modifications. No doubt, something has come. We will support the Bill. But, Sir, the very essence of this Bill is Clause (9) which says:

"The Commission shall examine request for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate."

Sir, people never expected that enlisting and delisting is the only duty of this Commission. People are expecting much more from this Commission because we ourselves have propagated that we are forming a National Commission for Backward Classes. So, give them more teeth. Entrust them with the responsibility of implementation also. Let them have powers. Give them civil court powers. If anybody violates, if anybody does not implement it, if anybody has overlooked it, they should be called. These things should also be brought

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under the purview of this Commission so that they call for the persons also. It should also function as a monitoring agency. Even about monitoring in the case of Scheduled Castes and Scheduled Tribes also, we have seen what has happened. Sir, I give you one example of a circular about backlog. Even the implementation portion of it is an eye-wash. Even the interpretation of backlog is in doubt. During the Babasaheb Ambedkar's Centenary, the Government came out with a plan telling that we would fill up all the backlog. Interpretation of backlog itself is still in doubt. DPAR interprets in a different way, the Liaison Officers interpret in a different way. They created confusion. Correspondence of fixing up the backlog number itself has taken months and years. Even today, if two officers are sitting in a meeting and if this question is posed to them, they will come out with different connotation, different calculation and different interpretation about this backlog. So, unless these things are clarified, the very purpose of the Bill will be defeated, the very purpose of the intention of the Government to give the benefits to the Backward Classes will be defeated unless we are very clear about this. So, I request the Government to come out with an amendment to this Clause (9) as early as possible so that the monitoring powers and the implementation powers are also included in it. Of course, one sitting or a retired Judge will be the Chairman of this Commission. Sitaram Kesariji said while introducing the Bill that there will be a sociologist and people from public life and also from public life and also from the judiciary so that it will be a competent Commission. Give them more powers so that what we feel or what we think about helping the Backward Classes will be translated into action. I hope the Government will come forward with these modifications and with further amendments to this. Not only that. The Government should not stop at just creating the Commission and sitting quiet. Sir, I give you one example. Last year, we constituted a

Statutory Commission in the case of Scheduled Castes and Scheduled Tribes. What is it doing? I think, one year is over. The country or the House should expect a report from them. A lot of atrocities have been committed. The Commission has not visited those places, nobody has been hauled up, no notices have been issued. Even the Commission or the Chairman has visited Kumbhar, Tsundur and wherever the atrocities have taken place. The Commission has not gone there, has not verified, and no action has been taken. So, if you just create a Commission and forget about it, if you create a Backward Classes Commission and forget about it, then we are not doing justice to the Classes that are expecting the results from such Commissions. So, I must say that the Government's duty does not end with the mere formation of the Commission and entrusting it with some function. There should be a constant watch and monitoring to see whether the Commission functions properly and whether the intention of the Government is being properly translated into action.

THE VICE-CHAIRMAN (SYED SIBTEY RAZI): Shri Rana Bhadur

RE. GAS LEAKAGE IN KALYAN AND THANE

SHRI JAGDESH DESAI (Maharashtra): Before you call the next speaker, I would like to give this information which I have just received that in Kalyan and Thane, there has been a gas leak and 41 persons have died and many have been injured and their condition is very serious. I would like the Minister to come here and tell us about it. After the Bhopal gas leak tragedy, this thing has happened. We would like to know the action being taken by the Government to prevent such things. I think the Minister should come and give us the facts as to what has really happened so that we know the details. After the Bhopal gas leak, it is very unfortunate that another similar incident has taken place.