

is being scurberd by imposing sponsored banks so that the deposits of the regional banks are diverted for non-rural purposes. I think, policy reversion is required and I insist the Government to seriously consider reversion of the policy in the matter.

श्री वी. हनुमंत राव (आन्ध्र प्रदेश): सर, हिन्दुस्तान में लोग...(व्यवधान)...पूजा करते हैं।...(व्यवधान)...

THE VICE-CHAIRMAN (PROF P. J. KURIEN): What is the matter? No, no; your Zero Hour is not admitted. What are you saying?...(*Interruptions*)...It is not permitted. Please take your seat...(*Interruptions*)...It is not permitted. Please take your seat.

श्री वी. हनुमंत राव: *

THE VICE-CHAIRMAN (PROF P. J. KURIEN): Mr. V. Hanumantha Rao, you are not permitted. Please take your seat...(*Interruptions*)..We are going to have an important discussion. Please take your seat. We will now take up the Short Duration Discussion. Shri Satish Chandra Misra to initiate.

SHORT DURATION DISCUSSION

Issue of reservation for Scheduled Castes and Scheduled Tribes in promotions during services

श्री सतीश चन्द्र मिश्रा (उत्तर प्रदेश): माननीय उपसभाध्यक्ष महोदय, मैं सबसे पहले माननीय सभापति महोदय और आपको इस बात के लिए धन्यवाद देता हूँ कि आपने इस महत्वपूर्ण मुद्दे पर हमारे नोटिस को स्वीकार करते हुए, इसकी urgency को देखते हुए, इस matter को आज take up कर लिया है। इसके साथ-साथ, मैं अपनी पार्टी की प्रेजिडेंट, इस सदन में हमारी पार्टी की नेता, हमारी पार्टी की अध्यक्षा को भी धन्यवाद देना चाहता हूँ कि उन्होंने इस मौके पर, इस महत्वपूर्ण मामले पर हमको बोलने का मौका दिया। इस विषय पर पहले उन्होंने अपनी बात रखी थी और उसके बाद उन्होंने माननीय प्रधान मंत्री जी को, जो कि इस हाउस के लीडर हैं, माननीय लीडर ऑफ दि ओपोजिशन को और सभी दलों के नेताओं को एक व्यक्तिगत विस्तृत पत्र लिख कर, उसमें सारे तथ्यों को लिखते हुए इससे अवगत कराया था और उनसे सहयोग की अपेक्षा की थी। वे तथ्य, जिन्हें हमारी पार्टी की राष्ट्रीय अध्यक्षा ने अपने पत्र में पहले ही रख दिया है, को मैं आपके और सदन के सभी सदस्यों के सामने रखना चाहता हूँ।

मान्यवर, जहां तक article 16(4) of the Constitution है, उसमें reservation के लिए provision दिया गया है। Article 16(4), Constitution में उसके inception से मौजूद है। Constitution, जिसके architect बाबा साहब डा. भीमराव अम्बेडकर थे। उसमें article 16(4) के तहत बहुत सोच-समझ कर इस प्रोविजन को रखा गया था। जो लोग सदियों से इस देश

* Not recorded

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में inequality से suffer कर रहे हैं और जहां social backwardness है, जो कि economic backwardness और educational backwardness को lead करती है, उसके तहत उसको दूर करने के लिए जो गैरबराबरी चल रही थी, उसको बराबर करने के लिए उन्होंने Constitution में article 16(4) को डाला था जिससे कि नौकरियों में रिजर्वेशन मिल सके और यह रिजर्वेशन बैकवॉर्ड और शैड्यूल्ड कॉस्ट, शैड्यूल्ड ट्राइब्स के दोनों लोगों को दिया जा सके। उसके तहत में जब से कांस्टीट्यूशन बना था, तब से अनवरत जो रिजर्वेशन 16(4) में था, appointment का वर्ड जरूर यूज था लेकिन उसके साथ में उसमें प्रमोशन में भी रिजर्वेशन दिया जा रहा था। इन्दिरा साहनी का जजमेंट 16-11-1992 को आया। This judgment was delivered by a Nine-Judge Bench of the Supreme Court. In this judgment, for the first time, Article 16(4) was interpreted that it only includes initial appointments and does not include promotions within the ambit of Article 16(4). Therefore, reservations by way of promotions cannot be given under Article 16(4). But, the Supreme Court also noted in this very judgment that 'all the previous judgments of the Supreme Court have been holding consistently that Article 16(4) includes reservation for promotion and since this was going on, therefore, we now hold that reservation in promotion will be allowed to continue for another five years.' Before this period could come to an end and when reservation in promotions was continuing, the Constitution (Seventy Seventh Amendment) Act was brought and made effective from 17th September, 1995. Through this amendment, a new Article was added to Article 16 and that is (4A). Under this Article 16(4A), it was provided that there will also be reservation in promotion for SC and ST. Before incorporation of this amendment, there was an Act passed in the State of Uttar Pradesh in 1994. It was relating to reservation for SC/ST and Backward Classes. In this, there is Section 3(7). Under this Section, reservation was granted in promotions also. After the Constitution (Seventy-Seventh Amendment) Act, the protection to that Section was automatically given. Thereafter, there were certain litigations. In those litigations, it was said in certain judgments that so far as 16(4A) is concerned, it, no doubt, include promotion by way of reservation, but this accelerated reservation would not bring in accelerated seniority and there will be no consequential seniority into this. Once these interpretations were given by the Supreme Court in Veer Pal Singh Chauhan and Ajit Singh cases, a further amendment was necessitated to the Constitution.

Sir, an amendment was made to Article 4A itself. It was provided therein that when promotion is given, by way of reservation to SC/ST, accelerated seniority would also be given to them. In this manner, after the judgment delivered in Veer Pal Singh Chauhan and Ajit Singh's case, they were done away with it as per the Amendment brought by Parliament. Now, after this, there was another amendment

which became necessary. It was because there were other judgments which came in between. These judgments said that reservation in promotion, if they have not done in the year in question for which vacancies arisen, will lapse. As the things were going on, everyone is trying to find out a method to give equality to SC/ST by providing them reservation so that these categories of persons can also rise and they may have administrative control in their hands at the higher posts. Unless there is administrative control to persons belongs to such castes, it is understood, even if there is political power, ultimately, it has to be exercised by the executive. Therefore, when one takes these considerations into account, all the persons who are at the helm of affairs in various States, appointments by way of promotions were not given in time, which resulted in lapse of posts after one year. So, to overcome this situation, the Constitution was further amended. Through the Constitution (Eighty-First Amendment) Act of 2000, which came into effect on 9-6-2000, another Article was added to 16 and it was 16(4B). And by means of this, it was provided that vacancies which are not filled in a particular year would continue to remain alive and will be carried forward into the next, year and, thereafter, into later years till they are actually filled up, and that this carrying forward of vacancies would not disturb the 50 per cent quota because the 50 per cent quota, even if it is exceeded because of this carrying forward of vacancies, the carried forward vacancies would be filled up because they would be treated as vacancies of the year in which they arose. Now, after this judgement was given, there were certain disputes again and certain matters again went up to the Supreme Court where in and it was said that article 335 of the Constitution which provides that efficiency in work has also to be kept in mind while providing reservation, and you cannot give any relaxation while giving promotion to candidates belonging to the Scheduled Castes and Schedule Tribes in spite of the accelerated reservation permitted under article 16(4)(a). Later, a fresh amendment was brought in to do away with this. The intention was that these particular castes should get their rights enforced through promotion by way of reservation and accelerated seniority. So, a fresh amendment was brought and that is the 82nd amendment which came into effect from 08.09.2000. Under this, a proviso was added, to article 335, which empowered the States, while making the Act or the rules thereunder, that they can give relaxation to the Scheduled Castes and Schedule Tribes with respect to their qualifying marks and also for lowering the standards of evaluation while making appointments by way of promotion. So, this amendment was incorporated through the 82nd amendment to the Constitution. After this, it was thought that the matter was now settled, that all these amendments have taken care of the Indira Sahni judgement and other judgements that came from time to time, and that these people belonging to the Scheduled Castes and Schedule Tribes would

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continue to get their right to promotion enforced through reservation. But, in the meantime, this 77th Amendment was challenged again in various High Courts and the matter went to the Supreme Court. That was the M. Nagaraj case. Ultimately, the judgement came in the M. Nagaraj case, which was given by the five-Judge Bench. This came on 19.10.2006. This judgement upheld the validity of the amendment to article 16(4)(a) and 16(4)(b). The court held, it said that it is not *ultra vires*, but while holding so, the five-Judges Bench, overlooking the nine-Judges Bench's judgement, put certain self-imposed conditions, which are not there in the Constitution. There were three such conditions which had been imposed. They said that the States and the Centre, before making reservation rules, by means of a quantifiable data — the court used this word 'quantifiable data' — will have to ascertain three things: (i) whether they have adequate representation in the service; (ii) their backwardness would be ascertained by quantifiable data; (iii) whether efficiency in administrative work is being affected as per of article 335.

Sir, I would come to these three conditions imposed as a consequence of the M. Nagaraj case after narrating the incident that has led this House to consider and discuss this issue today as account of the judgement that came on 27th April, 2012. The State of Uttar Pradesh had brought in this 1994 Act, about which I had referred earlier that under Section 3(7) there was reservation, hereafter, the UP Government servants' seniority rules of 2002 were also framed. By means of the 2002 rules, which were incorporated on 18.10.2002 in the State of UP when *Sushri* Mayawatiiji was the Chief Minister of Uttar Pradesh, rule 8A was inserted. Rule 8A provided nothing more than what was already contained in the 85th amendment as it only said that as far as reservation in promotions was concerned, consequential seniority would also be available to those who had been promoted by means of reservation in promotion. Sir, about this rule 8A and section 3(7), after the change of Government in Uttar Pradesh, when the Government of another party was in power, on 13th May, 2005, the State of Uttar Pradesh had deleted this rule 8A. But, in 2007, a new Government of BSP, was formed where *Sushri* Mayawatiiji again became the Chief Minister. Immediately thereafter, on 4.9.2007, this rule 8A was re-inserted providing consequential seniority. This was made operative with effect from 16.6.1995 when the 85th Amendment was brought to the Constitution. About this rule 8A as well as section 3(7), which is in operation since 1994, 18 years have passed since under 3(7) promotions have been made; the promotions were continuing since 1950. Section 3(7) simply said that whatever rules and orders continuing for reservation will remain in operation.

Validity of section 3(7) and rule 8A were challenged by means of various writ petitions. One was filed at the Allahabad Bench and another was filed at the Lucknow Bench of the Allahabad High Court. The Allahabad Bench gave its judgment prior in time. The Allahabad Bench, after considering the entire matter held that the provision of section 3(7) of the Act as well as rule 8A were perfectly valid and that they could not be declared *ultra vires*, in view of the provisions as contained in the amended Constitution. After that, the Lucknow Bench gave its decision and the decision from the Lucknow Bench came from the same number of judges as was of the Allahabad Bench, which had two judges' Bench. But, in spite of there being a judgment of the Allahabad Bench which was binding; and if there was a difference, it could have only been referred to the Allahabad High Court's larger Bench. But, the Lucknow Bench of two judges, proceeded further to decide the issue and after hearing the parties, they gave a separate judgment. In that judgment, they declared both, section 3(7) as well as rule 8A as *ultra vires*. These matters came to the Supreme Court. In the Supreme Court, the matters were taken up. The judgment has now come on 27th April, 2012. This judgment, which has come upholds the judgment of the Lucknow Bench. While criticizing the Lucknow Bench that they should not have proceeded to decide the matter by the two judges because two judges had already given a judgment at the Allahabad High Court which was binding on them. After criticizing this, they proceeded to decide the matter on merits and it was a five judge Bench. The Nagaraj Vs. Union of India judgment imposes three conditions before framing the rules under the Act. Sir, there is another judgment in respect of the same matter relating to Rajasthan services, which is a case known as Suraj Bhan Vs. State of Rajasthan, which also came to the Supreme Court. The Supreme Court also has relied upon Nagaraj Vs. Union of India case, and have declared the rule of Rajasthan also as *ultra vires*. Therefore, following these two decisions of Rajasthan as well as Nagaraj Vs. Union of India case the Supreme Court on 27.4.2012 have upheld the Lucknow Bench's decision. Sir, the consequence of this is very grave. The consequence of this is that persons who have-been promoted belonging to the Scheduled Castes and Scheduled Tribes right from 1994 onwards, no protection has been given to them. They are not being protected as the protection was given in Indira Sahani case. In the Indira Sahani case, the 9 judge Bench had given a protection to all those who had already been promoted; their promotions were not affected. But, in the present case, the Supreme Court has not given any protection to all these employees having been promoted for the last 18 years. The enforcement of this judgment will affect not only thousands of employees belonging to the Scheduled Castes and Scheduled Tribes who have been promoted in the State of Uttar Pradesh, but all such employees throughout the country.

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Rajasthan has already been a victim of it. Now, throughout the country, all the employees who have got promotions ever since the 77th Amendment would be how reverted. All the rules and the provisions of the Act with respect to reservation and promotion will be liable to be declared *ultra vires*, and lakhs of these employees would stand reverted to their posts on which they were initially appointed. As such today, it has created a situation which is very grave. The effect of this is that the employees belonging to the Scheduled Castes and Scheduled Tribes not only in the States of U.P. and Rajasthan but also in the whole country are highly agitated. It is not just the existing employees who are going to be affected by it. All those who are likely to get employment in future, those who are students and are still studying and will be getting employment in future, their future rights are also going to be affected by it. So, almost the entire Scheduled Caste and Scheduled Tribe community in the country is affected by it. Therefore, this issue was raised in this House by my party leader Sushri Mayawatiiji with the urgency it deserves. She has also written a letter to all the leaders of the parties, including the hon. Prime Minister and the Leader of the Opposition, and stated the facts and the repercussions which are going to arise out of this.

Now, the question arises as to what is the effect of this judgement and how we can overcome it. This is a question which I am putting to myself also. While considering this question — and which this House also will have to consider — a few things which are very important. There are three pre-conditions which have been imposed by M. Nagraj case. One is about backwardness. It is ascertainment of backwardness by a quantifiable data with respect to Scheduled Castes and Scheduled Tribes. Now, while giving the two-judges' judgement of Rajasthan and U.P. by the Supreme Court, they refer to the five-judges' judgement, and they say that the dictum laid thereon in Nagraj's case is binding through in M. Nagraj's judgement which has been given by the five judges, they have completely overlooked the nine-judges' judgement of Indira Sahni case. Sir, I will take all the three issues one-by-one. The first issue is with respect to ascertainment by way of quantification of the backwardness. Now, the nine judges of the hon. Supreme Court, in Indira Sahni case, had discussed about backwardness socially, economically and educationally, and they had discussed 'socially, economically and educationally backward' words used in article 15, they had also interpreted in article 16. They had also looked article 335, and Articles 341 and 342 under which the President issues an order and notifies as to which castes of this country would be Scheduled Castes and Scheduled Tribes.

Now, after considering all that, the nine-judge bench of the Supreme Court in *Indira Sawhney* case conclusively held that SC/ST are deemed Backward went through the judgement to find out if some judge has dissented on this point whether in the case of Scheduled Castes and Scheduled Tribes, it is yet to be ascertained whether they are backward or not; but I could not find any dissent among the nine judges. Though the final judgement was given by a majority of six, still on this issue, all of them were together, and they have held therein that so far as ascertainment of backwardness is concerned, with respect to Scheduled Castes and Scheduled Tribes, it is indubitable that they are backward once they are notified, under articles 341 and 342, as Scheduled Castes or Scheduled Tribes, and as soon as this exercise is done, they are deemed to be backward the words used are, “they will be deemed to be backward”. This finding has not been at one place, but in several paragraphs of the judgement of the hon. Supreme Court it has been discussed. A few of the paragraphs are 264, 319, 323, 367, 567, 571, 781, 788, 796, 797, 798, etc. In these paragraphs the hon. Supreme Court has considered why the reservation was required. It has also gone into the concept of why there should be reservation for Scheduled Castes and Scheduled Tribes. It has gone into the history of this reservation, and the speeches given by Dr. Baba Saheb Bhimrao Ambedkar in the Constituent Assembly, and thereafter, as the Law Minister also in this Parliament have been quoted in that judgement. Thereafter, they have said it is unfortunate that there are two groups in our country who are inherently unequal, one is, the Scheduled Castes and the Scheduled Tribes and the other is the so-called ‘upper caste’. They are inherently unequal and this we have to admit. Equality of unequals is secured only by treating them unequally and to bring equality in real sense, a positive and affirmative action is required. That is why the necessity of bringing reservation under article 16 and under article 15 has arise. Undisputedly, it is the social backwardness which leads to economic and educational backwardness. This is very important. The Supreme Court into judgment trace the entire history and after tracing the history they have concluded that social backwardness is the basic thing which has to be considered and kept in mind. On the basis of social backwardness only, the economic and educational backwardness comes into play. We all know even today after these many years of promulgation of the Constitution what is happening in our country. We all are seeing it. We cannot have a blind eye to what is happening around us. We have seen what has happened in the State next to Delhi, in Haryana, in Mirchipur. What happened to the Scheduled Castes and the Scheduled Tribe people there, they had to flee and leave their places. What happened during the common wealth games which were held in Delhi one year back to all the Scheduled Caste and the Scheduled Caste people who were living in and

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they were living in these hutments? They were socially backward and they were having their livelihood by living there, but all these hutments were demolished. The special component which was provided under the Special Component Plan, the amount of almost of Rs. 7000 crores earmarked for upliftment of the Scheduled Castes and the Scheduled Tribes was used for the games. When we raised this issue in this House, the Home Minister had given a statement at that time that, 'yes, it is accepted that this has been done and we will return back the money.' Now two years have passed and not even a single *naya* paisa is given back. Even if now the money would have been returned, what about those people who have been dislocated and who were forced to go and live beneath the flyovers and later on thrown away from there also? It was done for cleanliness of Delhi, because we live here. All the Ministers, all the Secretaries, the Judges and parliamentarians are living in Delhi, and it is the Capital as such all of us do not want the Scheduled Castes and the Scheduled Tribe people to live in huts around us. This we have to keep in mind and we have to accept this reality, the stark reality which glares into our eyes.

This discrimination is still continuing till today. What happened in Odisha, where the persons belonging to the Scheduled Caste were not allowed to cross in front of the houses belonging to the upper castes? So, these things have to be kept in mind while finding out why it is so. This is background what the hon. Supreme Court and the nine-Judges Bench had traced out and looked into the social backwardness and then found that the reservation is a must to make them equal, it is not discrimination with respect to equality which is contained in article 14 of the Constitution. It rather interpreted that this is for bringing the equality for which it is necessary to give reservation. Now this reservation is being sought to be done away with by a judgment of five Judges which completely ignores the nine-Judges dictum on the question of backwardness. The Supreme Court had also considered that higher castes, even if economically backward are not socially backward and this makes a vast difference between the two. They even considered this aspect. Every time argument is made that even higher caste people are also poor, therefore, what about their reservation. Earlier reservation was given through an Office Memo by the Government of India of 10 per cent to such persons also who are economically backward. But that was struck down by the Supreme Court. It says that higher castes are not socially backward. Even if economically backward, they traced out that the difference between the two is, and said it may be all right, they are poor, but still socially they are not backward. Whenever they sit in any social gathering, they are given a different place, even being poor. They have a different position because

they are socially forward and they are not socially backward and all this was taken into consideration while bringing this article. The judgment also said that the SCs and the STs will otherwise be never allowed to reach the top, if they are not given reservation. Every effort and power would be used, which is being used even today by those who come into power and who are still against the reservation of the Scheduled Castes and Scheduled Tribes or their upliftment and want to keep them down or push them down. And, for this reason, Dr. Bheem Rao Ambedkar had stated that empowerment of the unrepresented is necessary in service so that administration can look to their problems also. And, this empowerment, he said, is necessary in the administration because political empowerment only will not suffice since even if we achieve political empowerment, still the work is to be done through the administrator. Therefore, unless the people of these particular castes and communities reach at the higher places, through reservation, the desired results cannot be achieved. Therefore, it is necessary that reservation should be provided at that place also. Here, I would like to read a few lines of the Indira Sawhney Case. In paragraph 788, it says, "Further, if one keeps in mind the context in which article 16(4) was enacted, it would be clear that the accent was upon social backwardness. It goes without saying that in the Indian context, social backwardness leads to educational backwardness and both of them, together, lead to poverty, which, in turn, breeds and perpetuates the social and educational backwardness. They feed upon each other, constituting a vicious circle. It is a well-known fact that till Independence the administrative apparatus was manned almost exclusively by the members of the 'upper' castes. This is a fact, which we have to accept. The Scheduled Castes and the Scheduled Tribes and other similar backward social groups, among Muslims and Christians, had practically no entry into the administrative apparatus. It was this imbalance which was sought to be redressed by providing for reservations in favour of such backward classes.

In this sense, Dr. Rajiv Dhawan may be right when he says that the object of Article 16(4) was "empowerment" of the backward classes. The idea was to enable them to share the State power. This is very important to be considered and noted. We are accordingly of the opinion that the backwardness, contemplated by article 16(4), is mainly social backwardness. It would not be correct to say that the backwardness under article 16(4) should be both, social and educational. The Scheduled Castes and the Scheduled Tribes are without a doubt backward for the purposes of the clause, no one has suggested that they should satisfy the test of social and educational backwardness. Now, in the teeth of this, a five-judges judgement comes into effect. A nine-judges bench had discussed it. Not in one but in several judgements, the hon. Supreme Court have also considered article 141.

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And, while considering the article 141 about the orders passed by the Supreme Court, in one of the latest judgements in 2010 case of Small-Scale Industries *versus* Harmeet Singh, volume 3sc, page 330, while interpreting article 141, it was held that the decision of the smaller bench cannot override the decision of the larger bench. But we have that judgement; and, we have the consequence of such judgement, which has resulted in declaring the provisions as *ultra vires*, on the basis of this five-judges judgement, sitting over the nine-judges judgement. And, the two benches of judges, of course, say that they are bound by the five-judges judgement. Therefore, a situation has arisen which will have to be considered urgently and needs to be necessarily looked into by this House and the Parliament to overcome this type of a situation, otherwise it will lead to a very bad situation. Therefore, it has to be considered most urgently by us.

In the end, I will also be making some suggestions with respect to overcoming the situation which has been brought before us. But before that, I would like to mention two other issues. Sir, there are three conditions that have been imposed. The second condition is ascertainment of adequacy of representation in the service. This is the second condition which was imposed in Nagaraj case and also in the State of UP and also in Rajasthan, case relying on the Nagaraj case. This condition is that before making promotion of the Scheduled Castes and the Scheduled Tribes by way of reservation, an ascertainment has to be made whether adequacy of representation in the service is there or not. To do so is, absolutely impossible. This is a condition, which has now been directed to be imposed. Accordingly to it, whenever a promotion is to be made with respect to the Scheduled Castes/Scheduled Tribes then first, an ascertainment is required to be made about the inadequacy of representation in the services. Every State, including the Union Services, on the basis of the population of the Scheduled Castes/Scheduled Tribes in their States, has ascertained and fixed some quota. Ascertainment is made not only in UP but also in every State. All the States in the country, including the Union of India, ascertain the quota which is required to be filled by these persons in all the posts, including appointments at the initial stage or at the time of promotion. In UP, it is 21 per cent for the Scheduled Castes and 2 per cent for the Scheduled Tribes. In some States, it is more for the Scheduled Tribes and less for the Scheduled Castes. It depends on the population or the situation existing in the respective State. So, this ascertainment is done in every State. Therefore, this is sufficient. Once the ascertainment has been made, no further inquiry is required to be made for ascertaining whether adequacy of representation is there or not. If we read article

16(4-A) or read the article 16(4-B), we will find that it is literally making a provision which is not existing in the Constitution, which is inoperative and ineffective. According to me, if the quota under the reservation of SC/ST for promotion which has already been fixed or ascertained for a particular State Service or for the Union of India Service, has not been achieved or reached, then, in that case, it shows that adequate representation in that particular category of post is not there. It is not at all violative of article 16(4-A). Therefore, a clarification by means of an amendment would be required, which I would be suggesting after submitting the third issue.

The third issue is ascertaining efficiency in working while making promotions. The judgement imposes this condition also. It says that whenever you are going to make a promotion, you cannot ignore article 335. Therefore, you have to see that whenever you make a promotion, whether by way of appointment or by way of promotion, of the Scheduled Caste or the Scheduled Tribe, you first have to look into article 335 and see that the efficiency is not being affected. Ascertain this in every promotion. This, again, negates completely not only the provisions of articles 16(4-A) and 16(4-B) but also the article 335. Keeping this situation in mind, only this amendment was made in article 335 on 8th of June, 2000. Through this amendment, a proviso was added. What is that proviso? I will just read that out because that will make it clear. It says, "Provided that nothing in this article shall prevent making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of the State." So, giving relaxation has already been incorporated under article 335. It is under this article that all rules have been framed and it is under this that the Act has also been framed in UP and elsewhere. If, in any individual case, it is not followed and if that individual case goes to the court and is challenged, which if it is found that the qualifying marks or the relaxation which was determined under article 335 has been violated, then, in that individual case alone it can be looked into. But a general condition should not be imposed for ascertainment, before framing the rules, of seniority or of promotion, by reservation rules have already been framed in the State of UP and wherein eligibility conditions have been imposed even for the promotion of the Scheduled Castes and the Scheduled Tribes. Almost in every State and the Union of India, rules are there saying that this is the minimum number for qualifying and this is the requirement of the length of service which you have to put in, which is conditions are common for all; it may be Upper Caste, Scheduled Caste or Backward Class or any other category. Such minimum requirements, which ascertain the requirement of efficiency, are already there. A person who has put in 25 years of service and, only when he becomes eligible for

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promotion. If he is promoted on the basis of reservation and given seniority, it is but still such promotion is violating article 335, though he has already attained efficiency. Therefore, all these above three pre-conditions which have been incorporated in the judgments of Supreme Court, have to be looked into. Parliament has to consider this because we have no other remedy. It is not a case where under article 143, the President can refer the matter to the Supreme Court for answer, because it cannot be done. That is not binding. It is not binding upon the Supreme Court to even answer the reference. Therefore, that is no remedy. What the five judges in M. Nagraj case have held the two judges have refiled on, and they have reiterated in the same. So, we have to find a remedy. We will have to sit together to find a remedy. That is why, our Leader, Sushri Mayawati, has written a detailed letter requesting all the leaders of the Parties to come together, sit together and look into this aspect to overcome the judgements. Whatever I have said just now is contained in the letter that she has sent to every one.

In this regard, I would like to make two suggestions. First in respect to the issue of backwardness. The 5 judge judgment overreaching the judgement of nine judges while holding that in spite of the name being declared under articles 341 and 342, that backwardness is yet to be ascertained. But since that judgement has come; in my view, it becomes necessary that we should amend articles 341 and 342 by adding this after article 342. Here, I would like to make some suggestions, because it is very important to overcome this situation. Articles 341 and 342 provide for declaration of certain castes as 'Scheduled Caste and Scheduled Tribes' after an exercise which is to be done looking at the social, educational and economic backwardness. Therefore, they are, under this Supreme Court judgement, treated as 'backward.' But now, looking at the five judges judgement, article 341 is required to be amended by adding this. It says, "and shall for all the purposes of the Constitution be deemed to be Scheduled Caste in relation to that State or Union Territory or as the case may be." Now, my suggestion is, if we make amendment then this will settle the issue of ascertainment of backwardness.

The second suggestion is with respect to article 16(4A) where they say ascertainment of adquency in service is required to be done. Why do they say that ascertainment is to be done? Article 16(4A) says, "Nothing in this article shall prevent the State from making any provision or reservation in matters of promotion in consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes, which in the opinion of the State are not adequately represented in the services under the State."

This last sentence is being used for saying that ascertainment of adequate representation is necessary. Therefore, my submission is that by ways of amendment, the following sentence should be deleted. '... which in the opinion of the State are not adequately represented in the services under the State' and, in its place, the following sentence should be substituted, 'to the extent of percentage of reservation provided to the Scheduled Castes, Scheduled Tribes in the services of the State'. ...(Interruptions)... Since such percentage have already been fixed by all the States, therefore as soon as this is added, it will take care of this present controversy.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Yes, please.

SHRI SATISH CHANDRA MISRA: Sir, I will take only two minutes more. If this is incorporated into this by deleting this sentence, this issue would be closed for all times to come and it would take away the adverse effect which has been created by Nagraj's case.

So far as the efficiency is concerned, Article 335 is already there and, therefore, it has to be provided that if the rules are framed in accordance with Article 335, then that is sufficient to conclude that efficiency has been determined.

Now, after saying this, I would like to...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Yes, please.

SHRI SATISH CHANDRA MISRA: Sir, there about five minutes left for lunch. I will take that much time only. I will take only two minutes. I am really grateful. हम आपको इस बात के लिए धन्यवाद देते हैं कि आपने हमको पूरा मौका दिया है, लेकिन मैं यह समझता हूँ इस विषय पर मैं जितनी बात रख रहा हूँ, किसी को यह लगता है कि शायद मैंने इस पर ज्यादा समय ले लिया है या चेयर समझती है कि मैंने कुछ ज्यादा समय ले लिया है, तो I am sorry for that. But I felt that for considering and understanding the whole issue, the gravity of the issue, it is necessary that we should look into all this. अंत में, हम लोगों को यह नहीं भूलना चाहिए कि शैड्यूल्ड कास्ट/शैड्यूल्ड ट्राइब्स के लोग किस तरीके से चलकर यहां तक पहुंचे हैं। आज उनको यह अधिकार, जो बाबा साहब डा. भीमराव अम्बेडकर जी ने दिया था, इसको पहले भी इंदिरा साहनी की जजमेंट के बाद छीनने की कोशिश की गई थी, जिसके बाद, इसको लेकर पूरे देश में शैड्यूल्ड कास्ट/शैड्यूल्ड ट्राइब्स के लिए लोग आंदोलित हुए थे और इस आंदोलन को लीड करने का काम मान्यवर श्री कांशी राम जी और सुश्री मायावती जी ने किया था तथा उसके बाद यह अमेंडमेंट आया। लेकिन आज फिर वही सिचुएशन अराइज हो गई है, आज फिर से ऐसी सिचुएशन आई है कि इनके जो राइट्स हैं, उनको फिर से आघात पहुंचाने की, और छीनने की कोशिश की जा रही है। चूंकि हम लोग आज भी अपनी मानसिकता नहीं बदल पा रहे हैं यहां तक कि बैकवर्ड क्लास या शैड्यूल्ड कास्ट के जो मसीहा संत व गुरु लोग हैं, यदि काम उनके नाम पर भी कुछ किया

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जाता है, तो लोग उस पर उंगली उठाते हैं, जबकि इस तरह की उंगली दूसरों पर नहीं उठती है। अगर कोई कार्य को किया जाता है, कोई स्मारक बनाया जाता है या उनके नाम पर कोई जगह बनाई जाती है तो लोग उस पर आघात करने की कोशिश करते हैं और कहते हैं कि इसकी जरूरत नहीं है, जबकि इस तरह की चीजे जो अन्य लोगों के सम्बंध में कभी उंगली नहीं उठाई जाती है। यदि शैड्यूल कास्ट/शैड्यूल ट्राइब्स और बैकवर्ड लोगों के सम्बंध में कोई कार्य किया जाता हो तो सभी लोग विरोध में उठकर खड़े हो जाते हों, इसलिए जहां अभी भी ऐसी मानसिकता विद्यमान हो, उसमें यह ध्यान में रखना जरूरी है कि इस कंडीशन के तहत, जिसमें आज पूरे देश के शैड्यूल कास्ट/शैड्यूल ट्राइब्स के एम्प्लॉइज इन्वॉल्व हैं, वे अफेक्टिड हो रहे हैं। इससे खाली एग्जिस्टिंग एम्प्लॉइज ही अफेक्टिड नहीं हो रहे हैं, बल्कि वे भी अफेक्टिड हो रहे हैं, जो अभी एम्प्लॉएमेंट में नहीं आये हैं और आगे एम्प्लॉएमेंट की उम्मीद रख रहे हैं। यह जो भेदभाव है, उसको ध्यान में रखते हुए ही डा. भीमराव अम्बेडकर ने इससे संबंधित कानून संविधान में बनाने का कार्य किया था। हम लोग यह अच्छी तरह से जानते हैं कि एक लड़का जो सेंट स्टीफन से पढ़ा है और एक लड़का दूसरे किसी ऐसे स्कूल में पढ़ा है, जहां पर कि बिल्डिंग भी नहीं है, वह वहां से पढ़कर कम्पीटीशन में आ रहा है तो दोनों में **Competition** के अन्दर कितनी गैर बराबरी होगी। इस गैर बराबरी को कैसे दूर किया जाए, इसको ध्यान में रखकर ही आर्टिकल 15, आर्टिकल 16(4) और इन सारी चीजों को रखा गया था, कांस्टीट्यूशन का बेसिक स्ट्रक्चर बनाया गया था, जिसके तहत प्रीएम्बल में था। यह **social equality** को अचीव करने के लिए कहा गया है, लेकिन अफसोस की बात है कि आज इस तरह के आदेशों को सुप्रीम कोर्ट के निर्देशों के तहत, इस तरह के जजमेंट्स के तहत खत्म करने की कोशिश हो रही है। इसलिए इस पूरे सदन से, सभी से हमारा यह आग्रह है, जैसा आग्रह उस दिन अपने पक्ष के द्वारा सुश्री मायावती जी ने किया था, इस विषय पर डिस्कशन स्टार्ट किया था, इसकी शीघ्रता को देखते हुए केंद्र सरकार से आग्रह किया था। हम खास तौर से चाहेंगे कि लॉ मिनिस्टर साहब, जो कि श्री नारायणसामी जी हैं, जिनके अंदर यह सारा एम्प्लॉएमेंट का इश्यू आता है, जो पर्सनल के मिनिस्टर हैं, वे आज अपना स्टैंड जरूर रखें।

आज पूरे देश में भयावह स्थिति उत्पन्न हुई है, आज पूरे देश में ज्वलंत स्थिति उत्पन्न है। आज जो लोग शांत हुए हैं, वे उस दिन से शांत हुए हैं, जिस दिन इस सदन में सुश्री मायावती जी ने इस बात को उठाने का कार्य किया, जिसे पूरे देश के शैड्यूल कास्ट्स, शैड्यूल ट्राइब्स के लोगों ने देखा और उसके बाद उनमें यह उम्मीद जगी। चूंकि आपने इसकी **urgency** को देखते हुए इस मैटर को बहुत शीघ्र लेने का भी कार्य किया, इसलिए आज थोड़ी शांति हुई है। इसी को ध्यान में रख कर इस क्लास में यह भावना है कि पार्लियामेंट उनके इन अधिकारों की रक्षा जरूर करेगी, इसी सदन में करेगी और इसी सत्र में करेगी।

इसके साथ ही मैं अपनी बात समाप्त करता हूं और आपको धन्यवाद देता हूं कि आपने मुझे बोलने का पूरा मौका दिया।

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Now, we shall start with the next speaker, Dr. Mungekar, after lunch.

The House is adjourned for one-hour lunch break.

The House then adjourned for lunch at one minute past one of the clock.

The House re-assembled after lunch at one-minute past two of the clock,

[THE VICE-CHAIRMAN (PROF. P.J. KURIEN) in the Chair.]

DR. BHALCHANDRA MUNGEKAR (Nominated): Mr. Vice-Chairman, Sir, I thank you, very much for allowing me to speak on this extremely important national issue. By no way, this issue could be considered as sectarian because the dimensions of this issue are very widespread from the point of view of social justice. I compliment my colleague, Satish Chandraji, for raising this issue, and also you, Sir, for taking up the matter for discussion in the most urgent manner. At the outset, before I come to the particular matter with respect to reservation in promotions, I must make some qualifying statements. Sir, centuries old exploitation, destitution and oppression resulting from the pernicious caste system based on highly iniquitous social order perpetuated due to the sanctity given by the religious scriptures in the country. Sir, there are several countries in the world which are experiencing inequalities. But nowhere is there a country which has experienced, for hundreds of years, not only inequality, but graded inequality and graded hierarchy. This graded inequality and graded hierarchy accompanied by social, economic and educated backwardness of certain sections of the society, which were earlier referred to as 'depressed classes' and various other nomenclatures, were first systematically scheduled in the Government of India Act, 1935 and came to be known, for official purposes and governance purpose of this country, even during the time when the Britishers were ruling, as the 'Scheduled Castes' and the 'Scheduled Tribes'. Sir, the Constitution of the free India, at the nascent stage, has demonstratively committed to the objectives of social, economic and political equality. In fact, the entire essence of the Constitution is summarized in the Preamble. Sir, this definitely made imperative, not only imperative but also obligatory, to incorporate the principle of affirmative action in the Indian Constitution. This is time for me to put on record my sense of gratitude to the Founding Fathers of the Constitution for incorporating this clause, that is, the policy of affirmative action. I also must make a tribute to Dr. Babasaheb Ambedkar, who, throughout his tenure in the Constituent Assembly, took uncompromised stand, time and again, when the issues relating to social justice were being discussed and who came to be known later as the principal architect of the Indian Constitution. Sir, also, I must not fail in putting on record my gratitude to the Indian National Congress as the moving spirit behind framing of the Indian Constitution, since the Indian National Congress was the principal instrument in fighting for political freedom of this country.

[Dr. Balchandra Mungekar]

Sir, this House, and every Member in this House, amply knows that the Constitution of every country in the world is the product of social, economic, cultural, educational and historical conditions. Had it not been the case, probably, Constitutions of all the countries in the world would have been identical. But, that is no more the case. That is why, the Indian Constitution is committed to the principal of 'affirmative action' and its uniqueness lies in the prescribed 'quota' in the fields of legislatures, employment and education for the members of the Scheduled Caste and the Scheduled Tribe communities. This affirmative action is unique to India where prescribed quota is enshrined in the Indian Constitution by law.

Sir, there have been several faults in the implementation of reservation policy since independence. But, I must not overlook the fact that the reservation policy meant for the Scheduled Castes and Scheduled Tribes has largely proved an effective instrument to bridge the gap between the Scheduled Castes and Scheduled Tribes on the one hand; and the general population, on the other. I wonder if the welfare of the members of the Scheduled Caste and the Scheduled Tribe communities would have been left only to the autonomous process of academic development, probably, whatever level of socio-economic and educational development, the members of the Scheduled Caste and the Scheduled Tribe communities are witnessing today after 63 years of independence, would not have certainly been seen. That is why, despite faults in the implementation, and I can mention a number of them, in the States and at the Centre level, there is no denying the fact that reservation policy played an important and catalytic role in achieving the level-playing field and improving the overall socio-economic conditions of the Scheduled Castes and the Scheduled Tribes.

So far as the matter raised by Shri Satish Chandra Misra is concerned, I also carefully read the letter which was written by Sushri Mayawatji to the Members of the Parliament giving the detail records of the entire case.

Sir, till 1992, reservations in direct recruitment and promotions were admissible to the Scheduled Castes and the Scheduled Tribes in the States and the Central Government services only on the basis of article 16(4) of the Indian Constitution which was read in the morning by Shri Satish Chandra Misra, it was only for the first time in the case of Indra Sawhney that a nine-Judge Bench of the hon. Supreme Court held that article 16(4) does not provide for reservation in promotions. After going carefully through article 16(4), it was found partly true. That is why, the Parliament wisely, in its wisdom, amended article 16(4) and added article 16(4)(A) where the reservation in promotions was also included. Now, I don't want to read it

again because the House is totally aware of this. Sir, once again, in the case of Virpal Singh Chauhan, a two-Judge Bench of the hon. Supreme Court in 1995, a three-Judge Bench in 1996 and a five-Judge Bench in 1999 introduced the 'catch-up principle'. Now, the House also knows the 'catch-up principle', but I will take the risk of repeating the same. The Scheduled Castes, and Scheduled Tribes, who have been given promotion in reservation despite the fact that they are junior to the senior members of the General Category people, the general category people, when they will get the promotion in due course, will regain their seniority. This is simply the meaning of 'catch up principle', which totally came in the way of retaining the seniority of the members of the Scheduled Castes and Scheduled Tribes. Sir, the 77th Amendment to the Constitution, which added article 16(4A), and, the 85th Amendment to the Constitution, in order to deal with this particular case, gave effect to the reservation in promotions. Now, once again, 77th and 85th Amendments to the Constitution were challenged by the general category employees, and, the 5-Judge Bench of the Supreme Court, clubbing all the petitions challenging the amendments, in the case of M. Nagaraj, gave a decision that these amendments were constitutionally valid with certain conditions, which were laid down by the hon. Court in its judgement in the same case. I do not want to read the judgement but, Sir, three principles were added, namely, (1) social backwardness, (2) inadequate representation, and, (3) efficiency. Sir, I do not want to take much time of the House because in the morning, Mr. Misra eloquently explained the situation.

Once article 341 and 342 deal with the identification of the Scheduled Castes and the Scheduled Tribes by using certain criteria, allowing the Central and the State Governments to identify certain social sections as belonging to the Scheduled Castes and the Scheduled Tribes, I fail to understand the hon. Supreme Court's added criteria that they need to be proved to be 'socially backward', which is absolutely redundant. With all respect to the hon. Supreme Court, I venture to say that it is absolutely uncalled for so far as the ethics of jurisprudence are concerned. Only after confirmation, certain sections of the society, those who are experiencing social and economic backwardness, and, those who are not coming up to the level of general population, are clubbed in the list of the Scheduled Castes and Scheduled Tribes. We know the distinction between Scheduled Castes and Scheduled Tribes. Scheduled Caste people are those who were having certain element of untouchability, and, Scheduled Tribe people generally are those who suffer from geographical isolation. This is the distinction between the Scheduled Castes and the Scheduled Tribes. The concept of social backwardness is absolutely redundant, and, that is why, I fully endorse the amendments to article 341 and 342 suggested by Shri Satish Chandra Misra that this social backwardness criteria should not

[Dr. Balchandra Mungekar]

absolutely be required because only those categories are included in the Scheduled Castes and the Scheduled Tribes.

Sir, I am a layman. I was concerned with elementary economics but I can further say that Kesavananda Bharati case has given the concept of, what is popularly known as, the Basic Structure of the Constitution. Before this House, and, through this House, before the nation and the entire faculty of the jurisprudence, *I will venture to say that taking into account the basic caste system as the foundational feature of the Indian society, reservation policy enshrined in the Indian Constitution should be considered as part of basic features of the Indian Constitution. Sir, there should not be absolutely any doubt.*

As I mentioned in the beginning, it is not the popular law, Unfortunately, till today, the reservation policy does not have any statutory backing. It is implemented through orders and Government notifications. I will come to this point later on, a point, which the Forum of the Members of the Scheduled Caste and Scheduled Tribe of both the Houses of Parliament is demanding.

Second point is 'inadequate representation'. Inadequate representation is the quantification but here, again, I fail to understand the judgement of the hon. Supreme Court—'Inadequate' in relation to what? First we have to have certain objective standard. For example, 1st class means sixty per cent marks. A person who does not get adequate marks does not get 1st class—what does it mean? It means that a person who does not get sixty per cent marks will not be declared to have passed in 1st class. This inadequate representation and quantifiable data is in relation to what? That is why I fully endorse the suggestion and the amendment suggested by Mr. Misra that article 16(iv)(a) which added 'inadequate representation' in the opinion of the State should be altogether deleted. Conventionally, it has been followed since 1954 that the people belonging to the Scheduled Castes and the Scheduled Tribes are given representation in proportion to their population in education and in employment in the Central Government, the State Governments as well as in Parliament and the State Legislatures. Surprisingly, the Supreme Court has also mentioned it earlier in the Kesavananda Bharati Case. The question is not about accepting the powers of the Union Government or the Parliament to amend the Constitution with respect to reservation, but the question is about the width of the power. The width of the power means to what extent reservation can be provided. And then the criterion of not more than 50 per cent reservation came. Taking into account the overwhelming backwardness of nearly 60, 70, 80 per cent of the population of the country belonging to the Scheduled Castes

and the Scheduled Tribes, OBCs and minority communities, I am personally not in favour of 50 per cent cut off point. But that is not the subject matter of today's discussion. What I am submitting is that conventionally the proportion of population is considered as the basis. Over a period of time, the Central Government and the State Governments are working out the backlogs. On what basis they are working out the backlogs? It means, there is implicit criterion that there will be 15 per cent reservation for Scheduled Castes, seven-and-a-half per cent for Scheduled Tribes and 27 per cent for OBCs, after Mandal Commission. That is why your total reservation is not coming more than 50 per cent. That is why inadequate representation also, according to me, should be done away with.

The last point is about efficiency. Sir, the question is, can efficiency be a quantifiable criterion? In this country, unfortunately, I am forced to say being in the public life in various capacities for the last 20 years, efficiency is associated with one's caste, gender, religion, language, ethnic group and even the place of domicile. This is highly unacceptable in a country which considers itself to be a democratic country. Still, article 335 talks about efficiency. Now, there was not a single political party having overriding prerogative power to make the Constitution. That is why the Indian Constitution is basically a compromise formula. There is no doubt in my mind that it is the first major intervention. *During the last 3000 years of India's known social history, Indian Constitution is the first major intervention to correct the social, economic, political and cultural imbalances prevailing in different sections of the society and coming in the way of making this country a modern nation state.* That is why, from that point of view, Sir, I submit that I fully endorse the amendment suggested by Mr. Misra.

Lastly, when we are talking about implementation of various programmes of the Government, I do not want to take much of your time, but since a fringe of data is available with me, without antagonizing any section of the society, I must mention that the latest report indicates that there is no candidate to represent in the top echelons of administration of Government of India. There is not a single Secretary belonging to the Scheduled Castes against the total number of 88. There is only one Additional Secretary as against the total number of 66 which is 1.52 per cent only. There are only 13 Joint Secretaries belonging to the Scheduled Castes against total number of 249 which is 5.04 per cent only. There are 471 Director-level posts and the Scheduled Castes have representation only of 31, which is 6.20 per cent only. A new report published by a newspaper on 27th March, 2011, states that there is no Scheduled Castes Secretary in the Government of India Departments and only 3 per cent vacancies are filled with those in the top bureaucracy. It is a matter of grave concern and required to be pondered over immediately.

[Dr. Balchandra Mungekar]

Sir, I, once again, endorse the amendments and request the House, as has been suggested by Sushri Mayawatiji and all the Members, that we should immediately bring a comprehensive Reservation Bill. Sir, I will take two-three minutes more.

It was introduced in 2008. According to it, in 46 educational institutions of national excellence, reservation will not be there. I fail to understand who decides 'national excellence, What is the meaning of 'national excellence'? Today, nearly 45 per cent of the teaching posts are vacant in all universities in the country; they are not filled. And we want top-class education! What is the meaning of 'efficiency'? What is the meaning of 'excellence'? Farmers, without having any PhD or any honorary degree, have been doing farming for the last 5,000 years. We consider them as 'unskilled'. This is the nomenclature. A carpenter in this country is considered as 'unskilled'. His skills are ten times better than mine, a person who is not able to sit properly on chair. We met the hon. Prime Minister several times over this issue. The Bill was introduced in Parliament and subsequently withdrawn because of opposition. Its clause 4 says, 'no reservation in 46 nationally excellent institutions.' Sir, I was Vice-Chancellor of the University of Mumbai for five years. I don't want to mention my autobiography. Not a single university in the country could achieve a one hundredth level of Oxford or Cambridge because they are on a different footing. Harvard's total corpus, donation by students and alumni may equivalent to nearly one-fifth of India's total national income. Here, 50 per cent of the schools don't have chalks, dusters, and blackboards. We are having totally dissimilar conditions. The Reservation Policy, which is just operationalised through the orders of the Government and notifications, which can be interpreted at the sweet will of certain sections of society, is not acceptable. My submission is that Parliament should pass a comprehensive legislation, including reservation in promotions. Thank you very much, Sir.

श्री थावर चन्द गहलोत (मध्य प्रदेश): धन्यवाद, उपसभाध्यक्ष महोदय। यह सदन एक अत्यधिक महत्वपूर्ण विषय, उत्तर प्रदेश पॉवर कार्पोरेशन बनाम राजेश कुमार एवं अन्य की अपील संख्या 2608/2011 पर सर्वोच्च न्यायालय के निर्णय दिनांक 27-4-2012 से उत्पन्न स्थिति, पर चर्चा कर रहा है। मैं भी इस पर चर्चा करने के लिए खड़ा हुआ हूँ। निश्चित रूप से यह निर्णय देश के अनुसूचित जाति और जनजाति वर्ग के लाखों कर्मचारियों को प्रभावित करने वाला है और इतना ही नहीं, उनके परिवार से संबंधित करोड़ों ऐसे भी लोग हैं जो इससे प्रभावित होंगे और इस निर्णय के कारण उनको काफी परेशानी होगी। आदरणीय सतीश चन्द्र मिश्रा जी ने इस विषय पर विस्तार से चर्चा की है। यह अल्पकालीन चर्चा है, परन्तु उन्होंने एक घंटे तक अपने विचार व्यक्त करते हुए जो-जो कानूनन प्रोविजन हैं, उन सब की विस्तार से व्याख्या

की है। निश्चित रूप से उनके द्वारा कही गई बात और संवैधानिक प्रावधानों की जो व्याख्या की गई है, वह समर्थन योग्य है। महोदय, मैं भारतीय जनता पार्टी का कार्यकर्ता हूँ और मुझे गर्व है कि हम भारत के संविधान में अनुसूचित जाति व जनजाति से सम्बन्धित प्रावधानों का समर्थन करते हैं और समय-समय पर हमको जब भी अवसर मिला है, हमने संवैधानिक प्रावधानों के संरक्षण का प्रयास भी किया है।

महोदय, संविधान निर्माताओं ने आरक्षण सम्बंधी जो प्रावधान किए हैं, उन पर विस्तार से चर्चा हुई है और समय-समय पर सुप्रीम कोर्ट में उठाए जाने वाले अनेक विषयों पर चर्चा करने के बाद ही आरक्षण सम्बंधी प्रावधान किए गए हैं। परंतु हमारे यहां प्रजातांत्रिक व्यवस्था में विचारों की अभिव्यक्ति का सभी को अधिकार है और माननीय न्यायालय में जाकर भी अपनी बात रखने का अधिकार है। महोदय, समय-समय पर आरक्षण संबंधी विषयों को लेकर अनेक याचिकाएं दायर हुई हैं और उनमें निर्णय भी हुए हैं जिनमें से कुछ निर्णय अनुकूल व कुछ प्रतिकूल भी हुए हैं। महोदय, जैसा कहा गया है, 1992 तक संवैधानिक प्रावधान के अंतर्गत आरक्षण व प्रमोशन में आरक्षण भी मिलता रहा है, किन्तु उसके बाद उच्चतम न्यायालय के निर्णय के कारण इसमें कुछ बाधाएं आयीं और उन बाधाओं को दूर करने के लिए उनमें 5 साल के लिए फिर से वृद्धि की गयी कि वह **as it is** चलता रहेगा। बाद में सन् 1997 में तत्कालीन केन्द्र सरकार ने पांच कार्यालयीन आदेश जारी किए जिनके माध्यम से, जो संवैधानिक प्रावधान थे, उनको यह कहकर कि उच्चतम न्यायालय ने इस-इस प्रकार से निर्णय दिए हैं और माननीय उच्चतम न्यायालय के निर्णय पर अमल करना आवश्यक है, वे आदेश जारी किए गए और उन आदेशों में आरक्षण सम्बंधी प्रावधानों पर रोक लगा दी गयी। महोदय, मैं 1996 से 2009 तक लोक सभा का सदस्य रहा हूँ और मुझे यह कहते हुए खुशी हो रही है कि जब अटल बिहारी वाजपेयी जी देश के प्रधान मंत्री बने, तो संसद के एस.सी./एस.टी. फोरम के सदस्यों ने एक बैठक आहूत की और उसमें उस समय के प्रधान मंत्री आदरणीय अटल बिहारी वाजपेयी जी को आमंत्रित किया। उनको हमने बताया कि ये जो पांच कार्यालयीन आदेश जारी हुए हैं, उनके कारण उन्हें नौकरियों में आरक्षण में जो छूट मिलती है, आवागमन में यात्रा का **relaxation** मिलता है, कम अंकों पर प्रवेश दिया जाता है और कम अंकों पर नौकरी में भी नियुक्ति दी जाती है और प्रमोशन में आरक्षण भी होता है, इन पर रोक लगी हुई है। इसके साथ ही एक निर्णय और था जिसमें सुप्रीम कोर्ट ने 50 प्रतिशत की जो प्रतिबंधित सीमा रखी है, उस पर भी संविधान में संशोधन हुए जिस के फलस्वरूप संविधान में तीन संशोधन किए गए और उन से आरक्षण की सुविधाएं फिर से बहाल हुईं। महोदय, 50 प्रतिशत की सीमा के बारे में यह संशोधन किया गया कि **backlog** की पूर्ति के लिए 50 प्रतिशत की सीमा का बंधन नहीं होगा और प्रमोशन में आरक्षण भी होगा। यह संशोधन पिछली तारीख से लागू किया गया, जिस तारीख को याचिका दायर हुई थी अर्थात् 1995 से यह संशोधन लागू किया गया जबकि वह आदेश 1997 में लागू हुआ था। उनमें दो मामले रोस्टर सम्बंधी थे व एक अन्य विषय था जिन पर पुनर्विचार याचिका दायर की गयी थी और ये विषय न्यायालय में लम्बित थे। उस समय हम इस कारण से उन मुद्दों पर संशोधन नहीं कर पाए थे और ये संशोधन 2002 में लागू हुए। अच्छा होता, उसके बाद वाली सरकार संविधान संशोधन के तुरंत बाद कार्यालयीन आदेश निकालती और उन पर अमल का कार्य प्रारम्भ होता। परन्तु उस पर अमल करने में रुचि नहीं दिखाई गई। इस प्रकार के निर्णय आने के पीछे मैं कारण सोचता हूँ कि आखिर

[श्री थावर चन्द गहलोत]

ऐसे निर्णय क्यों होते हैं? मैं समझता हूँ कि याचिका दायर करने वाला व्यक्ति तो अपना वकील स्वयं करता है, पूरी तैयारी करता है और तैयारी करने के साथ अपने वकील के साथ कोर्ट में हाजिर होता है, परन्तु शासन की ओर से जो प्रतिनिधित्व होना चाहिए, वह ठीक से नहीं होता है। एक प्रमुख कारण तो यह होता है। दूसरा कारण होता है कि अगर कोई रुचि लेने वाला भी होता है, तो वह संवैधानिक प्रावधान के अंतर्गत जो तर्क-वितर्क होने चाहिए, वे तर्क-वितर्क ठीक से नहीं कर पाता है, जिसके कारण इस प्रकार के निर्णय हो जाते हैं।

महोदय, यह जो निर्णय आया है, इस निर्णय में उन्होंने बताया है कि अगर कोई राज्य सरकार आरक्षण संबंधी प्रोविजन करने वाला कोई कानून बनाए, तो वह प्रमुख रूप से तीन बातों का ध्यान रखे। एक तो यह कि यथोचित प्रतिनिधित्व हुआ है कि नहीं। मैं सोचता हूँ कि यह निष्कर्ष अन्यथा लेकर ही निकाला गया होगा, क्योंकि आरक्षण का प्रतिशत तय है, केन्द्रीय स्तर पर भी आरक्षण का प्रतिशत तय है और राज्य स्तर पर भी तय है। राज्यों की नौकरियों में, भिन्न-भिन्न राज्यों में जनसंख्या के आधार पर वहां लोकल सर्विसेस में, उनका प्रतिशत तय होता है और राष्ट्रीय स्तर पर अनुसूचित वर्ग के लिए 15 प्रतिशत आरक्षण तय है और अनुसूचित जनजाति के लोगों के लिए 7.5 प्रतिशत तय है, इस प्रकार से यह 22.5 प्रतिशत होता है। उत्तर प्रदेश की सरकार ने जो किया, वह तो 21 प्रतिशत ही होता है, यानी केन्द्र सरकार के मापदंड के अंतर्गत भी वह विदइन लिमिट है। फिर यह प्रश्न क्यों उठा कि यथोचित प्रतिनिधित्व है कि नहीं है? मैं इस अवसर पर यह भी कहना चाहूंगा कि इसमें फिर पूछा गया कि इनका पिछड़ापन दूर हुआ कि नहीं हुआ या वैसे का वैसे ही है? अब यह प्रश्न भी पूछने की आवश्यकता नहीं होनी चाहिए, क्योंकि संविधान में जो प्रावधान किया गया है, जैसे राजनीतिक आरक्षण तो दस साल के लिए है, दस साल में फिर पुनर्विचार होता है। उसमें अगर लगता है कि एक्सटेंड करना चाहिए, तो करते हैं और अभी तक यह महसूस किया जाता रहा है।...**(व्यवधान)**...

SHRI ISHWAR SINGH (Haryana): I am on a point of order.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): What is the point of order? No point of order.

श्री थावर चन्द गहलोत: परन्तु नौकरियों के आरक्षण में समयावधि की लिमिटेशन नहीं है। जब वह नहीं है, तो इस प्रकार के मुद्दे सामने क्यों लाए जाते हैं? फिर तीसरी बात और है संविधान के अनुच्छेद 335 को ध्यान में रखते हुए आरक्षण और पदोन्नति से प्रशासन की दक्षता प्रभावित तो नहीं होगी? जब भरती के नियम बने हुए हैं और आरक्षण संबंधी प्रतिशत तय है, तो भरती नियम के अंतर्गत अगर कोई नियुक्ति प्राप्त करता है, चूंकि योग्यता के दायरे में आता है तभी तो नियुक्ति प्राप्त करता है, फिर यह संदेह क्यों है? और इस प्रकार के विषयों पर चर्चा क्यों होती है? मैं तो सीधे-सीधे यह कहना चाहता हूँ कि इसमें अनुसूचित जाति और जनजाति वर्ग के पक्ष के हित में ठीक से पैरवी नहीं हुई है और इसी कारण यह अर्थ का अनर्थ निकाल कर के यह निर्णय लिया गया है।

महोदय, मैं प्रमोशन में आरक्षण वाली बात पर कहना चाहूंगा कि हर राज्य में डिपार्टमेंटल प्रमोशन कमेटी होती है और वह जांच-पड़ताल करती है कि यह प्रमोशन की योग्यता के दायरे में आता है या नहीं आता है। उसकी सी.आर. देखी जाती है। उसकी वर्किंग एफिशिएंसी देखी जाती है और यह सब ठीक होने के बाद ही डी.पी.सी. उसको प्रमोशन देने का निर्णय करती है अदरवाइस नहीं करती है। तो फिर यह प्रश्न क्यों उठ गया कि उसकी एफिशिएंसी काम करने की है कि नहीं है और यदि प्रमोट हो गया, तो उसकी प्रशासनिक काम की दक्षता प्रभावित तो नहीं होगी? मैं यहां एक शंका व्यक्त करना चाहता हूं। हम सांसद चुनकर आते हैं, हम में से कोई प्रधान मंत्री बनता है और वह प्रधान मंत्री उन सांसदों में से मंत्रिमंडल का गठन करता है। हम सांसद बन गए, यानी मंत्री बनने की योग्यता के दायरे में आ गए। कोई कोर्ट कल यह कहेगी कि यह सांसद, मंत्री बनने योग्य नहीं है और वह फैसला दे देगी कि यह मंत्री बनने योग्य नहीं है और इसे मंत्री नहीं बना सकते। तो DPC का काम योग्यता देखने का है और वह यही करती है।

मैं यह कहना चाहता हूं कि आज भी इस देश में राज्यों की नौकरियों में और केन्द्र की नौकरियों में अत्याधिक स्थान रिक्त पड़े हैं। उनको भरने की आवश्यकता है, लेकिन उनको भरा नहीं जा रहा है। सही मायनों में निर्णय तो यह होना चाहिए कि रिक्त स्थानों की पूर्ति कर दी जाए। अब रिक्त स्थान होते हुए भी वे कहते हैं कि यथोचित प्रतिनिधित्व यानी **appropriate representation** है या नहीं? इसका सवाल ही नहीं उठता। रिक्त स्थान हैं, अभी और भर्ती करने की आवश्यकता है, लेकिन इस प्रकार के प्रश्न उठाकर अनुसूचित जाति और अनुसूचित जनजाति के लोगों के साथ निश्चित रूप से अन्याय हो रहा है। हम चाहते हैं कि संवैधानिक प्रावधानों के अंतर्गत **Article 16(4-A), Article 16(4-B)** के तहत जो आरक्षण की सुविधा है और **Article 335** के बारे में जो अन्यथा अर्थ लगाया जाता है, उसमें भी अगर ऐसा लगता है कि उसको ठीक करने की आवश्यकता है, तो उसे ठीक करना चाहिए। **NDA** की सरकार ने उसको ठीक करने का काम किया था। हम चाहते हैं कि संवैधानिक प्रावधानों के अंतर्गत जो-जो अधिकार, जो-जो सुविधाएं दी गई हैं, वे जिस उद्देश्य से दी गई हैं, उस उद्देश्य के पूरा होने तक वह निरंतर जारी रखी जाएं। इसके लिए दो-तीन उपाय हो सकते हैं। पहले एक निर्णय 9 जजों की बेंच ने दिया था, अब 5 जजों की बेंच ने एक निर्णय दिया है। अब 5 जजों ने 9 जजों की भावना को अन्यथा लेकर या नजरअंदाज करके कुछ और निर्णय दिया है। इसलिए मैं सरकार से निवेदन करना चाहता हूं कि यदि समयावधि बाकी है, तो वह सुप्रीम कोर्ट की फुल बेंच में अपील करे, मेरे ख्याल में समयावधि बाकी है, क्योंकि निर्णय तो अभी हाल ही में आया है। एक तो सरकार अपील करे...**(व्यवधान)** या तो सरकार अपील करे या अपने स्तर पर ऐक्ट में संशोधन कर दे अन्यथा संविधान में संशोधन करने की कार्यवाही करे।

डा. भीमराव अम्बेडकर और उस समय के जो मूर्धन्य नेता थे, महापुरुष थे, उस समय इस देश में जो असमानता का वातावरण था, छुआछुत का वातावरण था, समरसता नहीं थी, उन्होंने समरसता लाने के लिए, बराबरी लाने के लिए यह तय किया था और संविधान में आरक्षण संबंधी **provisions** किए थे। इनके साथ कोई छेड़छाड़ न हो, इसके लिए चाहे आप संविधान में संशोधन करें या किसी और आधार पर किया जा सकता है, तो वह करें। आज हम यह निर्णय आने पर ठगा सा महसूस कर रहे हैं और लगता है कि संविधान ने हमको

[श्री थावर चन्द गहलोत]

एक हाथ से आरक्षण संबंधी सुविधाएं दी हैं और न्यायालय ने दूसरे हाथ से संविधान में दी गई सुविधाएं छीन ली हैं। जब ऐसा हुआ है, तो निश्चित रूप से जिस उद्देश्य से ये आरक्षण संबंधी प्रावधान किए गए हैं, ये पूरे नहीं होंगे और जब ये पूरे नहीं होंगे, तो इस देश में अलगाववाद की स्थिति निर्मित हो सकती है। हम चाहते हैं कि हमारा देश अलगाववाद की ओर न जाए और हम समरसता की ओर आगे बढ़ें, हम सब मिलकर देश के विकास में सहभागी बनें, इस देश से रूढ़िवादिता, और कुरीतियों को दूर करें और गरीब से गरीब व्यक्ति भी उच्च वर्ग या ज्यादा धन-सम्पदा कमाने वाले व्यक्तियों की श्रेणी में पहुंचने के लिए जो उनके अधिकार हैं, उनका उपयोग कर सकें।

मैं इस अवसर पर आपके माध्यम से सरकार से निवेदन करना चाहता हूँ कि वह तत्काल संविधान में संशोधन करने की प्रक्रिया प्रारम्भ करे और न्यायालय के निर्णय के कारण हमारे जो अधिकार छीने गए हैं, उनको फिर से बहाल करने का कष्ट करे। धन्यवाद।

SHRI T. K. RANGARAJAN (Tamil Nadu): Mr. Vice-Chairman, Sir, this is a very important discussion on the depressed class, socially and economically neglected for the past 60 years. Both the Houses of Parliament have discussed several times about the uplift-of SCs and STs. But still we needed a special discussion as proposed by Kumari Mayawati ji have heard Shri Misra and the other hon. Member on this subject. If a Constitution amendment comes, we will definitely discuss that. But the question is: why aren't you able to implement it even today? Yes, the hon. Member has talked about how many Secretaries were there from SC/ST; how many Government officials were there would. I like to know from the hon. Minister as to how many Directors are there from the SCs and STs in the public sector; how many posts of Chairmen you have filled up and how many promotions you have given. I am a trade unionist. I have dealt with so many cases like this. I would like to quote one or two examples here. There was one very efficient engineer in the BHEL. It happened some 25 years ago. He was in-charge of the Narora Plant in Uttar Pradesh. He was a senior engineer. He was asked to complete the job within 24 months. But he had completed the job in 18 months. There was a panel for promotion to the post of General Manager. He was efficient and he had completed his work before time, but he was not given that post. I was a member of the Joint Committee of the BHEL. We represented this case; I and one-senior Member, Shri R. Umanath, who was a Member of the other House for two terms, represented this case. What did the Chairman of the Board say? He said, "it is a post of an officer. You are a leader of the workers. Why do you discuss about the promotion of an officer?" This is a public sector. Even today, look at the attitude of the public sector towards the eligible and efficient people? If he belongs to the SC or ST, he will not be considered. You can make all kinds of amendments in the Act, but when it comes to

implementation, practically, there is nobody to implement them in this country. I am a Marxist. I respect Dr. Ambedkar; I respect Mahatma Gandhi. But even today, the Marxists and the Leftists are fighting for the education of the ordinary SC and ST people and against untouchability. So our Party has a right to argue this case. Why do they neglect them? Is it not the attitude? Against female, you have a male chauvinist attitude. It is a part of feudal attitude. This attitude has to change. We used to say even if he is a Cabinet Minister, inside the Cabinet, the SCs and STs are untouchable. This is the thing which is happening in this country. Dr. Ambedkar said, "One man one vote". He also said, "You must have one man one value". We are discussing the same thing again and again. We have these 77th and 85th amendments to the Constitution. There are judgements against this and that. So, whatever we decide, the hon. court decides otherwise. Under pressure, we change certain provisions of the Constitution. Under pressure, judges give different types of judgements. How do you solve this contradiction? Unless you solve the contradiction, how are you going to help the SCs and the STs? I heard the speech of Shri Misra; he spoke well. I thought he would say as to how many eligible people were promoted in Uttar Pradesh during the tenure of Mayawatiiji. I wanted him to quote some examples; I don't have any examples. Sir, we have no right to delay the job or promotion to anybody. I don't want to create a gulf between the SCs and STs and the other communities. My suggestion, which we have to put before the BHEL and others, is this. What happens is that they don't want to promote an SC or an ST person. Instead, they promote some 'XYZ' because he belongs to the Upper Caste. We have told several Managements, "If you want to promote any non-SC or non-ST person, then, give promotion to the SC and ST persons as well. For this, you create supernumerary post." What is wrong in creating a supernumerary post? Don't create a fight between the SCs and STs, and the non-SC and STs. You create a supernumerary post. Give them promotion. Give the right promotion to the SC and ST persons. I can tell you of a case in a university in Madurai where they don't want to make an Assistant Professor the Head of the Department. Last year, one IIT qualified man came to me. He was not offered the PhD I think his name is Mr. Prasant Bohslay or something. He was with me for four years. He was highly depressed that he might even commit suicide. He was an eligible candidate. The Professor didn't even want to meet him. Sir, this attitude must be changed. The law can be changed. If the attitude can be changed, then, so many things can happen in this country.

Sir, my suggestion is that in the panel of promotions or in the Selection Committee, there must be representation from the SCs and the STs. Now, there is no SC or ST member in the panel, if there is an SC or ST member in the panel, I will have the confidence to appear before the panel. Today, even before appearing in the

[Shri T.K. Rangarajan]

panel, I know that I will not be selected. I must have some confidence. If you do not have an eligible SC or ST person in a particular institution or a department, then, why don't you borrow from some other department? So, do not wait for a law to be framed. The Government can give instruction to the selection committees or the promotion panel that there must be representations from the SC and STs. If that is there, then, people, who appear for these examinations or promotions, will have the confidence to feel that there will be some reasonable argument in his favour in the committee. So, Sir, I have put two suggestions before the Government. One is to create supernumerary posts. Don't stop either SC and ST promotions or non-SC and ST promotions. The second is, in every panel, there must be a representation from the SCs and the STs. I don't think it requires any law. Even tomorrow you can implement it.

Sir, with these words, I would like to conclude. This is an important discussion. On some of the aspects, I agree with the hon. Member, Shri Misra, and the hon. Member from that side. I feel that there should be some action on the ground. Mere discussion will not help. We have been having discussion after discussion, but we are implementing nothing. So, I would request the Government to implement this. Thank you.

श्री सुखेन्दु शेखर राय (पश्चिमी बंगाल): सर, हिन्दी में एक कहावत है, हालांकि मैं ठीक से हिन्दी बोल नहीं पाता हूँ। मैंने कभी सुना था। हिन्दी में एक कहावत है कि रात भर अंडा पकाया, फिर भी अंडा कच्चा रह गया।

[उपसभाध्यक्ष (श्री तारिक अनवर) पीठासीन हुए]

हम इसलिए यह बात बोल रहे हैं कि 10 दिन बाद हम इस पार्लियामेंट की 60वीं साल गिरह मनाने जा रहे हैं। पिछले 60 साल में इस पार्लियामेंट ने पिछड़े वर्गों के लिए कितने सारे अमेंडमेंट कांस्टीट्यूशन में किए, कितने सारे प्रावधान कांस्टीट्यूशन में रखे, ताकि उनको ठीक से तरक्की मिले, बढ़त मिले, लेकिन हमारी पार्लियामेंट को 60 साल बाद भी, फिर से रिजर्वेशन पर चर्चा करनी पड़ती है। कब तक इस पर चर्चा चलती रहेगी? पार्लियामेंट कुछ सेटल करती है, तो जुडिशियरी उसको अनसेटल कर देती है। जब बंगाल का 1905 में पार्टिशन हुआ था, तो सारे देश में क्रांति आ गई थी against the partition of Bengal. At that point of time, the then Viceroy, Lord Curzon, said that partition of Bengal is a settled fact. Then, Rashtraguru Swarna Bandyopadhyay quipped that we shall unsettle the settled fact. So, reservation for the SCs, STs and Other Backward Classes is a settled fact. Unfortunately, this is being unsettled, time and again, on different pleas. Now it is the question of reservation in promotions. All of us, in this House, since the discussion was initiated by hon. Member, Shri Satish Misra and other hon. Members, also participated, have spoken in favour of certain actions on the part of

the Government so that some amendments can be initiated to protect the interest of the SC, ST and Other Backward Classes, and I fully support those Bills. Without any hesitation, this House should unanimously decide on this issue, and I urge upon the Government to make a fresh amendment because all of us know that last week, the Supreme Court over-ruled the Allahabad High Court judgment of 2011 which upheld the Government to grant reservation in promotions to all the reserved categories among Government employees. The Apex Court has ruled that the decision of UP Government was *ultra-vires* of the Constitution and declared that there could be no reservation in promotions. Even in the Indira Sahni case also, in the past, the Apex Court holds that reservation in promotion is unconstitutional. However, through the Constitution (82nd amendment) Act of 2000, this Parliament amended article 335, which Satish Misraji and other hon. Members referred to, and I fully support this view. What was the background of that amendment? The background of that amendment was that hon. Supreme Court again, in the case of S. Vinod Kumar *versus* Union of India held that various instructions of the Government providing for lower qualifying marks and lesser standard of evaluation of SCs, STs in the matter of promotion were withdrawn by the Government with effect from 22nd of July, 1997. That was the background. It was related to reservation, evaluation etc., in promotions. Now, thereafter, the Parliament decided to, once again, restore the relaxations and concessions in promotion and a proviso to article 335 was inserted. What did this proviso say? I will only quote one part of the proviso that “nothing in this article shall prevent in making of any provision in favour of the members of SCs, STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion.” That is most important. I am putting emphasis on this particular part of the proviso that “for reservation in matters of promotion”. Therefore, this amendment has accepted reservation in the matter of promotion. So, once the amendment has accepted reservation in the matter of promotion and that is being set side by the judiciary, then, it is the duty of the Parliament to come out with a fresh amendment so that the interest of the SCs, STs and Other Backward Classes are protected. This is my humble submission to the Government because I think, after that amendment of article 335, the Department of Personnel and Training also issued an order vide OM No. 36012/23/96-Estt. (Res.)-vol. 2, dated 3rd October, 2000. Whereby, the amendment was given effect to by the Department of Personnel and Training. Now, again, the time has come that the Department of Personnel and Training has to rise to the occasion once again and bring out the amendment as desired by the hon. Members in the right earnest at the earliest possible time. Thank you.

प्रो. राम गोपाल यादव (उत्तर प्रदेश): श्रीमन्, सदन में बहुत ही महत्वपूर्ण मुद्दे पर बहस चल रही है। समाजवादी पार्टी कई नामों से समाजवादियों की पार्टी रही है, जैसे कांग्रेस के

[प्रो. राम गोपाल यादव]

अंदर कांग्रेस सोशलिस्ट पार्टी बाद में किसान प्रजा पार्टी, प्रजा सोशलिस्ट पार्टी, सोशलिस्ट पार्टी, संयुक्त सोशलिस्ट पार्टी और अब समाजवादी पार्टी है। हमने हमेशा विशेष अवसर के सिद्धांत का समर्थन किया है। इस विशेष अवसर के सिद्धांत के आधार पर ही आरक्षण की व्यवस्था है। जो वंचित वर्ग के लोग हैं, वे सदियों से शोषित, पीड़ित और उपेक्षित रहे हैं। उनको उनका हक मिल सके, इसलिए आरक्षण की बात कही गई है और संविधान में इसकी व्यवस्था है।

मैं शुरू में ही यह स्पष्ट कर देना चाहता हूँ कि समाजवादी पार्टी आरक्षण के पक्ष में है और प्रमोशन में आरक्षण के पक्ष में भी है। हमने अपने चुनाव घोषणापत्र में केवल परिणामी ज्येष्ठता के खिलाफ होने की बात कही थी और उस पर हम आज भी कायम हैं। उत्तर प्रदेश की बसपा सरकार का **Consequential Seniority** का बहुत खतरनाक स्टेप था, जब उसने नियमावली के अंतर्गत सर्विस रूल्स में **8(a)** को इन्क्लूड किया था। उसी **8(a)** को लेकर ही मामला सुप्रीम कोर्ट में आया। सुप्रीम कोर्ट का क्या फैसला हुआ, वह अलग बात है, लेकिन **8(a)** एक ऐसी व्यवस्था करता है, अगर यह कानून रहेगा तो कोई भी नान SC, ST चाहे वह जनरल कैटेगरी की अधिकारी हो, चाहे OBC का अधिकारी हो, अनन्तकाल तक उत्तर प्रदेश में किसी विभाग का अध्यक्ष नहीं बन सकता। यह एक बहुत ही गंभीर मामला है। इसकी वजह से समाज के लगभग 75-80 फीसदी लोगों के मन में यह होगा कि हमारे साथ अन्याय हो रहा है। हम चाहते हैं कि लोगों को प्रमोशन में आरक्षण मिले। हम इसके पक्षधर हैं, लेकिन एक बार प्रमोशन होने के बाद की **date** से **Seniority** निर्धारित की जाए। यदि दो व्यक्ति एक साथ एसिस्टेंट इंजीनियर भर्ती हुए, एक जनरल कैटेगरी का और एक एस.सी. का, तो पांच साल बाद एस.सी. कैटेगरी का व्यक्ति एग्जिक्यूटिव इंजीनियर हो जाता है, आठ साल बाद जनरल कैटेगरी का व्यक्ति भी एग्जिक्यूटिव इंजीनियर हो जाता है। इस तरह से पन्द्रह साल के बाद एक चीफ इंजीनियर बन जाता है और एक सुप्रीटेंडेंट इंजीनियर भी नहीं हो पाता है। यह **8(a)** की स्थिति है। जहां तक सुप्रीम कोर्ट के निर्देश की बात है, तो मैं बताना चाहता हूँ कि उत्तर प्रदेश में क्लास वन में आज भी SC के लोगों का **22.3 per cent** प्रतिनिधित्व है और क्लास टू में **26.6 per cent** प्रतिनिधित्व है। इसमें किसी तरह की कोई कमी नहीं है। आज यहां पर इसके ऊपर बहस चल रही है। हम से भी कहा गया था कि आप इसके खिलाफ हैं जबकि उत्तर प्रदेश में 1994 में मुलायम सिंह की सरकार ने ही सबसे पहले सर्विस नियमावली बनाते हुए विधान सभा से यह कानून पारित करवाया था।

उन्होंने कहा था कि प्रमोशन में भी 21 परसेंट रिजर्वेशन शैड्यूल्ड कास्ट के लिए और 2 परसेंट रिजर्वेशन शैड्यूल्ड ट्राइब्स के लिए होना चाहिए। यह मुलायम सिंह गवर्नमेंट का ही 1994 का फैसला था। हमें इस रूप में पेश करना कि हम रिजर्वेशन के खिलाफ हैं, प्रमोशन में रिजर्वेशन के खिलाफ हैं, यह बात सही नहीं है। हमने अपने चुनाव घोषणा-पत्र में केवल परिणामी ज्येष्ठता के खिलाफ बात की थी। जैसा कि मिश्रा जी ने बताया है इलाहाबाद हाई कोर्ट की दो बेंच ने अलग-अलग फैसले दिए थे, एक ने उसको वैलिड ठहराया था और दूसरे ने उसको रद्द किया था। गवर्नमेंट इसके खिलाफ सुप्रीम कोर्ट में आई और सुप्रीम कोर्ट ने 27 तारीख को फैसला दे दिया। उस पर परिणामी ज्येष्ठता के साथ-साथ प्रमोशन में आरक्षण की जो बात थी, प्रमोशन में आरक्षण को खत्म करने की जो बात थी, हम उससे सहमत नहीं हैं,

3.00 P.M.

लेकिन परिणामी ज्येष्ठता वाला हमारा 8(ए) का जो रूल है, जो उसमें लागू किया गया था, हम उसके खिलाफ हैं, वह नहीं होना चाहिए, हम उससे बिल्कुल भी सहमत नहीं हैं। उससे पूरी ब्यूरोक्रेसी में वैमनस्य पैदा होगा, लोगों के अंदर दूरियां बढ़ेंगी और उसका एफिशिएंसी पर भी एडवर्स असर पड़ेगा। अभी कांग्रेस के हमारे बहुत ही विद्वान वक्ता श्री मुगेकर साहब बोल रहे थे। उन्होंने आंकड़े देखकर बताया कि केंद्र में कोई सेक्रेट्री नहीं है। जब शैड्यूल्ड कास्ट और शैड्यूल्ड ट्राइब्स के अधिकारी उपलब्ध हैं, तो उनका एम्पैनलमेंट क्यों नहीं होता है, यह नारायणसामी जी जानें। **Who is responsible for that?**

इसके लिए कोई रिजर्वेशन पॉलिसी जिम्मेदार नहीं है। **When officers are available, why are they not being empanelled?** उनका एम्पैनलमेंट क्यों नहीं हो रहा है, वे क्यों सेक्रेट्री नहीं बन सकते हैं, केंद्र सरकार में ऐसा क्यों नहीं हो पा रहा है, यह अलग चीज है और इसको इस चीज से जोड़कर नहीं देखा जा सकता है। हां, अगर रिजर्वेशन को लागू न किया जाए, उसकी नीति का पालन न किया जाए, तो अलग बात है। मैं उत्तर प्रदेश के अपने साथियों को याद दिलाना चाहता हूं कि मुलायम सिंह यादव जी पहले मुख्यमंत्री थे, जिन्होंने यह कानून बनाया था कि जो अधिकारी आरक्षण को पूरा नहीं करेगा, उसके खिलाफ दंडात्मक कार्यवाही होगी और उसको जेल भी भेजा जा सकता है। उत्तर प्रदेश में कहीं भी यह बात नहीं है कि बैकलॉग के जरिए ओर भरिए, वह सब पूरा है, कहीं किसी तरह की कोई कमी नहीं है। ये जो तमाम तरह की बहसें हुईं, तमाम तरह की बातें चलीं, मैं इस पर अपनी स्थिति स्पष्ट करते हुए कहना चाहता हूं कि जिस तरह से सर्विस नियमावली में संशोधन करके, उत्तर प्रदेश में जोड़ा गया था, अगर आप इस तरह का कोई संशोधन ला रहे हैं, संविधान में इस तरह की कोई बात आती है तो हम उसका विरोध करेंगे, अगर इस तरह की बात नहीं होती है तो हम सहमत हैं। कानून मंत्री जी बैठे हुए हैं, आप सभी कुछ उठाकर देख सकते हैं कि किस तरह से जो आदमी बहुत नीचे था, वह सीनियर है और जो बहुत सीनियर था, वह उसके नीचे काम कर रहा है। यह अननैचुरल है, यह नैचुरल जस्टिस के भी खिलाफ है, यह जूरिप्रूडेंस के मान्य सिद्धांतों के खिलाफ है। इसलिए हमने इसको अपने चुनाव घोषणा-पत्र में दिया था, उसमें मंडेट दिया था। मैं यहां पर यह स्पष्ट कर देना चाहता हूं कि उत्तर प्रदेश में लोक सभा की 70 रिजर्व्ड कांस्टीट्यूटेंसी हैं, उनमें से 10 समाजवादी पार्टी जीती थी, 84 सीटें विधान सभा की रिजर्व्ड हैं, उसमें से 57 समाजवादी पार्टी जीती है। हमारा यह मंडेट, यह चुनाव घोषणा-पत्र 8(ए) के खिलाफ दिए जाने के बाद भी अगर हमें इतने बड़े पैमाने पर रिजर्व्ड कांस्टीट्यूटेंसी में समर्थन मिलता है, तो हमें इसका मंडेट हासिल है और हम 8(ए) जैसे किसी भी कानून का विरोध करेंगे। आपका बहुत-बहुत धन्यवाद।

श्री सतीश चन्द्र मिश्रा: सर, मैं आपकी permission से केवल एक बात clear कर देना चाहता हूं कि परिणामी ज्येष्ठता का जो एक provision है, वह पार्लियामेंट ने Article 16(4A) में amend करके पहले से डाला हुआ है, वह मौजूद है। उसी के तहत 8(a) बना है। हम लोग यह नहीं मांग रहे हैं कि उसको दोबारा से लाया जाए, वह तो पहले से ही मौजूद है। 1994 में जो एक्ट बना था, आपने कहा कि श्री मुलायम सिंह यादव जी उस समय मुख्य मंत्री थे। वह बहुजन समाज पार्टी के साथ एक coalition government थी और उसी Pressure में आकर आपने यह कानून बनाया था, स्वेच्छा से नहीं बनाया था।

SHRIMATI VASANTHI STANLEY (Tamil Nadu): Thank you Mr. Vice-Chairman, Sir, for giving me this opportunity to raise my views on behalf of my party on the discussion on the very important issue of reservation for the Scheduled Castes and Scheduled Tribes in promotions during service. I would really like to thank my dear sister and hon. former Prime Minister of Uttar Pradesh and hon. Member of Parliament now... – Sorry, Chief Minister; she may become in future and she is welcome—for mooting out this discussion.

I would like to firstly mention the reason for mooting out this discussion. She has, as a right and royal Chief Minister of Uttar Pradesh, brought in reservation in her State which was questioned by the Allahabad High Court and which is upheld by the Supreme Court. The DMK has been consistently demanding that the percentage of fixation of reservation should be left to the State Governments because the State Governments can provide reservation depending on the percentage of the Scheduled Castes, Scheduled Tribes and Backward Classes, as this varies from State-to-State. If the ruling party or the people's Government is not able to do this and, time and again, if the courts are intervening in this, then this is the right time for this discussion.

At this juncture, Sir, on behalf of the DMK, I would like to say this is my pride and prejudice to discuss this issue because in the mid-20's, the first communal GO was passed in the erstwhile Madras Presidency by the Justice Party, the founder of the Dravidian Movement, in which all communities were given opportunities in the Government jobs. In 1950, Sir, when the new Constitution came into force and the earlier orders became null and void, our leaders, Tandhai Periyar and Arignar Anna, conducted various agitations and, ultimately, the first amendment to the Constitution was passed on reservation for the socially and educationally backward classes. It was given in Government employment and education. Subsequently, reservation for the Scheduled Castes, Scheduled Tribes and Backward Classes Was increased to 69 per cent by the State of Tamil Nadu by our leader, Dr. Kalaignar. In 1989, the DMK was instrumental in implementing the Mandal Commission's recommendations providing 27 per cent reservation for the OBCs. So, we are here discussing that the same proportion of reservation be provided in promotion also since once again the socially and educationally backward classes are deprived of holding higher positions in any organisation.

At this juncture, Sir, one may just wonder what the difficulty for Scheduled Castes and Scheduled Tribes could be. They are given reservation in colleges and in all educational institutions; and, then, getting into jobs also they are given reservation. Then, what could be the difficulty for them to get promotion on par with

the other employees'. This would be the question in the minds of other candidates. As a former Government servant, who has put in 20 years of Government service in the State Government of Tamil Nadu, I would like to mention here that there are certain departmental examinations which are mandatory for getting promotion. These examinations are really very tough to the core that even after 3 or 6 attempts they will not be able to pass. This is for all the employees, not only for the Scheduled Castes and Scheduled Tribes. So, if this be the case for all the employees, I would like to reiterate here that the logic which applies for getting admission in educational institution, the same logic that applies for getting into the Government employment, should be applied for the reservation in promotion also. Only after three attempts or six attempts, some of them have to be exempted from appearing in departmental examinations. So, for promotions, it should be mandatory that reservation should be there. Sir, our leader, Dr. Kalaingar Karunanidhi, has spent his entire life in public career speaking, writing and fighting for the rights of poor, downtrodden and socially backward, especially for the rights of the SCs, STs and the Backwards. He has, many times, written to the Prime Minister about the need to amend the Constitution suitably to treat the converted Christians and Muslims on a par with other SCs and STs. Hence, we are second to none to fight on this issue.

Sir, here, I would like to say that this is not just a legal issue but a social issue. Hence, it should be left to the popular Government to decide on the issue, and not to the judicial forums. One may wonder that once the Supreme Court has intervened, how can the Parliament intervene? No, Sir; we have proved many times, including in the Shah Bano's case, that the Parliament is supreme. So, here, I would like the hon. Minister and the Government of India to rise to the occasion and see to it that the Constitution is amended suitably. Thank you, Sir.

SHRI SHASHI BHUSAN BEHERA (Odisha): Mr. Vice-Chairman, Sir, this is an issue of national importance, and this issue is very much linked with social justice. If you see the country as a whole, on the issue of reservation, the country has two opinions. Some people are in favour of continuance of reservation, and some are against it. But the reality is that the country is to be ruled as per the Acts and rules and regulations which have been enacted in Parliament and which have been given to us by our Constitution. It is certainly a matter of pride that we have got a Constitution which gives protection to the Scheduled Castes, Scheduled Tribes and the weaker sections. Sir, our Constitution intends to mitigate the social inequality which is still prevailing from thousands of years in this country. Sir, today's discussion emerged from a case whose judgement was pronounced on 27th April, only five days back. This is a matter not only for UP but also for the whole country.

[Shri Shashi Bhushan Behra]

Sir, I belong to Odisha. I come from a State where the population of the Scheduled Castes and Scheduled Tribes is 38 per cent of the total population. Out of that, 22 per cent is tribal population, and nearly 16 per cent is the Scheduled Caste population. But the Central Government national cap about reservation is 15 per cent and 7 ½, a total of 22 ½ per cent. The States whose population is greater in number are not enjoying the benefits of reservation as per their population. The State Governments are giving reservation to these people. We have already discussed the issue about the percentage of these people in class I jobs and class I jobs. These reserved posts are still lying vacant. The question about their eligibility and backwardness is already defined in articles 341 and 342....where it is scheduled with certain criteria. That is already a settled matter and it is being opened again by certain sections for creating confusion in the society. Sir, this matter already comes under 77th, 81st, 85th and 92nd amendment in constitution brought in this House, which have given protection to article 16(4a) and (4b). It is already there and the judgment of the Supreme Court is a question in the minds and that is why Behanji, Ms. Mayawati, a former Chief Minister, has brought this in a Short Duration Discussion. Most important discussions are taking place in the last minutes. Satishji elaborated it in a very wider manner. I am only making some suggestions that with this amendment, namely 77th and 85th in promotion, the SCs/STs are being protected under article 16(4a) and (4b) which is now in question. So, this august House which has framed a law to protect the Backwards, SCs and STs has to rethink over this matter that this social backwardness still exists in these communities. Maybe, some economic improvement is there, maybe, social improvement is there, but it is not hundred per cent. Social backwardness is still there and it will not allow these communities to go ahead with this reservation facility, if this judgment continues to confirm, thousands and thousands of employees will lose their interest as they will be kept in utter helpness position. Those who are already having 18 years of service or employment, how can they go 18 years back? It is putting a question mark on their future. So, I suggest that this House must consider and make some amendment to effect this correction. I hope for the best. Thank you very much.

SHRI A.W. RABI BERNARD (Tamil Nadu): Hon. Vice-Chairman, Sir, I rise to assure the unwavering support of the All India Anna Dravida Munnetra Kazagam in the fight for equality and struggle for social justice through affirmative actions. We in the AIADMK stand shoulder to shoulder with all those who engage themselves in uplifting the marginalized, subaltern women and men of this nation. As I participate in this discussion on the issue of reservation for the Scheduled Castes and the Scheduled Tribes in promotion during service, I bring to the attention of

this august House the words of the former Philippine President, Dr. Ramon Magsaysay. When asked for the need for the affirmative actions, Dr. Magsaysay said that those who have less in life should have more in law. Sir, can mankind identify any other group of people in the world who has less in life as Ramon Magsaysay said than the Indian Scheduled Castes and the Scheduled Tribes? Is it not that the Indian caste system is apartheid of gigantic proportion? Is it not that the untouchability in India practised for several hundred years is jinerourism of colossal magnitude? Is it not the economic deprivation, social oppression, political marginalisation of a large population of this country, have resulted in an overall underdevelopment of this country? Dr. John F. Kennedy while inaugurating the American Peace Corps said, that pockets of poverty anywhere threaten prosperity everywhere. Yes, to ensure a social equilibrium, to ensure a sustainable, safe, cultured living for everyone, it is essential that not only equal opportunities are given to everyone, but affirmative actions are also guaranteed through legal measures, which Magsaysay called 'giving more in law'.

The founding father of my party, Bharat Ratna Dr. M.G.R. remained totally committed to this cause; and, my beloved leader, Chief Minister of Tamil Nadu, Madam Jayalalitha, ensured 69 per cent reservation in education and job opportunities in the State and got them included in the Ninth Schedule of the Constitution.

The roots of discrimination in India go so deep that social and economic disparities are deeply intervened, rather in increasingly complex ways. We put our faith in reservations to correct the situation not because they are the perfect instruments to rectify centuries-old discriminations that make us shrink in shame in the comity of nations and so inhuman that no philosophy or theology can justify, but because reservations are the most workable method to move in this direction. The nature of Indian society ensures that without such measures, social discrimination and exclusion will only persist and will be strengthened. Those of us who have lived in decades in casteless societies will vouch for my views.

In the case of the Scheduled Castes and the Scheduled Tribes, discrimination is more evident since it has been historically compounded by oppression which still continues in a blatant and often vicious form in many parts of the country. This has persisted despite the official policy of reservations for these communities in Government employment and education. But it does not reflect the failure of reservation policy as much as its inadequate implementation in both, letter and spirit.

It is usually argued that reservation will affect quality and undermine merit and efficiency. This was mentioned in the Supreme Court too while deciding the

[Shri A.W. Rabi Bernard]

question of reservation in promotions. The supposed contradiction between reservations, on the one hand, and the merit and efficiency on the other, is a false one. First of all, there are many reasons to believe that drawing upon a wider social base increases the diversity and, thereby, the quality of the workplace. Secondly, there are good reasons to be sceptical regarding the extent to which current systems of promotions are genuinely 'merit-based'.

Sir, the Parliament has, several times in the past, discussed the issue of affirmative actions through reservation and may discuss several times in future too. Let us remember that reservations do not address the most fundamental problems of economic inequality or access to opportunities in India, particularly in the context of globalisation and liberalisation.

There is no question that asset inequalities and related income inequalities are at the heart of the issue of unequal access in our country. The lack of asset ownership among deprived communities is critical in determining other forms of discrimination. That is where the question of actions, mostly economical, from the part of the Government come, like special component plan, credit facility, etc. I am proud to inform this august House that Madam Jayalalitha has made an unprecedented allocation of Rs. 6,000 crores for the special component plan for the SCs and STs in Tamil Nadu, this year. Sir, from time to time, Parliament discusses the issue of reservations and looks for the ways to safeguard it, but when it comes to implementation, there is no institutional mechanism of incentives and disincentives to ensure affirmative action. At the moment, there are legal requirements for filling certain quotas, but there are no penalties for public institutions that do not fill them. As we discuss reservations in promotions, we should pay attention to this issue also. We should ensure that quotas do, actually, get filled. Reservation must be ensured in all appointments, particularly, appointments to the Judiciary, appointments made by the Government of India in the World Bank, in the IMF, in the United Nations, Asian Development Bank and all other international appointments.

THE VICE-CHAIRMAN (SHRI TARIQ ANWAR): Please conclude.

SHRI A.W. RABI BERNARD: Finally, reservations have been found to be a very transparent and an inexpensive method to implement and monitor when compared to other affirmative actions. So, let us strengthen them by providing them reservation in promotions during services also. Thank you.

SHRI D. RAJA (Tamil Nadu): Sir, at the outset, I congratulate the leader of the BSP, Mayawati, for raising this issue at an appropriate time. I fully endorse the

views expressed by Shri Satish Chandra Misra as well as my beloved friend Dr. Mungekar. Sir, the judgement is an assault on the rights of the Scheduled Castes and the Scheduled Tribes. It is an assault on the very policy-making power of Indian Parliament. This has raised several serious issues. What is the power of Judiciary? What is the power of Parliament and Legislature? Parliament and Legislative Assemblies, in their wisdom, enact certain legislations in favour of the Scheduled Castes and the Scheduled Tribes, but the Judiciary, instead of upholding the implementation of these policies tries to enter into the domain of policies and dismisses whatever the Parliament or Legislature has been proposing. This is a very serious situation. That is why I urge upon the Government that the time has come when the Government should think of constituting a National Judicial Commission and the Judiciary will have to reflect the social reality that exists in India. The composition of Judiciary will have to reflect the social reality of India...(Interruptions)...I am talking about the Judiciary. Now, I am coming to the issue that we are discussing, that is, reservation in promotions during service. Sir, everybody has referred to Dr. Ambedkar, the architect of the Indian Constitution. It is Dr. Ambedkar who introduced reservations in public services for the Scheduled Castes and the Scheduled Tribes under article 16 of the Indian Constitution, which we all adopted in the year 1950. The article 15(4), which was the first amendment to the Indian Constitution, ensured admissions for the Scheduled Castes and the Scheduled Tribes in educational institutions. Dr. Ambedkar also ensured that representation should be available at not only entry levels but also in public services; it should be ensured in all classes and at all levels of administration. The concept of reservations in promotions was introduced with the same purpose. The complication arose after the Supreme Court gave its verdict on Mandal Commission. In Mandal Commission judgment, the Supreme Court imposed a ceiling of 50 per cent, to which I don't agree. In fact, I have said on other occasions also in this very House that it should be left to the States on the basis of total quantum of reservation. It also annulled reservations in promotions for Scheduled Castes, which was restored by the 77th Amendment to the Constitution in 1996. Later on, consequential seniority to 'Reserved Category' employees was denied in the process of reservation in promotions by the Supreme Court, which was set right by the very same Parliament by the 85th Amendment. So, the position is very clear. Even then, the five-member Bench has given this verdict on three major issues, and these three major issues were dealt efficiently by my colleague, Shri Satish Chandra Misra. Even then, I would like to make a few observations on these three issues.

On the issue of adequate representation, I think, they must ask the Government as to why the Government is not ensuring the implementation of SC/ST

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quota according to the percentage which has been accepted—22.5 per cent put together for Scheduled Castes and Scheduled Tribes. Who has to answer the Supreme Court? It is the Government which has to answer saying that ‘yes, we have been implementing it and we have been fulfilling this quota which has been reserved for Scheduled Castes, Scheduled Tribes and OBCs’.

Sir, the second point is related to the backwardness. What do they mean by ‘backwardness’? Here, I find that a sinister design is emerging from the Judiciary to scuttle the very Policy of Reservation and do away with the Policy of Reservation that we have. Sir, the Constitution is very clear; Dr. Ambedkar was very clear. The Scheduled Caste and Scheduled Tribe people are backward. That is why, they have said, ‘Other Backward Classes’. Otherwise, they would have said, ‘Backward Classes’. Why did they add the adjective ‘Other’ and said ‘Other Backward Classes’? It means that Scheduled Castes and Scheduled Tribes are already backward. So, they have said, ‘Other Backward Classes’. Then, it has to be ‘socially and educationally backward’. It was understood. Now, the Judiciary should read it properly and it cannot give its own interpretation, questioning the backwardness of Scheduled Caste or Scheduled Tribe people.

Sir, we are a nation where, whether we like it or not, the caste prejudices do exist and do exist strongly, and, untouchability, constitutionally and legally, must have been abolished. But untouchability is practised in different ways even in modern era, in cities as well as in towns. This aspect will have to be kept in mind. That is why when the Judiciary questions the backwardness of the Schedule Caste and Scheduled Tribe people, I think, there is some sinister design. This is what I understand. The sinister design is to do away with the entire Reservation Policy. I ask in this august House, do we agree with such an understanding of the Judiciary? And, I find — irrespective of political parties — that every one is for reservation to Scheduled Castes and Scheduled Tribes in jobs and also in promotions. But the Judiciary gives a different interpretation, which the Parliament should reject. The Parliament should reject it.

Moreover, there is the entire question of efficiency. What is this efficiency? Is there any scientific proof to show that the Scheduled Caste and Scheduled Tribe people are inferior and they do not have merit? Is there any scientific data? Is there any scientific study? The learned Judges must tell us that ‘we have this scientific study at our disposal, and, based on that, we say that the Scheduled Caste and Scheduled Tribe people are inferior; they don’t have efficiency, they don’t have merit’. Let them say it. What is this argument? This is a very inhuman and

undemocratic argument. It is an insult to the people who belong to the 'Schedule Caste' and 'Schedule Tribe' categories. It is an insult to the children born to the Schedule Caste parents. The learned Judges must understand that.

Sir, I would like to quote here a scholar about whom many of us know. He was the Chairman of UGC, Prof. S.K. Thorat. He had conducted a study to show how discrimination was taking place. Even though the Schedule Caste applicants had the same efficiency, possessed the same certificates and the same merit, after looking at their caste titles, they were denied jobs in the private sector. Prof. Thorat had well brought out how lack of efficiency was just a camouflage to deny the rightful place to the Scheduled Castes and Scheduled Tribes. That is why I say that this argument citing efficiency is a baseless and unscientific argument. I do not understand why the Judiciary has been raising all these questions. There is a contradiction in the understanding of the Judiciary and the understanding of the Legislature. This contradiction has become very serious. Some previous speakers referred to one case from IIT, that of Mr. Bhonsle. I had met that candidate too. He has not been awarded the Ph.D. He is ready with all his certificates and other details. We have raised this issue, many times in this House. Also, I am a member of the Parliamentary Committee on the Welfare of SCs and STs, and we have produced a number of documents. But I have not come across even one Scheduled Caste or Scheduled Tribe member in any Board of Governors. We have seen it in a number of cases. What is the reason given to that? They say, it is because of non-availability of suitable candidates. After 60 years of Independence, the Government says that no suitable candidate is available! Then, when I press for further details, they say that it is as per DoPT orders. So, I ask the Minister in charge of the DoPT, 'what is your answer? What is the guideline you have for the public sector undertakings, banks and other industries? Why is there no Chairman or MD in any public sector from that class?' To cite an example, in a Vizag steel plant, one SC person could have become Chairman, but some false cases and charges were framed; a raid was organized and his chances of becoming Chairman were destroyed. That is how it is happening with SC candidates. What I mean to say is, even if one or two SC or ST candidates come up to the level, they are consciously denied their rightful claims. This is what the Government will have to take note of. This is a very serious issue. Does the Government have the political will to see to it that there is effective implementation of the reservation policy in the country?

Sir, talking of reservations in promotions, the previous speaker wanted to know how many Secretaries to the Government belonged to this class? Do they mean to say that after 60 years of Independence, no IAS man or woman from the Scheduled Castes is available for the post of Secretary to the Government of India?

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Then whose Government is this? If that Government does not belong to the Scheduled Castes and Scheduled Tribes, then whose Government is it? You say that there is no efficient IAS officer belonging to the Scheduled Castes to become Secretary and there is no Scheduled Tribe IAS officer efficient enough to become Secretary. What is happening in this country? Are we a nation or, are we having a *jungle raj*? Does the Government want to follow the theory of survival of the fittest? Does the Judiciary want to implement this? This is nothing but social Darwinism, Sir, 'survival of the fittest'? Historically, the Scheduled Caste and Scheduled Tribe people don't have access to many things. Now, what they are asking for is their due share, fair share, in the nation's wealth. They are asking for due place in the administration at all levels. Are we willing to concede their demand? They don't want pity; they don't want mercy from any Government. Today you may be in Government and tomorrow somebody else may be in Government, but they don't want mercy or philanthropy from the Government; they want to have it as their right. That is what we should understand. Are we willing to concede that or not? If we deny them their rights, let us be ready for social upheaval. Satish Chandrasi used a different word, but I can say that if you deny them their rights and their due demands, then we will have to face a social revolution. That is what Dr. Ambedkar meant. In fact, I give my respect to Dr. Ambedkar. He wanted everything to be done constitutionally; he wanted everything to be done through constitutional methods. If Constitution is tampered like this or if Constitution is subverted like this by the judiciary, where else can we go? Again we come back to the Constitution-making body, the law-making body, that is, Parliament.

THE VICE-CHAIRMAN (SHRI TARIQ ANWAR): Please conclude.

SHRI D. RAJA: I support the amendments proposed by my hon. colleague, Shri Satish Chandra Misra. There is a need to consider those amendments to ensure the policy of reservation not only at the entry level but also in promotions for the people of Scheduled Castes and the Scheduled Tribes. With these words, I conclude. Thank you.

SHRI PRAVEEN RASHTRAPAL (Gujarat): Sir, I just go back to history and refer to the erstwhile King of Kohlapur, Sahu Maharaj. It was Sahu Maharaj, who gave financial assistance to Dr. B.R. Ambedkar. Gaekwads of Baroda also gave financial assistance. As a result, Dr. Ambedkar was able to go to the United States, the UK and Germany and obtained Degrees in Law, Economics and wrote a thesis on the 'Problem of Rupee'. I want to give you information that Sahu Maharaj was the first Indian King in the western and the northern part of the country who introduced

reservation in Government services 110 years ago. That order was passed when he was in the UK and it was sent by telegram. Why did he make reservation in services? When he acquired the seat of King, he called for the list of the staff working in the Palace from his Prime Minister. A list of 57 staff members was given to him. Then he asked about their caste. There were three or four Brahmins and all others were Marathas. Even in his Palace staff, no member of his own caste was there. Then he called for the officers working in the State. There was also the same position — Brahmins and Marathas. I am talking with reference to Maharashtra. You know, these are the two dominant classes there' even now. ...*(Interruptions)*...

SHRI D. RAJA: Please allow me. I want to say something. ...*(Interruptions)*...

SHRI PRAVEEN RASHTRAPAL: I will allow you everything provided you start social revolution. ...*(Interruptions)*...

SHRI D. RAJA: The concept of reservation was first implemented by Maharaja of Mysore. ...*(Interruptions)*...

SHRI PRAVEEN RASHTRAPAL: I have already made it clear by saying 'western and northern part of the country' ...*(Interruptions)*...

SHRI D. RAJA: It was to ensure reservation to Kannada Brahmins to counter Tamil Brahmins. ...*(Interruptions)*...

SHRI PRAVEEN RASHTRAPAL: I am coming to that. And that reservation was not for 'backward class' or for 'forward class'; it was for every community of the State. The reservation was according to population. Everybody was happy. Again you go to the period of Akbar. Akbar had a *Senapati* whose name was Raja Man Singh. He was Rajput. Man Singh's sister Jodhabai married to Akbar. What a casteless society it was! Nobody objected to it. But if a Scheduled Caste marries a Kshatriya woman or a Brahmin woman, heaven will fall from the sky on the Earth. In spite of that, people have forgotten reservation which was 100 per cent for certain communities before 1500 years. In Indian Army, only Kshatriyas were allowed before Mughals came to this country. Before Mughals came to this country, in the armies of various Maharajas, only Kshatriyas were allowed. And, who were allowed to work in the temples? Even now, who are allowed to work in the temples? Only Brahmins are allowed. So, there is hundred per cent reservation for Brahmins for working in the temple's sanctum sanctorum. उसे हिन्दी में गर्भगृह कहते हैं। No non-Brahmin can enter temple even now in the year 2012 in India, which is a secular, socialist, sovereign, democratic republic. But, you cannot enter गर्भगृह; बाहर खड़े रहो, धोती पहनकर आओ, पजामा नहीं चलेगा। In Southern States, there is generally one room behind the temple which is full of golden ornaments. Even the court has directed not

[Shri Parveen Rashtrapal]

to open it. They are afraid of opening that because of religion. But, there were good Maharajas also Kohlapur Maharaja, Bhavnagar Maharaja, Gaekward Maharaja, Gondan Naresh. Education was compulsory in Gujarat. If a child was not sent to school on attaining the age of seven years, his father was penalised with one rupee per month. I am talking of 1935-36 and the States were Gondan, Bhavnagar and Baroda. There was a provision of compulsory education. As a result, we have got number of teachers from the Scheduled Caste category in Gujarat. My father was uneducated. I was not sent to school even at the age of eight. He was penalised. Then only, I could go to school and I passed my matriculation at the age of 20 years. But, today, we have an Act passed in the year 2009 in our Parliament for compulsory education. Even now, it has not been implemented. The cut off date for implementation of that law was 1st April, 2010. Even now, the State Governments are asking for money. The Education Minister of Gujarat, Shri Raman Lal Vohra, spoke four days back that they would not be able to implement the Constitutional amendment regarding reservation, or, hundred per cent education to all because they did not have the money. This is the situation in this country. Similar is the situation about this issue of reservation.

श्री भरतसिंह प्रभातसिंह परमार (गुजरात): केन्द्र की ओर से गुजरात सरकार को सर्व शिक्षा अभियान के लिए जो पैसे बाकी हैं, वे भी आपने अभी तक नहीं दिए हैं।...**(व्यवधान)**

श्री प्रवीण राष्ट्रपाल: एजुकेशन के लिए मैं गुजरात सरकार को पैसे दे दूंगा, एजुकेशन के लिए अपनी पूरी पगार दे दूंगा...**(व्यवधान)**

श्री सतीश चन्द्र मिश्रा: उपसभाध्यक्ष जी, माननीय सदस्य यदि मुद्दे पर बोलें, तो ज्यादा अच्छा होगा।

SHRI PRAVEEN RASHTRAPAL: I have brought one copy only, During the last two years, I have put questions to four Departments about the backlog. All the four Departments have replied to me that information is being collected and it will be supplied to me. That information came to me exactly after one year. Now, what can I do? I have forgotten. Now, this particular answer to me from the Finance Ministry is very interesting for everybody. It says, "The hon. Madras High Court had given eight weeks' time to implement the DOPT circular dated 13th August, 1997. But, in the meantime, the concerned five banks—Union Bank of India, Uco Bank, Central Bank of India, Canara Bank and Syndicate Bank—went in appeal in the hon. Supreme Court of India." Again, there is a judgement dated 9.12.2009. Now, Madras High Court gave a judgment on this date directing that there-should be reservation in promotion. Madras High Court gave that DOPT circular number also and directed

the banks to implement it. Now, this is a judgment in favour of the Government of India directing the nationalised banks to implement the circular. But, five banks went in appeal. Now, the Ministry says, "However, the banks are following instructions contained in the DOPT OM number so and so, dated 13th August, 1997." And, what is the Court order? It says, "*Status quo* should continue." That means, the judgment should be implemented. Now, once the judgment is to be implemented, how are five banks allowed by the Finance Ministry to go in appeal against the Madras High Court's judgement which is in support of the DOPT circular? Nobody gives me reply even here. So, it is pinching because there has been no priority to the issue of the Scheduled Castes during the last few years in this country, whether it is the rule of this party or that party. What we want is priority. We are crying, we are shouting for the Reservation Act for the last four years. It was introduced, it was passed without discussion. Then, we came to know about the list of institutions. It was agreed that it will be removed. My friend, Mr. Natchiappan, was the Chairman of the Standing Committee, which gave the report that this could not be done. The list of institutions cannot be capped; that there will not be reservation. They have given Report to the Parliament that there cannot be such a direction in the Bill but the Bill is not coming up in the Parliament.

Now, what can a Member of Parliament, that too, of the Ruling Party, do? I cannot give a challenge like a social revolution. I am requesting my two hon. Ministers, namely, the Minister of Law and Justice, who is sitting here, and, the Minister of Personnel, Public Grievances and Pensions to please give me an answer. If the Madras High Court's judgement was according to the DOPT's circular, how were the nationalized banks allowed to go in appeal against the same judgement and waste Government money? That is my question, and, why promotion to these people should not be given.

[THE VICE-CHAIRMAN (PROF. P.J. KURIEN) in the Chair]

Sir, I come to another argument. My learned lawyer friend, Mr. Misra has very rightly defended it because he is not only Misra, he is 'S.C.' Misra. You have done my job today. So, Mr. S.C. Misra and, another friend of mine, Mr. Mungekar, have spoken so well, and, it was legal as well as theoretical speech. So, I do not have to say much but I have to give only definition of promotion.

Very few of you might know that Dr. I.G. Patel was not an IAS officer. Do you know he was appointed as a Secretary by Shri Morarji Desai? He has not passed any examination. Do you know the learned Prime Minister of the country, who is a Member of this House, was appointed by Mr. Pranab Mukherjee, when he was the Finance Minister during the regime of Madam Indira Gandhi? The Government has

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power. Dr. I.G. Patel was appointed. Dr. Manmohan Singh was appointed. He was a Professor in JNU. But looking to their knowledge of economics, Madam Indira Gandhi wanted that he should be appointed as the Finance Secretary. So, appointment was made. Nobody has challenged it.

Now, here, the issue is of reservation in promotion. There is reservation for recruitment and not for promotion. But in article 335 of the Constitution, the framers of the Constitution have not used the word 'recruitment'. The word used is 'appointment'. Now, appointment can be made by selection, appointment can be made by election, appointment can be made by recruitment, and, appointment can be made by appointment. President of India appoints the Chief Justice of the Supreme Court. To become Chief Justice from the post of a Judge is a promotion but the word used is not 'promoted'. What is written is that one is appointed as Chief Justice of the Supreme Court. Appointment includes everything. Article 335 very clearly says, 'at the time of appointment'. So, I request both the Ministers to see into article 16(4), 16(4A), 16(4B) and 17 also. Nowadays, we are not bothered about article 17. Article 17 is about removal of untouchability. The Article 17 of the Constitution abolishes untouchability and says that its practice in any form shall be punishable under the law of the land. In the first twenty years immediately after independence, there were social movements; there were departments which used to send people to villages to tell them that they are all equal; give water to these people, they are also our citizens. They may be Scheduled Castes but they are not untouchables. Otherwise, after all, what is the meaning of Scheduled Caste? It is not a caste. Hon. Supreme Court has gone on record to say that it is not a caste. It is a community included in the List and the List is prepared by the President of the country under article 341 for the Scheduled Castes and under article 342 for the Scheduled Tribes. This List is prepared by the President of India and it can subsequently be amended only as suggested by the Parliament. Nobody else can touch this List. A poor man can be a Scheduled Caste and a rich man can also be a Scheduled Caste. A man with agriculture land can be a Scheduled Caste and a man with no agriculture land can be a Scheduled Caste. There is no change in their status of backwardness or forwardness. There is reservation in Lok Sabha and in Vidhan Sabha. That is political reservation. It was only for 10 years. But there was no time limit for reservation in education, higher education and Government services. So, promotion is also included at the time of reservation, and as rightly said by my two-three friends, we are demanding parity and not charity.

I am now coming to article 338 which deals with the National Commission for Scheduled Castes and Scheduled Tribes. I am extremely sorry that the constitutional

role of the National Commission for Scheduled Castes and Scheduled Tribes is not properly allowed by the Government during the last ten years. In the good old days, every year there used to be a report from the National Commission for Scheduled Castes and Scheduled Tribes. This report as well as action taken was used to be discussed in the Parliament. Today also, on this very problem, with the permission of the Chair, I am exhibiting this booklet. This is not a private document. The title is 'A Study Report on Reservation in Promotion'. The answer to the three questions raised by the Supreme Court judgement is already prepared by the National Commission for Scheduled Castes and Scheduled Tribes. With the permission of the Chair, I am putting this copy on the Table for the use of the Minister of Law and Justice and the Minister of Personnel and Public Grievances. May I do this, Sir?

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): No, no, you should have taken prior permission. That is the issue.

SHRI PRAVEEN RASHTRAPAL: The Commission has given answer to the court that where is the question of verifying who is a Scheduled Caste person and who is a Scheduled Tribe person. The list is there in the Schedule of the Constitution and there is reservation for them. Who will decide adequacy? Adequacy is already decided according to the population. Beautiful answer is given by this Commission. It should be utilised.

I finally conclude because many things have already been said by most of my friends. My only request is, both the Ministers should immediately call a meeting of the leaders of all the parties during the next week and see that suitable Constitution Amendments are prepared and passed during this session to avoid the problem all over the country. There was some discussion between Satish Chandra Misraji and our friend from the Samajwadi Party. That may be settled at U.P. level. That should not create any problem in the all India matter. So, I request the Minister to please take up this issue. Another thing is that this exercise may be expedited because the Act is already ready. Please introduce it in the Lok Sabha. Please don't introduce it in the Rajya Sabha because Rajya Sabha is a permanent House. There is no hurry for passing it in the Rajya Sabha. Passing it in the Lok Sabha is very urgent. Last time, we passed it in the Rajya Sabha without discussion, but we could not introduce it in the Lok Sabha and the Lok Sabha was dissolved. Now, this time, according to press reports, nothing is sure what will happen after one week. So, it is better that we introduce it in the Lok Sabha and get the Act also passed because the Act is ready. I want that the Act should be passed and the suggestion of two amendments as suggested by Mr. Satish Chandra Misra and my senior colleague Mr. Mungekar may kindly be taken up. Thank you very much.

4.00 P.M.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): The hon. Minister wants to intervene here.

THE MINISTER OF LAW AND JUSTICE AND THE MINISTER OF MINORITY AFFAIRS (SHRI SALMAN KHURSHEED): Sir, I am grateful to you for allowing me a brief intervention. The issue has legal dimensions. This is a very, very important topic. The matter concerns the entire nation and, of course, the hon. Members across the floor. I want to reiterate the commitment of the Government and indeed the commitment of this House and all the people of our country for the empowerment of all backward communities of our country ensuring dignity and equal participation, as equal citizens with equal respect and equal entitlement, in the nation-building effort.

Sir, in that context, as Minister of Law and Justice, I consider it my beholden duty to respond to somewhat cynical concerns expressed. As has been expressed, judges of the country often, for different reasons, stand in the way of fulfilment of the dreams of our founding fathers in the matter of giving equal participation, dignity and equality to backward classes of our country. I do believe that when these debates are heard across the country and seen across the country, and I am sure they are heard by ordinary citizens as indeed they are seen and heard by people associated with legal profession, including eminent judges, they might feel that somehow we, Members of Parliament, and the Government have a cynical and a pessimistic view about their commitment to equality for all people in our country. Therefore, I consider it my duty to say that some of the greatest contributions that have been made to equality, particularly in the case of the disadvantaged section, the citizens who suffered the worst kind of treatment in the past, has come from some of the outstanding judges of our country. And some yeoman service to this has been provided by legendary judges in cases that we could hear. And those of us associated with law could recite them here with great admiration and pride and say that we have had judges in the country who have done this. But, Sir, let me say this also. As I praise the judges, it is not to say that we are not concerned, that we are not affected and that we do not consider it a matter of urgency to respond to the decision that has been taken. That, in a sense, disappoints us and, in a sense, stands in the way of fulfilment of our objectives and fulfilment of our aspirations. But we must not forget that two judgments came. One from the Allahabad High Court sitting at Allahabad and the other came from a Bench of the Allahabad High Court sitting at Lucknow. On a noble objective and destination, judges can disagree. And equally Supreme Court judges can disagree with them. The Supreme Court

judges often disagree amongst themselves. They are dissenting judges. Sometimes the dissent of one generation is treated as the forewarning or indeed the foresight of a coming generation that changes the law. And that is how the law has evolved. I, therefore, urge my hon. Colleagues on both sides of the House to treat this as a grand democratic dialogue with different organs of Government, including the judiciary, so that we move forward in a manner that is not, in any way, symptomatic of a conflict or a confrontation, but of a collaboration and cooperation between different arms of Government to achieve this very noble objective of our Constitution. Sir, we have to continue to trust our Judges because whatever we do here will finally be tested on the anvil of the basic structure, as understood by the highest judiciary, by the Judges of the Supreme Court and, therefore, the language that we speak and the formulation that we make must indeed be communicative not only of our deep concern and our commitment in our conviction but also be persuasive to the judiciary to come hand in hand with us and move forward towards the destination that has been highlighted once again today in this House, in this very, very important discussion which has been initiated by the new hon. Member of the House, Km. Mayawati.

Sir, the issue which concerns us directly is the issue in the judgment which is related to adequacy of representation. I do believe, as Shri Satish Misraji has highlighted, the judgment goes back to Nagaraj judgment because Nagaraj judgment has been the base of the judgment that has now been pronounced by the Supreme Court both in Rajasthan matter and the Uttar Pradesh matter. The Nagaraj judgment had indicated and flagged three issues—efficiency, adequacy of representation and backwardness. Reading those judgments carefully, I find that the issue of efficiency and backwardness, although mentioned, does not seem to stand in the way of what we were trying to achieve. The issue of adequacy of representation certainly seems to have been the stumbling block of some major concern and obviously, the House, as indeed the Government, will have to take some steps in order to ensure that this does not continue to be an impediment in achieving our goals. But, Sir, in fairness to the judiciary and in fairness to ourselves, we have to recall that the root of whatever we are doing comes from article 16(1) which very clearly says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. It's only because the bland 'equality' expression of article 16(1) does not become apparent to an ordinary person and an ordinary citizen, it had become important to provide the derivatives of article 16(1), that is, 'real equality' as opposed to only 'symbolic equality'. And, therefore, we had article 16(4). The inadequacy of article 16(4) required article 16(4A). But, I must read

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to the House article 14(4A) in its entirety to ensure that we know what exactly we are dealing with and what is that we have to address. Article 16(4A) says, “Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the service’s under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

Sir, it may well have been our lack of foresight when we introduced this amendment, a far-reaching amendment, to the Constitution. We did include adequacy; we did feel that adequacy was perhaps being derived from article 16(1) and, therefore, we have to very carefully reflect upon how we get past something that we had introduced ourselves, possibly in the understanding that mentioning of adequacy would not, in any way, become an impediment because there is a national—and may I say, constitutional—consensus that 22.5 per cent is what will, at least, be necessary for adequacy. I am not going to foreclose any argument that will take place in court. But, it is quite possible to say that 22.5 per cent is not adequate. It is quite possible in some circumstances that a State Government or Central Government comes to a conclusion that total justice, in fairness, requires that we go beyond what is proportionate to the population; so, we need to go beyond. Of course, as the hon. Member, Shri Raja, said, for the present, we have a limit—at least, a *prima facie* limit—of 50 per cent. You are lucky that in your State, the Supreme Court has allowed an exemption.

SHRI D. RAJA: It is in the Ninth Schedule.

SHRI SALMAN KHURSHEED: May be a temporary exception in the State of Tamil Nadu, and I believe in Karnataka also. But certainly we do believe that there is a *prima facie* restriction of 50 per cent imposed. But we have this craze of adequacy that will have to be addressed.

Sir, going back to the Indira Sawhney case which again, as I mentioned, is the Mandal judgement 16(1), as well as, Indira Sawhney’s case much of the jurisprudence in these matters have concerned with backward classes. Then, I will explain backward classes are actually classes which include SCs, STs and Other Backward Classes, of classes seem to be similarly disadvantaged, but not exactly the same as backward classes. The special status of SCs, STs has been recognised throughout. SC and STs are, as it were, constitutionally mandated backward classes where there is no necessity of looking only at educational backwardness or social

backwardness, just backwardness in itself linked with extremely hurtful and extremely sad episode in our history have given them the label of backward. And centuries of that backwardness inflicted upon them would not be set right by one or two generations of positions in high power positions or being comfortable economically. This has been understood. Therefore, creamy layer does not apply to SCs and STs, but creamy layer does apply to other backward communities. I do believe that when we look at this problem we will have to be sensitive to the concerns of other backward just as we are both sensitive and concerned about the issues that pertain to SC and STs and Other Backward Classes may sometime has issues on which there will be consensus, sometime has issues on which there may be a difference of opinion. There is no difference of opinion on creamy layer. But there is differences of opinion today only in the nation's say but it could become more serious difference of opinion in sub-categorisation. There is no sub-categorisation as far as Indira Sawhney case is concerned. No sub-categorisation in SCs and STs. But there is a sub-categorisation, in OBCs, and, therefore, in this evolving saga of how we give complete justice to all our citizens, wipe out the scars, the hurtful matters of our history and write together in this House and the other House a glorious future for our children to come matters. We look forward to the day not necessarily in our life time but we look forward to the day with someone not once, but thousands and thousands and thousands of young people in this country will have the confidence and will have the stature, we will have the success that we have in Behan, Miss Mayawati so that they will not need to fall back no reservation but on their own merit, with their own conviction, with their own success reach out towards a bright future. But we do know the factual reality of our times in which we live and the factual reality of the time to an extreme actually goes to say that despite the fact that we have moved away from our history the practical reality remains extremely different. It is not just for dalits of the land, it is not just for minority of the land, it is not just for backwards of the land. It is also for lot of ordinary citizens who still hunger for food, who still need medicine, who still need education, who still need roof above them. Every day and every speech that is made in this House, Members repeat, time and time again and knock on the conscience of both the Government and themselves that there is still a lot to be done. If I may borrow Robert Frost's words that Pandit Nehru was so fond of "The woods are lovely, dark and deep, but I have promises to keep and miles to go before I sleep, and miles to go before I sleep." I will just add one point which is of urgent concern and that point is, when the decision of Indira Sawhney was taken, a five-year period was given—a period in which there would be no reversion of the promotions that had been made. Such a safety net has not been provided in the present judgement. Therefore, we could

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have a crisis in our hands very soon, almost immediately. Probably, even while we are discussing this there could be a crisis somewhere. Therefore, the urgency of the matter is that the issue will have to be addressed and whichever way and form it has to be addressed, we will address it. My colleague, while replying to this discussion, would be able to give clearer indications of the decisions that we have taken in the Government. But those decisions will be meaningless unless we all join hands together. I think, he will indicate the roadmap for that. I can only assure you that from the time that we have, formed this Government we are looking at the Nagaraj case and we are looking at all the developments very closely. A series of meetings have taken place. We have also consulted with the SC and ST fora; we have also consulted with the experts. There are other issues. (*Interruptions*)...On the Reservation Act, my colleague will speak. My job is only to vet it when it is ready and sent to me. My colleague will tell you what he is doing to have it ready.

With this short intervention, I thank the House and I thank you, Mr. Vice-Chairman, for giving me this opportunity.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Thank you, Salmanji. Mr. Biswajit Daimary.

SHRI PRAKASH JAVADEKAR (Maharashtra): Sir, I just want to seek one clarification.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): The Minister will reply. (*Interruptions*)...

SHRI PRAKASH JAVADEKAR: He is the Law Minister (*Interruptions*)...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): It is not the reply (*Interruptions*)...

SHRI PRAKASH JAVADEKAR: He is the Law Minister. (*Interruptions*)...

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): You can ask the Minister who will reply to the debate. (*Interruptions*)...

SHRI PRAKASH JAVADEKAR: He is the Law Minister of the country. I just want to know what the brief of the Central Government to the pleaders in the Supreme Court was and what they pleaded. (*Interruptions*)...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): No. That reply will be given by the Minister. (*Interruptions*)...The Minister will reply. (*Interruptions*)... The Minister will reply. (*Interruptions*)...

श्री विश्वजीत दैमारी (असम): धन्यवाद उपसभाध्यक्ष महोदय। इस विषय पर सारे माननीय सदस्य बोल चुके हैं और अभी-अभी मिनिस्टर साहब ने भी इसके ऊपर कानून की कुछ बातें **clear** की हैं। हम सबके बताने की कोई जरूरत नहीं है कि हमारे संविधान में एस.सी. या एस.टी. के लिए क्या प्रोविजन है और एस.सी./एस.टी. के लिए सर्विस रूल में क्या है, **recruitment, appointment** हो या **promotion** हो, इसमें क्या है, इस पर नए हिसाब से बात करने की कोई जरूरत नहीं है। लेकिन इसमें समस्या यह आ रही है कि संविधान का प्रोविजन होते हुए भी, कानून व्यवस्था रहते हुए भी आज शैड्यूल्ड कास्ट और 'शैड्यूल्ड ट्राइब्स' के लोग **secured** नहीं हैं, वे अपने आपको सुरक्षित नहीं पा रहे हैं, जिसके कारण फिर से इस विषय पर इस सदन में बात करने की जरूरत पड़ रही है। हम सबके लिए यह दुर्भाग्य कि बात है कि हमारे देश में जो छोटी-छोटी जातियां हैं, चाहे एस.सी. हों या एस.टी. हों, उन लोगों को समझने वाले, उन लोगों की तरफ सहायता के लिए हाथ आगे बढ़ाने वाले, नेता हों या मंत्री हों या कोई ऑफिसर हो, जो भी उच्च पद पर हो, भारतवर्ष में ये कम हो गये हैं और इसीलिए ऐसा हो रहा है। अगर हम इस समस्या को देखते हैं, तो संविधान के प्रोविजन के हिसाब से हो या कानूनी व्यवस्था के हिसाब से हो, अगर हमें इसमें कोई मौका मिलना है और कोई इसे देना नहीं चाहता है, तो इसके लिए शैड्यूल्ड कास्ट\शैड्यूल्ड ट्राइब्स के लोगों को कोर्ट के पास जाना पड़ता है। अगर कभी उसे यह मिल भी जाता है, तो फिर इसके ऊपर कोर्ट में **challenge** किया जाता है और फिर इसे झंझट में डाल दिया जाता है। आज हमें अपनी **population** के हिसाब से **percentage** दिया गया है। हम लोगों को जितना **percentage** मिलना था, वह नहीं मिला है, जिसके कारण बहुत सारा **backlog** पड़ा हुआ है। इसका कारण यह है कि **recruitment policy** में एस.टी. को रोस्टर के हिसाब से पोस्ट न मिले, ऐसा भी किया जाता है। जैसे मेरे स्टेट, असम में अभी भी हजारों पोस्ट्स **backlog** में हैं। **Backlog fill up** नहीं किया गया है। चाहे **recruitment** में हो, **appointment** में हो या **promotion** में हो, रोस्टर के हिसाब से वहां शैड्यूल्ड ट्राइब्स को 10 परसेंट मिलता है। अगर 10 लोगों का **promotion** करना है, तो 10 में एक एस.टी. को मिलता है, लेकिन इसके लिए 9 का **advertisement** दिया जाता है, 10 का **advertisement** नहीं दिया जाता है। जिसके कारण रोस्टर के हिसाब से 9 सीट होने की वजह से वह सीट एस.टी. को नहीं मिलती है। अगर 20 पोस्ट्स होंगी, तो पहले सिर्फ 15 पोस्ट्स का एडवर्टाइजमेंट देते हैं, इसके कारण जहां दो लोगों को नौकरी मिलनी थी, वहां सिर्फ एक को ही मिलती है। हर समय इसी तरह की कुछ न कुछ उल्टी-पुल्टी व्यवस्था लाकर, एस.टी. या एस.सी. को जो अधिकार मिलना था, उनसे इस अधिकार को छीन लिया जाता है। उनके इस अधिकार को हम कैसे सुरक्षित करेंगे, यह सबसे ज्यादा चिन्ता का विषय है। यद्यपि हमारे संविधान में इस सबका प्रोविजन है, कानून में भी सब कुछ है, लेकिन ये सब होते हुए भी हम लोग कुछ नहीं कर पा रहे हैं। इसके लिए **National Commission for Scheduled Tribes** और **National Commission for Scheduled Caste** का भी हमारे यहां व्यवस्था है, लेकिन प्रवीण जी अभी बता चुके हैं कि आज ये किस हालत में चल रहे हैं।

मैं इसमें ज्यादा नहीं कहना चाहता हूं। हम लोगों को इस पर सीरियसली सोचना चाहिए और इस विषय पर हो रही चर्चा को भी सीरियसली लेना चाहिए। हमें देखना होगा कि किस तरह से ट्राइबल्स के अधिकार उनको मिलें, चाहे वे प्रमोशन में हों, चाहे एपॉइंटमेंट

[श्री बिश्वजीत दैमारी]

में हों, डेवलपमेंट परपस में हों। उनके लिए जो भी फंड वगैरह दिए जाते हैं, उनको भी ट्राइबल्स के लिए अच्छी तरह से खर्च किया जाए। एक बात यह भी है कि स्टेट गवर्नमेंट सारे फंड्स को डायवर्ट कर देती है। अगर ट्राइबल एरिया में कोई रास्ता बनना है तो कहीं दूर रास्ता बनाते हैं, फिर जब आप विधान सभा में या कहीं और कंप्लेंट करेंगे तो बताएंगे कि ट्राइबल लोग इस से आते-जाते रहते हैं, इसीलिए इस फंड को यहां खर्च किया गया है। कहीं-कहीं वे टाउन में कॉलेज बनाएंगे, होस्टल बनाएंगे, इसके बाद बोलेंगे कि वहां पर ट्राइबल लोग आ कर पढ़ते हैं, इसलिए इस कॉलेज को बनाने में इस पैसे को दिया गया है। कभी टाउन में, शहर में उस पैसे से तनखाह तक दी जाती है, जो रुपया ट्राइबल गांव के लिए आता है। जब पूछते हैं तो बोलते हैं कि यहां ट्राइबल स्टुडेंट्स पढ़ते हैं, इसीलिए ट्राइबल का फंड वहां के सर्विस होल्डर्स को तनखाह देने में हम खर्च कर रहे हैं। अब आप क्या करेंगे?...**(समय की घंटी)** ये सब बातें होती हैं।

इसलिए मैं अनुरोध करता हूं, इस विषय पर जो प्रस्ताव लाया गया है, उस पर ध्यान दिया जाए और इस पर कार्य किया जाए। यही कह कर मैं अपनी बात को समाप्त करता हूं, धन्यवाद।

डा. भारतकुमार राऊत (महाराष्ट्र): धन्यवाद, महोदय। महोदय, आज मैं हिन्दी में बात करना चाहता हूं, वैसे मेरी हिन्दी बहुत अच्छी नहीं है। मैं हिन्दी में बोल रहा हूं, क्योंकि यह जो विषय है, शेड्यूल्ड कास्ट और शेड्यूल्ड ट्राइब्स...**(व्यवधान)**

श्रीमती जया बच्चन (उत्तर प्रदेश): आप हिन्दी में बोल रहे हैं, यह बहुत बड़ी बात है।

डा. भारतकुमार राऊत: धन्यवाद। वह गरीब, जो दूर देहात में रह रहा है, जिसे अंग्रेजी नहीं आती, मैं उन लोगों के लिए बोल रहा हूं। वे लोग अंग्रेजी नहीं समझते हैं, उनको एक ही चीज समझ में आती है कि मेरे बेटे के पास नौकरी नहीं है, मेरे बेटे के पास शिक्षा नहीं है, अगर मेरा बेटा सरकारी नौकरी में जाए, तो उसके लिए प्रमोशन नहीं है। जो देहाती ऐसी स्थिति में हैं, मैं उनके लिए बोलना चाहता हूं।

सर, मैं जिस पार्टी का प्रतिनिधित्व करता हूं, वह शिव सेना है और उस शिव सेना के प्रमुख बाला साहब ठाकरे जाति व्यवस्था का उपयोग राजनीति में नहीं करना चाहते। हम उसमें विश्वास नहीं रखते हैं। अभी हम प्रमोशन की पॉलिसी के ऊपर बात कर रहे हैं, जिसके ऊपर अभी सतीश चन्द्र मिश्रा जी ने इतना अच्छा भाषण किया। इसके लिए मैं उनका धन्यवाद करता हूं।

यह प्रमोशन की नीति जो आप अपनाना चाहते हैं, यह नीति किसके लिए है? यह नीति उसके लिए है, जो प्रमोशन तक पहुंचे, जिसे सरकारी नौकरी मिले, या वह नौकरी का पात्र हो जाए। आज हमारे देहाती भाई उस स्थिति में रह रहे हैं, जिन्हें शिक्षा ही नहीं मिलती है, इसलिए वे किसी भी नौकरी के पात्र ही नहीं बनते। अगर वे नौकरी के पात्र ही नहीं बनते तो प्रमोशन का सवाल आता ही नहीं है। इसलिए मुझे लगता है कि हमें इस विषय को शिक्षा से ही शुरू करना चाहिए। अगर इस विषय हम शिक्षा से शुरू करेंगे, तभी हम इसका कोई इलाज ढूंढ सकेंगे।

शिक्षा के बारे में अगर आप सोचेंगे, तो आप उन बच्चों के लिए सोचेंगे, जो स्कूल तक पहुंच सकते हैं। हमारे देहाती बच्चे, जो पीड़ित हैं, दलित हैं, वे तो स्कूल तक पहुंच ही नहीं सकते। अगर वे स्कूल में पहुंचेंगे, तब आप उनके आरक्षण की व्यवस्था कर सकते हैं, अगर वे आरक्षण लेकर आगे जाएंगे, तभी आप उनकी उच्च शिक्षा के आरक्षण की बात कर सकते हैं, उसके बाद उनकी नौकरी के आरक्षण की बात कर सकते हैं और उसके बाद ही उनकी प्रमोशन का सवाल आता है। हमें नींव से शुरूआत करना चाहिए। मुझे आपको यह बताना है कि सरकार की जो नीति है कि इस नीति से किसी भी पिछड़े वर्ग का आदमी/बच्चा यहां तक पहुंचे, वह पहुंच ही नहीं सकता है। सर, अगर एस.सी./एस.टी. का कोई उम्मीदवार है, अगर वह नौकरी की अर्हता ही प्राप्त नहीं कर सकता, तो उसे नौकरी मिल ही नहीं सकेगी और अगर उसे नौकरी नहीं मिल सकेगी तो उसको प्रमोशन नहीं मिल सकता। इसके लिए हमें नींव तक जाकर बात करनी चाहिए।

मैं एक और सवाल आप सब से पूछना चाहता हूँ। इस देश में जिन एस.सी./एस.टी. लोगों ने रिजर्वेशन लिया, शिक्षा में रिजर्वेशन लिया, नौकरी में रिजर्वेशन लिया और उसके बाद प्रमोशन में भी रिजर्वेशन लिया, **that is justified**, मैं उनके खिलाफ नहीं हूँ, जिन्होंने इस तरह से रिजर्वेशन लेकर अपनी उन्नति की, लेकिन क्या उन्होंने अपनी उन्नति का उपयोग अपने वर्ग के लोगों के लिए किया? अगर एक जेनरेशन से, एक पीढ़ी से, इस तरह का प्रश्न किया जाए कि उन्हें शिक्षा नहीं मिली, नौकरी नहीं मिली और उसके बाद प्रमोशन नहीं मिली, तो क्या उनके बच्चों को भी यही सुविधा मिलनी चाहिए? मैं आपको एक उदाहरण देता हूँ। मैं महाराष्ट्र से आता हूँ। महाराष्ट्र के एक आई.ए.एस. ऑफिसर, जिन्होंने रिजर्वेशन लिया, रिजर्वेशन से वे सेक्रेटरी बने और उसके बाद मुख्य सचिव बने। इसका मतलब है कि वे समाज में एक स्तर पर आ गए। उसके बाद अगर उनका बेटा भी रिजर्वेशन के लिए अप्लाई करे, तो हमें क्या करना चाहिए? जिनको रिजर्वेशन मिला है, वे लोग अगर अपनी ही जाति के, अपने ही पीड़ित वर्ग के, लोगों को रिजर्वेशन से वंचित रखना चाहते हैं, तो मुझे लगता है कि यहां पर सरकार को अपनी नीति बदलनी चाहिए, सरकार को हरकत में आना चाहिए और सरकार को उनके खिलाफ कार्रवाई करनी चाहिए। रिजर्वेशन इक्वलिटी के लिए है। इक्वलिटी आने के बाद भी आप अगर ऐसे ही करेंगे तो मुझे लगता है कि यह नाइंसाफी है और कानून द्वारा यह जो फैसिलिटी मिली, उसका दुरुपयोग है।

सर, मैं उस प्रांत से आता हूँ, जो डा. बाबा साहेब की कर्मभूमि रही है और उसके उस भाग से आता हूँ, जहां पर डा. बाबा साहेब अम्बेडकर की अंत्येष्टि हुई थी। इसलिए, मैं कहना चाहता हूँ कि डा. बाबा साहेब अम्बेडकर का नाम जो बार-बार ले रहे हैं, उनको यह समझना चाहिए कि यह जो सहूलियत है, इस सहूलियत को सहूलियत की दृष्टि से ही देखना चाहिए। यह हमेशा के लिए हक नहीं बनना चाहिए। अगर हम इसे हमेशा के लिए हम बनाकर रखेंगे तो हम उस पीड़ित वर्ग के साथ नाइंसाफी ही करेंगे, क्योंकि इससे लगेगा हम उसे समाज के मुख्य प्रवाह से हमेशा दूर रखना चाहते हैं। अगर यह दूरी रहेगी तो समाज हमेशा डिवाइडेड रहेगा। यह डिवाइडेड समाज शायद वोट बैंक के रूप में किसी पार्टी के काम में आएगा, लेकिन इससे समाज की उन्नति होने का कोई भी भरोसा नहीं है और जहां तक मैं समझता हूँ कि इससे समाज की प्रगति नहीं बल्कि पिछड़ापन ही होगा। इसलिए, मेरी

[डा. भारतकुमार राऊत]

आप सबसे यह मांग है कि जब हम इस तरह के रिजर्वेशन की बात कर रहे हैं, प्रमोशन की बात कर रहे हैं, उस समय हमें उन लोगों के बारे में भी बोलना चाहिए, जिन्हें इस तरह की सहूलियत मिली, जिनको यह फैसिलिटी मिली और उन्होंने ऊंचे पद ले लिए, लेकिन उन्हें अपने बच्चों के लिए, उनकी शिक्षा के लिए, नौकरी के लिए, प्रमोशन के लिए इस तरह से नहीं करना चाहिए।...**(समय की घंटी)**...धन्यवाद।

श्री राम कृपाल यादव (बिहार): माननीय उपसभाध्यक्ष महोदय, मैं आपके प्रति आभार प्रकट करता हूँ कि आपने मुझे इस महत्वपूर्ण अल्पकालिक चर्चा में सम्मिलित होने का अवसर प्रदान किया है।

महोदय, मैं अपनी बात कहूँ, उससे पहले मैं बहन मायावती जी का आभार व्यक्त करना चाहता हूँ, जिन्होंने इस चर्चा के शुरुआत की बुनियाद डाली। और साथ में आदरणीय मिश्रा जी का, जिन्होंने इस चर्चा को आगे बढ़ाने का अवसर प्रदान किया, जिससे हम सब लोगों को शरीक होने का मौका मिला। महोदय, विडम्बना यह है कि देश को आजाद हुए 65 वर्ष हो गए, लेकिन वंचित समाज जिसको हम दलित, शोषित और पीड़ित कहते हैं, जो अंतिम पंक्ति में वर्षों से बैठा हुआ है, उसकी हालत ठीक नहीं है। मैं समझता हूँ कि आज भी वह विशेष अवसर से वंचित है। जितने उसके अधिकार और उनको जितना हक मिलना चाहिए था, वह नहीं मिल रहा है। आज भी उसका शोषण, दोहन हो रहा है और प्रताड़ना मिल रही है। हमारा देश आगे बढ़ रहा है, हमारी सोच भी आगे बढ़नी चाहिए। लेकिन मैं समझता हूँ कि इतने वर्षों के बाद हमारी सोच में बहुत बदलाव नहीं हुआ है, जिसकी वजह से आज भी वह समाज, जो दलित समाज है, जो पिछड़ा और वंचित समाज है उसके हालात वहीं के वहीं हैं। बाबा साहेब भीमराव अम्बेडकर, जिनको हम भूल नहीं सकते और उससे पहले जैसा कि क्षत्रपति साहू जी महाराज ने नई सोच के तहत 1902 में विशेष अवसर दिया उन लोगों को, जो वंचित लोग थे। वे उस समय लंदन में थे और बर्थडे के अवसर पर उन्होंने वंचित समाज के लोगों को यह एक गिफ्ट दिया था। बाद के दिनों में आजादी की लड़ाई हुई, हम सब लोगों ने शिरकत करने का काम किया। संविधान बना, संविधान निर्माता डा. भीमराव अम्बेडकर ने सहयोगियों के साथ एक खूबसूरत संविधान बनाया, जिसमें आर्टिकल के माध्यम से 1950 के दशक में आरक्षण की व्यवस्था, शोषित और वंचित लोगों के लिए की गई। आज इसकी चर्चा सदन में हो रही है। महोदय, यह सोचा गया था कि वंचित समाज जिसे समाज के अन्य लोग अछूत कहते हैं, जिसको दोहरी नागरिकता के दृष्टिकोण से देखने का काम आज भी कर रहे हैं, वैसे लोगों को विशेष तौर पर प्रावधान के तहत संविधान में अवसर दिए गए और नौकरियों में आरक्षण का प्रावधान मिला, न सिर्फ दलित वर्ग के लोगों को, बल्कि पिछड़े वर्ग के लोगों को भी। बाद के दिनों में मंडल कमीशन की चर्चा हुई। मंडल कमीशन के तहत ओ.बी.सी. के लोगों को भी आरक्षण का प्रावधान मिला। कानून तो बनते हैं, कानून बनाए गए, मगर मैं समझता हूँ कि न्याय नहीं मिल सका उन लोगों को, इसलिए आज भी बड़े पैमाने पर जो आबादी है वह अवसर से वंचित है और उनको यह अवसर पूरे तौर पर नहीं मिल पाया। बाद के दिनों में एक केस का हवाला सामने आया, जिसकी चर्चा हम लोग कर रहे थे। फिर संविधान में कुछ संशोधन हुआ, धारा-16(4) के तहत प्रमोशन में भी आरक्षण की व्यवस्था की

गई और उसका लाभ मिल रहा है। फिर अभी एक निर्णय आया, जिसमें यह कहा गया कि आज बड़े पैमाने पर लोग वंचित हैं, जो खास तौर पर एस.सी., एस.टी. के लोग हैं, उनको यह लग रहा है कि हमारे हक फिर छीने जा रहे हैं। प्रमोशन में उनको जो हक मिला हुआ था, विशेष अवसर मिला हुआ था और जो समान अवसर मिला हुआ था, उससे उनको वंचित करने की कोशिश की जा रही है। महोदय, मिश्रा जी ठीक ही कह रहे थे, कहा जाता है कि जो वंचित समाज के लोग हैं, जो दलित और पिछड़े समाज के लोग हैं, उनमें मेरिट का अभाव रहा है। मैं जानना चाहता हूँ कि क्या हमने उनको वे सुविधाएँ उपलब्ध करवाई, पढ़ने की, लिखने की और रहने की? इंसान तो एक है, हर कोई एक माँ की कोख से जन्म लेता है और भगवान ने जिसको भेजने का काम किया है वह रजिस्ट्रेशन कराकर नहीं आता है कि मैं दलित वर्ग में जाऊँगा या आम लोगों के बीच में जाऊँगा, वह तो ईश्वर की कृपा है, यहाँ आ जाता है। यह जो आज आरक्षण की व्यवस्था की बात कही जा रही है, हमारे साथी बता रहे थे कि उनको अब यह अवसर नहीं मिलना चाहिए। हम तो यह कहते हैं आज वह अवसर खत्म कर दीजिए, किस चीज की आपत्ति है। समाज का वह वर्ग और तबका, जो शोषित और पीड़ित है और जो अंतिम पंक्ति में खड़ा है 65 वर्ष की आजादी के बाद **(समय की घंटी)** सुनिए सर, यह बहुत सेंसेटिव मामला है, घंटी मत बजाइए। हमको अपनी बात बोलने दीजिए। मैं कोशिश करूँगा आपके द्वारा पुनः घंटी बजाने से पहले अपनी बात खत्म कर दूँ, मगर मेरी जो भावना है, मेरी जो फीलिंग है उसको तो रिकॉर्ड में आने दीजिए। यह सब स्पीच लिखी जाएगी और देखी जाएगी। इसलिए कृपया इंटरप्ट न करें। सर, आपको भी उतनी ही वेदना होगी जितनी वेदना से मैं बोल रहा हूँ।

उपसभाध्यक्ष (प्रो. पी.जे. कुरियन): अब समाप्त कीजिए। आप अच्छा बोले।

श्री राम कृपाल यादव: सर, मुझे अपनी बात कह लेने दीजिए। सर मैं बता रहा था कि हमारे समाज में बहुत से वर्ग और तबके के लोग हैं और कहा जाता है कि चूँकि वह पिछड़े वर्ग का है, उसमें मेधा का अभाव है। सर, आप देखिए एक की पढ़ाई सेंट जोसेफ और सेंट जैवियर में हुई और दूसरे की पढ़ाई वहाँ हुई जहाँ टीचर्स की भी समुचित व्यवस्था तक नहीं है। वह खुले आकाश के नीचे चढ़ी, बोरा या ईट पर बैठकर पढ़ाई कर रहा है तो हमारी मेरिट्स बड़े लोगों के साथ कैसे होगी? सर, मैं तो उस प्राथमिक विद्यालय का विद्यार्थी रहा हूँ और खुले आकाश के नीचे, नीम के पेड़ के नीचे बैठकर पढ़ा हूँ। मैंने तो "ए" "बी" "सी" "डी" छठी कक्षा से सीखी। तो अंग्रेजी बोलने वाले लोगों, ऐसे बहुत से लोग यहाँ बैठे हैं, उनके साथ मेरी तुलना कैसे हो सकती है? सर, मेधा संसार में एक ही तरह की है और मेधा को बढ़ाने के लिए अच्छे लालन-पालन की आवश्यकता होती है, अच्छी पढ़ाई-लिखाई की आवश्यकता होती है। आप सभी को समान रूप से पढ़ाएँ-लिखाइए। मैं दावा करना चाहता हूँ कि एक दलित समाज के बच्चे को समान रूप से शिक्षा दी जाए, अच्छी तरह लालन-पालन किया जाए, तो वह भी हर मामले में आगे रहेगा, लेकिन जो सूखी रोटी खाकर आ रहा है और दूसरा मक्खन खाकर आ रहा है, तो फिर उस गरीब तबके के बच्चे की तुलना उसके साथ आप कैसे कर सकते हैं? आप उसे समान रूप से खिलाइए-पिलाइए। मैं कहता हूँ आप दो बच्चों को निकालिए एक जो दलित वर्ग में पैदा हुआ है और दूसरा बड़े घर में पैदा हुआ है, उनको एक-समान पढ़ाइए-लिखाइए और उनके लालन-पालन की व्यवस्था कीजिए और फिर मेधा का टेस्ट ले लीजिए।

उपसभाध्यक्ष (प्रो. पी.जे. कुरियन): प्लीज खत्म कीजिए। Please conclude.

श्री राम कृपाल यादव: लेकिन यह कहना कि वह दलित समाज का है, पिछड़े समाज का है तो उसमें मेधा की कमी होगी। ये किस तरह की टिप्पणियां माननीय न्यायालय से आ रही है? शायद उस मानसिकता से लोग अभी अलग नहीं हुए हैं, जिस मानसिकता से समाज का बहुत बड़ा तबका पीड़ित और प्रताड़ित रहा है। क्या हम उस मानसिकता से कभी अलग नहीं होंगे? हमारी मानसिकता में बदलाव नहीं होगा? सर, आरक्षण हमारा राइट है और मैं कहता हूँ कि हमें भीख नहीं भागीदारी चाहिए। हम यहां भागीदारी के लिए लड़ने आए हैं और हमारा यह वर्ग और तबका भागीदारी लिए बिना नहीं मान सकता। वह भीख का जमाना गया। यह तो "वोट हमारा और राज तुम्हारा" वाली बात है। हमारी आबादी वोट देकर सरकार बनाती है और हम कानून बनाने के अधिकार से वंचित रह जाएंगे? क्या हमें संविधान में प्राप्त विशेष अवसर के प्रावधान से वंचित कर दिया जाएगा? सर, इस तरह का अन्याय बर्दाश्त नहीं किया जा सकता है।

THE VICE CHAIRMAN (PROF. P.J. KURIEN): Okay, please conclude.

श्री राम कृपाल यादव: सर, मैं खत्म कर रहा हूँ। सर, मैं कह रहा था कि मंत्री जी उनके अधिकार पर इस तरह धीरे-धीरे अंकुश लगाने का काम न करें। आज वह दलित और शोषित जोकि अभी भी अबला है, वह हमारी तरफ ध्यान से देख रहा है। सर, यह चर्चा पूरे देश में देखी जा रही है। अगर उस वंचित तबके के लोगों से उनका हक छीना गया तो बहुत कुछ हो सकता है। माननीय मंत्री जी, आप उन्हें full protection दीजिए। आप संविधान में ऐसा प्रावधान कीजिए ताकि गरीब व दलित समाज के लोगों को यह न लगे कि उनके हक छीने जा रहे हैं। इस से उनके मन में जो एक प्रकार का डर पैदा हुआ है, वह दूर हो सके।

THE VICE CHAIRMAN (PROF. P.J. KURIEN): Now, you please stop. You have taken a lot of time. (Interruptions) राम कृपाल जी, बैठिए।

श्री राम कृपाल यादव: सर, मैं बहुत पीड़ा के साथ बोल रहा हूँ क्योंकि मैं उस वर्ग और तबके से आता हूँ। आप हमारी पीड़ा का एहसास कीजिए। यह देश की जनता की 90 फीसदी आबादी की आवाज है जिसे कानून के हथौड़े चलाकर कोई दबा नहीं सकता। आप कानून का हथौड़ा चलाना बंद कीजिए और मन को खोलकर रखिए। आप इस संकुचित विचारधारा से बाहर निकलिए और गरीब व वंचित समाज के लोगों के...

THE VICE CHAIRMAN (PROF. P.J. KURIEN): Now, take your seat. Please take your seat. Now, Shri Husain Dalwai. (Interruptions) Please take your seat.

श्री राम कृपाल यादव: उनके हक छीनने का प्रयास मत कीजिए, नहीं तो हिंदुस्तान का वह तबका, वह वर्ग...(व्यवधान)...देश के प्रगति बाधित कर देगा और फिर एक क्रांति होगी। मैं मंत्री जी से निवेदन करता हूँ कि आप निश्चित तौर पर कानून में प्रावधान करके पिछड़ों का, दलितों का जो आरक्षण है, उसको और उनके प्रमोशन के आरक्षण को बहाल करने का काम कीजिए। बहुत-बहुत धन्यवाद।

श्री हुसैन दलवाई (महाराष्ट्र): उपसभाध्यक्ष महोदय, आज एक ऐतिहासिक विषय के ऊपर चर्चा चली है, ऐसा मैं समझता हूँ। यह बात सही है कि डा. बाबा साहेब अम्बेडकर और उस वक्त के आजादी के आंदोलन से आए हुए लोगों ने इस देश के ऊपर इतनी बड़ी मेहरबानी की कि उन्होंने आरक्षण का मुद्दा संविधान में लिया। आज मैं यह कहूँगा कि इस देश में एक तरह से रक्त-विहीन क्रांति हो रही है। अगर यहां का दलित समाज, आदिवासी समाज, ओ.बी.सी. समाज आरक्षण के बिना रहता, तो आज वह ऐसा न रहता और आज इस सदन में जो बहस हो रही है, वैसी बहस भी नहीं हो सकती थी। आज जो यह बहस हो रही है, यह हमारे पुरखों द्वारा की हुई मेहरबानी है, ऐसा मैं समझता हूँ।

महोदय, मैं महाराष्ट्र से आया हूँ। मुझे इस बात का दुख होता है कि महाराष्ट्र से आए हुए हमारे भारतकुमार राऊत जी ने जिस ढंग से अपनी बात कही है, वह बिल्कुल गलत बात कही है। वहां से तो महात्मा फुले हुए हैं, साहू महाराज ने इस विषय को लिया था, हैदराबाद के नवाब ने भी यह आरक्षण का विषय लिया था। मैं यह भी कहूँगा कि साउथ में एक तरह से पिछड़े हुए लोगों को आगे लाने के लिए ठीक ढंग से काम हुआ है। साउथ के जो लोग यहां बोले हैं, वह बहुत अच्छे ढंग से बोले हैं कि वहां 69 परसेंट तक आरक्षण दिया गया है। उत्तर भारत में यह क्रांति होने में बहुत देर लगी, लेकिन डा. राम मनोहर लोहिया जी ने पहली बार यह बात कही थी और एक तरह से उत्तर भारत में बड़े पैमाने पर यह आंदोलन चला था, जिसे कांशी राम जी आगे लेकर चले। मुझे इस बात का दुख होता है कि डा. लोहिया जी का नाम लेने वाले लोग आज इस तरह से आरक्षण का विरोध करते हैं, यह बिल्कुल गलत बात है। एक तरह से मुझे ऐसा लगने लगा है कि आप लोहिया जी की वह बात छोड़ कर संघ परिवार के नजदीक जाने की कोशिश कर रहे हैं। यह बिल्कुल गलत बात है।

महोदय, मैं तो यह कहूँगा कि जैसी हिन्दू दलित की हालत है, वैसी ही हालत मुस्लिम दलित की भी है। मुसलमानों में खटिक समाज है, मुसलमानों में लालवानी समाज है, पिछड़ा समाज है, उनको इस आरक्षण से अलग रखने का जो काम हुआ है, यह भी गलत बात है। उसको भी आरक्षण मिलना चाहिए, उसकी हालत बहुत बुरी है। आज भी वह सिर पर मैला लेकर जाता है। मैं यह कहूँगा कि सारे हाउस को, हमारे सभी सभासदों को एक होकर इस बात को भी कहना चाहिए। यहां यह बात आई कि आरक्षण लटका हुआ है कि जहां प्रमोशन है वहां आरक्षण होना चाहिए कि नहीं होना चाहिए। अगर प्रमोशन में आरक्षण नहीं होगा, तो कोई दलित कितना भी अच्छा हो, कितना भी एफिशिएंट हो, कितना भी होशियार हो, अगर उसको प्रमोशन नहीं दिया जाएगा, तो वह वहीं के वहीं नीचे स्तर पर, यानी प्यून और क्लर्क की सीट पर ही लटका रहेगा, उसको कोई आगे नहीं आने देगा। इसलिए मैं यह समझता हूँ कि इसके ऊपर भी सभी सभासदों ने अपनी बात रखी है, मगर जो लोग विरोध कर रहे हैं उनको भी विचार करना चाहिए, क्योंकि इस देश में एक तरह से जो रक्त-विहीन क्रांति हो रही है, वह आगे चलनी चाहिए। आप उल्टा काम मत कीजिए। मनु ने जो काम किया था, उसको सीधा करने का काम डा. बाबा साहेब अम्बेडकर ने इस संविधान में लिखकर किया है, वह आगे जाए, यह हमें देखना चाहिए। मुझे यही कहना था। जय हिंद, जय भारत।

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE AND PENSIONS AND THE MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY): Mr. Vice-Chairman, Sir, I am grateful to you for giving this opportunity to the hon. Members of this House to discuss on the issue of reservation for the Scheduled Castes and the Scheduled Tribes in promotions, which is, today, a contentious issue. I am also grateful to the hon. leader of the BSP, *Bahan* Mayawatiji, for raising this issue during Zero Hour, three days back, in this august House. I am also equally grateful to hon. Member, Shri Satish Chandra Mishraji, who raised the issue with eloquence. He also elaborated the sequence of events, leading to the debate in this House. The other hon. Members, Dr. Bhalchandra Mungekarji, Shri Thaawar Chand Gehlotji, Shri T.K. Rangarajanji, Shri Sukhendu Sekhar Roy Sahib, Shri Ram Gopal Yadavji, Shrimati Vasanthi Stanleyji Shri Shashi Bhushan Beheraji, Shri A.W. Rabi Bernardji, Shri D. Raja sahib, Shri Praveen Rashtrapal, Shri Biswajit Daimaryji, Shri Bharat Kumar Routji, Shri Ram Kripal Yadavji, also discussed this issue in unison. In fact, there is rare unity in this august House. Members of Parliament, cutting across party lines, feel that the issue has to be addressed by the Government. As hon. Member, Shri Satish Chandra Misra, has elaborately mentioned the sequence of events, the situation initially arose because of Indira Sawhney's case. In 1992, when the judgement was pronounced, one issue that was to be decided in the judgement was whether clause 4(a) of article 16 provides reservation only in the matter of initial appointment and direct recruitment or it contemplates to provide reservation in the matter of promotion as well. This issue was debated in the Supreme Court. And, rightly so, the reference was relating to reservation issue only. The Senior Counsel, Shri Parasaran, rightly argued saying that the issue is relating to reservation which has to be decided by the hon. court and the reservation for promotion was not at all the issue. But Justice Ahmadi gave a dissenting judgement on that. But other Judges wanted to decide this issue also, along with other issues which came before the Supreme Court. Several qualifying observations have been made, which have also been narrated by the hon. Members. One I would like to mention here is: The conditioned precedent for the exercise of power, conferred by article 16(4), is that the State are to be satisfied that any backward citizen is not adequately represented in its service. The condition precedent may refer to either the numerical inadequacy of representation in services or even the qualitative inadequacy of representation. The advancement of socially and educationally backward classes requires not only that they should have adequate representation in the lowest rung of services, but also in the higher rung. Having made all these observations, the court gave its verdict. Since the verdict had been given by the court, it had become a very challenging

task for the Parliament and also for the Government, which was Congress-led Government at that time. Therefore, in the judgement, they said that reservation in promotion can continue for five more years, that is, from 1992 to 1997. In the meanwhile, the issue was addressed. The Constitutional amendment was brought under article 16(4) (a). My hon. colleague, the Law Minister, while intervening, made an observation which I would like to quote. “Nothing in this article shall prevent a State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State”—which in the opinion of the State is very important—“are not adequately represented in the services under the State.” Therefore, it is squarely in the domain of the State to decide whether a particular class of citizens is adequately represented or not. They have said, ‘in the opinion of the State’. Then, in the Virpai Singh’s case, which my colleague mentioned, there is another clarification which is required because there was some argument that was going on. The judgement’ in the Virpal Singh’s case says that even when the people from the reserved category get promotion before the senior people belonging to the general category, the general category people who were promoted later will supersede the category of reserved people who got the promotion earlier. Therefore, another amendment was made under qualifying provision, which has been made consequential seniority. So, that has been brought. All this happened with the consensus of the House. I am one with all the hon. Members that this House is for the Scheduled Castes, the Scheduled Tribes, the Backward Classes, the-oppressed sections of the society, the people who are in the lower rungs of the society and also other communities. Therefore, we are here to address the problems faced by those people, either socially, economically and also from the educational point of view. Then, he issued the order, it was challenged in the Nagaraj case. In the Nagaraj case, three qualifying observations were given by the Supreme Court. One is the ‘backwardness’; secondly, whether there was adequate representation or not and the third observation is given in article 335, that is, merit will be the criteria. Observations made in the Nagaraj case are here before this august House. Discussions have been held in a very elaborate manner. I find that there is a consensus among the hon. Members on the point that this issue has to be addressed. Why this discussion came up in this House is because we have been receiving representations from the Department of Personnel, from the Government of Rajasthan, from the Government of UP and various other State Governments. This is because of the situation that was created by the Nagaraj case in which the Supreme Court gave three qualifying observations. They are finding it difficult to go ahead with the reservation in promotion for the Scheduled Castes and

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the Scheduled Tribes in those States. I am not very definite about it. Some of the contempt petitions also have been filed in the Supreme Court in this matter. The issue now is before this august House. I could find that there is unanimity amongst the the hon. Members of Parliament, because whether it is our Government or whether it is the NDA Government, the issue was addressed whenever the issue was raised by the hon. Members in this House. One amendment was made by us. The NDA Government made two amendments. Therefore, amendments have been made according to the need of the hour, whenever the Supreme Court went against the reservation for the Scheduled Castes and the Scheduled Tribes and also the Backward Classes. Now the issue is before this House. The hon. Members have expressed their views. I do not want to elaborate on it because my colleague has dealt with the legal issue.

In fact, I would like to give two pieces of information to this august House. As far as the issue of filling up the backlog of vacancies is concerned, our Government has taken a proactive measure. In fact, when the issue was pending and when we found that there were a large number of vacancies to be filled up in respect of Scheduled Castes, Scheduled Tribes, OBCs and the Physically-handicapped people, myself and my colleague, the hon. Minister of Social Justice and Empowerment, called meetings of the Secretaries of various Departments. We called three-four meetings. We sent letters to various State Governments. And, among ourselves, we said that 'we need to fix a time-frame for that'. In fact, a special recruitment drive for filling up these vacancies was started in November, 2008. At that time, in 73 Ministries and Departments, 77,998 vacancies were there, which were not filled up, of which 46,691 vacancies were direct recruitment and 31,307 vacancies belonged to promotion category. At that time, the Special Recruitment Drive was very helpful to us, and around 50-55 per cent vacancies were filled up as a result of that in 2008. In order to fill up the further vacancies, which were there and which had to be filled up, we held several meetings, and I am glad to inform this august House that as a result of our efforts, we were able to reach the level of 75 per cent. We called the Secretaries and gave them the direction to do it. We told them that if they were not able to do it, we would go for universal recruitment drive, as far as the filling up the Scheduled Castes and Scheduled Tribes' vacancies are concerned. We are now having review meetings from time to time for the purpose of filling up the backlog of vacancies in the Central Government Departments, Corporates, Boards and Banks.

Sir, I would like to give one more information, which is a tentative

information. As far as the issue of adequate representation which has been highlighted by the Supreme Court is concerned, I don't want to make any comments because the Law Minister has made some observation on that. Now, Sir, in 2009, in Group A Service, the Scheduled Castes representation was 11.9; in Group B, it was 14.3; in Group C, it was 16.2; and in Group D, it was 18.4. As far as the Scheduled Tribes representation is concerned, for Group A, it was 4.4; for Group B, it was 5.4; for Group C, it was 7.3; and for Group D, it was 6.5. I am not saying that it is adequate. Sir, I am saying that it is not sufficient. We have to go a long way in order to fulfil the wishes and aspirations of the Scheduled Castes, Scheduled Tribes, Minorities, OBCs, and also the wishes and aspiration of other people, especially, the Physically-challenged people. These are the challenges which are before us.

There is one observation which I would like to make. Whenever we bring an amendment to the Constitution to address the issue which comes before us as a result of the Court judgment, a different interpretation comes up. This is happening all the time. Sir, four-five amendments have been carried out. But, even thereafter, we find that the issue is lingering. The House is unanimous on this issue. Rangarajanji made one observation. He asked, 'How many times we need to bring amendments to the Constitution? And, thereafter, the courts are setting it aside.' That observation has also been made.

Therefore, Sir, my humble submission to this august House is that this is 'a very serious matter, and not only the Central Government but even the State Governments are very much concerned about it.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Mr. Minister, one moment, please. I hope the House agrees that we should proceed with this item rather than taking up the Half-an-Hour Discussion. We are not taking up the Half-an-Hour Discussion slated for today.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND THE MINISTER OF WATER RESOURCES (SHRI PAWAN KUMAR BANSAL): So, we are not taking up the Half-an-Hour Discussion.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Yes. That is the sense of the House. So, let us proceed with this. Mr. Minister, please continue.

SHRI V. NARAYANASAMY: Sir, that being the situation, now, in order to address this issue, in my capacity as Minister of State for Personnel, I discussed it with the hon. Prime Minister and he was apprised of the situation. Several Chief Ministers had met the hon. Prime Minister and he was seized of the matter. Therefore, Sir, if the House agrees, the hon. Prime Minister and the Government is

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willing to call for an all-Party meeting to arrive at a solution. The solution we are going to arrive at will be for the long run. It is for that purpose that I am requesting the House to agree with me that an all-Party meeting is called, within a short time, by the hon. Prime Minister. There we can arrive at a consensus on how to go about it, whether a Constitutional amendment is required or whether explanation is required. Mr. Rashtrapal had raised that issue. As far as a time-frame is concerned, at a very convenient date we will discuss it with the hon. Prime Minister and come back to the House.

I am grateful to the hon. Members, especially Madam Mayawati and Shri Satish Chandra Misra, who brought this discussion in the august House, and for the views expressed by hon. Members in this House. I am very happy about it. Mr. Ram Gopal Yadav, Members from the BJP, and all Members, cutting across party lines, have all supported the issue. Therefore, it is my humble and earnest request to the august House to agree to convene an all-Party meeting called by the hon. Prime Minister to arrive at a consensus.

SHRI D. RAJA: There is already a consensus on that. (*Interruptions*)

SHRI V. NARAYANASAMY: I am talking about the format. (*Interruptions*)

SHRI JESUDASU SEELM (Andhra Pradesh): Sir, I would like to know about one more thing. (*Interruptions*)

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Now, please sit down. (*Interruptions*) I would give you time. Please sit down. Now, Ms. Mayawati. Please put only the question.

सुश्री मायावती (उत्तर प्रदेश): उपसभाध्यक्ष जी, अभी माननीय मंत्री जी ने SC/ST के आरक्षण के बारे में जो कुछ बोला है, मुझे उसके ऊपर कोई ज्यादा टीका-टिप्पणी नहीं करनी है, लेकिन दुख की बात यह है कि जिस विषय के ऊपर चर्चा हो रही थी और उस विषय के ऊपर हम यह उम्मीद करके चल रहे थे, अर्थात् सदन यह उम्मीद करके चल रहा था कि गवर्नमेंट की ओर से आज कोई सही डिजीजन जरूर लिया जाएगा।

माननीय मंत्री जी ने रिजर्वेशन को लेकर गवर्नमेंट की **performance** के बारे में, हमने यह किया, हमने वह प्लानिंग बनाई, यह तो आपने काफी कुछ बता दिया है, लेकिन देश में SC/ST के आरक्षण को लेकर एम. नागराज के केस में माननीय सर्वोच्च न्यायालय की संवैधानिक पीठ का निर्णय आने के बाद, इनकी पदोन्नति में आरक्षण एवं वरिष्ठता के मामले में, जो तीन मापदंड अपनाने की शर्त रखी गई है, यदि इन तीनों शर्तों को केन्द्र की सरकार द्वारा संविधान में जल्दी से जल्दी संशोधन करके नहीं हटाया जाता है, तो फिर इनकी आड़ में आरक्षण विरोधी लोग, इन वर्गों के लोगों को पदोन्नति में आरक्षण एवं वरिष्ठता का लाभ पूरे तौर से नहीं लेने देंगे।

माननीय मंत्री महोदय ने यह बात कही कि हम ऑल पार्टीज के लीडर्स की मीटिंग बुलाकर आम राय बनायेंगे, तो आज राज्य सभा में ऑल पार्टीज के नेताओं ने अपनी राय गवर्नमेंट के सामने रखी है, इसलिए मैं यह समझती हूँ कि जब इस सदन के अंदर इतनी लम्बी चर्चा हुई है, इसके बावजूद भी आप यह बोलें कि हम आम राय बनायेंगे, मैं समझती हूँ कि यह ठीक नहीं है और यह इस मामले को लटकाने वाली बात है। इसलिए केन्द्र सरकार को आरक्षण को लेकर यह जो प्रॉब्लम क्रिएट हुई है, इन तीन शर्तों को संशोधन के जरिए जरूर हटाना चाहिए, क्योंकि यदि तीन शर्तों के ऊपर गवर्नमेंट ने जल्दी से जल्दी अमेंडमेंट को लेकर कोई डिस्मिशन नहीं लिया, तो SC/ST आरक्षण को लेकर जो शर्तें तय की गई हैं, तो उसमें उनका बड़ा भारी नुकसान हो जाएगा। इसलिए केन्द्र सरकार को इन तीन शर्तों को संशोधन के जरिए से हटाना बहुत जरूरी है। लेकिन दुःख की बात यह है कि इस संदर्भ में केन्द्र की सरकार ने आज भी अपना स्टैंड स्पष्ट नहीं किया है। इससे हमारी पार्टी काफी चिंतित है और अब हमारी पार्टी केन्द्र सरकार के इस दलित आरक्षण विरोधी रवैये का पूरे देश भर में पर्दाफाश करेगी। इसके साथ ही हमारी पार्टी दलितों के आरक्षण संबंधी इस अति महत्वपूर्ण मुद्दे पर सरकार के आज के दुलमुल रवैये से परेशान होकर सदन से बहिर्गमन भी करती है।

(At this stage, some hon. Members left the Chamber.)

SHRI JESUDASU SEELAM (Andhra Pradesh): Sir, while thanking the hon. Minister for his suggestion for an all-Party meeting, we want immediately the time-frame for bringing an amendment for removing this. Secondly, many hon. Members have spoken about the reason behind the Court's interpretation. The reason is lack of a comprehensive Reservation Bill. We want the hon. Minister to give us a time-frame. We have been hearing a lot. Please tell us by what date he will bring that Bill to the House. This is our request.

SHRI D. RAJA: Sir, it was good that the hon. Law Minister intervened in this debate. It was quite appreciated. Sir, I respond to the reply given by our hon. Minister. ...*(Interruptions)*...What is the way forward? Don't expect further consensus. I find that there is a consensus. Now on the basis of this consensus, the Government will have to act. Is the Government thinking of going for reviewing this judicial verdict? If that is not possible, then you will have to go for amending the Constitution because Parliament has the right and it is in the domain of Parliament. Parliament can move amendment to the Constitution. ...*(Interruptions)*... Finally, is the Government contemplating of bringing a comprehensive Reservation Bill, including ensuring reservation in the private sector?

श्री नरेश अग्रवाल (उत्तर प्रदेश): मान्यवर, मैं आपके माध्यम से माननीय मंत्री जी से यह जानना चाहता हूँ कि शैड्यूल्ड कॉस्ट और शैड्यूल्ड ट्राइब्स की बात तो आई है, लेकिन ओ.बी.सी. के आरक्षण की बात भी करें। प्रमोशन और आरक्षण, दोनों में ओ.बी.सी. की हालत

[श्री नरेश अग्रवाल]

बहुत खराब है। आपने शैड्यूल्ड कॉस्ट और शैड्यूल्ड ट्राइब्स के कोटे के बारे में तो बता दिया कि कितना-कितना है, अगर आप ओ.बी.सी. के बारे में भी बता दें, तो शायद स्थिति ज्यादा स्पष्ट होगी। वह भी समाज का ऐसा तबका है, जो आज बहुत पिछड़ा है और बहुत बुरी स्थिति में रह रहा है। मैं चाहूंगा कि जब इस बारे में बात हो तो उस समय ओ.बी.सी. का रिप्रजेंटेशन भी रख दें, ताकि वह चीज भी स्पष्ट हो जाए।

श्री प्रकाश जावडेकर: सर, सत्तारूढ़ दल ने अब एक नया तरीका अपनाया है। मैं माननीय मंत्री महोदय से जानना चाहूंगा कि जब वे ऑल पार्टीज की बात करते हैं, मैं तेलंगाना के मुद्दे पर तो कल बोलूंगा, लेकिन हर बार ऑल पार्टीज मीटिंग मतलब कोई **consensus** तैयार नहीं करना। अटल बिहारी वाजपेयी ऑल पार्टी मीटिंग बुलाते थे, **consensus** तैयार करते थे और आप ऑल पार्टीज मीटिंग बुलाते हैं, अपनी खुद की राय ही नहीं बताते हैं, पार्टी अपनी राय ही नहीं बताती है। यह तो टालने का या लम्बित करने का मामला है। मैं यह जानना चाहता हूँ कि आपकी भूमिका क्या है?

SHRI T.K. RANGARAJAN: Sir, there is a consensus in the House. If there is a will, there is a way. Can the Hon. Minister fix a date for such meeting, at least, tomorrow or the day after tomorrow or Monday or before the end of this session? Can he reply to that?

SHRI V. NARAYANASAMY: Sir, I would like to respond to one question which was raised by Shri Jesudasu Seelam. Sir, as far as bringing a Bill in this august House for reservation to the Scheduled Castes and the Scheduled Tribes is concerned, I would like to inform the House that the Government has prepared a Bill. Now, it is under the consideration of the Government. Very shortly, we will take it before the Cabinet. We would like to introduce the Bill in the House as early as possible.

RECOMMENDATIONS OF THE BUSINESS ADVISORY COMMITTEE

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): I have to inform the hon. Members that the Business Advisory Committee, at its meeting held on 3rd May, 2012, has allotted time for Government legislative business as follows:

1. Consideration and passing of the following Bills:-
 - (i) The Motor Vehicles (Amendment) Bill, 2007 **- One hour**
 - (ii) The Administrators General (Amendment) Bill, 2011 **- One hour**
2. Consideration and passing of the Indian Medical Council (Amendment) Bill, 2012, after it is passed by Lok Sabha; **- Two hours**