

**Agenda Note**

**Sub :** Increase of representation of Bhutia and Lepcha from 12 to 16 in case of increase of Assembly seats in the Sikkim from 32 to 40.

**I Issue in brief**

A representation dated 31/10/2006 was received in the Commission from Sikkim Bhutia Lepcha Apex Committee(SBLAC) requesting intervention of the Commission in regard to amendment to the Representation of People Amendment Act 1980 and the Constitution (Sikkim) Scheduled Tribe Order 1978 for increase of representation of Bhutia and Lepcha from 12 to 16 in case of increase of Assembly seats in the Sikkim from 32 to 40. The issue was taken up with the Chief Secretary, Govt of Sikkim vide Commission's letter dated 06.11.2006. Govt. of Sikkim vide their letter dated 11.06.2008 intimated that they had already replied and enclosed their letter dated 08.12.2006 in this regard. The position, as communicated vide letter dated 08.12.2006 is as under:

Sikkim merged with the Indian Union in the year 1975. Elections were held for the first time in 1979 on the basis of an Ordinance that provided for reservation of 12 seats for Bhutia-Lepchas, 1 seat for Sangha and 2 for SCs out of a total of 32 seats in the Sikkim Legislative Assembly. Therefore, as per the Representation of People (Amendment) Act, 1980, 12 out of 32 Assembly seats in Sikkim, i.e. 40 % are reserved for Bhutia-Lepcha as against around 21% population of the Bhutia and Lepcha in the state of Sikkim. The State Govt. of Sikkim has submitted various memorandums to the Govt. of India regarding protection of the 12 seats reserved Bhutia-Lepcha communities and the 1 Sangha seat.

Though the Bhutia and Lepcha community in the State are declared as tribals, as per the Constitution (Sikkim) Scheduled Tribe Order, 1978, the reservation of seats has been granted on the community basis; and not as per their tribal status, as in other States of the Country. Consequently, Limboos and Tamangs, who have been declared as tribals, are not eligible to contest from the

said reserved seats and have demanded suitable reservation of seats for them in the Sikkim Legislative Assembly.

The State Govt has suggested increase in the strength of the Sikkim Legislative Assembly from the existing 32 to 40 for grant of reservation of seats in the State Assembly for Limboos and Tamangs tribals, while protecting the reserved seats for Bhutia-Lepcha and Sangha.

Chairperson, National Commission for Scheduled Tribes has written a DO letter dated 03.09.2008 to the Hon'ble Home Minister in favour of demand of Sikkim Bhutia-Lepcha Apex Committee regarding proportionate increase in their quota of 12 Assembly seats to 16.

Ministry of Home Affairs intimated vide their letter dated 23<sup>rd</sup> Feb, 2009 that the matter is under active consideration.

## **II Proposed Comments of the Commission on the matter.**

The Commission may deliberate over the issue in the light of the following constitutional provisions and options:-

(a) According to Article 170(1) of the Constitution of India, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(b) According to Article 371F(a) of the Constitution of India, the Legislative Assembly of the State of Sikkim shall consist of not less than thirty members.

(c) According to Article 332(3) of the Constitution of India, the number of seats reserved for the SCs and STs in the Legislative Assembly of any State shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State.

(d) According to Article 371F(f) of the Constitution of India, 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.

(e) According to The Representation of People Act, 1950 [ Act No. 43 of 1950], Total number of seats in Legislative Assemblies and assembly constituencies in the Legislative Assembly of each State specified in the Second Schedule, to be filled by persons chosen by direct election from assembly constituencies, and the number of seats, if any, to be reserved for the SCs and for STs of the State, shall be as shown in that Schedule: Notwithstanding anything contained in sub-section (1), the total number of seats in the Legislative Assembly of the State of Sikkim, to be constituted at any time after the commencement of the Representation of the People (Amendment) Act, 1980 (8 of 1980), to be filled by persons chosen by direct election from assembly constituencies shall be thirty two of which (a) twelve seats shall be reserved for Sikkimese of Bhutia – Lepcha origin ; (b) two seats shall be reserved for the Scheduled Castes of that State; and (c) one seat shall be reserved for the Sanghas referred to in section 25A. Explanation.- In this sub-section “Bhutia” includes Chumbipa Dophapa, Dukpa, Kagatey, Sherpa, Tibetan, Tromopa and Yolmo.

The special provisions of Article 371F have been upheld by the Supreme Court in CAs 78/1982, 84/1982, 93/1991 & 94/1991, in which it was observed that the departures are not such as to negate the fundamental principles of democracy / cannot be said to be unconstitutional given the particular situation and the permissible latitudes. In the present situation, the following alternatives may be considered :-

- i) The reservation of Sikkim Legislative Assembly seats for STs should be the same proportion to the total number of seats in the Assembly as the population of the Scheduled Tribes in the State, as is followed in the other States as per the Article 332(3); and , for this purpose the number of seats in the legislature may be increased suitably.
- ii) In case of increase in the Sikkim Legislative Assembly seats from 32 to 40, the increased (8) number of Assembly seats may be considered to be reserved for Scheduled Tribes according to their population, so that all the Scheduled Tribe Communities candidates can contest for these seats including Bhutia-Lepcha.
- iii) In case the existing 32 Legislative Assembly seats in Sikkim Legislative Assembly are not increased to 40, Commission may like to recommend to treat a population proportionate number of the existing 12 Assembly seats reserved for Bhutia-Lepcha community as reserved for Scheduled Tribes, to safeguard the political representation of STs, viz, Limboos and Tamangs also in the Sikkim Legislative Assembly.