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Title : Discussion on the motion for consideration of Constitution (one hundred and fifth amendment) Bill, 2006 (Discussion not concluded).

MR. SPEAKER: Now, House shall take up Item No.21 of today's List of Business – Shri Shivraj V. Patil.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI PRIYA RANJAN DASMUNSI): Sir, I would like to bring before the House that the Item No. 21 which is listed in today's Agenda for the Constitution Amendment, the hon. Home Minister shall explain the reasons; and then one or two speakers would participate. But, Sir, I have been approached by the leaders of the Opposition parties and a few other groups that the voting part of this Constitution Amendment Bill may be deferred and taken up on 22nd May at 1.00 p.m so that all would be assembled to consider and pass it.

MR. SPEAKER: I think all sections of the House are agreeable to it. Voting on Item 21 will be on 22nd May at 1 o'clock.

AN HON. MEMBER: What about Matters under Rule 377?

MR. SPEAKER: They have already been laid on the Table of the House.

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): I beg to move:

"That the Bill further to amend the Constitution of India be taken into consideration. "

The proviso to article 164 (1) of the Constitution of India in its present form makes it mandatory for the States of Bihar, Madhya Pradesh and Orissa to have a Minister in charge of tribal welfare, who may, in addition be the incharge of the welfare of the Scheduled Castes and the Backward Classes or any other work. The Constitution however does not debar States, other than three States mentioned in the proviso, to have such Ministers in charge of tribal welfare.

13.13 hrs. (Shri Devendra Prasad Yadav *in the Chair*)

The new States of Chhattisgarh and Jharkhand came into being *w.e.f.* 1.11.2000 and 15.11.2000 respectively, consequent upon the enactment of the Madhya Pradesh (Reorganisation) Act 2000 and the Bihar (Reorganisation) Act, 2000. With the creation of these two new States, a sizeable proportion of the Scheduled areas of the erstwhile State of Madhya Pradesh stand transferred to Chhattisgarh and the entire Scheduled area of the former Bihar State stands transferred to the newly formed Jharkhand State. The Scheduled area States of Chhattisgarh, Jharkhand and Madhya Pradesh, Order 2003, PO 192, specifies the Scheduled areas in respect of Chhattisgarh, Jharkhand and Madhya Pradesh. As per census figures of 2001, the percentage of the Scheduled Tribes to the total population in Bihar is only 0.9 while in Jharkhand, Chhattisgarh and Madhya Pradesh the percentage of tribal population is 26.3, 31.8 and 20.3 respectively.

The Constitution (Ninety fourth Amendment) Bill, 2006 seeks to exclude Bihar from the purview of provision to article 164 (1) and to extend the same provisions to the newly formed States of Chhattisgarh and Jharkhand. Sir, I commend the Constitution (Ninety fourth Amendment) Bill, 2006 to the august House for consideration and passing.

MR. CHAIRMAN: Motion moved:

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

SHRI GIRIDHAR GAMANG (KORAPUT): I support this Constitution (Amendment) Bill. I would like to refer to some of the points based on the constitutional provisions made in respect of the scheduled areas and the Scheduled Tribes.

Under Article 164 a special provision is made for the appointment of the Minister in charge of tribal welfare, Scheduled Castes and Backward Classes. Even without this provision a number of States were already having such Ministers in their States. When a constitutional provision is made to provide for the Minister in charge of the weaker sections, I think there is some constitutionality in this provision. All these areas come under scheduled areas. The scheduled area is not the area demarcated by the States. The scheduled area is demarcated on the basis of Article 244 (1) and (2) by the Parliament.

Therefore, when there will be change of areas either within the Scheduled Areas or there is addition or deletion of Scheduled Area, it will have to come to Parliament for inclusion or exclusion. But there are a number of States, especially Orissa and Chhattisgarh which have demarcated the Scheduled Areas within the Scheduled Area by dividing the districts. The Koraput District has the district boundary on the basis of article 244(1). It is done by Parliament. But, now, they have divided it into four different districts. I would like to know whether it will be treated undivided Koraput district or through an enactment this will be brought to Parliament for these four districts saying that all these boundaries have been changed. Unless that is done, their constitutionality will be a problem for us. Like that, the Bastar district of Chhattisgarh has been divided into two-three districts. It falls in the Scheduled Area. That will have to come to Parliament for demarcation of the districts. Therefore, when there will be de-limitation, I would like to know whether that district will be considered as a unit for the purpose of reservation. If so, whether it will be treated one district as per the Constitution or the Presidential Order or they would be treated as four separate districts. So, these are the constitutional problems. What about the Ministers who will be in charge of Chhattisgarh or Jharkhand or Orissa or Madhya Pradesh or some other State to represent the tribals as well as Scheduled Areas? There is a provision for the Minister for the Scheduled Area. Without that also, there are a number of Ministers in other States also.

There are words 'Scheduled Area' in other provisions of Constitution also. Article 339 says that a Commission will be there for Scheduled Areas and Scheduled Tribes which would be for administration. Article 244(1) says that the administrative control will be by the Governor. For that also, an interpretation will have to be there whether the President of India will ask the Governor directly to give the annual report or the Governor would *suo motu* submit the Annual Report of the administration of Scheduled Areas. It is only for Scheduled Areas. There is a provision that the Council of Ministers will have to recommend or consider either in the State or at the Centre while giving the Administrative Report. But the administrative report is not the development report. It is the administration of Scheduled Areas for good governance. It comes under the President as well as the Governor of those States which are having Scheduled Areas.

Article 275 is very clear. There is a financial provision, namely, that the funds from the Consolidated Fund of India can be paid for two purposes. One is for the socio-economic development and the second for strengthening the administration of Scheduled Area. When we go through the report, we find that we have not received any report from any State regarding receiving funds for strengthening the administration of Scheduled Area under article 275(1). Though there are a number of schemes for socio-economic development but the governance of Scheduled Area comes under not only the Governor but also the President of India. There is a provision in the Constitution but it will have to be interpreted. Article 243 is regarding Panchayats, where we have got the Panchayat but it is not applicable to Scheduled Areas. So, we have to extend that through PESA Act. It is also a provision which protects the interest of Scheduled Tribes. We have got the Sixth Scheduled Areas. They have got administration in such a way that they have got the self-governance but under Panchayats there is a provision for local self-governance. Under Fifth Schedule for the first time Panchayats are extended to Scheduled Areas in the country. Some of the States have neither implemented the PESA Act properly nor they have got a separate Act in the State according to article 243. It will have to be a separate act for extending the Panchayats to Scheduled Areas. The extension of PESA Act is definitely a protective measure for the Scheduled Tribes in the Fifth Scheduled Area and not only development.

While supporting the Bill, I would urge the Minister to see that those who would be interpreting some of the constitutional provisions to implement it, they should do it in such a way that there is a good impact without any adverse implications.

I would like to request the hon. Minister to go through the Constitutional provisions meant for the Scheduled Tribes in the Scheduled areas as well as through the other provisions also which are meant to protect the interest of the tribal people not only economically but also from the exploits in whichever manner it takes place against them.

However, I support this amendment. It is a Constitutional amendment. Now, it has been proposed to have a Minister particularly meant to look after the interest of the tribals in the Scheduled Areas in these four States, but there are also tribals in other

parts of the country and I am sure the interest of those tribals in other places would be looked after by other Departments.

SHRI TATHAGATA SATPATHY (DHENKANAL): Sir, I welcome this amending Bill brought forward by the hon. Home Minister. But the brevity of this paper shows that not much thought has gone into this. It is a cosmetic change, a very superficial enactment. As has been pointed out by the previous speaker, this amending Bill could probably be construed as a Bill meant to create a constitutional post in every Ministry of every State included under the purview of this Bill. The Government is enacting by law that wherever, in whichever State, namely, in the States of Orissa, Madhya Pradesh, Jharkhand and Chhattisgarh, a post of a Minister will be created who will be mandatorily there to satisfy the Constitutional requirements. It is good to have new Ministers which will entail having new Secretaries, new clerks, new peons and new offices. More the bureaucracy, the merrier the situation. But what do we aim to achieve by this? Has the Government, at any place, clarified that a Minister who will be appointed to look after the well-being of the aboriginals or the tribal people of India of a particular State or area will mandatorily be a person from a reserved constituency? Will he be a person belonging to the Scheduled Tribe community? Or, will he be somebody else who would be put there to look after the well-being of the tribals? This aspect needs to be clarified. What we have seen in the past is that we have only shed crocodile tears for the people belonging to the Scheduled Castes, the Scheduled Tribes and the people belonging to the Other Backward Castes. We saw it even today. But in reality none of the gestures that the Government tries to show to these people through these Acts and policies percolates down to the ones for whom they are meant.

Sir, we have not made any concerted efforts to develop the languages and dialects of the tribals in many areas of India. In my State of Orissa, as far as I am aware there are at least 8-plus distinct languages or dialects of the tribal people. The State of Orissa has a large chunk of tribal population. The tribals play a very major role in our socio-economic development, in our political life. They are an integral part of the State of Orissa. If you would ever had been to the State of Orissa you would have seen that the tribals of Orissa are unlike the tribals of any other place in the sense that they do not need mercy; they do not need that somebody should spoon feed them.

They have the capacity and the tenacity to stand up and voice their opinion to be heard socially, economically and politically and even in Oriya literature, the tribals have played a very major role. We have had the pleasure and honour of having Dr. Giridhar Gamang as our Chief Minister at a very crucial stage in the history of the State. He has been an able Chief Minister and has projected the fact that tribals in Orissa do matter. On the other hand, what have the consequent Union Governments done for the tribals in the States of Jharkhand, Chhattisgarh and Orissa? As the hon. Finance Minister is also in the House, I would like to point out one fact. Has there ever been an effort made by this Government or the previous Government of giving special packages to the States which have large chunks of tribal population? No steps have been taken to develop their language, to allow them to lead their own lives by giving them economic freedom. It is only possible when special packages to States like Orissa are given to develop the tribal areas predominantly. Only then concentrated developmental activities can take place. It is a pity and you can yourselves see that, in areas like Koraput, Bolangir and Kalahandi where we have large chunks of tribal people, development is very tardy. It cannot be done only by creating a Ministry and appointing a Minister. We, the Biju Janata Dal, support the amendment but it should be very specifically mentioned that the Minister also should be a tribal. There should also be a provision that whichever State is affected by this should mandatorily have a Minister and also get a special package from the hon. Finance Minister to exclusively develop the areas where tribals are predominant.

MR. CHAIRMAN : The House stands adjourned for lunch to meet again at 2.30 p.m.

13.28 hrs.

The Lok Sabha then adjourned for Lunch till thirty minutes

past Fourteen of the Clock.

MR. DEPUTY-SPEAKER: Let us continue our discussion on the Constitution (One Hundred and Fifth Amendment) Bill, 2006. Shri Bikram Keshari Deo to speak.

SHRI BIKRAM KESHARI DEO (KALAHANDI): Sir, the Constitution (One Hundred and Fifth Amendment) Bill, 2006 has been brought and I support it. After this Bill is passed, it is mandatory to appoint a Tribal Affairs Minister in the newly created States or in States which do not have the Tribal Affairs Minister to look into the tribal affairs, tribals' socio-economic conditions, their programmes, and development in several scheduled areas.

After the bifurcation of Bihar and Madhya Pradesh where majority of the new States which were created, they were mainly tribal dominated States like Jharkhand and Chattisgarh. It became mandatory that a Tribal Affairs Minister should be there to look into their affairs. Therefore, this piece of legislation has gone. But I would like to stress during the passage of this Bill that some problems have taken place, especially in the delimitation which is today going on in the country.

Sir, there is no constitutional provision to divide the tribal areas into districts. Take for example, Orissa. In Orissa, Koraput was undivided district, as was rightly pointed out by Shri Giridhar Gamang, the previous speaker and the first speaker from the Congress Party. He said that Koraput was an undivided district. Now, it has become four districts. Similar is the case with Kalahandi which was undivided. It became two districts – Kalahandi and Nawapara. By virtue of this, there has been a lot of differences in calculation of the tribal population. So, before the Delimitation Committee went into this exercise, they should have first made a constitutional amendment. I would like to read out the districts from the Annual Report, namely, the Mayurbhanj district, Sundargarh district, Koraput district, Kuchinda Tahsil in Sambalpur district, Keonjhar and Telkoi Tahsils of Keonjhar sub-division. Similarly, in Kalahandi, Thuamul Rampur block of Kalahandi Tahsil, and Lanjigarh block filling in Lanjigarh and Kalahandi Tahsils, in Bhawanipatna sub-division in Kalahandi district.

Here, my contention is that the Scheduled Areas in the State of Orissa were originally specified by the Scheduled Areas (Part A States) Order, 1950 (Constitution Order, 9) dated 23.1.1950, and the Scheduled Areas (Part B States) Order, 1950. Subsequently, it was as per the Constitution Order 109 dated 31.12.1977 after rescinding the Orders cited earlier in so far as they related to the State of Orissa.

Therefore, Sir, if the delimitation was to take place, they should have considered the areas which were before 1977 as undivided districts as one district. Undivided Koraput, undivided Kalahandi should have been taken as one unit for allocating seats to tribals, Scheduled Castes and general Castes accordingly. But that was not done. So, today, the problem has arisen in Kalahandi that before 1977 when this Constitution Order was promulgated, there was a tribal seat in Kalahandi known as Narla. But today, after the Delimitation Reports have come out with a preliminary Report, it is cited that the Narla seat, the tribal seat, has been missing. During the NDA Government, there was a constitutional amendment to include Scheduled Tribes which were left out into the Scheduled Tribes List so that they could get the benefits accruing to the Scheduled Tribes. Out of that, a big chunk of nearly 45,000-50,000 of Scheduled Tribes belong to the Bhadra Caste. Bhadra Caste was included at Sr. No.143 in the Tribal List. So, the new Scheduled Tribes are to be included into the Scheduled Tribes List. Therefore, a distortion has taken place. Here, through this Bill, I would like to demand that instead of one tribal seat in Kalahandi, there should be two tribal seats in the Assembly segment. This means, either Narla should be retained or the entire Thuamul Rampur block should be integrated into the Narla Constituency instead of it being integrated to Junagarh Constituency.

It was previously a general seat, now it has become an SC seat. Therefore, I hope my message will go to the Delimitation Commission, which is going to have its sitting shortly on 23rd of this month at Berhampur for the Southern States. I hope that the proceedings of the Parliament will be placed before the Delimitation Commissioner so that this can be considered. Besides this, Sir, as you know there is a Scheduled Castes Commission, there is a Scheduled Tribes Commission and a lot of reports come out on that. There is a Parliamentary Committee looking into the affairs of Scheduled Castes and Scheduled Tribes but I am sorry to state that the main economic indicators, which are prevalent in those areas, are much below par. No health services are available. There are maximum malaria cases, maximum starvation deaths; maximum migration is taking place. The educational institutions are going without teachers. The paramedical facilities are not at all there. That is why this KVK programme was initiated for these three undivided districts of Kalahandi, Koraput and Bolangir. I hope that the present

Government will give it an extension for another ten more years so that these tribal and scheduled areas could come at par with the other developed areas of the country and the State.

MR. DEPUTY-SPEAKER: We shall continue this discussion on this Bill on 22nd May, 2006, as decided by the House earlier.
