



REPORT NO.
59

PARLIAMENT OF INDIA
RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE**

FIFTY NINTH REPORT

**The Readjustment of Representation of Scheduled Castes and
Scheduled Tribes in Parliamentary and Assembly
Constituencies Bill, 2013**

(Presented to the Rajya Sabha on 2nd May, 2013)

(Laid on the Table of Lok Sabha on 2nd May, 2013)



Rajya Sabha Secretariat, New Delhi
May, 2013/Vaisakha, 1935 (Saka)



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ACRONYMS

SC - SCHEDULED CASTE

ST - SCHEDULED TRIBE

UT - UNION TERRITORY

w.e.f. - WITH EFFECT FROM

WP - WRIT PETITION

CONTENTS

	PAGES
1. COMPOSITION OF THE COMMITTEE	(i)
2. INTRODUCTION	(ii)-(iii)
3. REPORT	1 - 7
4. RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE - AT A GLANCE	
5. NOTE OF DISSENT RECEIVED FROM SHRI SUKHENDU SEKHAR ROY, M.P.(RS) AND MEMBER OF THE COMMITTEE.	
*6. RELEVANT MINUTES OF THE MEETINGS OF THE COMMITTEE	
*7. ANNEXURES	
I. THE READJUSTMENT OF REPRESENTATION OF SCHEDULED CASTES AND SCHEDULED TRIBES IN PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES BILL, 2013.	
II THE READJUSTMENT OF REPRESENTATION OF SCHEDULED CASTES AND SCHEDULED TRIBES IN PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES ORDINANCE, 2013	
III THE GAZETTE OF INDIA EXTRA ORDINARY PART III-SECTION -4 NO-90 DATED 1 ST APRIL, 2013.	
IV STATE AND UT WISE TOTAL POPULATION, SCHEDULED CASTES AND SCHEDULED TRIBES POPULATION AND THEIR PERCENTAGE OF THE TOTAL POPULATION AS PER 2001 CENSUS.	
V COMMENTS OF THE LEGISLATIVE DEPARTMENT ON THE VIEWS/ SUGGESTIONS CONTAINED IN MEMORANDA SUBMITTED BY INDIVIDUALS/ORGANISATIONS/ EXPERTS ON THE PROVISIONS OF THE BILL TO THE COMMITTEE.	
VI ALLOCATION OF SEATS IN HOUSE OF PEOPLE ON THE BASIS OF DELIMITATION OF PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES ORDERS OF 1976 & 2008.	
VII ALLOCATION OF SEATS IN LEGISLATIVES ASSEMBLIES ON THE BASIS OF DELIMITATION OF PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES ORDERS OF 1976 & 2008.	

* TO BE APPENDED AT PRINTING STAGE.

**COMPOSITION OF THE COMMITTEE
(2012-13)**

1. Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Dr. Abhishek Manu Singhvi
3. Shri Jesudas Seelam
4. Shri Ram Jethmalani
5. Shri Bhupender Yadav
6. Shri Ramchandra Prasad Singh
7. Shri Sukhendu Sekhar Roy
8. Shri Ram Vilas Paswan
9. Shri Sanjiv Kumar
10. Shri Parimal Nathwani

LOK SABHA

11. Maulana Badruddin Ajmal
12. Shri P.C. Gaddigoudar
13. Shri D.B. Chandre Gowda
14. Shri Shailendra Kumar
15. Shri Jitender Singh Malik
16. Shri Arjun Ram Meghwal
17. Shri Pinaki Misra
18. Shri S. Semmalai
19. Shri S.D. "Shariq"
20. Smt. Meena Singh
21. Shri Vijay Bahadur Singh
22. Dr. Prabha Kishore Taviad
23. Shri Suresh Kashinath Taware
24. Shri Madhusudan Yadav
25. Vacant@
26. Vacant
27. Vacant
28. Vacant
29. Vacant
30. Vacant
31. Vacant

SECRETARIAT

Shri Deepak Goyal, Joint Secretary
Shri K.P. Singh, Director
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director
Smt. Catherine John L., Committee Officer

@ Vacancy caused due to induction of Smt. Chandresh Kumari in the Council of Minister w.e.f. 28th October, 2011.

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Fifty Ninth Report on the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Bill, 2013.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred* the Bill, as introduced in the Rajya Sabha on the 26th February, 2013 and pending therein, to this Committee on the 18th March, 2013 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. Accordingly, a press communiqué was issued in national and local newspapers and dailies, in response to which twenty one memoranda containing suggestions were received, from various organizations / individuals / experts.

4. The Committee heard the presentation of the Secretary, Legislative Department, Ministry of Law and Justice on the provisions of the Bill in its meeting held on 5th April, 2013 and had in-house discussion on the various issues of the subject matter of the Bill in its meeting held on 12th April, 2013.

5. While considering the Bill, the Committee took note of the following documents/information placed before it :-

- (i) Background note on the Bill submitted by the Legislative Department, Ministry of Law and Justice;
- (ii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Legislative Department thereon;
- (iii) The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002;
- (iv) The Delimitation of Parliamentary and Assembly Constituencies Order 2008;
- (v) Supreme Court Judgment on Writ Petition (Civil) No.540 of 2011, Virendra Pratap and Another vs. Union of India and others;
- (vi) State-wise lists of castes as well as population figures of Scheduled Castes and Scheduled Tribes included under lists of Scheduled Castes and Scheduled Tribes by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002; and
- (vii) The Constitution of India.

* Rajya Sabha Parliamentary Bulletin Part-II (No. 49638) dated the 10th May, 2012.

6. The Committee adopted the Report in its meeting held on the 29th April,, 2013. **Shri Sukhendu Sekhar Roy, M.P.(RS) and Member of the Committee submitted a note of dissent opposing the adoption of the Report which has been appropriately appended in the Report.**

7. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
April 29th, 2013

SHANTARAM NAIK
Chairman,
Committee on Personnel,
Public Grievances, Law and Justice

REPORT

The Readjustment of Representations of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Bill, 2013 (**Annexure-I**) is an Ordinance replacing legislation introduced on the 26th February, 2013 in the Council of States. The Statement of Objects and Reasons of the Bill outlines the basic objectives of the proposed legislation/Ordinance and is reproduced below:-

“Articles 330 and 332 of the Constitution provide for reservation of seats for the Scheduled Castes and the Scheduled Tribes respectively in the House of the People and in the Legislative Assemblies of the States, in proportion to their population. Articles 82 and 170 of the Constitution provide for readjustment of seats after each Census. Accordingly, the seats for the Scheduled Castes and Scheduled Tribes in the House of the People and Legislative Assemblies of the States have been readjusted as per Census 2001.

A Writ Petition (Civil) No. 540 of 2011, Virendra Pratap and another vs. Union of India and others was filed in the Supreme Court contending that by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 (No.10 of 2003), several castes, which had not been included in the list of Scheduled Tribes, were included as Scheduled Tribes and despite such inclusion their representation in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 was not done. The Supreme Court vide its judgment dated the 10th January, 2012 directed the Election Commission of India to consider the case of the Scheduled Tribes which had been included in the list of the Scheduled Tribes by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 (No. 10 of 2003) and to take appropriate steps for their representation in the House of the People as well as in the State Legislative Assembly. Pursuant thereto, the Election Commission desired that a legislation may be enacted specifically empowering the Election Commission to carry out re-adjustment of seats for the Scheduled Castes and Scheduled Tribes in the light of the revised population figures of the Scheduled Castes and the Scheduled Tribes, as may be ascertained and estimated by the Census Commissioner with reference to 1st March, 2001, after taking into account the population figures of the castes and tribes which have been declared as the Scheduled Castes and the Scheduled Tribes after publication of 2001 Census.

After the Census of 2001 and up to 31st May, 2012, several castes and tribes have been included in and excluded from the lists of the Scheduled Castes and Scheduled Tribes by eleven Parliamentary Amendment Acts. Thus, there was an urgent need to review and restore the statutory rights of those castes and tribes so included and excluded all over the country.

As the Parliament was not in session and immediate steps were required to be taken to implement the aforesaid Judgment of the Supreme Court, the President was pleased to promulgate the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013 on the 30th January, 2013. The Ordinance inter alia provided as follows—

(i) the Census Commissioner to ascertain and estimate the varied population figures of the Scheduled Castes and the Scheduled Tribes in the States as on the last Census held in 2001 and to notify the same in the Gazette of India;

(ii) the Election Commission to make necessary amendments in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 for the purpose of giving proper representation to the Scheduled Castes or the Scheduled Tribes in Lok Sabha and Legislative Assemblies of the States by readjustment of Parliamentary and Legislative Assemblies territorial Constituencies;

(iii) the Election Commission of India to cause publication of amendments made in the existing Delimitation Order and dates of its operation;

(iv) the Election Commission to make necessary correction of the errors in the said Delimitation Order and also to make necessary alterations therein, pursuant to any change in boundaries and name of any district or territorial division.”

2. An Ordinance, namely, the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance, 2013 was promulgated by Hon'ble President of India on the 30th January, 2013 (**Annexure II**) which is liable to be repealed upon the enactment of the proposed Legislation in terms of its Clause 10. The Committee takes note of the Order of Supreme Court in the Writ Petition (Civil) No. 540 of 2011 in the matter of Virendra Pratap and another vs. Union of India and others wherein the Election Commission of India has been directed to take appropriate steps for representation of Scheduled Tribes in the Lower House in Parliament as well as in the State Assembly in accordance with the provisions of the Constitution for due representation of Scheduled Tribes population in the State of Uttar Pradesh. Following the judgement of Supreme Court, the Election Commission of India had expressed its inability to Government to carry out the Orders of the Supreme Court as it did not have the power to do so under existing laws. Accordingly, the

Election Commission requested the Government to enact necessary legislation to enable it to carry out the directions of Supreme Court. The Government while examining the judgement of Supreme Court noted that the judgement was only applicable in respect of the State of Uttar Pradesh whereas several castes and tribes have been included and/or excluded from the list of Scheduled Castes and Scheduled Tribes under Articles 341 and 342 of Constitution respectively, in almost all the States across the country through several amendments effected to Scheduled Caste and Scheduled Tribe Orders after the 2001 census. The Committee has been apprised that as many as eleven amendments after 2001 census till 31st May, 2012 have been passed which need to be accounted for necessitating readjustment of seats meant for Scheduled Castes and Scheduled Tribes in the Lower House of Parliament and the State Legislature Assemblies. The necessity of proposed legislation is essentially to enable the Registrar General of India to estimate and ascertain the varied population figures of Scheduled Castes and Scheduled Tribes in relation to the 2001 census and to empower the Election Commission of India to carry out readjustment of Parliamentary and Assembly seats on the basis of revised population figures of Scheduled Castes and Scheduled Tribes.

3. Clause 4 of the Bill empowers the Election Commission to carry out amendments as may be necessary in the Delimitation Order, 2008 by readjustment of territorial constituencies of States and UTs for Lok Sabha and the Legislative Assemblies having regard to Articles 81, 170, 330 and 332 of the Constitution and Section 8 of Delimitation Act, 2002. These amendments when done, would be deemed to have taken place in First and Second Schedules to the Representation of the People Act, 1950 which reflects allocation of seats in the House of People and Legislative Assemblies. In order to carry out readjustment of Parliamentary Constituencies the Registrar of General and Census Commission of India would provide revised figure of population of Scheduled Castes and Scheduled Tribes up to 31st May, 2012 to the Election Commission of India for the purpose. The date of commencement of the Act would be from the date of Promulgation of the Ordinance i.e. 30th January, 2013 in terms of Clause 1 of the Bill. The Provisions of Bill would be applicable retrospectively because the Registrar General and Census Commissioner of India has already started ascertaining the figure of Scheduled Castes and Scheduled Tribes during the period

following 2001 Census till 31st May, 2012, starting with the State of Uttar Pradesh. The Registrar General of India have already notified total population figure of Scheduled Castes and Scheduled Tribes and percentage of their population with reference to the total population of the State of Uttar Pradesh as on 1st April, 2013 in Gazette of India (**Annexure III**). It is noted from the figures that the percentage of Scheduled Tribe population is 0.4% of the State population and this has no representation in the Parliamentary as well as Assembly Constituencies of that State. After the enactment of this legislation, the Election Commission is supposed to carry out necessary alterations in the Delimitation Order, 2008 to give due representation to Scheduled Castes and Scheduled Tribes in proportion to total population figure in the Parliamentary and Assembly Constituencies of States and Union Territories.

4. The Bill empowers the Election Commission to carry out readjustment of Parliamentary and Assembly Constituencies on the basis of revised Scheduled Castes and Scheduled Tribes percentage vis a vis the total population of State/UT. However, the Secretary, Legislative Department during his deposition before the Committee referred to the precedent of 1976 when readjustment of Parliamentary and Assembly Constituencies took place following inclusion/exclusion of certain Castes and Tribes in the list under Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976.

5. The Secretariat issued a press communiqué inviting writing suggestions from the Members of public on 25th March, 2013. The written memoranda numbering 21 received from the public, including some public representatives, were forwarded to the Legislative Department of Government of India for their comments. A Statement showing the issues raised in these Memoranda/representations and the comments of the Legislative Department thereon is enclosed (**Annexure IV**).

6. The Secretary, Legislative Department, Government of India in his disposition before the Committee on 5th April, 2013 apprised the Committee that Hon'ble High Court of Bombay at Goa in its judgement dated the 11th February, 2013 on Writ Petition No. 230/2007 regarding Goa State Scheduled Tribes Action Committee Vs. State of Goa and others had directed the Election Commission of India to decide the representation of Scheduled Tribes in the Lower House of Parliament and State Legislative Assemblies within a period of eight months. The Bombay High Court while pronouncing the

aforesaid judgement made reference to the Supreme Court judgement in Virendra Pratap case.

7. The Committee notes that as per the Constitution of India, readjustment and delimitation of constituencies both Parliamentary and Assembly are to be done after every decennial census in terms of Articles 82 and 170 of Constitution. The Delimitation Commission was constituted four times in the past in the history of independent India, i.e., in 1952, 1962, 1972 and 2002. The delimitation initiated in 2002 was done without changing the overall seats of Parliamentary Constituencies and Assembly Constituencies of different States and it got completed in 2008. However, the delimitation carried out in 2008 did not take into account the variation in the population of SC/ST during the period following 1st March, 2001. A Statement giving the State/UT wise population as per 2001 census and the representation (% wise) of SC/ST therein is enclosed (**Annexure-V**).

8. The population figures in respect of Scheduled Castes and Scheduled Tribes are under revision by the office of Registrar General of India and would be available to public at the end of this year as reported by the Registrar General of India to the Committee on the 5th of April, 2013. The Committee was informed that the population figure of Scheduled Castes and Scheduled Tribes in percentage terms with reference to the total population figure had increased from 14.6% in 1971 census to 16.2% in 2001 census. Similarly, the population figure of Scheduled Tribes had increased from 6.9% in 1971 census to 8.2% in 2001 census. The overall increase of population figure of SC and ST in 2001 census has led the Delimitation Commission to increase the seats for Scheduled Castes in Lok Sabha from 79 to 84 and for Scheduled Tribes from 41 to 47.

9. Statements giving statistics of Parliamentary and Assembly Constituencies, including these reserved for SC/ST on the basis of the delimitation exercises of 1976 and 2008 are enclosed (**Annexures - VII & VIII**).

10. The Secretary in his deposition apprised the Committee that the Bill is not meant for delimitation of Constituencies but it has a limited mandate of giving representation to Scheduled Castes and Scheduled Tribes in view of constitutional provisions enshrined under Articles 330 and 332 of Constitution. The legislation will enable the Office of Registrar General to ascertain an estimate the varied population figure of

Scheduled Castes and Scheduled Tribes with reference to 2001 census where after the Election Commission of India would be carrying out necessary alteration in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008. To the query of the Committee whether the readjustment of the constituencies can be reviewed, the Secretary submitted that the Delimitation Commission which was constituted in 2002 has become *functus officio* after 2008. Therefore, the Election Commission of India and State Election Commissions which were part of the Delimitation Commission would be entrusted the task of readjustment of seats of Parliament and Assembly Constituencies after the enactment of this legislation. Another query was raised whether readjustment of seats Parliamentary and Assembly Constituencies would lead to limited delimitation of reserved constituencies or its adjoining constituencies, the Secretary submitted that there may be limited change of boundary of Parliamentary or Assembly Constituencies and also change in boundary and name of any district or territorial division in order to give effect to readjustment of seats under the Bill.

11. Some Members, during the course of the deliberations of the Bill, pointed out that the exercise for the Election Commission would turn out to be a major one. However, in Committee's view, this exercise is limited to provide for the readjustment of representation of Parliamentary and Assembly constituencies in so far as such readjustment is necessitated by inclusion in or exclusion of the Scheduled Castes and the Scheduled Tribes by the Parliamentary Acts after the 2001 Census and upto 31st May, 2012 broadly on the lines of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (108 of 1976). This exercise would only result in increase or decrease of a few reserved seats of Scheduled Castes and Scheduled Tribes. It will neither change the number of constituencies nor will it be a delimitation exercise.

12. Further, Members also wanted to know as to why the task could not be entrusted to the Delimitation Commission. In this connection, the Committee observes that the Delimitation Commission constituted under the Delimitation Commission ceased to exist *w.e.f.* 1st June, 2008 on completion of its task of delimitating the constituencies throughout the country. Thus, entrusting this task to the Delimitation Commission would require constituting the Commission afresh.

The Delimitation Commission is meant to delimit the constituencies throughout the country which is a mammoth exercise. The present task of readjustment of representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies is only a limited exercise. Therefore, any fresh Delimitation Commission does not seem to be appropriate. Under similar circumstances in the year 1976 this exercise was entrusted to the Election Commission of India under the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (108 of 1976).

13. There was another query raised by some Members that the judgement, based on which the present Bill has been drafted, pertained to Uttar Pradesh only. That being the case, it was not proper to cover other parts of the country to have delimitation done throughout the country with regard to SC/ST communities. The Committee, however, notes that limiting the present delimitation exercise to the Uttar Pradesh only would be violative of right to equality. Once a judgement is pronounced on any particular issue then principle laid down in it has to be uniformly applied to all States. There is an identical Writ Petition, namely, W.P. No. 230 of 2007 filed before the Hon'ble High Court of Bombay at Goa wherein reservation of seats for the Scheduled Tribes in the Legislative Assembly of Goa was sought. The Hon'ble High Court in its judgement dated the 4th February, 2013 has directed the Election Commission that the representation of the petitioner seeking reservation of the Scheduled Tribes in the Legislative Assembly of Goa may be decided as expeditiously as possible and in any case within a period of eight months. Therefore, this exercise has to be done in all the States.

14. In principle, the Committee agrees to the provisions of the Bill. The Bill seeks to recognize the rights of the persons belonging to SC/ST communities in the matter of their representation in the Parliament and the State Assemblies in terms of the provisions of the Constitution and the legislation on the subject. However, the Committee desires that the Election Commission of India and other related Agencies should take all care to give effect to the provisions of the Bill in accordance with the procedure prescribed in the Bill.

15. Accordingly, the Committee recommends that the Bill may be passed.

RECOMMENDATIONS AT A GLANCE

1. Some Members, during the course of the deliberations of the Bill, pointed out that the exercise for the Election Commission would turn out to be a major one. However, in Committee's view, this exercise is limited to provide for the readjustment of representation of Parliamentary and Assembly constituencies in so far as such readjustment is necessitated by inclusion in or exclusion of the Scheduled Castes and the Scheduled Tribes by the Parliamentary Acts after the 2001 Census and upto 31st May, 2012 broadly on the lines of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (108 of 1976). This exercise would only result in increase or decrease of a few reserved seats of Scheduled Castes and Scheduled Tribes. It will neither change the number of constituencies nor will it be a delimitation exercise. [Para 11]

2. Further, Members also wanted to know as to why the task could not be entrusted to the Delimitation Commission. In this connection, the Committee observes that the Delimitation Commission constituted under the Delimitation Commission ceased to exist *w.e.f.* 1st June, 2008 on completion of its task of delimitating the constituencies throughout the country. Thus, entrusting this task to the Delimitation Commission would require constituting the Commission afresh. The Delimitation Commission is meant to delimit the constituencies throughout the country which is a mammoth exercise. The present task of readjustment of representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies is only a limited exercise. Therefore, any fresh Delimitation Commission does not seem to be appropriate. Under similar circumstances in the year 1976 this exercise was entrusted to the Election Commission of India under the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (108 of 1976). [Para 11]

3. There was another query raised by some Members that the judgement, based on which the present Bill has been drafted, pertained to Uttar Pradesh only. That being the case, it was not proper to cover other parts of the country to have delimitation done throughout the country with regard to SC/ST communities. The

Committee, however, notes that limiting the present delimitation exercise to the Uttar Pradesh only would be violative of right to equality. Once a judgement is pronounced on any particular issue then principle laid down in it has to be uniformly applied to all States. There is an identical Writ Petition, namely, W.P. No. 230 of 2007 filed before the Hon'ble High Court of Bombay at Goa wherein reservation of seats for the Scheduled Tribes in the Legislative Assembly of Goa was sought. The Hon'ble High Court in its judgement dated the 4th February, 2013 has directed the Election Commission that the representation of the petitioner seeking reservation of the Scheduled Tribes in the Legislative Assembly of Goa may be decided as expeditiously as possible and in any case within a period of eight months. Therefore, this exercise has to be done in all the States. [Para 11]

4. In principle, the Committee agrees to the provisions of the Bill. The Bill seeks to recognize the rights of the persons belonging to SC/ST communities in the matter of their representation in the Parliament and the State Assemblies in terms of the provisions of the Constitution and the legislation on the subject. However, the Committee desires that the Election Commission of India and other related Agencies should take all care to give effect to the provisions of the Bill in accordance with the procedure prescribed in the Bill. [Para 4]

5. Accordingly, the Committee recommends that the Bill may be passed. [Para 15]

MINUTES OF DISSENT

MINUTES OF DISSENT SUBMITTED BY – SHRI SUKHENDU SEKHAR ROY:

Note of Dissent by Shri Sukhendu Sekhar Roy

Please refer to the verbatim records of the proceedings of the meetings of the Committee held on 5th and 12th April, 2013 in the above mentioned subject and the points raised /submissions made by the Hon'ble Members on the Bill referred to above. In the last meeting, i.e. on 12th April, 2013 the members were given to understand that many meetings would further be held and views of experts would be sought for in the matter, as would be evident from the last few lines at page 29 of the said recordings. However, it is not known whether any expert view was obtained in the matter as no copy of the expert view, if any, has been circulated among the members, it is , therefore , not understood what prompted the Chairman to convene today's meeting for “ adoption “ of a draft report without having further discussions and obtaining expert view in the matter as assured in the last meeting.

Without prejudice to what have been stated hereinabove but fully relying upon them and in exercise of my right to dissent, I oppose adoption of the Draft Report on the following , amongst other, grounds:

1. The Draft Report (hereinafter called 'DR') which refers to Article 170 of the Constitution for readjustment of the seats for SC & ST is the guiding factor for any such readjustment. However, no power for readjustment of seats after each census has been vested to the Election Commission of India under Article 324 of the Constitution and /or any other statute/rules governing such readjustment. On the Contrary Article 82 inter alia stipulates that territorial constituencies shall be readjusted “by such authority and in such manner as Parliament may by law determine. “ In pursuance of Article 82 of the Constitution , Parliament has since passed The Delimitation Act, 2002 (Act 33 of 2002) for constitution of Delimitation Commission and empowering it for readjustment of the allocation of seats in the House of the People and Legislative Assemblies in the State and “ for matter connected therewith” . Section 8 of the Delimitation Commission inter alia envisages that the Commission shall, having regard to the provision of 81,170,330 and 332, shall determine the number of seats to be reserved for SC/ST and publish its orders to that effect after considering all objections and suggestions and holding public sittings at such place of places in each state as it thinks fit. Therefore , the powers of readjustment of seats, which forms part of delimitation falls within the jurisdiction of the Delimitation Commission, which cannot be taken away or usurped by any other authority , not to speak of the Election Commission of India.

The Judgment referred to in the DR under reference has no applicability in the present case inasmuch as the said judgment was exclusively meant for disposing of that particular case before the Court and the ratio of judgment is per incuriam and not per curiam. That the Govt. Promulgated an Ordinance on 30th January ,2013 as, according to the D.R., the Parliament was not in session and the immediate steps were required to be taken to implement the aforesaid judgment of the Supreme Court , such reasons must be considered as concocted, baseless and unacceptable in as such as the Supreme judgment was passed in 2011 and the Ordinance was promulgated in January,2013. In between the period there had been a series of Parliament sessions and the Govt. did not initiate any action for about 2 years because the Govt. was also aware that the aforesaid judgment was not meant for readjustment of SC/ST seats all over the country . Moreover, it was not mentioned by the Govt/Election Commission that it was the Delimitation Commission under the Delimitation Act which is empowered to make the readjustments, and not the Election Commission of India or for that matter any other authority. The Judgment of the Bombay High Court 4.2.13 is also limited only to the Petitioner(s) concerned and does not ask for countrywide readjustment of the seats for SC/ST.

Had the Govt. good and clear intention for taking legal steps for readjustment of representation of SC/ST the following measures ought to have been effected in the meantime.

- a) Directing the Census Commissioner to ascertain and estimate the varied population figures of SC/ST (Election Commission deposed before the committee saying that it was not known when the figures would be made available by the Census Commission – a complete uncertainty prevails in the respect)
- b) Reconstituting the Delimitation Commission under Sec 3 of the Delimitation Act 2002 and causing a notice to be published to that effect.
- c) All figures of SC/ST ought to have been published and views of respective states and such other representative bodies/organizations of the SC/ST should have been taken and considered by holding public sitting too;
- d) Directing the Delimitation Commission to reconstitute to cause publication of amendment of SC/ST seats within a definite Time.

In the DR, a reference has been drawn citing a precedent whereby the Election Commission was authorized for readjustment of seats in 1976 . However, bad precedent does not hold good to subserve the greater interest of the SC/ST communities, particularly of an era ante, notoriously known as Emergency Period when even the fundamental rights of the citizens and freedom of Press were abridged/taken away and the citizens were compelled to abide by all draconian measures and mandates issued at the whims and fancies of the ruling party Government.

In fine , it appears from each and every line of the proposed Bill that it seeks to empower the Election Commission of India to usurp all the existing powers of the Delimitation Commission, for the purpose of the present Bill , although Article 324 of the Constitution of India envisages interalia that “ the superintendence , direction and control of the preparation of electoral roll and all elections to Parliament and State Legislature.....shall be vested in the Commission (election commission)” . Therefore, without reconstituting the Delimitation Commission but preparing the present Bill instead, the Govt. seeks to take away the powers of the Delimitation Commission and to give all such powers to Election Commission for collateral and/or oblique purposes which is out and out unconstitutional and not acceptable both in the context and form of the proposed Bill.

In view of what have been stated hereinabove, I vehemently oppose the adoption of the Draft Report and /or endorsement of the proposed Bill to its hilt and suggest for more deliberations on the subject after taking views of the constitutional experts and the views of all concerned States/Union Territories.

Sd/-

(SUKHENDU SEKHAR ROY)
Member, Rajya Sabha