

RAJYA SABHA

Wednesday, the 29th July, 2009/7 Sravana, 1931 (Saka)

The House met at eleven of the clock,

MR. CHAIRMAN in the Chair.

Oral Answers to Questions

सिक्किम राज्य में विधान सभा की सीटों की संख्या को बढ़ाया जाना

*361. श्री समन पाठक :††

श्री ओ.टी. लेपचा :

क्या गृह मंत्री यह बताने की कृपा करेंगे कि:

(क) क्या सिक्किम राज्य में विधान सभा की सीटों की संख्या में वृद्धि करने के लिए कोई प्रस्ताव हुआ है;

(ख) यदि हां, तो तत्संबंधी ब्यौरा क्या है और इस पर केन्द्रीय सरकार की क्या प्रतिक्रिया है;

(ग) क्या यह सच है कि सिक्किम राज्य की विधान सभा में अनुसूचित जनजातियों विशेषकर सुब्बा (लिम्बू) जनजाति के लिए आरक्षण का कोई प्रावधान नहीं है; और

(घ) यदि हां, तो तामांग और सुब्बा जनजातियों को आरक्षण प्रदान करने के लिए क्या प्रावधान हैं?

गृह मंत्रालय में राज्य मंत्री (श्री अजय माकन): (क) से (घ) एक विवरण सभा पटल पर रखा जा रहा है।

विवरण

(क) और (ख) जी हां। सिक्किम विधान सभा में सीटों की संख्या बढ़ाए जाने के लिए सिक्किम सरकार का एक प्रस्ताव जनवरी 2005 में प्राप्त हुआ था। सिक्किम राज्य विधायिका ने 16-9-2004 को एक संकल्प पारित किया कि:-

- (i) विधायिका की वर्तमान नफरी को 32 से बढ़ाकर न्यूनतम 40 किया जाए।
- (ii) लेपचा और भूटिया समुदायों के लिए आरक्षित 12 सीटों और सांघा के लिए आरक्षित एक सीट संरक्षित रखी जाए।
- (iii) लिम्बू और तमंग समुदायों को आरक्षण दिया जाना चाहिए।

चूंकि संकल्प में सीटों का श्रेणीवार आरक्षण करने का स्पष्ट उल्लेख नहीं किया गया इसलिए भारत सरकार ने सितम्बर 2008 में राज्य सरकार से विधान सभा द्वारा स्पष्ट एवं सर्वसम्मत रूप से पारित एक ऐसा संकल्प प्रस्तुत किए जाने का अनुरोध किया जिसमें राज्य सरकार द्वारा प्रस्तावित की जा रही श्रेणीवार सीटों के आरक्षण का स्पष्ट उल्लेख हो।

इसके प्रत्युत्तर में, राज्य सरकार ने सिक्किम विधान सभा में सीटों की कुल संख्या बढ़ाकर 40 करने के आशय वाला सर्वसम्मत रूप से पारित एक अन्य संकल्प 23 दिसम्बर, 2008 को प्रस्तुत किया जिसमें विभिन्न समुदायों के बीच सीटों का निम्नलिखित ढंग से वितरण होगा:-

समुदाय	सीटें	आबादी प्रतिशत	टिप्पणी
भूटिया-लेपचा	12	20-50%	यथावत रखी जाए
सांघास	1		
अनुसूचित जाति	2	5.03%	
अन्य (लिम्बू और तमंग)	27	79.50%	अनुसूचित जनजाति (लिम्बू और तमंग सहित) के लिए सीटों का निर्धारण आबादी में उनके अनुपात के अनुसार 27 सीटों में से किया जाए।

††सभा में यह प्रश्न श्री समन पाठक द्वारा पूछा गया।

चूँकि राज्य सरकार ने यह प्रस्ताव किया कि लिम्बू और तमंगों के लिए सीटों का निर्धारण आबादी में उनके अनुपात के अनुसार किया जाए, जो कि उपलब्ध नहीं है, इसके लिए पहले एक विशेष जनगणना कराई जानी अपेक्षित है और तत्पश्चात् उस पर आगे कार्रवाई करने से पहले उस आधार पर सीटों का आरक्षण करने के लिए राज्य सरकार की सम्मति प्राप्त करनी होगी। यह अनुमान लगाया गया कि सीटों की संख्या बढ़ाना, विशेष जनगणना करना, निर्वाचन क्षेत्रों का परिसीमन करना आदि कार्य करने के लिए कम से कम 10-12 महीनों का समय चाहिए। इस प्रकार, राज्य विधान सभा के चुनावों की अधिसूचना होने तक, राज्य सरकार के प्रस्ताव पर विचार करना सम्भव नहीं था।

इस समय लिम्बू तथा तमंग समुदायों के लिए प्रमाणिक आबादी के आंकड़े उपलब्ध नहीं हैं। यदि राज्य में उनकी आबादी के अनुपात में इन समुदायों का आरक्षण किए जाने पर विचार किया जाए, जैसा कि राज्य सरकार ने सिफारिश की है, तो ऐसा वर्ष 2011 की जनगणना के आंकड़े संकलित होने के पश्चात् ही हो सकेगा।

(ग) और (घ) अनुच्छेद 332(1), जिसमें यह प्रावधान है कि अनुसूचित और अनुसूचित जनजाति के लोगों के लिए प्रत्येक राज्य की विधान सभा में (असम के स्वशासी राज्य जिलों में अनुसूचित जनजाति को छोड़कर) सीट आरक्षित की जाएगी, भारत के संविधान के अनुच्छेद 371-च के अन्तर्गत किए गए विशेष उपबंधों के कारण सिक्किम राज्य के मामले में पूरी तरह से लागू नहीं होता। इसके अलावा उच्चतम न्यायालय ने आर.सी. पौडियाल बनाम भारत संघ के मामले में यह माना कि ".....अनुच्छेद 371-च भारत के संविधान के अन्य उपबंधों पर 371-च के खण्ड (क) से (त) को अधिभावी प्रभाव प्रदान करेगा।"

भारत के संविधान के अनुच्छेद 371-च में यह प्रावधान है कि "संसद, सिक्किम की जनता के विभिन्न विभागों के अधिकारों और हितों की संरक्षा करने के प्रयोजन के लिए सिक्किम राज्य की विधान सभा में उन स्थानों की संख्या के लिए जो ऐसे विभागों के अभ्यर्थियों द्वारा भरे जा सकेंगे और ऐसे सभी निर्वाचन-क्षेत्रों के परिसीमन के लिए उपबंध कर सकेंगे जिनसे केवल ऐसे विभागों के अभ्यर्थी ही सिक्किम राज्य की विधान सभा के निर्वाचन के लिए खड़े हो सकेंगे।"

Increasing the number of seats in the Legislative Assembly of Sikkim

†*361. SHRI SAMAN PATHAK:††

SHRI O.T. LEPOCHA:

Will the Minister of HOME AFFAIRS be pleased to state:

(a) whether any proposal has been received to increase the number of seats in the Legislative Assembly of Sikkim;

(b) if so, the details thereof and the reaction of Central Government thereto;

(c) whether it is a fact that there is no provision for reservation for the Scheduled Tribes, particularly for Subba (Limboo) tribe in the Legislative Assembly of Sikkim; and

(d) if so, the details of the provisions for providing reservation to Tamang and Subba tribes?

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI AJAY MAKEN): (a) to (d) A Statement is laid on the Table of the House.

†Original notice of the question was received in Hindi.

††The question was actually asked on the floor of the House by Shri Saman Pathak.

Statement

(a) and (b) Yes Sir. A proposal of Government of Sikkim had been received in January, 2005 to increase the number of seats in the Legislative Assembly of Sikkim. The State Legislature of Sikkim had passed a resolution on 16.9.2004 that:-

- (i) The present strength of legislature should be increased from 32 to a minimum of 40;
- (ii) 12 seats reserved for Bhutia and Lepcha communities and one for Sangha should be protected;
- (iii) Reservation should be provided for Limboo and Tamang communities.

Since the resolution did not clearly specify the category wise reservation of seats, the State Government was requested by Government of India in September, 2008 to furnish an unambiguous and consensual resolution passed by the Legislative Assembly clearly outlining the category wise reservation of seats being proposed by the State Government .

In response, the State Government furnished another resolution dated 23rd December, 2008 passed unanimously to the effect that total number of seats in the Sikkim Assembly be increased to 40, which may be distributed among the different communities in the following manner:-

Community	Seats	Population Percentage	Remarks
Bhutia-Lepcha	12	20.50%	Should not be disturbed
Sanghas	1		
Scheduled Castes	2	5.03%	
Others (including Limboos & Tamangs)	27	79.50%	Seats for STs (Limboos & Tamangs) may be decided out of 27 seats as per proportion of their population.

As the State Government had proposed that the seats for Limboos & Tamangs may be decided as per the proportion of their population, which is not available, a special census was required to be carried out in the first instance and thereafter the concurrence of the State Government for reservation of seats on that basis shall have to be obtained before proceeding further. It was estimated that such an exercise, including increase in the number of seats, conducting special census, delimitation of constituencies etc, would require atleast 10-12 months time. Thus, by the time the elections to the State legislative Assembly were notified, it was not possible to consider the proposal of the State Government.

At present no authentic population figures for Limboo & Tamang communities are available. If the reservation for these communities is to be considered as per proportion of their population in the State, as recommended by the State Government, the same may be available only after the results of the 2011 census are compiled.

(c) and (d) Article 332(1), which provides that seats shall be reserved for the Scheduled Castes and the Scheduled Tribes (except the Scheduled Tribes in the Autonomous State Districts of Assam) in the Legislative Assembly of every State, is not strictly applicable in the case of the State of Sikkim because of the special provisions made under Article 371-F of the Constitution. Further the Supreme Court in the case of R.C. Poudiyal Vs Union of India has observed ".....Article 371-F would give overriding effect to clauses (a) to (p) of 371-F over other provisions of the Constitution".

Article 371-F (f) of the Constitution of India provides that "Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim."

श्री समन पाठक : सभापति जी, मैं आपके माध्यम से मंत्री जी से जानना चाहूंगा, मंत्री जी का जवाब आया है कि सिक्किम में 332(a) के तहत ट्रायबल को सीट देने या न देने का अलग से विशेष प्रावधान है, एक विशेष अधिकार है। 371(f) में एथनिक ग्रुप का उल्लेख है। कुछ ट्रायबल्स को बाद में अनुसूचित जनजाति में शामिल किया गया। मेरा सवाल लिम्बू और तमंग को लेकर है। लिम्बू और तमंग टिपिकल एथनिक कम्युनिटी है। मेरा प्रश्न यह है कि सरकार को इनको यह सुविधा देने में क्या एतराज है? सरकार इसके लिए क्या कदम उठा रही है?

SHRI P. CHIDAMBARAM: Sir, as I said in the answer, the recommendation of the State Government, based on the resolution of the Sikkim Assembly, is that Limboos and Tamangs should be given compartmental reservation as per proportion of their population. Until then they are included in the 'others' category and 27 seats are provided in the 'others' category. Now, the proportion of their population can be determined only after the Census. The Census will take place only in 2011. Therefore, any action on this aspect has to wait for the Census 2011.

श्री समन पाठक : सभापति जी, संविधान के अनुच्छेद 332(a) में प्रावधान है कि ट्रायबल्स का प्रतिनिधित्व करने के लिए इनकी सीट का आरक्षण किया जाए। 1975 में जब सिक्किम का विलय हुआ, जब वहां पर विधान सभा कांस्टीट्यूट हुई, तब यह ट्रायबल सीट थी, लेकिन 1979 में एक ऑर्डिनेंस लाकर भूटिया और लेपचा को अलग से सीट का प्रावधान कर दिया। संविधान में यह जो अधिकार प्राप्त है, भूटिया और लेपचा के साथ ही जो अदर ट्रायबल्स हैं, वे इससे क्यों वंचित रहे?

SHRI P. CHIDAMBARAM: Sir, Limboos and Tamangs are not being deprived of reservation. I am going by the resolution of the Sikkim Assembly. For Bhutia-Lepcha's the proposal is to give them 12 seats, Sanghas 1, but when it comes to Limboos and Tamangs, the resolution did not say give them 'X' number of seats. It said, 'they should be given seats based on the proportion to their population.' Since that cannot be done now and it can only be done in 2011, this matter will be taken up after 2011.

SHRI O.T. LEPCHA: Mr. Chairman, it has been stated in the reply given by the hon. Minister that since there is no authentic population figure of Limboo and Tamang community, the reservation to these communities would be considered after the 2011 Census. Looking at the population and in order to save time, in the meanwhile, the Government can increase the number of seats from 32 to 40 and, later on, after the Census of 2011, reservation of seats can be adjusted to Limboos and Tamangs. There has been a consistent demand for including Gurungs, Rais, Magars, Thami and Jogi in the list of the Scheduled Tribes. What is the position in this regard? Further, the State Government. ...*(Interruptions)*...

MR. CHAIRMAN: One question at a time please.

SHRI O.T. LEPCHA: Sir, there has been a consistent demand for declaring Sikkim as a tribal State. I would like to know whether the Government intends to consider the demand of the State Government and take a favourable decision. If so, by when would the declaration be made?

MR. CHAIRMAN: Mr. Minister, you may just answer the first part.

SHRI P. CHIDAMBARAM; Sir, the present distribution of 32 seats is: Bhutias, Lepchas, there are 12 reserved seats, for the Scheduled Castes, there are 2 reserved seats, for Sangmas, there is one and for General category, there are 17 seats. The Limboos and Tamangs can now contest under the General 17 unreserved seats. If you raise it to 40, without compartmental reservation, this will mean that the 17 seats will become 27 seats; they will, still, be unreserved. The Limboos and Tamangs would have to contest alongwith every other general candidate for those 27 seats. Therefore, that does not answer the demand of the Limboos and Tamangs that they should have compartmental reservation. Besides, I would like to draw the hon. Member's attention to article 170 of the Constitution which says what can be done, and what cannot be done, based on various Census and also puts a cut off date as 2026. But these are constitutional questions which have to be resolved, reading articles 170, article 332 and article 371 (F) together. But, at the moment, the demand is, there should be compartmental reservation for Limboos and Tamangs. We are not against it. All that we say is, please wait for the 2011 Census.

SHRI SAMAN PATHAK: Sir...

MR. CHAIRMAN: No, you have had your turn. Please, let others put their questions.

SHRI ARUN JAITLEY: Sir, the hon. Home Minister, as I understand it, says that the compartmental reservation for Limbus and Tamangs can be considered after the 2011 Census, whenever the certified figures are available. Now, the difficulty which is arising is, they are now notified Scheduled Tribes whereas the other Scheduled Tribes have compartmental reservation, these don't. Now, I think, we are already in 2009; they can wait up to 2011. But, are the hon. Home Minister and the Government clear about the fact that it will be 2011 and not 2026 when the next

delimitation will take place? Therefore, am I to understand from the hon. Home Minister that a special delimitation to identify the seats reserved for them will have to be made in the context of Sikkim?

SHRI P. CHIDAMBARAM: Sir, frankly, I have not yet made up my mind on the question. Although there is an opinion of the Solicitor General, I have not yet made up my mind on the question. I am inviting the Solicitor General to come and discuss the matter with me. But, in any event, the question can be addressed only after 2011. So, between now and 2011, we can resolve the Constitutional issue. Once the Census is complete, we will do whatever is permissible under the Constitution. But, to answer my good friend Arun's question, I have not yet come to any conclusion about the inter-play of these three articles of the Constitution.

DR. K. MALAISAMY: Sir, as I understand, article 371(F) is an enabling provision to go for reservation for other communities, other than the Scheduled Castes and the Scheduled Tribes. This is my understanding. My specific question is: Is this enabling provision apply with reference to Sikkim alone, or, other States also? If it is available for other States also, I would like to know whether similar representations of this nature have come to you.

SHRI P. CHIDAMBARAM: Sir, article 371 (F) is a special provision with respect to the State of Sikkim. There is no other Assembly in the country, which has compartmental reservation. The only reservations are: for Scheduled Castes, as a whole; for Scheduled Tribes, as a whole and the remaining seats are General. The Article 371 (F) applies only to Sikkim.

श्रीमती विप्लव ठाकुर : सभापति जी, माननीय मंत्री जी ने कहा कि यह 2026 तक फ्रीज है और बढ़ाया नहीं जा सकता। मैं माननीय मंत्री जी से सिर्फ इतना जानना चाहती हूँ, चूंकि इंडिया की पॉपुलेशन बहुत बढ़ गई है और इस बढ़ती हुई पॉपुलेशन को देखते हुए क्या गवर्नमेंट 2026 से पहले ही कानून लाकर कॉस्टीट्यूएंसीज को बढ़ाए जाने की बात सोच रही है?

SHRI P. CHIDAMBARAM: Sir, 2026 is a provision in the Constitution brought about by an amendment. If that amendment has to be undone, it can only be done by another constitutional amendment, and I am not even thinking of anything like that at the moment.

Delay and cost escalation in NHDP projects

*362. SHRIMATI MOHSINA KIDWAI:

SHRI N.K. SINGH:††

Will the Minister of ROAD TRANSPORT AND HIGHWAYS be pleased to state:

(a) whether a large number of projects under the National Highway Development Project (NHDP) have been affected and are running behind schedule due to cost escalation and other reasons;

††The question was actually asked on the floor of the House by Shri N.K. Singh.