Bill No. 150 of 2021

THE PROVISIONS OF THE MUNICIPALITIES (EXTENSION TO THE SCHEDULED AREAS) BILL, 2021

By

DR. HEENA VIJAYKUMAR GAVIT, M.P.

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BILL

_to provide for the extension of the provisions of Part IXA of the Constitution relating to the Municipalities to the Scheduled Areas._

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (I) This Act may be called the Provisions of the Municipalities (Extension to the Scheduled Areas) Act, 2021. Short title.

2. In this Act, the expression "Scheduled Areas" mean the Scheduled Areas as referred to in clause (f) of article 244 of the Constitution. Definition.
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1. (1) This Act may be called the Provisions of the Municipalities (Extension to the Scheduled Areas) Act, 2021. Short title.

2. In this Act, the expression “Scheduled Areas” mean the Scheduled Areas as referred to in clause (1) of article 244 of the Constitution. Definition.
3. The provisions of Part IXA of the Constitution relating to the Municipalities are hereby extended to the Scheduled Areas, subject to following exceptions and modifications:

I. Article 243Q relating to "Constitution of Municipalities" shall apply with the following exceptions and modifications:

(1) For the purposes of self-governing institutions in the Urban Scheduled Areas, all urban centres may be designated, as the case may be, as 'Nagar Panchayats', 'Municipal Councils', 'Municipal Corporations' and 'Industrial or Mining Townships'.

(2) The Governor may, in consultation with or in pursuance of the recommendations of the Tribes Advisory Council, by public notification, declare and classify an area as an urban area of appropriate category having regard to its population, the percentage of employment in non-agricultural activities, the infrastructure, social services, development potential and such other factors, as he may deem fit.

(3) The tribal habitation in an urban setting shall be treated as a separate unit for the purposes of local self-government. The habitants, whose economy is predominantly rural, shall be included in Gram Sabha and the habitants, who have got assimilated in the urban economy with agriculture and allied activities receding into the background, shall be included in Tribal Mohalla or Ward Sabha.

II. Article 243S relating to "Constitution and composition of Wards Committees, etc.," shall apply with the following exceptions and modifications:

(a) There shall be constituted a Standing Committee for tribal affairs in each Municipality located within the Scheduled Area.

The Committee shall comprise of tribal members of the Municipality along with the Chairman.

Recommendations of this Committee shall ordinarily be binding on the Municipality;

(b) There shall be constituted a Standing Committee for rural development in each Municipality responsible for the advancement of those engaged in agriculture and allied activities.

III. Article 243T relating to "Reservation of Seats" shall apply with the following exceptions and modifications:

(1) Seats may be reserved for the Scheduled Tribes in every Municipality in the Scheduled Area in proportion to their population in the Municipal area or one-third of the total number of seats, whichever is higher;

(2) The seats of all the Gram Sabhas, Tribal Mohallas, Ward Sabhas included in the Municipality in the Scheduled Areas may be reserved for the Scheduled Tribes. The remaining seats shall be allotted by rotation among other wards in the Municipality;
(3) The Chairperson of the urban body shall be a member of the Scheduled Tribes;

(4) In all programmes of development like housing colonies, trading centers, etc., and in educational institutions or industrial training institutions, reservation shall be made in favour of the tribal people in proportion to their population in the concerned district and there shall be no de-reservation whatsoever;

(5) Nagar Panchayat may be constituted in an area identified as transitional area from rural to urban area. The composition of Nagar Panchayats in Scheduled Areas shall, as far as possible, be as per the structure of Municipal Committees:

Provided that not less than one-half of the members of Nagar Panchayat shall be from Scheduled Tribes.

IV. Article 243W relating to “Powers, authority and responsibilities of Municipalities, etc.,” shall apply with the following exceptions and modifications:—

The Legislature of a State shall, by law, endow the Municipality in the Scheduled Area with such powers and authority as may be necessary to enable it to function as institution of self-government and such law shall contain provisions for the devolution of the following powers and responsibilities upon Municipality with respect to—

(1) preparing five year development plans and annual plan with reference to resources available for the development of human resources, socio-economic advancement of the community, provision for reinforcement of the infrastructure and augmentation of civic amenities in the area;

(2) fostering tribal endogenous institutions;

(3) undertaking schemes and adopting measures, including the giving of financial assistance relating to development of khadi, cottage and small-scale industries, cooperative movement, water supply, public health and sanitation and hospitals, communication, primary and secondary education, adult and non-formal education, welfare of students, electrification including distribution, non-conventional energy sources, women and child development, social welfare and other aspects of general public utility;

(4) managing of Haats and markets;

(5) maintaining places for rest and stay, which are neat, open and congenial for the tribal people visiting the town;

(6) protecting and maintaining all cultural and religious places of tribal people located within the municipal limits;

(7) identifying and removing unauthorized occupation of land;

(8) acquiring land for the purposes of education, health, railways, communication, defense, electricity generation, water supply, sanitation
projects, laying electricity lines and making provision for water supply, sewerage and drainage pipelines:

Provided that on acquisition of land, the affected person shall be paid—

(a) reasonable and adequate compensation; and

(b) alternative means of livelihood:

Provided further that no Scheduled Tribe person shall be rendered landless as a consequence of acquisition of land as aforesaid.

V. Article 243X relating to "Power to impose taxes by, and Funds of, the Municipalities" shall apply with the following exceptions and modifications:—

No urban tax shall be leviable on a tribal who continues to live in his traditional style.

Explanation.—For the purposes of this clause, the following may be the norms to determine whether a Tribal continues to live in his traditional style or otherwise, namely:—

(1) whether he belongs to any of the communities notified as Scheduled Tribe for that State or Union territory;

(2) whether he is a bonafide resident of the urban area concerned; or

(3) whether he continues to pursue traditional occupation of farming, petty business as artisan, labourer, or the like.

If a tribal is living with his family, the deciding factor shall be the main occupation of the family and not that of the individual member as long as he lives together in the same house.

If the other conditions are fulfilled, the income shall not be the criterion.

VI. Article 243ZF relating to "Continuance of existing laws and Municipalities" shall apply with the following modifications:—

Notwithstanding exceptions and modifications subject to which Part IXA of the Constitution has been extended to the Scheduled Areas by this Act, any provision of any law relating to Municipalities in force in the Scheduled Areas immediately before the date of commencement of this Act, which is inconsistent with this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act comes into force whichever is earlier:

Provided that all the Municipalities existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council, by each House of the Legislature of that State.
STATEMENT OF OBJECTS AND REASONS

The Constitution of India mandates establishment of autonomous councils to govern tribal areas, but the same is not available to Scheduled Areas. Dilip Singh Bhuria Committee which was constituted in 1995 had recommended that two Bills be brought into effect to bring decentralised governance to the Scheduled Areas: Municipal Extension to Scheduled Areas (MESA) Bill for urban areas and Panchayat Extension to Scheduled Areas (PESA) Bill for rural areas. These Bills sought to provide safeguards to the tribal inhabitants against exploitation.

While PESA was passed in 1996 and panchayats have been formed under it, MESA still has not been passed. Yet, municipal governments have been formed in Scheduled Areas. The conflict that municipal governance faces in Scheduled Areas is because of this lack of legislative protections. In practice there is a huge variation in matters of municipal governance in Scheduled Areas. There is a consistent practice of setting up of municipalities in areas under the Fifth Schedule, though the legality of the same has been challenged. The absence of a legislation like MESA means that when areas are converted from rural to urban governance systems, they are likely to be exploited.

Urbanisation is inevitable and is taking place in tribal dominated areas as well. Urban areas need governance systems which are geared towards their particular needs. This includes decentralised provision of services such as solid waste management, water supply, and urban planning. At the same time, the culture in these areas need to be preserved and any governance system needs to be sensitive towards this. This Bill seeks to achieve the required purpose and constitutionally bring municipal governance to the Scheduled Areas and help inhabitants gain more control over their own governance. This Bill aims to protect the land rights of tribals and provides for a Standing Committee on Tribal Affairs in each municipality.

The erstwhile Planning Commission and National Advisory Council had also pointed out this void in its reports from time to time and stressed for proper implementation of the provisions of Fifth Schedule of the Constitution in countering Left-wing extremism. The Standing Committee on Rural and Urban Development in 2003 in its 50th Report had also recommended the passing of MESA Bill.

Hence this Bill.

NEW DELHI;

November 18, 2021.

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