

[Shri A. Elavarasan]

and tribal areas where the patients may not continue the medication so that such halting of medication leads to severe condition of TB. Therefore, I would like to urge the Government to strengthen the existing TB Control Programme along with awareness programmes about the TB disease in rural and tribal areas across the country.

SHRI PRASANTA CHATTERJEE (West Bengal) : What about the Border Security Force (Amendment) Bill ...(*Interruptions*)...

MR. DEPUTY CHAIRMAN : We will take up the legislative business at 2 o' clock. ...(*Interruptions*)...

श्री शिवानन्द तिवारी (बिहार) : महोदय, होम मिनिस्टर साहब यहाँ मौजूद हैं। हम लोग उनसे गुजारिश करेंगे कि वे इस बिल के बारे में दो बजे ...(*व्यवधान*)...

MR. DEPUTY CHAIRMAN : there are two Bills. We have to take them up. ...(*Interruptions*)... The House is adjourned till 2.00 p.m.

The House then adjourned for lunch at
fifty-four minutes past twelve of the clock.

The House reassembled after lunch at two of the clock.

MR. DEPUTY CHAIRMAN in the Chair

MR. DEPUTY CHAIRMAN : We now take up the Border Security Force (Amendment) Bill, 2011. Shri P. Chidambaram.

GOVERNMENT BILLS

The Border Security Force (Amendment) Bill, 2011

THE MINISTER OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) : Sir, I was present in the morning when Hon. Members expressed certain views that this Bill should be taken up only after the Chief Ministers' Conference. I am entirely in the hands of the Chair and the Members, but I wish to submit respectfully that the ground of objection does not seem to be correct.

It is a constitutional limitation under Entry 2A of List I that Central Armed Police Forces can be deployed only in aid of the civil power. That limitation has been recognized by successive Governments and in advisories and standard-operating procedures, that has been made clear. I don't think there is any manner of doubt in anyone's mind that any contingent of the Armed Police forces can only be deployed at the request of the State Government.

I have advisories issued in 2000 and 2001 by the previous Government. I have advisories issued in 2010 by the present Government, and also in 2005. And, it clearly

says that this can only be deployed in aid of civil authorities, and, there is, in fact, a requisition form in which they have to requisition the Force giving details, and only then it can be deployed.

The BSF Act is an old Act. The CRPF, ITBP and SSB are subsequent Acts. The very powers that we are now giving to the BSF have already been included in the CRPF Act, in the ITBP Act and the SSB Act. The BSF Act, being an old Act, rightly, at that time, said, 'powers are available when you deploy them in border areas', because, at that time, the intention was to deploy them only in border areas. We have this principle of 'one-force-one-border'. BSF is deployed on the Indian border in Rajasthan and Indian border in Punjab. ITBP is on India-China border; SSB is on India-Nepal border; BSF is also in the North-East.

In recent times, because of the demands on the Forces, the CRPF is almost, throughout the year, deployed somewhere. It has become necessary to deploy some BSF personnel in the hinterland districts of the States, not on the border, but in the hinterland districts. When we tell the State Governments that we have no more CRPF, we have no more ITBP - ITBP can't be deployed, but even that we deploy sometimes - they say, 'no, no, please send us BSF.' For example, BSF has been deployed in Chhattisgarh, in Naxal-affected districts; in Odisha, in Naxal-affected districts. So, when BSF is deployed in those districts, BSF must have the same powers as it has when it is deployed in the border areas - no more, no less. So, we wrote to the State Governments. Now, we have reminded the State Governments several times to give their comments. The State Governments, which have replied to us, have all supported the amendments. Then, the matter went to the Standing Committee. The Standing Committee said that we should remind the State Governments again. We have reminded the State Governments once, twice. We finally told them that if we do not get a reply from them by such and such date, we will take it that they do not have any objection. No State Government has objected. The State Governments, which have written to us, have agreed to the amendment ...*(Interruptions)*... Please, listen to me. The State Governments, which have written to us, have accepted it. The State Governments, which have not written to us, are deemed to have accepted it because we have told them that the Standing Committee wants a final answer and they should tell us by this date.

Now, finally, the Standing Committee raised this very objection. We explained it to the Standing Committee. The Standing Committee accepted the explanation and unanimously recommended the Bill. In the Standing Committee, chaired by Mr. Venkaiah Naidu, every clause has been unanimously supported and recommended without any change. I have got the Report of the Standing Committee. Therefore, at this stage, to doubt the intention of the Central Government, or, to read into it something sinister, I submit, is not correct.

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This is exactly the same power which the BSF has in border areas. If and when it is deployed in any interior district, it will have the same power. But, if the State does not want the BSF to be deployed in interior districts, it will not be deployed. It is only when the State wants us to deploy it, we are deploying it. Therefore, my respectful submission is that there is no hidden agenda in this Bill. This Bill can be passed. But, if Hon. Members still think that it should be deferred, I mean, I cannot say anything more. Certainly, there is no reason for me to repeat what I have said. I think, I have made myself quite clear. Please, read Entry 2(A) of List-I. It's a Constitutional limitation - deployment of Central armed police forces in aid of the civil power. And, executive power, under Article 73, extends to legislative power. You cannot deploy Central armed police force except in aid of civil power, and aid of civil power is governed by repeated directions of every successive Government; you must request and we will deploy. Let me read the advisory of 2010. We have got a form. In this proforma, they have to make a request, and then only, we deploy the force. Otherwise, no paramilitary force is deployed anywhere in India. This is the position. But, if Hon. Members feel that we are on a Thursday afternoon and, therefore, we would not consider it, I have nothing further to say.

SHRI PRASANTA CHATTERJEE (West Bengal) : I have one amendment, and somebody else has one amendment. Now, many Members have spoken that since the Prime Minister himself is discussing with the Chief Ministers, let it be deferred. Along with the NCTC Bill, this Bill may also come. This is our opinion. So, let it be postponed; let it be deferred. We do not want to discuss what the Standing Committee had said, that we have our amendments and all these things. We want to defer to this Bill.

श्री शिवानन्द तिवारी (बिहार) : उपसभापति महोदय, इस पर पहले ही सत्र में लगभग सारी पार्टियों के नेताओं ने अपनी राय जाहिर की है। सरकार की जो ally पार्टियाँ हैं, जो सरकार का समर्थन कर रही हैं, उनकी भी यही राय है। मैं समझता हूँ कि टी.एम.सी. की भी यही राय है, राम गोपाल जी की समाजवादी पार्टी की भी यही राय है, राम गोपाल जी ने समाजवादी पार्टी की राय बताई है और श्री सतीश चन्द्र मिश्रा जी ने बहुजन समाज पार्टी की राय बताई है।

उपसभापति महोदय, मुझे लगता है कि सदन के बहुमत की यही राय है कि अगले महीने की 16 तारीख को इस मामले में जो मुख्य मंत्रियों की बैठक बुलाई जा रही है, उसी में इसको सामने रखा जाए। उसमें जो consensus बनती है, उसके आधार पर इसे सदन में लाया जाए। अगर मुख्य मंत्रियों की राय होगी, अथवा वहाँ से कोई संशोधन आता है, जिसको आप स्वीकार करते हैं, तो उस संशोधन के साथ आप इसे फिर से सदन में ले आइए। हमारी रिक्वेस्ट यही है कि आज इसको स्थगित किया जाए और 16 अप्रैल की मीटिंग के बाद ही इसको लाया जाए।

SHRI SUKHENDU SEKHAR ROY (West Bengal) : Sir, after the clarification made by the Hon. Home Minister, we do not have any doubt in our mind that the BSF will be deployed only on the request of the State Government.

MR. DEPUTY CHAIRMAN : Yes, that is evident.

SHRI V.P. SINGH BADNORE (Rajasthan) : Sir, I have moved an amendment and what the Home Minister is saying, if this is acceptable, can I read it out to you? If the amendment says what exactly he is saying, and this is what the amendment says, "That page 1, line 6 and 7, for the words 'or of any part of the territory thereof', the words 'or of any part of the country where in the State Government demands thereof' be substituted." Why don't you put this? What you are saying is exactly this. ...*(Interruptions)*... So, if you can put this, it is okay. ...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD (Bihar) : Mr. Deputy Chairman, Sir, we have heard what the Hon. Home Minister has said. But, Sir, there is a context to the entire demand being raised nearly by all the Opposition Parties including the allies of the Ruling Party, and, the context is that an increasing sense of apprehension is being felt by various State Governments, cutting across ideological divide, on the issue of federal principles, which is indeed very important. In that light, Mr. Deputy Chairman, Sir, you may recall, that officers were called, and, the political demand came about that political heads needed to talk about it, and, thereafter, the meeting of the Chief Ministers has been talked about. He may have a point that at the bureaucratic level, some answers would have come, some would not have come. But when at the highest political level between the Hon. Prime Minister and the Chief Ministers of the States, the entire gamut of these issues like Railway Protection Force, GRP, NCTC, Para-military forces are being talked about, I think, their views on the present amendment to the BSF Bill will also become very valuable input. Now, Sir, he has read about a particular entry. That entry is there. Now, let us come to the Statement of Objects and Reasons of the BSF (Amendment) Bill, 2011, wherein para 3 says that it can be deployed to counter insurgency operations, for internal security duties, and, to assist during natural calamities. Para 4 says, "In view of the necessity of deploying the Border Security Force in areas other than the borders of India or its adjoining areas for the exigencies specified in the preceding paragraph, it has become necessary to amend the long title, Sections 4 and 139 of the Border Security Force Act, 1968 to enable the Central Government to deploy..." Now, the enabling power is there with the Central Government without any caveat like, 'in consultation with or in accordance with demand from the State Governments.' These are issues which are important issues to be debated in that high-powered meeting. So, I think, almost collective demand for deferring this Bill is very well intentioned. We will do it in the light of that in the next Session. I think, on that issue, there is no need to take it up today, and, that is my respectful submission, Sir.

श्री आर. सी. सिंह (बिहार) : सर, मैं बहुत संक्षेप में कह रहा हूँ कि मेरा भी मत यही है कि जब स्टेट्स के चीफ मिनिस्टर्स के साथ मीटिंग होने जा रही है, तो उससे पहले इतनी हड़बड़ी में बिल न लाया जाए और सभी बातों को ध्यान में रखते हुए, मंत्री महोदय इसको defer करें।

MR. DEPUTY CHAIRMAN : The point, which Hon. Minister has made is that these provisions already exists in Acts governing other Central Forces. ...(*Interruptions*)... One minute. Just for the House to know, the Hon. Home Minister has said that all these provisions are already there in laws relating to the CRPF etc., and, because it is an old act, they are introducing this provision here. This is what the Hon. Home Minister has said. It has nothing ...(*Interruptions*)...

SHRI V.P. SINGH BADNORE : Sir, CRPF is a different body. Its usage is different ...(*Interruptions*)...

SHRI P. CHIDAMBARAM : Sir, the deployment can only be made in aid of civil power. Does anyone have any doubt about it? Does anyone in this House, anyone who has been Government, have any doubt about the proposition that under the Constitution of India, a Central Armed Police Force can only be deployed in aid of the civil power? That is the Constitution of India. If anybody has any doubt on that, and, you want a discussion, let us defer it. But, if you want to defer it for the reason of the Chief Ministers' meeting, I have nothing to say on that. But, if there is no doubt that a Central Armed Police Force can only be deployed in aid of the civil power, it is the end of the matter. Successive Governments have made it clear, we have made it clear. There is a proforma, and, the State has to request in that proforma saying, please deploy CRPF, or, please deploy BSF, and, we deploy. Therefore, if there is doubt in the matter, we can defer it but if there is no doubt in the matter ...(*Interruptions*)... No, no, the need of the amendment is ...(*Interruptions*)... Sir, my learned friend has read the Bill. The need of the amendment is, today, the Act says 'BSF can be deployed only in border areas'. That is the limitation. The State Governments say sometimes we have to deploy it in the interior districts. As I said, in Chhattisgarh, Odisha, we are deploying it in interior districts. So, the Law Ministry said, 'sorry, you cannot deploy it in the interior districts because the Act says 'deploy only in border areas'. Therefore, we are saying 'border areas and any other part of the State'.

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY) : Sir, I am extremely grateful to the Hon. Minister for repeatedly clarifying that issue. I think between what apprehension the Members have and what the Hon. Home Minister is saying, it seems absolutely clear that we are all of the same opinion (a) that law and order strictly is a State Subject and (b) under Entry 2A, that he referred to, which was brought by the 42nd Amendment in 1976, Central forces can be deployed in the States in aid of the civil power. That is what he says. There is no difficulty in that. On a more pragmatic view, a State may have a situation which is going out of control and a State may say, 'I request the Central Government to send either the BSF or the CRPF in some areas'. Additionally, in closer to the border areas, he has a greater experience in the Ministry that some of us, there may be cases where the BSF from the border is chasing somebody who has infiltrated inside and he may get into the territory of the

State. Therefore, in all these cases, the cardinal principle which he accepts, fortunately for us, is that this can be done only on the request of the State or with the consent of the State. Rather than it remains in an area of ambiguity, either we can wait till after the 16th meeting is over or in this legislation, because after all none of us is going to be here forever and, therefore, our discussions on assurances here can at best be an aid to the interpretation of these laws. So, twenty years or thirty years later, when this will be interpreted that we have a power and the Parliament enacted a law that BSF can go into a State and function within a State, there can't be two parallel authorities. It can only be in aid of a civil authority. Therefore, just as I have mentioned earlier, in the Delhi Special Police Establishment Act, you have a provision with regard to consent. You can put an additional amendment here saying, 'on the request of the State'.

SHRI P. CHIDAMBARAM : If we go by the same argument, then the CRPF Act should be amended at the request of the State. ...*(Interruptions)*... Please listen to me. Either we exchange views as on legal matters or we meet a legal argument with a non-legal argument.

SHRI RAVI SHANKAR PRASAD : It is a political matter. ...*(Interruptions)*...

SHRI P. CHIDAMBARAM : Political, we will come to ...*(Interruptions)*... I understand. Political, we will come to. ...*(Interruptions)*... By the argument of the Hon. Leader of the Opposition, the CRPF Act has to be amended to make it clear at the request of the State Government ...*(Interruptions)*...

SHRI ARUN JAITLEY : If it is clear that when you brought the CRPF Act, these apprehensions with regard to encroachment of federalism may not have been there. Today, we have innumerable cases where this has happened. So, our apprehensions are not without basis.

SHRI P. CHIDAMBARAM : If that argument is accepted, the CRPF Act has to be amended; the ITBP Act has to be amended; the SSB Act has to be amended because sometimes I deploy the ITBP in the hinterland, I deploy CRPF everywhere in the hinterland. Today, I have got 54 companies of BSF on internal security duties. I have got 60 companies of BSF in Naxal-affected districts. And, the Law Ministry tells me, 'sorry, these companies cannot be deployed because the limitation of border areas is there. Therefore, these 54 and 60 companies cannot be deployed because the Act, unfortunately, has a limitation of border areas'. In fact, if the Law Ministry's opinion prevails, as it should, on the Government, these 54 and 60 companies are acting today in excess of authority of law. Therefore, I am saying this is nothing but what is already there in the CRPF Act, SSB Act, ITBP Act and no more legal limitation has to be provided than providing it in the Constitution. I mean, there is nothing wrong in adding it. But if you add it, does it make it stronger? Does it make it any better than Article 2A of List 1? Article 2A of List 1 is on the Constitution of India. It says 'it cannot be

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deployed except in aid of the civil power'. By merely adding it in the Act ...*(Interruptions)*... What are you doing to make it stronger legally? Legally, it is there in the Constitution of India. Sir, I have no objection. All I am pointing out is that every Government in this country has understood the law correctly. It is Entry 2A, List I. It says that armed police forces can only be deployed in aid of the civil power, and there must be a requisition and a request of the State Government. Unfortunately, today, I have got 114 companies in Naxal-affected areas and in internal security. Now, the Law Ministry tells me that this deployment is wrong.

SHRI ARUN JAITLEY : We have no difficulty; we will pass the Bill right now. Just add the phrase 'when requested by the State Government'. That's all. ...*(Interruptions)*...

SHRI P. CHIDAMBARAM : But then we must add it in the CRPF Act also. ...*(Interruptions)*...

SHRI ARUN JAITLEY : Since you are absolutely clear about it. ...*(Interruptions)*...

SHRI PRASANTA CHATTERJEE : Sir, what about my amendment? ...*(Interruptions)*... It says, "Provided that the Force deployed at the request of any State Government or Chief or State Election Commissioner, shall work only under the supervision of the Chief Secretary of the State or Chief or State Election Commissioner." But still we don't want to discuss it here now. We want its deferment for a certain date ...*(Interruptions)*... It is a simple thing.

SHRI BALAVANT ALIAS BAL APTE (Maharashtra) : Let civil administration decide whether it wants aid. Or will you decide that they want aid and send it? The whole question is who decides that ...*(Interruptions)*...

श्री श्रीगोपाल व्यास (छत्तीसगढ़) : उपसभापति जी धन्यवाद। मैं माननीय गृह मंत्री जी से बहुत सम्मान के साथ कहना चाहता हूँ कि उन्होंने छत्तीसगढ़ का नाम दो बार लिया है, मैं एडमिनिस्ट्रेशन का एक्सपर्ट नहीं हूँ, परंतु मैं यह जानता हूँ कि छत्तीसगढ़ के लोगों ने आपसे अनेक बार पुलिस फोर्स को और स्ट्रेन्थन करने के लिए कहा है, उनको "बी" से "ए" कैटेगिरी में डालने के लिए कहा है। आप कृपया इस पृष्ठभूमि को समझने की भी कोशिश कीजिए कि चूंकि वे पुलिस फोर्स को एनफोर्स नहीं कर रहे हैं, ज्यादा ताकत नहीं दे रहे हैं, इसलिए वे आपसे सिक्योरिटी फोर्स माँगते हैं। यदि हम पुलिस फोर्स को बलवान बना देंगे, तो हो सकता है कि छत्तीसगढ़ आपसे यह नहीं मांगेगा, पर आप पुलिस फोर्स को स्ट्रेन्थन नहीं करना चाहते हैं। जितना मैं समझता हूँ, उस संदर्भ में यह मेरा निवेदन है, बाकी तो गृह मंत्री जी हमसे ज्यादा जानते हैं।

श्री शिवानन्द तिवारी : उपसभापति जी, आज संदर्भ बदल गया है। रविशंकर जी ने जो सवाल उठाया है और सी.आर.पी.एफ., इंडो-तिब्बत बॉर्डर पुलिस के बारे में गृह मंत्री जी ने जो कुछ बताया है, हम उस पर कहीं भी शुबहा नहीं कर रहे हैं, लेकिन आज संदर्भ बिल्कुल बदल गया है। आज राज्यों के मन में

यह धारणा बैठ गई है कि हमारे संविधान ने फेडरलिज्म के अंतर्गत जो अधिकार दिया है, यह सेंट्रल गवर्नमेंट उसके उल्लंघन पर आमादा है। लोकपाल का, लोकायुक्त का जो बिल आया, उस समय से ही यह विवाद शुरू हुआ। हम आपके मोटिव पर डाउट नहीं कर रहे हैं, हम आपसे आग्रह करेंगे, हमारी सिर्फ इतनी रिक्वेस्ट है कि 16 तारीख को मुख्यमंत्रियों की जो बैठक होने वाली है, आप इसको उस बैठक तक टाल दीजिए। आपका बिल जिस रूप में है, लोग उसको उसी रूप में मानने के लिए तैयार हैं, हम लोगों को कोई ऐतराज नहीं है, हमारा केवल यही अनुरोध है कि आज इसको डैफर कर दिया जाए।

SHRI P. CHIDAMBARAM : Sir, whatever decision you take, we will abide by it. With due respect, I submit this. I can say with confidence about this Government and I can say with knowledge about previous Governments also, no Central Government in India has deployed Central Armed Police Forces without the request of the State Government.

MR. DEPUTY CHAIRMAN : This Bill is deferred.

MR. DEPUTY CHAIRMAN : Now, we shall take up the Whistle Blowers Protection Bill, 2011.

The Whistle Blowers Protection Bill, 2011

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRI V. NARAYANASAMY) : Mr. Deputy Chairman, Sir, I beg to move :

That the Bill to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected therewith and incidental thereto, as passed by Lok Sabha, be taken into consideration.

Sir, the Government recognises that it is one of the Bills ...(*Interruptions*)... for eliminating corruption in the Government and the public sector undertakings and providing adequate protection to the complaints reporting corruption. Therefore, the Government has issued a Resolution on 21st April, 2004 authorising the Central Vigilance Commission as the Designated Agency to receive written complaints from whistleblowers. The said Resolution, *inter alia*, provides for protection to the whistleblowers from harassment and keeping the identity of the whistleblowers concealed. They also kept the whistleblower's name out of the public domain. It was felt that the persons who report about corruption need statutory protection. Therefore, Sir, the Government have brought forward the Bill before the Parliament under the name, "The Public Interest Disclosure and Protection to Persons Making the disclosures Bill, 2010".