

15.29 hrs.

**INDO-TIBETAN BORDER POLICE  
FORCE BILL**

**As Passed by Rajya Sabha**

[English]

THE MINISTER OF STATE IN THE  
MINISTRY OF PARLIAMENTARY AFFAIRS  
AND MINISTER OF STATE IN THE MINIS-  
TRY OF HOME AFFAIRS (SHRI M. M.  
JACOB): Sir, I beg to move\*:

"That the Bill to provide for the constitution and regulation of an armed force of the Union for ensuring the security of the borders of India and for matters connected therewith, as passed by Rajya Sabha, be taken into consideration."

As the House is aware, the Indo-Tibetan Border Police was raised in October 1962 in the wake of Chinese aggression on our northern borders. The Force was conceived as an integrated unconventional guerrilla-cum-intelligence-cum-fighting Force meant to operate primarily in the inhospitable, wild and vertical world of the Himalayas. Since its inception, it has been mainly deployed ahead of Army defences in the remote areas of northern borders at altitudes of 9,000 to 19,000 ft. above the sea level in the States of Jammu & Kashmir, Himachal Pradesh and Uttar Pradesh. It has been discharging its role, including border surveillance, effectively. Moreover, during the past three decades, it has also acquired rich experience in the fields of high risk VVIP security, bank security and in anti-terrorist operations in States like Punjab and Jammu and Kashmir. The specialisation acquired by ITBP has accorded it a recognisable identity of its own.

The ITBP, since its raising is being

governed by the provisions, of the CRPF Act, 1949 and the CRPF Rules, 1955 as amended from time to time. However, the role of ITBP is distinct from that of the CRPF, as it includes providing a sense of security to the population living on the borders, controlling trans-border traffic, ensuring effective border surveillance and functioning under the operational control of the Army as may be required in sensitive areas. This role demands legal provisions of a nature different from those required by the CRPF. Thus, a separate Act for ITBP is required which would also impact a sense of pride and recognition to the ITBP personnel.

Sir, if permitted, I would like to touch some of the salient points of the Bill. In view of the sensitive role assigned to this Force, it is imperative that the highest standard of discipline and efficiency is maintained amongst its members. This can only be done through a stringent Code governing the members of the Force. Accordingly, suitable penal and disciplinary provisions have been incorporated in the Bill. While formulating the Bill, provisions of the BSF Act, and in some respects of the Army Act, have been extensively drawn upon. However, wherever required, modifications have been made.

Sir, I would like to point out that the Bill mainly deals with the basic structures of the Force and it does not go into the administrative and procedural details which along with service conditions, etc., will form part of the Rules framed under Clause 156.

In the Armed Force, there is an in-built system of periodical Sainik Sabha and Request Room for ventilating grievances of members of the Force. The Bill also provides statutory right to petition against injustice or grievance. However, some restrictions have been imposed on the fundamental rights of members to ensure high standard of discipline among them. Similar pro-

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\*Moved with the recommendation of the President.

[Sh. M.M. Jacob]

visions exist in law governing BSF, NSG and Army.

As the Force has to ensure security and integrity of nation, for which members have to make supreme sacrifice, if necessary any action which compromises the security and integrity of the country has to be dealt with very severely. Thus, there is an essential requirement of having the provisions of severe punishments and giving powers to Force Courts to award such punishments.

With a view of provision to exercise check on such powers of the Force Court and to minimise chances of injustice or arbitrariness, if any, confirmation of punishments awarded by the Force Court by appropriate authority has been made necessary. In addition, the accused has been given statutory right to prefer a pre-confirmation and a post-confirmation petition to the prescribed authority against the award of punishment. Besides provisions for suo-motu review of proceedings by the superior authority has also been provided. These confirmation petitions are to be examined by Judge Attorney-General who is otherwise not associated with trial. Thus, Judicial review is available to the members of the Force in the matter of punishment through the in-built mechanism.

For effective and efficient utilisation of the Force, Central Government has been empowered to confer powers and duties to the officers of this Force under various Central Acts such as CrPC, Custom Act, etc., subject to certain conditions and limitations. Similar powers under State Acts can also be conferred on the Force personnel with the concurrence of State Governments. Such provisions also exist in Acts, of BSF, NSG, Coast Guard, etc.

Sir, the Bill was generally welcomed in the other House and, I hope, that it will also be welcomed by all Members in this House.

With these words, I commend the Bill to the House for its consideration and acceptance.

MR. CHAIRMAN: Motion moved:

"That the Bill to provide for the Constitution and regulation of an armed force of the Union for ensuring the security of the borders of India and for matters connected therewith, as passed by Rajya Sabha, be taken into consideration."

MAJ. GEN (RETD.) BHUWAN CHANDRA KHANDURI (Garhwal): Sir, with this Indo Tibetan Border Force Bill, 1992, an Act is being introduced, which as the Minister himself has stated, is a stringent measure. The Act is applicable to a Force which is already in uniform and is already subject to some rules and regulations and certain conditions of service.

As the Statement of Objects and Reasons says, this Force was raised in October 1962 and is being regulated under certain specific rules pertaining to the CPF. The necessity, therefore, to introduce a Bill now, after 30 years of its existence, ought to have been clarified by the Minister. In his brief statement as also in the statement of objects and reasons, it is said that because of certain changed conditions and experience gained during the last three decades, it has been felt that the Force should be regulated by a separate self-contained statute. I would request the hon. Minister to make it clear as to what is the experience gained and what are those changes that have forced him to have a separate set of rules and regulations.

I will come to the details in this regard a little later, but it appears to me that these are virtually a copy of the Army Act: I would also like to know about the problems with regard to the existing rules and regulations - both common laws as well as specific laws - which are being applied to the ITBP.

Coming to the statement of objects and reason, I have some observations to make. The responsibilities that have been assigned to this Force are not very fair. In fact, there is a hotchpotch of a variety of duties. It is not all fair to any Force that you give them a variety of duties which are not matching with one another. Let me read out their duties. This Force has been charged with the responsibility of ensuring security on the Northern Borders and instilling a sense of security among the people living in the border areas and preventing trans-border crime. So far so good. But then, they also have to guard against smuggling, un-authorised entry into Indian territory in coordination with the other security forces. In addition, the Force has been assigned bank security duties and other related duties in terrorist affected areas. I suppose these are only a part of the duties of this Force! My observation is, on the one hand you charge a Force to be responsible for activities against the enemy; and on the other hand, you use them for activities against our own people, in the name of enforcing law and order. Over a period of time, you have done exactly the same thing with the Army as well. This type of a concept is not good. People who are on border should deal with border and those who are required for internal security duties with our own people, should be doing a strictly policing job. These two duties should not be mixed up in this manner.

The third observation that I want to make is this. While going through this Bill, it appears to me that this is virtually a copy of

the Army Act, to the extent that even the various punishments offences, etc. have been copied verbatim. I would like to give a few examples.

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Clause 17 of this Bill is the same as Clause 34 of the Army Act. Similarly Clause 18 correlates to Clause 36 of the Army Act. All along it goes on like this.

Similar is the case with regard to punishment, which is mentioned at pages 17 to 20. All the punishments which have been there in the Army Act have been included in ITBP Bill. This includes the punishment of death also. When you talk of giving punishment like the death punishment, may be it is understood in the case of enemy action but to apply it to a force like ITBP - which is not of the same category - is not correct. Therefore, I would like to know from the Minister whether it is a deliberate decision to subject the ITBP to a similar act like the Army Act. If that is so, would it not be better to say that they will come under Army rather than under a separate Act? If there are any other reasons for this, we would like to be benefited.

I would like to say that punishment with regard to death sentence needs to be looked into again. In my opinion it is not a correct punishment to be included in this Act. Coming to page 17, para 56(1) you have here mentioned certain punishments which are being given to the subordinate officers. I would like to remind you that in the Army Act (Amendment) Bill, which is going to come up today itself, there is a provision that in order to speed up justice certain punishments pertaining to junior officers, there are now being handed down to the unit Commanders. I would suggest that whatever modifications are being made, either in terms of liberalisation or in terms of making its application

[Sh. Bhuwan Chandra Khanduri]

administratively casier, in the Army Act should be carried here also otherwise benefits that have been given to army would not be available here.

Like the Army Act, a clause regarding the pay and allowances has also been included in this Bill. I would like to submit to the Minister that the concept of penalising the soldiers - either in the army or even in the ITBP - monetarily should be reviewed. There is a standing direction in the army that fines can be imposed for the loss of property of Government. I would suggest that this should be reviewed and this clause, that is 61 (e), should be eliminated. There should be no monetary punishment except for the loss caused to the Government property or such other cases.

Now, I come to the other interesting aspect of summary disposal. What we call in the Army as summary court-martial, here we call it as summary force court. For the information of Members, a person who wishes to prosecute or a person who charges a man with an offence is also a judge A Unit Commander who decides that a man has committed an offence also decides as to what punishment is to be given to him. Normally, such a method is not considered good. The prosecutor and the judge should not be the same. In Army it has been going on because of certain conditions but it is not fair to apply it to ITBP also. I would, therefore, request the Minister to kindly review this aspect. If the Minister still wants to retain this provision, he may please give justification for this.

Similarly, there is summary punishment. Summary disposal means that the commanding officer can give a punishment upto one year to an individual. He just walks upto him, the person is heard and then, he will be disposed of by way of punishment upto one year. It is being done here, because, it is

being done in the Army. I don't think that similar punishment should be given to the ITBP. This also needs to be reviewed.

The last point that I would like to suggest is that there must be an appellate authority. You have talked about the Judge, the Advocate-General or something of that sort that is there in the Army. But, there is a need, in the present context that before sentences - by summary courts, court martials or the various other courts - are actually implemented, there should be a judicial review or in case of punishments which are of harsher nature, certainly, the individual should have the freedom for applying to a separate civil appellate authority so that justice can be given promptly and he does not have to wait for a longer period to go to the civil courts independent of this court's order.

Therefore, I would suggest to you - though I accept the necessity of having a strict, if not stringent code of conduct for a force like to ITBP - that it should be seen in the context of the type of past performance of theirs and also the duties that have been assigned to them and not by just comparing the Army which has not entirely a different role, particularly, in the case of the enemy. Therefore, I would suggest that this Act should be reviewed in that context.

SHRI SUDHIR SAWANT (Rajapur): I rise to support the Bill. The ITBP was constituted at a time when India was facing, after independence, a most dangerous situation. It was constituted in 1962. At that point of time, the situation was such that there was totally a lack of any force operating in the areas like Jammu and Kashmir, Himachal Pradesh or Uttar Pradesh. Hence, ITBP was created. What we have to really see today is whether those conditions which made the constitution of this force necessary are still relevant. More about this, I will speak later.

But one thing is certain that I welcome this Bill because, at last, there is some form of document on which the officers of this force can rely on. However, there are many aspects which need to be considered. As Mr. Khandhri has just now pointed out that this particular Bill has been brought forward by taking some portions from the Army Act and some portions from the BSF Act. I feel, the application of mind required to go into the condition of that new force is totally lacking. All the ills of the Army Act have been incorporated. Take the example of summary disposal of cases. As Mr. Khanduri has just pointed out, it is a draconian measure. While speaking on the Army Act, we are going to speak about this point also. The Indian Army Act was brought into force by the British Government to subjugate the native infantry and to that extent, even today, we have the colonial legacy being carried on in the Army. Take the example of summary disposal. In fact, there is no trial. The person walks upto the commanding officer, the commanding officer sentence him for one Year's rigorous imprisonment, then, he is thrown out of the force and he is put in the jail.

Here, there is no appeal. In independent India, I don't think there should exist any such situation where the human rights are trampled on, where people are sent to jails just because there is no button in the shirt or just because a person is on leave for one day due to fever, he is sent to jail for one year. These are examples which are happening today. The personal aspect has played a major part in some cases. By and large, the officers cadre is responsible; by and large, the decisions are fair. But what about those instances where there have been excesses, where personal enmity has been taken into account while giving decisions.

There are Sections 25 and 43 of this particular Bill. Section 26 is with regard to unbecoming conduct. Now, what does this mean? This is an offence in the Army Act

which has now been brought into this Bill. Section 26 is with regard to unbecoming no conduct. The discretion of deciding unbecoming conduct vests on that officer or the authority; he may decide in any manner. I oppose the inclusion of this section in total. So also we have Section 43 - violation of good order and discipline. What is good order and discipline? It is nowhere described; where you cannot find a fault with an individual in any particular offence you place him under Section 43; this is a copy of Army Act 1963. Even if person does not stand properly, he can be charged under the Army Act 1963 and under ITBPF Bill. And hence these things have been taken mechanically; and they have to suffer imprisonment for a term which may extend to seven years. For what action it is for violation of good order and discipline which is going to be determined arbitrarily. And that is why, in any Act or any Bill, where there is scope for arbitrariness, the Act shall be condemned; it cannot be accepted in modern India.

We had drawn the Indian Army Act, then the Army Act from the British. The British had a different Army Act for themselves or different Army Act for the Indian Army. Now that Army Act has been picked up and placed into ITBPF Bill. That is why, I would request the Minister that he must seriously reconsider clauses of this Bill because we cannot accept this Bill in totality as it is. Why should this section be there? Why should there be a summary Act disposal in today's circumstances? There are many loopholes in this Bill which must be reconsidered.

Now I will come to the most fundamental issue which we must address to ourselves, that is the organisation of the para military forces. Do we require today ITB Police Force when we have BSF, Assam Rifles, BRPF. Out of these three do the same role. The Assam Rifles have to guard the borders of this country. Now, having more forces is just an exercise which is futile; having a

[Sh. Sudhir Sawant]

number of forces is nothing but putting strain on the economy of this country. If you want to have new forces, it means you have to have a Headquarters; if you want to have new forces, it means staff, training establishment and crores and crores of rupees of the State exchequer have gone into such like activities which have no effect on the ground.

What we require today are individuals operating on the ground; and we must cut down the tale. I got down into teeth to tale ratio on the Defence Budget; and similarly teeth to tale ratio of the para military forces must be harmonised to the optimal requirement; and hence we must consider whether ITBPF Bill is required today in its present form or it must be merged with BBF or the BSF must be merged with the ITBPF. We cannot afford that. There is still another term of creating one force for anti-terrorist operations. We created NSG for a different role but now it is involved in another role. You have created in the Army another particular force, Rashtriya Rifles. What that Rashtriya Rifles have served, I do not know? In this connection, we must take a decision to stop having a number of forces. In J&K, you see, number of forces are operating there. There is no coordination. There is cross-firing. People have died of their own bullets. This is what is happening due to the lack of coordination. That is the particular issue, which we must address.

SHRI SUDARSAN RAYCHAUDHURI (Serampore): Where has it happened?

SHRI SUDHIR SAWANT: That was, when I was in the forces, so I cannot come out now. But this is what is happening. In private, I can tell you.

Another aspect to which I would like to draw you attention is about the Customs Act. ITBP is supposed to do anti-smuggling

operations. But what about the applicability of the Customs Act? ITBP has not power to investigate, to lodge investigation. ITBP has no power to prosecute. What do you call it; a Police Force? There is lot of rivalry on these borders as far as the Customs is involved on the one side and the ITBP on the other side. ITBP has not authority to lodge investigation or prosecute hence how it can do that role of anti-smuggling, I fail to understand.

I placed some view in front of the House. I would request the Minister to kindly consider these aspects in national interest.

First of all, we must bring out a firm policy as to review all the para-military forces and develop them into an optimal level of requirement of this country.

Secondly, I would request and reiterate the point made by Maj. Gen. Khanduri about the appallete authority. Appallete requirement of the appallete authority is a must. I would request the Minister to consider to go into the appallete side of any decision take at the executive level or at the administrative level. Thank you Sir.

15.59 hrs.

[SHRI TARA SINGH *in the Chair*]

[*Translation*]

\*SHRI SUDHIR GIRI(Contai): Mr. Chairman, Sir, I shall speak in my mother-tongue. Since their birth, human beings had been struggling against all odds. At the outset they struggled and later they became united and formed themselves into group. That was how society came into existence. They became the part of the society and tried to find out the ways and means for their survival. But after sometime, a part of the society whom we term and recognize as authoritarian force wanted to establish their authority and supremacy separated the other

part of the society and fragmented it. We have seen how these authoritarian forces created state machinery so as to preserve their own self interest. With the creation of state machinery the conflict also started inevitably. This conflict between man and state machinery is nothing new. It was there right from the beginning. The state machinery formulates rules and enact certain acts so as to preserve their interest or in other words to protect the interest or in other words to protect the interest of selected few in the society. So, the conflict, the clash between state machinery and man started and this conflict is still continuing.

The Indo Tibetan Border Police Force Bill, 1992 is going to be passed. So at the outset we must admit that conflict would definitely arise between the Government and the common soldier. Mr. Chairman, Sir, the Indo Tibetan Border Police Force came into being in 1962 during the Indo China border conflict. The force has dual functions. On the one hand it has been charged with the responsibility of ensuring the security of border, instilling a sense of security among the people living in border areas and preventing trans-border crimes, smuggling and unauthorised entry into or exit from Indian territory, and on the other hand, the Force has been assigned bank security duties and other sensitive duties in terrorist afflicted states. So, this Force has been assigned both external and internal duties. But we must remember that there is a basic difference between the functioning of the police and army. It is not proper to consider the functioning of Police and army equally. Their fields of work is different and they cannot be judged at par. The Indo Tibetan Border Police Force has been assigned different types of responsibility. The conditions of service of the Force have been mentioned in the provisions of the Bill. These conditions will be decided by the Central Government. I feel the measures taken for the functioning

of the Force should be formulated in such a way so that the Force can be regulated in efficiency and discipline. It is not proper to treat the functions of the Police and the Army on the same level and press this Force to perform the duty of the Police. We should have this outlook and judge the whole thing. Otherwise, the basic purpose of the bill will be useless.

Sir, this Force has been assigned the responsibility of bank security and was used against bank robbery. Again this Force was charged with the responsibility of ensuring law and order situation in Sports events like Asian Games. Besides, this Force has also been entrusted to check internal disturbances. But this Force should not be used for internal purpose. They should be used for the protection and security of our border. They should be assigned the responsibility of fighting against the external forces and protect the motherland. Sir, the State has a tendency to make the Army inhuman. We have witnessed this tendency right from the days of slavery, Feudalism to capitalist system. This Force sometimes is involved in criminal activities. This happens because the cultural aspect, the developmental aspect is neglected. So, the Government must see to it that the mental, the cultural activities of the Force are developed in such a way that the standards of efficiency and discipline of the Force are ensured and attain the high order. They should be treated sympathetically.

Sir, Clause 13 of the Bill provides that the member of the Force would be debarred from participating in trade unions, labour unions, political association etc. Sir, my submission is, why they should be debarred from participation in union activities. Man has democratic right to develop his mental faculty and personality. Our Constitution has provided right to express one's ideas

[Sh. Sudir Giri]

through union, associations. Why the Force should be deprived of the Constitutional rights? Today we find how religion has been used to create conflict among people.

The Police acts in a partisan manner during communal disturbances protecting the people belonging to his own religion. Now the Force would have the right to participate in religious association. But they would be debarred from participating in trade unions, labour union, political association. I feel this attitude has destroyed the democratic rights of the Force. We must see that the democratic rights of each member of the Indo Tibetan Border Force should be protected.

With regards to punishment, we find that there is difference in punishment between the officers and ordinary soldiers. But this is not proper. They should be treated at par. They should not be differentiated. But in this case, the Bill provides for the differentiation in respect of punishment in respect of dealing with them. We feel the crime related to property and other criminal act should be treated at par. These should not be different. I draw the attention of the Honourable Minister in this regard. The same rule should be applied both for the officer and the ordinary soldier.

We come to know from the newspapers and also sometimes from the known people in the Army that there is too much corruption in the Force. According to Hon'ble Minister un-built mechanism is there for the prevention of corruption. What kind of penal legislation is this? There are two types of corruption, one is related to property and the other related to other criminal activities. This corruption cannot be stopped by un-built mechanism. My suggestion is that the secrecy essential to protect from the external foes should be maintained. But, regarding ad-

ministration there should not be any secrecy. There should be open discussion in this regard also.

Sir, we know the significant role of Army. Since 1962 this Force has been protecting our border and its role is commendable. We thank them for their excellent job. We appreciate the difficult task they are performing in hilly inaccessible areas. But we must also request them to be a more alert so that the gurreilla trained commando of Pakistan cannot enter our territory. We request our Army through this August House that their task for the protection of motherland is highly commendable and we expect more alertness and consciousness from them.

SHRI SOBHANADREESWARA RAO VADDE(Vijayawada): Mr. Chairman, Sir, thank you for giving me an opportunity to speak on this Indo-Tibetan Border Police Force Bill.

These Indo - Tibetan Border Police personnel are working under very difficult conditions. A part from protecting the borders in very very adverse climate conditions over a very long border of more than 2000 kms. and altitudes varying from 2800 to 5400 kms, they are also helping in various other aspects that is providing security cover to a number of VIPs in the capital and to out High Commissions abroad and also the banks in Punjab. I may mention here that Punjab is a troubled State because of the continued activities of the terrorists and which requires more security personnel.

My learned colleagues, Maj. Gen. (Retd.) Bhuwan Chandra Khanduri and Shri Sudhir Sawant, who had the privilege to work in the armed forces, have very valuable suggestions. So, I will not repeat what my friends have said. I take this opportunity to make only two suggestions in this regard to the hon. Minister.



After formation of the force in 1962 and after three decades, a Bill has been brought forward. Let us now go through the Bill. If some lapses, deficiencies or mistakes are committed by the people, who are working, in this Indo-Tibetan Border Police Force -, it is mentioned in this Bill as to how they have to be tried and what should be the penal measures that have to be taken against them. I being a person who is not connected with any of these things, I will not venture to make any suggestions in this regard.

My suggestion to the Government is please examine the present provisions as to how it can help their families and make necessary changes in the Policy to help liberally the families of such persons who are working in the Indo-Tibetan Border Police Force and who lose their lives in the discharge of their duties.

I also want to make another suggestion. Keeping in view all the severe stresses and strains under which they have to function and the adverse climatic conditions under which they have to work, the period for which they have to work compulsorily before availing retirement benefits, should be reduced or alternatively the quantum of retirement benefits may be enhanced.

With these two suggestions to the hon. Minister, I extend my support to this Bill.

[Translation]

SHRI RAMASHRAY PRASAD SINGH (Jahanabad): Mr. Chairman, Sir, Indo-Tibet Border Police Force Bill has been introduced by the hon. Minister in the House after 32 years. First of all I would like to know the reasons that proved the existing law inadequate and warranted introduction of a new Bill. Secondly, the Border Security Force was formed to protect the country from foreign threats. But it is deployed in the country in the name of maintaining law and

order. Different para-military forces viz. CRPF, BSF, Anti-Terrorist Force and ITBP have been formed in the course of time will have to perform the same type of duty. Though all these forces have district organisations of their own and have been formed to defend the country, but now a days these are being deployed for one type of work i.e. maintaining law and order in the country.

Above all, there are two different provisions to award punishment to its officers and Jawans. This practice was prevalent during the British days when punishments for Indian and British soldiers were different. But today ours is an independent country and we call ourselves an advanced country. These provisions are to justified today. Therefore, I would urge the hon. Minister to reconsider the Bill. Keeping in view the direction to which the mankind is moving today and today's mechanical way of life it would be in the fitness of things to reconsider the Bill before it is discussed in the House. With these words I conclude.

SHRI DAU DAYAL JOSHI (Kota): Mr. Chairman, Sir, the task which had been pending for last about 29 years is being accomplished by the present Government. The circumstances under which the Indo-Tibet Border Force was formed are known to people of the entire country. It was the time when slogans of 'Bharat-Chini Bhai-Bhai' were given and the country was not prepared to face the chinese attack. It was the time when China played treachery with us in the name of friendship and attacked our country suddenly leaving us in a state of utter helplessness. Because, Indian forces were totally ignorant of the area and routes in Chinese border. Due to this our forces had to suffer a heavy loss of life. There was none to guide our forces. It was situation which warranted the formation of a police force exclusively to defend the Indo-Tibetan Border.

[Sh. Dau Dayal Joshi]

It is better late than never. Though late, after the formation of the force in 1962, it is for the first time that the Government brought forward a Bill with a view to streamlining the working and service conditions of the force. The performance of this force during the last several years has been very good. It won several medals. It won about 40 life saving medals and 22 President's Police medals. The Government is doing a good thing to further streamline the working of this force which has already rendered yeoman service to the country. However, I do agree to the views of Shri Khanduri who is an ex-Major General in the Army that it has been brought forward in a haste without properly studying and analysing various aspects. The Government is going to apply the Army rules on police which is not at all justified. My submission is that the nature of duty of the Army is different from that of police. It is true that the Army is deployed to defend the borders of the country and the Indo-Tibet Police Force is not inferior to it in any sense. But keeping in view the circumstances in which this force has to work, their service conditions are not appropriate. I regret that though the motive behind the presentation of this Bill welfare of the personnel of this force. Yet only rules are being made stringent for them but no provision is being made to provide adequate facilities to look after and support their families. The allocations for this force were Rs. 113.25 crore in the 1991-92 Budget. The introduction of this Bill would not make any difference in that. Only an additional amount of about Rs. 10.8 lakh would be spent by the Government on appointment of Judges, Attorney General and other officers of the establishment branch.

Mr. Chairman, Sir, I returned from the northern region of Jammu and Kashmir only yesterday. I know that the people of that region on feel insecure. A similar police

force has been constituted there. It had the objective to ensure the security of borders and to arouse a feeling of security in people's mind living in that area. It was also to prevent infiltration of smugglers. But what is the present situation in Jammu? Today nobody has faith in Jammu-Kashmir Police. The Jawans of J&K Police has lost their credibility. A large number of people living in border areas and also the retired personnels of Army said in one voice that their lives are not safe due to faulty policies of the Government. It is very shameful thing for the Government. There is a great fear in their minds that even after repeated assurances and the forceful declaration of the Prime Minister from the ramparts of the Red Fort that Kashmir is the integral part of India, Kashmir will remain in India. The situation that I and my party noticed there is that entire Kashmir is going to be lost from our possession. No Indian Officer hoisted national flag anywhere in Kashmir on the 15th August. Mr. Chairman, Sir, I am afraid that due to the inaction of the Government a big part of Jammu is also slowly going out of our hands. In Doda, where I went with Dr. Laxmi Narayan ji the extremists and militants have established their full hold and it seems that one Jammu will also come into their grip. There is only one way left out. Today the terrorists are possessing AK 47 and AK 57 rifles but the citizens do not have such weapon. Earlier every Hindu family had old weapons, rifles but two years before those were forcible taken from them and were deposited. Today all the Hindus are helpless in Jammu. They ask as to ultimately who will give them protection?

Mr. Chairman, Sir, I want to submit to you that the women there told our group of three persons that they would not let us go from there and they will gherao us. They told us that we had visited there on behalf of the B.J.P., therefore, some arrangement must be made for them. They asked us to make

arrangements, for the return of their Arms, rifles which were forcibly deposited by the authorities. Our men will fight and afterwards if the situation so arises we will also fight and die. They told that if we could not do anything, they should be given capsules of Potassium cyanide. This is the plight of mothers and sisters there. They say that they do not want to see the occurrence of the incidents which took place in Kashmir. They want to maintain their existence. They asked us to pass their message to our leaders like Shri Advaniji and Shri Vajpayeeji that if the Government cannot return their arms they should be given Potassium Cyanide Capsules.

Through this Bill I want to submit to the Government that the basis of constituting Indo-Tibet Border Police at the time of Chinese invasion in 1962 should be taken into account because the credibility of J&K Police has totally lost and a sense of disbelief is prevailing in the entire J&K border area. Militants are being given training in J.K.P. training Centre, Udhampur. The person having training there give training to militants. Such is the condition of the J.K.P. today. Therefore, my submission is to constitute a force re-employing the ex-servicemen who can protect the entire border area in Jammu. Otherwise, I am afraid that despite the repeated declaration of Shri Narasimha Rao, Kashmir is in danger today. Its prestige, the mothers and sisters there are in danger. A new military force may kindly be constituted so that the situation may be controlled there, otherwise the situation there may further deteriorate.

[English]

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI M.M. JACOB): Sir, I am happy that the Members who participated in this discussion on the Bill

have contributed valuable points for the consideration of the Government.

At the outset I would like to thank the Members and I must also tell the hon. House that we should have brought this Bill much earlier. This is the 30th year of the formation of the ITBP. A question was asked 'What is the special necessity for ITBP? Why not you think of consolidating all the Forces as one and have one policy?' Sir, each Force has a distinct specific role to play and so even the formation of the ITBP was necessitated at a time when the Chinese aggression became a reality and we had to have Forces who are trained to handle on that terrain so high, almost 10,000 or 15,000 feet or even more than that.

[Translation]

SHRI RAJVEER SINGH (Arola): Mr. Chairman, Sir, I am on a point of order. There is no quorum in the House.

[English]

MR. CHAIRMAN: The bells is being rung-

Now there is a quorum. The hon. Minister may continue.

SHRI M.M. JACOB: Sir, I was trying to answer some of the points raised here. The Indo-Tibetan Border Police was formed at a crucial time for a specific purpose to handle that terrain of the border area of India where a specially trained police force was required. This was considered as a part of CRPF for all practical purposes, because we did not bring a separate Act for Indo-Tibetan Border Police Force at that time and it was considerably a small force. Later on, the strength of the force has increased and the requirements also have increased, So, a time has come when we should have a special Act for the Indo-Tibetan Border Police.

[Sh. M.M. Jacob]

A question could be asked as to why you have not discussed fully about it. Most of the provisions under this Bill were discussed in this very same House under CRPF, under BSF, under Army Act and several other related Acts which we have passed in this House. So, actually, this is a blending of various provisions that are existing in the CRPF Act, Army Act and other Acts.

We are very happy, as one of the hon. Members has mentioned, that the ITBP has made a tremendous impact in the areas of its working. Recently, in Uttarkashi, in the earthquake relief operations, the ITBP has played a tremendous role. In the Asian Games, they made a remarkable contribution. In Punjab and other places, it has done a good work. Actually, if there had been other police forces, then we would have withdrawn the ITBP from those places. In fact, I wish that the ITBP should concentrate on the border areas where they are intended to be more useful and for which they are trained. But, at the same time, other methods of training are also given to them because of the developments of insurgency, terrorism, militancy and so on and so forth. So, various types of training had to be given to them. So, in the context of the new scenario, we thought that a separate Act is good for the ITBP where they could have the satisfaction that they are a full force with their own Act and they could be taken care of properly.

Sir, I am really thankful for the very good suggestions given by the hon. Members. When the rules are framed under this Act, many of the suggestions given by the hon. Members will be taken care of and any anomalies noticed in the welfare and other things could be rectified in the rules. Then, with regard to the question of having a sepa-

rate Act for this force when CRPF Act is there, I would like to submit that the CRPF Act do not meet the full requirements for effective regulation and administration of the ITBP. That Act is not sufficient and that is why, a separate Act has been brought forward.

Hon. friend, Shri Khadnduri has made very valid points. Some of the suggestions are very excellent. One of the points which he has made is, why there is power for awarding severe punishment. He asked, why there should be dismissal from service and why pay and allowances and other public money to him should be forfeited. I would like to answer these two points because there will be some confusion. The provision of confirmation of a sentence awarded by the Force Court by the Central Government or by superior officer is a time tested provision which is existing in the Army Act, the BSF the NSG Act and in the Acts of other armed forces. The hon. Members are also aware of that. With this provision, a check by appropriate authority over the exercise of such powers of the Force Court to minimise any chance of injustice, has been provided. The accused can prefer a petition to confirming authority before confirmation of the sentence. He has the right to prefer another petition before the Central Government or Director-General or any prescribed authority superior in command, after confirmation of the sentence. In addition, clause 59 of this Bill confers *suo motu* powers of review of proceedings, if any punishment awarded under Sections 83, 84 or 85 appear unjust, illegal or excessive to a superior authority envisaged under section 88. Such authority may cancel or remit or vary the punishment. It is pertinent to mention here that pre-confirmation petition and post-confirmation petition are examined by the Judge-Attorney General who is not associated with the trial. Hence judicial review is available to the members of the Force in the matter of punishment, through in-built mechanism.

Reduction of money is another point which is mentioned. It is not true that all the money is going to be taken out or forfeited. In fact, the General Provident Fund, Risk Premium Fund Central Government Employees Insurance Scheme and such other things will not be forfeited. It is only in regard to pay and allowances which are due to be paid at the time of punishment which would be forfeited. I think, I have made this point very clear.

Why are severe punishments given? Some of the hon. Members have asked why such punishments are severe. Severe punishment is considered necessary to cover all the situations. For instance, there may be insubordination which may be in different forms such as refusing to shoot an enemy or terrorist or refusing to salute a superior officer. It is not possible to lay down a particular sentence to cover the wide-ranging possible offences coming under the same definition.

Similarly with regard to theft of Sten gun or something like that it is desirable in either case to provide sufficient courses to provide variation in the range of punishments. So, it is not true that punishment is severe for everything.

Another question was asked—why the same punishment as in the Army Act is provided. Is it deliberate? There is a need to have a re-look at the death sentence again. I may say that ITBP is also to act in the face of the enemy. They are facing enemies in the border areas with similar circumstances. The consequences are the same. So, indiscipline cannot be tolerated if you want a good result. Therefore, it requires similar level of discipline. For this, provisions are made there knowing fully well that we are equating them to the Army at the point when they are facing a similar situation.

Another question was asked again: "Why are you linking with the Army? When

they are in the border areas, they are actually under similar situations like that of the Army. If there is another type of rule, then there will be some kind of variation and difficulties at the operational level. So, we thought it is advantageous to have provisions similar to the Army Act applicable for the ITBP personnel to that point as well.

Another thing is about verbatim copy of the Army Act. That is one question asked by our ex Army Officer. He asked whether it is a verbatim copy. Some items are drawn from the Army Act and some from BSF Act, some from the NSC Act and a few from CRPF Act. So, this also is, as I said, a variety of duties conferred upon ITBP. From experience, we understand that some variations are required to make them more efficient and more active and more purposeful.

Lastly, in the event of war, ITBP has to work and fight the enemy under the same Army control. So, I think there is no fault in combining all these in the appropriate manner at the appropriate level.

Another point asked is, why right of appeal has not been provided. Some hon. Member mentioned that there is no right of appeal. This Bill has been prepared in the light of the Army Act in those particular areas and the BSF Act, as I said. The punishment awarded by the Force court shall not be carried out until confirmed by appropriate authority which will eliminate the chances of injustice. In this regard, provisions will be made in rules, as I mentioned earlier, in the existing Act and this could be certainly considered. Regarding the right of appeal, I have already mentioned in the beginning and I do not want to add at the moment.

One or two points more and I will conclude. The powers under Customs Act, 1962 have been delegated to BSF personnel and ITBP personnel even today. It is not

[Sh. M.M. Jacob]

a new thing, as they are deployed on borders of the country and they have to check the border crimes and smuggling. So, even now the powers are given to them. Power under Sections 100 to 110 of Customs Act which deal with search, seizure and arrest etc., necessary for efficient performance of duties for the purpose are given to them. That is why, Clause 154 has been provided in the Bill to delegate such powers to Members of the Force.

A question was asked about the right to form trade unions. Unless we maintain a high standards of discipline, it is not possible to extract real work and maintain the character of the Force. Even Article 366 of the Constitution provides explicitly that Parliament is empowered to restrict, even abrogate the Fundamental Rights of the Members of the Armed Forces. It is permissible and it is necessary. There is an inbuilt system of *Sainik Sabha* wherein members of the Force openly bring out grievances or ventilate individual grievances or grievances affecting other members of the Forces. Besides, there is also a system of Request Room through which the members of the Force can ventilate their grievances. They can also petition under Clause 14 and 15 of this Bill.

As regards religion and other things, all freedom is there. There is no restriction and no problem.

One last question is there: is there a difference in punishment for officers and other men? Officers and men are treated equal for punishment, for the crimes committed. It is the crime that determines the nature of the punishment. Otherwise, it is not.

Regarding welfare measures etc. which are mentioned here, they can be brought in

in the rules. We are conscious of it. We will certainly take note of it.

Sir, I am also happy to say that recently, as you are aware, a batch of the ITBP personnel have climbed the highest peak on Mount Everest. That batch include a lady by name Santhosh Yadav. They have brought victories to our country. It was a very good thing that it was recognised and even it was recognised by the Parliament. They have again gone on a Indo-Japanese Joint Women's Expedition Team. I am happy they are progressing in their march towards the peak very well. I hope they will bring laurels to the ITBP and to the nation in the Joint Expedition.

I thank you very much. I want our hon. Members to pass it unanimously. The suggestions are well taken and we will certainly see that they are included in the rules.

MR. CHAIRMAN: Mr. Khanduri wanted some clarifications.

SHRI M.M. JACOB: I think I have answered his question.

MAJ.GEN (RETD.) BHUWAN CHANDRA KHANDURI (Garhwal): I would like the Minister to clarify some aspects. You have mentioned about the Court of Appeal. What are you trying to recommend? There should be an independent Court of Appeal. Regarding the Army and all these Paramilitary Forces what you have mentioned is about the Judge Advocate General. What happens is that the processing channel is through the same people. If it is the Army, then the same set of officers or people who have indirect vested interest in seeing that the ruling of that Court and the decision of the Court is upheld, they process it. Therefore, the recommendations was that there should be a Special Court of Appeal which is independent of this Force, which has nothing to do with this Force.

Even the Judge Advocate General in the Army and even in this Force, would be an art of the system. Therefore, it is not humanly possible for these people to act independently. A Court Martial decision is rarely challenged by the Judge Advocate General because it is under the advice of his own officers that the Court functions. So, to say that they are not connected is not a right thing. I therefore wanted to say that you should kindly consider setting up of an independent Court, Special Court of Appeal particularly for the Court Martial case or for all the forces. (*Interruptions*)

Second thing you have mentioned is about the monetary aspect. I was saying that in this Act like the Army Act, there are provisions that a fine can be imposed as punishment, not for the loss that has been incurred, for the loss of property etc. But it is common to say that a Commanding Officer gives as fine seven days' pay, 14 days' pay. The Court Martial or the Force Court can give any amount of punishment in terms of fine. My suggestion is that a soldier should not be hit as we call in the Army.

[*Translation*]

**"Donot deprive a person of the means of his livelihood."**

[*English*]

You punish him physically. You give other types of punishments. You give a physical punishment which is quite tough. You give him a jail punishment. I therefore recommended that as a fine separately by itself should not be imposed on the soldier.

MR. CHAIRMAN: It is not a recommendation.

[*Translation*]

SHRI DAU DAYAL JOSHI (Kota): Mr.

Chairman, Sir, the one thing that I have to submit is that the hon. Minister did not stated clearly that why this matter has been kept pending for 29 years. The second thing that I want to submit is whether the Government will revise their terms and conditions of services or not because all the forces like the B.S.F., C.R.P.F. and the I.T.B.P. have their different terms and conditions of service. Whereas all the three forces are working on the border. Therefore, the difference in their terms and conditions of their service is not justified. Will the Government clarify my query whether it will improve the terms and conditions and pay scale of their service in the light of the awards which have been given to the I.T.B.P.

[*English*]

SHRI M.M. JACOB: Sir, regarding the first point make by my hon. friend about the independent nature of the Courts, I would say even in the present Bill which is before you, which I wanted you to get it passed, the Judge Attorney General, about whom I have just mentioned, is not associated with the trial in the case. So, he will examine the petition independently. That is the point. For a special court to be constricted by all the forces as an independent court is a good suggestion to be considered for future. We have to think seriously not only about this but may be for many things combined. That is a new suggestion which all the forces, all the groups will have to consider about its possibility and feasibility.

Regarding the other thing that is mentioned just now about the service conditions and other facilities to the members of the forces, when the Act is made that itself gives a real opportunity for a scrutiny and then an in-depth study can be made. If there is anything missing or if there is anything wanting, we can certainly provide that. That point will be taken care of at the time of implementation

[Sh. M.M. Jacob]

ARMY (AMENDMENT) BILL

and if anything is necessary, it will form part of the rules.

16.52 hrs

MR. CHAIRMAN: The question is:

[English]

"That the Bill to provide for the Constitution and regulation of an armed force of the Union for ensuring the security of the borders of India and for matters connected therewith, as passed by Rajya Sabha, be taken into consideration."

MR. CHAIRMAN: The House shall now take up Item Number 21.

Shri Krishna Kumar to speak.

*The motion was adopted*

THE MINISTER OF STATE IN THE MINISTRY OF PETROLEUM AND NATURAL GAS AND THE MINISTER OF STATE IN THE MINISTRY OF DEFENCE (SHRI KRISHAN KUMAR): Sir, I beg to move:

MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

"That the Bill further to amend the Army Act, 1950, be taken into consideration."

The question is:

"That Clauses 2 to 157 stand part of the Bill."

Our armed forces represent one of the most disciplined and patriotic sections of our society. They have adopted for themselves a career of commitment and sacrifice for the nation for defending our borders, for defending our freedom and integrity. High morale and discipline are the hallmark in the functioning of our armed forces. In order to ensure that the armed forces function effectively, the chain of command in the armed forces is kept sacrosanct both in peace time and war time to ensure that the jawans, the sailors and the airmen have avenues for redressal of their genuine grievances. The conditions of service and related matters of the armed forces are governed by separate legislation—the Army Act, the Navy Act and the Air Force Act.

*The motion was adopted*

*Clauses 2 to 157 were added to the Bill*

MR. CHAIRMAN: The question is:

"That Clause 1, the Enacting Formula and the long Title stand part of the Bill".

*The motion was adopted.*

*Clauses 1, the Enacting Formula and the long Title were added to the Bill*

SHRI M.M. JACOB: I beg to move:

"That the Bill be passed".

MR. CHAIRMAN: The question is:

"That the Bill be passed."

*The motion was adopted*

Sir, a law relating to the functioning of the Indian army is now covered by the Army Act, 1950. Basically, the Army Act relate to provisions, relate to commission, appointment, enrollment, conditions of service, offences, punishment procedures relating to martial and execution of sentences. For that, the army's rules and regulations gives further details regarding the manner of delay