

ready answer. I will have to verify it at what stage that particular proposal has reached.

### **Separation of Judiciary from Executive in hill districts of Assam**

\*816. DR. JAYANTA RONGPI: Will the Minister of LAW, JUSTICE AND COMPANY AFFAIRS be pleased to state:

(a) whether the judiciary is not separated from executive in Karbi Anglong and North Cachar hill districts of Assam;

(b) if so, the policy of the Union Government in this regard;

(c) whether the Government propose to separate the judiciary from executive in these two hill districts and bring it at par with the rest of the country;

(d) if so, when; and

(e) if not, the reasons therefor?

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RANGARAJAN KUMARAMANGALAM): (a) As per information made available by the State Government, the judiciary is not separated from the executive in these districts of Assam.

(b) Provisions of the Sixth Schedule to the Constitution of India apply to the Administration of the tribal areas referred to in (a) above.

(c) to (e). No such proposal is under consideration at present.

DR. JAYANTA RONGPI: Mr. Speaker, Sir, the hon. Minister has confessed that judiciary is not separated from the executive in the hill districts of Karbi Anglong and North Cachar. To the part (b) of my question regarding the Government's policy in regard to non-separation of judiciary from the executive he has mentioned this.

He has mentioned that it is a provision of the Sixth Schedule which is applicable to the administration of these two districts of Assam. Here the concerned provision of this para four of the Sixth Schedule has clearly restricted the District Councils from judicial functioning; they can administer the judicial functioning only when the cases are among the tribals. If one of the parties of the dispute is non-tribal, the District Council cannot try their case. So, all other cases, where involvement of the non-tribals is there and where one of the parties is non-tribal, are tried by the normal courts.

Even the District Councils could not be established in 1951 because of the obstacles and hindrances placed by the State Government. So, not a single case of the tribals during the last 40 years has been tried by the District Council. So, for all practical purposes, the judicial functions have been performed by the normal courts since independence. In view of this, I would like to know from the hon. Minister, whether he thinks that this practice of non-separation of judiciary from the executive is in violation of the basic principle of neutrality and natural justice; whether he thinks or not that these people of the hill districts of Assam are being deprived of their natural justice because the judiciary is not being separated from the executive.

SHRI RANGARAJAN KUMARAMANGALAM: With regard to separation of judiciary from the executive, under Article 50 of the Constitution itself - Directive Principles of State Policy - it is clearly laid down that the State would and shall take steps to separate the judiciary from the executive in the public services of the Union. But, in addition to this, the Constitution itself envisaged in the Sixth Schedule and has categorically set out a methodology by which the question of application of laws of Civil Procedure as well as Criminal Procedure would apply in case of certain tribal areas which are notified, specified. This has been done in the framework of the Constitution in the case of tribal areas which have got historical background where the customs and methods of functioning are

different from other areas. It is with this scheme of things that the Sixth Schedule itself is there. Under Clause 5 of the Sixth Schedule, it is categorically laid down that it is the Governor who will decide on the applicability of the Code of Civil Procedure and the code of Criminal Procedure with regard to these areas.

With regard to the Government of India's overall policy, we are totally in tune with it; and we have to be in tune with it. Under Article 50, we believe in the separation of the judiciary from the executive; and it is keeping this in mind and applying the recommendations of the various Law Commissions starting from the 37th itself that the Criminal Procedure Code of 1974, when it was enacted, categorically had divided what is called the Judicial Magistrates and the Executive Magistrates. But the applicability of this will depend on the decision that the State Government would take, the Governor would take; and that is provided in the Constitution. There is very little that the Union Government can do in this matter. Since this is a matter which is quite delicate, we would not like to voice our views what is right and what is wrong; and within the framework of the Constitution of India, it is not really proper for us to say that it is unfair or fair to those specified two districts in Assam.

**SHRI CHITTA BASU:** You can very well advise the Governor.

**DR. JAYANTA RONGPI:** I need your protection. He did not answer my supplementary question. I asked categorically whether he thinks this is a deprivation of the people of the two hill districts of Assam of their basic rights of natural justice. He did not reply this question.

**MR. SPEAKER:** You are asking for the opinion; it is not given on the Floor of the House.

**DR. JAYANTA RONGPI:** He has misquoted the procedure also. With your permission, I would like to read out just a few lines of para 4 in the Sixth Schedule. It is

clearly mentioned in Paragraph 4 of the Sixth Schedule of the Constitution and I quote:

\* 4. Administration of justice in autonomous districts and autonomous regions.

(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas"

So, my second question is, that - as he has misquoted the Constitution I am quoting it—

**MR. SPEAKER:** Are you asking your second supplementary?

**DR. JAYANTA RONGPI:** He has misquoted it, that is why I am quoting the Constitution where the provision is laid down.

**MR. SPEAKER:** This is not a court of law where we are interpreting the Constitution. You can put a question and get a reply. It is for the court to interpret the Constitution and the law. We do not have the time for that purpose here.

**DR. JAYANTA RONGPI:** For all practical purposes, the judicial district councils have now been governed by the traditional customs or customary laws. It has been so since independence. Not a single case has been tried under the criminal law in the court

in the districts of Karbi Anglong and North Cachar hill districts. It is done by the normal courts. This is the only part of the country where the Deputy Commissioner or the Deputy Collector is the Sessions Judge and the Judicial Magistrates and the Executive Magistrates are also the Judicial Magistrates.

**MR. SPEAKER:** Please put the question.

**DR.-JAYANTA RONGPI:** I would like to know whether the Government would write to the Government of Assam that they should separate the judiciary from the executive in the interests of natural justice.

**MR. SPEAKER:** This is left to the State Government to do it. If you want, you reply to it.

**SHRI RANGARAJAN KUMARAMAN-GALAM:** If I may clarify, per chance, if I voice an opinion, immediately my honourable friends on the other side will say that I am interfering with what is called the State's jurisdiction and I am doing what is normally called, axe to break down the federal structure within the Constitution and they will quote the Sarkaria Commission, the Law Commission and everything. I have said categorically that the Government is committed to the Directive Principles of State Policy. We think, principally that there should be a division between the judiciary and the executive; and nothing more I should say at this moment. If I do say anything more, it would definitely mean stepping on the toes of the State Government.

**SHRI MOHAMMAD YUNUS SALEEM:** You can issue a directive.

**SHRI CHANDRA JEET YADAV:** An ex-Governor is advising the Law Minister!

**SHRI MOHAMMAD YUNUS SALEEM:** Under the Directive Principles you can issue a directive.

**SHRI CHANDRA JEET YADAV:** The Minister is very intelligently trying to evade

the question and enunciating the general principle.

**MR. SPEAKER:** Let us be fair to him.

**SHRI CHANDRA JEET YADAV:** I am paying a compliment to him that he is intelligent.

Dr. Jayanta Rongpi, the hon. Member of the House has brought certain facts and the feelings of the people of that area, that they strongly feel that the judiciary is not separated from the executive, and therefore many people are not getting a fair justice.

Now this is an all-India question. It was decided in an all-India Judicial Conference that this provision of the Constitution about the separation of the judiciary from the executive should be implemented. Now the Minister has said that it is for the Governor to do it. Will the Government advise the Governor of Assam or the State Government of Assam, that keeping these facts in mind, they may consider this question, at least let them consider it and invite public opinion?

**SHRI RANGARAJAN KUMARAMAN-GALAM:** I think it would not be proper for me to say that the Government of India would advise the Governor on this issue. Let me categorically say that we would definitely communicate the feelings of the honourable Member and the other Members that they are not satisfied with the non-separation of the judiciary and executive, to the Government of Assam.

**SHRI MOHAMMAD YUNUS SALEEM:** Are you satisfied?

**SHRI RANGARAJAN KUMARAMAN-GALAM:** We have categorically stated that we are committed to Article 50 of the Constitution. It is enshrined as a Directive Principle of State Policy and we are committed to it. But, then, it is specifically provided in the Constitution itself that in so far as the tribal areas are concerned an exception will be made and it would be the Governor, with the aid and advice of the Council of Ministers of

that State also would decide as to whether it should apply or it should not apply. And if we, in the present scheme of things, in the present framework of the Constitution, start giving directives, we might be seriously stepping on the toes of separation of powers between the State and the Centre. I would not like to do that.

**SHRI YAIMA SINGH YUMNAM:** Sir, We have just heard from the hon. Minister that the people of that area are feeling that they are being denied the natural justice and thereby they are being treated as second class citizen of the country. The hon. Minister has just said that it has been laid down in the Constitution. My question is, whether the Government is supporting for putting up an amendment to the Constitution so that this separation of judicial from the executive can be made in the near future.

**MR. SPEAKER:** He is asking, 'would you like to amend the Constitution to facilitate it?'

**SHRI RANGARAJAN KUMARAMANGALAM:** Sir, I have understood his question. I would like to make it very clear that this is not only with regard to two districts which have been quoted here but also this deals with all the tribal areas which have been notified. It is not an easy question to answer straight off hand because there is justification in certain other places like in Andhra Pradesh.

**SHRI S. VIJAYA RAMA RAJU:** Sir, the same system is prevailing in the scheduled districts of Srikakulam, Vizayanagaram and Kamam in Andhra Pradesh and the Executive Magistrates are having this judicial powers there. So, will the hon. Minister write to the Government of Andhra Pradesh also asking them to separate the judicial powers from the executive.

**SHRI RANGARAJAN KUMARAMANGALAM:** I will convey the feelings of the hon. Member to the Government of Andhra Pradesh also.

**SHRI IMCHALEMBA:** Mr. Speaker, Sir, the questioner has put this question in regard to two hill districts consisting of tribal areas of Assam. Though it has been provided in the Sixth Schedule, till to day the District Council has not been vested with the powers of judiciary and is being exercised by Executive Head of the district administration. There are many cases where even though the tribals they have peacefully settled cases through customary laws the police had gone again picked up such cases and as a result of which, lots of dissensions and inter tribal feelings have been created among the people. Sir, in the case of Nagaland - we - even the cases of killings, murders and certain other arsons are settled by customary laws and the police do not interfere in such cases. Similarly the two tribal areas of Assam have their own tribal and customary laws by which they want to settle cases then only should the police drag these people to the normal court of law? After they have settled the cases, then they should be made to go to court again (*Interruptions*)

**MR. SPEAKER:** What is your question please?

**SHRI IMCHALEMBA:** My point is ...(*Interruptions*)

**MR. SPEAKER:** Not point, put your question.

**SHRI IMCHALEMBA:** My question is this. As it is already provided in the Sixth Schedule, why till today the judicial powers to exercise customary courts laws not been given to the District Councils?

**MR. SPEAKER:** He has already given a reply to this question. If the Minister likes to reply it again, he can do it.

**SHRI RANGARAJAN KUMARAMANGALAM:** I would like to clarify to the hon. Member and repeat once again that it is not for the Central Government, under the Sixth Schedule, either to apply or to ensure the implementation of the Sixth Schedule. Fortunately or unfortunately, under the present

scheme, it is the Governor who shall notify on the aid and advice of the Council of Ministers of the said State. And if the Scheduled Tribe Members of Parliament, who represent those areas, feel differently, I would request them to take up the matter with the respective State Government and ensure that State Governments take action.

[*Translation*]

#### Tea Estates

\*819 SHRI VILASRAO NAGNATHRAO GUNDEWAR: Will the Minister of COMMERCE be pleased to state:

(a) the number of tea-estates in the country, State-wise;

(b) the number of sick tea estates among them;

(c) whether the Government propose to nationalise the sick tea-estates to make these viable;

(d) if so, when; and

(e) if not, the other steps proposed to be taken by the Government to make these tea-estates viable?

[*English*]

THE DEPUTY MINISTER OF THE MINISTRY OF COMMERCE (SHRI P. CHIDAMBARAM): (a) to (e). A statement is laid on the Table of the House.

#### STATEMENT

(a) As per the last compiled figures of 1988, the state-wise number of tea estates registered with Tea Board are as follows:-

<i>State</i>	<i>No. of registered tea estates</i>
Assam	848
West Bengal	337
Tripura	58
Bihar	4
Uttar Pradesh	31
Himachal Pradesh	1385
Manipur	2
Sikkim	1
Arunachal Pradesh	5
Nagaland	1
Orissa	1
Tamil Nadu	6802