

Fourteenth Lok Sabha

Session : 8

Date : 23-08-2006

Participants : [Deo Shri Bikram Keshari](#), [Jaiswal Shri Shriprakash](#), [Chowdhury Shri Adhir Ranjan](#)

an>

Title : Discussion on the motion for consideration of the Protection of Human Rights (Amendment) Bill, 2006 moved by Shri Shriprakash Jaiswal on behalf of Shri Shivraj V. Patil.

MR. DEPUTY-SPEAKER: Item No.18.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI SHRIPRAKASH JAISWAL): On behalf of Shri Shivraj V. Patil, I beg to move:*

“That the Bill further to amend the Protection of Human Rights Act, 1993, as passed by Rajya Sabha, be taken into consideration.”

The National Human Rights Commission (NHRC) was set up in October, 1993, under the provisions of the Protection of Human Rights Act, 1993, for promotion and protection of human rights in the country. In the light of the experience gained in the administration of the law for nearly five years, the Commission felt that a second hard look was necessary on the structural inadequacies in the law. In May, 1998, the NHRC set up an Advisory Committee under the Chairmanship of Justice A.M. Ahmedi, former Chief Justice of India, to assess the need for structural changes and amendments in the Protection of Human Rights Act, 1993. The above Advisory Committee under the Chairmanship of Justice Ahmedi, suggested amendments to the Protection of Human Rights Act, 1993. The NHRC then considered the recommendations of the Advisory Committee and suggested amendments to the Act, to the Government.

The amendments suggested by the NHRC were examined by an Inter-Ministerial Committee, consisting of the Ministry of External Affairs, the Ministry of Defence and the Ministry of Law, keeping in view the scope and ambit of the Act. The Inter-Ministerial Committee made recommendations to the Government for amendments to the Act. The Government considered the recommendations of the Inter-Ministerial Committee and introduced the Protection of Human Rights

*Moved with the Recommendation of the President.

(Amendment) Bill, 2005 in the Rajya Sabha on the 8th of December, 2005. This Bill was referred by the hon. Chairman, Rajya Sabha to the Departmentally-Related Parliamentary Standing Committee on Home Affairs for examination. The Parliamentary Standing Committee after a clause-by-clause consideration of the Bill, suggested certain modifications to sharpen the focus of the amendments on the proposed changes so as to make it more effective. The Government, after consideration, has accepted the modifications suggested by the Parliamentary Standing Committee. These are reflected in the list of official amendments and these are submitted along with the Bill. ... (*Interruptions*)

The salient features of the proposed Bill are as follows:

Making eligible judges of the Supreme Court with at least three years of service to be eligible for appointment as Chairperson of the NHRC, apart from the existing provision of having retired Chief Justices of India eligible for the post of Chairperson.

Similarly, it makes eligible a judge of the High Court with at least five years of service eligible for appointment as Chairperson of the State Human Rights Commission, apart from the existing provision of having a retired Chief Justice of a High Court. This would enable the Selection Committee to have a wider choice while recommending a suitable person for the post of Chairperson.

The amendment reduces the number of members of a State Human Rights Commission from the present five to three. This will also help in reducing the costs of such Commissions in the States. The Bill also provides that where a State, on financial considerations, is unable to have its own Commission, it can co-opt the Chairperson or member of another State Commission for itself with the approval of the Selection Committee of the State concerned. This will enable smaller States to have the benefits of a Human Rights Commission.

The proposed amendments enable the NHRC to transfer complaints received by it to the concerned State Human Rights Commission. The NHRC at present receives a large number of complaints, making disposal of such complaints time consuming. The amendment will enable the NHRC to transfer these complaints to the concerned Human Rights Commission of the State concerned for disposal. The NHRC has also been empowered to visit any jail or other institution without prior intimation to the State Government concerned. This will enable the Commission to make surprise visits to prisons.

15.42 hrs.

(Shri Varkala Radhakrishnan *in the Chair*)

Another important amendment relates to enabling the NHRC and the State Human Rights Commission to make interim recommendations for compensations at any stage of the inquiry and not only after the completion of any inquiry, as is the law at present. This would ensure that victims of human rights violations would be in a position to obtain interim compensation wherever the NHRC or a State Human Rights Commission feels it justified to do so. The amendments also empower the NHRC and its Chairperson to delegate certain powers and functions of the Commission to the Secretary-General, except judicial functions and rule making power under Clause 18 of the Bill. The amendments also provide separate membership of the Commission for the Chairperson of the National Commission for Scheduled Castes and the Chairperson of the National Commission for Scheduled Tribes, consequent upon separate Commissions coming into existence.

The other amendments to the Bill clarify that the Chairperson of the NHRC and the State Human Rights Commissions are distinct from the members of the respective Commissions. The definition of International Covenants has also been modified to enable the Central Government to notify future international covenants and conventions to which the Act would be applicable.

It is expected that the above proposed amendments to the Protection of Human Rights Act, 1993, as laid down in the Bill before you, would make the National Human Rights Commission and the State Human Rights Commissions more efficient in their functioning and would help in the prevention of human rights violations.

With these words, Sir, I commend this Bill to this august House for consideration and approval.

MR. CHAIRMAN: Motion moved:

“That the Bill further to amend the Protection of Human Rights Act, 1993, as passed by Rajya Sabha, be taken into consideration. ”

15.44 hrs.

SHRI BIKRAM KESHARI DEO (KALAHANDI): Sir, I rise to debate on this Bill relating to the Protection of Human Rights (Amendment) Bill, 2005.

While starting my speech, I would like to say that we are the biggest democracy in the world. In a democratic country with a population of 108 crores, the protection of human values is the prime responsibility of the administrator or the Government which rules that country.

So the protection of human values is very important. It is surprising that even after 12 years of passing the Protection of Human Rights Act and the formation of National Human Rights Commission, it has not been applicable in all the States of the country. It has been applicable in 16 States only. Every year the Human Rights Commission receives about 70,000 complaints of human right violations. So, it became necessary on the part of the Government to protect the human rights. In 1998, under the Chairmanship of the retired Chief Justice of the Supreme Court, Justice Ahamadi, a Committee was set up to look into the ambit of the National Human Rights Commission and to see how it could be made more effective so that the human values could be protected. Mr. Ahamadi gave his report. Previously, only a retired Supreme Court Judge could be the Chairman or the Chairperson of the Human Rights Commission. That has been changed in this new Bill. It has been provided that a retired Supreme Court judge with three years experience can also be appointed as a Chairperson of the National Human Rights Commission. Similarly, to head a State Human Rights Commission, it was mandatory then that he has to be a retired High Court judge who knew the vernacular language or the regional language of that particular State. In those days, it was difficult to find a retired High Court judge knowing the vernacular language. So, it has been changed now. It has been provided that any retired judge of the High Court with a minimum three years experience or a retired District Judge with seven years experience, can be the head of the State Human Rights Commission.

As has rightly been pointed out by the hon. Minister, previously what used to happen is that if the National Human Rights Commission wanted to visit a jail or some hospital or asylum, it had to take permission from the concerned State Government. Today, after passing this Bill, the National

Human Rights Commission can go to any jail and have inquiries. It can see the conditions of the people who are languishing in jails. It can go to any asylums or mental hospital or any camp of the prisoners of war or a detention camp.

Sir, human rights are not related to *thanas* alone. Human right violations can be done by ruling Governments also by not providing the basic amenities to the poor people, by not giving them the basic economic benefits, by not maintaining or revamping the Public Distribution System and health in tribal areas. There was time when people and the *Adivasi* had to eat Mango kernels in Kosipur Block. Poor people are led to destitution and starvation in places like KBK or backward regions of the country. If a farmer commits suicide, this is also a violation of the human rights. So, these are the violations of the human rights. I feel that with the passage of this Bill, the National Human Rights Commission and the State Human Rights Commission will be strengthened.

At the same time, there is a provision in the Bill regarding the international Covenants which have been passed by the United Nations General Assembly where we are also a signatory. The idea of human rights first came after the Second World War in 1948, the UN General Assembly adopted a Resolution regarding Universal Declaration of Human Rights. In the period between 1948 and 1966 to make a democracy successful and to protect democracy throughout the world, the protection of human rights and values was necessary.

So, they adopted a Resolution in the United Nations General Assembly and India was also a signatory to it.

The five core Human Rights instruments to which India is a party are (year of India's accession in parentheses): International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has not yet been ratified by the Ministry of Home Affairs.

So, I would like to know from the Government of India, the Ministry of Home Affairs, as to when will the Government ratify the Convention against terror, against torture and other cruel, inhuman or degrading treatment or punishment. A legislation has not yet been brought to tackle this particular problem which has been ratified by the United Nations. Now, India has to do it.

Among other international instruments related to human rights, India signed the Convention on Trans-national Organised Crime in December, 2002. The Ministry of Home Affairs also has not ratified this.

Take India's active participation in the negotiating process, and its role as the Chairman of the Open Ended Expert Group, in the negotiations on the International Convention against Corruption. Why am I emphasising on corruption because of the Volcker Report and because of the Food-for-oil scam which took place? It is providing a moderating voice with the developing countries insisting on obligatory provisions in the Convention for the return of assets generated

through corruption and parked in safe havens abroad. So, in India, a parallel economy runs. As you know, most of the money is sent to the safe havens abroad, in Swiss Banks, in Zurich, to foreign banks abroad, to St. Kitts and banks of that nature. The developed countries are demanding obligatory provisions for effective preventive measures and good governance mechanisms in the concerned country. So, this also leads to human rights values' protection because this money of our country is being clandestinely channelised to different countries which could have been used for our country's development and for our country's benefit. So, I hope this Bill will be seriously considered.

Sir, we should go by the Paris Principles. India also was a signatory to the Paris Principles. As per the Paris Principles, we have to be committed to fight human rights violation. Allegations have been made that fight against terrorism also is a violation of human rights by some people. But we are doing it for democracy. Those people who are fighting it in the name of terrorism, they are fighting a racial war and they are fighting a *fidayeen* war against the country and against the democracy. So, that has to be crushed.

Sir, I have a few more points. As you know, when our Constitution was being made, our Constitution-makers were very thoughtful regarding preservation of the human values and human rights in our democracy. So, while preparing the Constitution to decide the fundamental rights in our country, they passed it on to the courts under Articles 14, 19 and 21. In Article 14, Right to Equality is given. In Article 19, Right to Freedom is given. In Article 21, Right to Life and Liberty is given.

Therefore, these Fundamental Rights have been enshrined in our Constitution. These human rights values have been enshrined in the Fundamental Rights of the Constitution. Therefore, my plea is this. We are a vast country with a big majority, with about 30 per cent people living below the poverty line. It is those centres of poverty which have to be tackled and fought. To protect the human values, their standard of life, their rate of nutrition, quality of food, quality of life have to be assessed. Then, we should try to improve their economic indicators. I hope the Human Rights Commission will give directions to the Government.

In one such case regarding Kalahandi, Panaspunji sold her child in Navpara District in Karyal Assembly segment. A Writ Petition was filed in the Supreme Court regarding poverty and starvation deaths in the village Chatta in Komna Block in Navpara district of Kalahandi Parliamentary constituency. In 1985-86, the Writ Petition was filed by the late Shri Kishan Patnaik in the Supreme Court. I thank him for that. He was a great socialist and a great fighter. In the name of Kalahandi, he had filed a Writ Petition in the Supreme Court. The Supreme Court gave a direction to the Human Rights Commission to look into the matter. After that, it was established that actually those people had died of starvation by eating roots, tubers because they were not getting food. The failure of the PDS system was there. Then the KBK Programme was started. I am very sorry to say that the UPA Government has shelved the KBK Programme. It has liquefied the KBK Programme and stopped that Programme. So, I would urge upon the Government to restart this Programme for the State of Orissa because Orissa, as it is, is a poor State. A lot of human values are to be protected there. With the introduction of the Bill, I hope something will happen. I welcome this Bill. I hope in

many States, the Human Rights Commissions are not functioning. Only in 16 States, the Human Rights Commissions are functioning. ... (*Interruptions*) बाकी जगह ह्यूमन राइट्स कमीशन लागू है, लेकिन आपकी स्टेट में लागू नहीं है। आपने युनाइटेड नेशन्स की जनरल असेम्बली में इसको लागू करने के समझौते पर हस्ताक्षर किए थे। The UN Convention against torture and other cruel, inhuman or degrading treatment or punishment is there. It is to right against terror. आप बताइए कि आप बिल लाकर इस बारे में कानून कब बना रहे हैं ?

MR. CHAIRMAN : Shri Adhir Chowdhury. You can speak for a few minutes because at Four of the Clock, we have to switch over to the other item. You can conclude your speech next time.

SHRI ADHIR CHOWDHURY (BERHAMPORE, WEST BENGAL): Actually, I rise to support the Bill under the nomenclature of the Protection of Human Rights (Amendment) Bill, 2006. The legislative document is very much relevant to our society, to our lives. The objective of this Bill seems to have essentially to injected a structural reform in the constitution of the Commission and its mandate as well.

The Bill seeks to amend 17 Sections of the principal Act and insert a new Section 40 (b) in that Act. The nature of the amendments could be categorised as substantial one, consequential and clarificatory. It is true that after the establishment of this Act, 14 years have already lapsed. Thereafter, we are bringing in an amendment. There is no gainsaying the fact that insofar as human rights are concerned, we are in a nascent stage because the UN Declaration on Human Rights was proclaimed in the year 1948.

16.00 hrs.

MR. CHAIRMAN : You can continue next time.

Now, the House shall take up Item No. 21, discussion under Rule 193 on Indo-US Nuclear Agreement.

KUMARI MAMATA BANERJEE (CALCUTTA SOUTH): Sir, again we are taking up a new discussion under Rule 193 when there are two more discussions already pending in the House.

MR. CHAIRMAN: Madam, this has already been decided that we will take this item at 4 o'clock today.

KUMARI MAMATA BANERJEE : Sir, you may please assure the House when the other two pending discussions will take place.

SHRI BRAJA KISHORE TRIPATHY (PURI): Sir, already two discussions under Rule 193 are pending and only a few Members have spoken and they are inconclusive.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI PRIYA RANJAN DASMUNSI): Sir, I am helpless in the matter in this place. Any discussion, which is started, is not allowed to be concluded on the same day. At the same time, the hon. Leaders insist that on a particular day the particular discussion should take place. Today's debate was fixed considering the availability of the hon. Prime Minister and that is why it was fixed for 4 o'clock. That is why it is coming. It does not mean that we are evading the other two debates. Another two days are left, we will accommodate them.

KUMARI MAMATA BANERJEE : That is all right that the availability of the hon. Prime Minister was considered in this matter. But I would like to know why two-three discussions under Rule 193 are pending. They take one discussion, two speakers speak and then they take another discussion and then also two speakers speak and then they take another one. What is this? The hon. Minister of Parliamentary Affairs should take care that this does not happen in future.

MR. CHAIRMAN: Now, the hon. Prime Minister has arrived, I think, we can commence the discussion.