

AS INTRODUCED IN LOK SABHA

Bill No. 73 of 2020

THE FIFTH SCHEDULE TO THE CONSTITUTION (AMENDMENT)
BILL, 2020

By

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A

BILL

further to amend the fifth Schedule to the Constitution of India.

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

1. (1) This Act may be called the Fifth Schedule to the Constitution (Amendment) Act, 2020. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by a notification in the Official Gazette, appoint.

Amendment
of the Fifth
Schedule.

2. In the Fifth Schedule to the Constitution,—

(a) for the heading "Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes, the heading "Provisions as to the Indigenous Rights and Governance of Scheduled Areas and Scheduled Tribes" shall be substituted;

(b) in paragraph 3, for the words "administration" at both the places, the word "governance" shall be substituted; 5

(c) after paragraph 3, for the heading "Administration and Control of Scheduled Areas and Scheduled Tribes", the heading "Governance and Indigenous Rights of Scheduled Areas and Scheduled Tribes" shall be substituted;

(d) in paragraph 4,— 10

(i) before the existing proviso, the following provisos shall be inserted, namely:—

"Provided that the Chairperson of the Tribes Advisory Council shall be a person belonging to the Scheduled Tribe:

Provided further that at least two members having expertise in tribal or indigenous affairs shall be nominated by the Governor to the Tribes Advisory Council."; 15

(ii) for sub-paragraph (2), the following sub-paragraph shall be substituted, namely:—

"(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the human rights, indigenous rights, welfare, development and advancement of the Scheduled Tribes in the State, either on annual basis or as and when required, as may be referred to them by the Governor."; 20

(iii) in sub-paragraph (3), for the words "Governor may", the words "Governor may, in consultation with the Tribes Advisory Council," be substituted; and

(e) in paragraph 5,—

(i) in sub-paragraph (1) for the words "Governor may", the words, "Governor may, in consultation with the Tribes Advisory Council," shall be substituted; and 25

(ii) in sub-paragraph (2), after the words "make regulations", the words "for the human rights and indigenous rights of the Scheduled Areas and Scheduled Tribes and" shall be inserted.

(f) after paragraph 5, the following paragraph shall be inserted, namely:— 30

"5A. (1) Notwithstanding anything in the Constitution, the Scheduled Tribes shall be guaranteed the following indigenous rights in the Scheduled Areas:—

(a) right to identity, self-identification and culture;

(b) right to own, use, develop and control their lands, territories and resources including participatory rights in the management of the lands, territories and resources; 35

(c) right to share royalty of the minerals of sub-surface resources in form of equity, lifelong annuity payments, share of earnings from alternative uses of land, employment and management of the company, establishment or undertaking granted permission by the State on the free and informed consent of gram sabha;

(d) right to the surface resources of their lands; 40

(e) right of community resources of minor and major forest produce, water bodies, maritime resources and grazing lands and their use;

Rights of
indigenous
people.

(f) right to decide their own priorities for the purpose of development and participate in the formulation, implementation and evaluation of plans, policies, programmes and projects;

5 **(g) right to receive reparations, restitution, compensation and satisfaction from the State and juristic person, company, establishment and undertaking in terms of discriminatory, unfair and illegal acquisition or takings of the lands, territories and resources in the past and present;**

(h) right to protection from removal from their lands and territories;

10 (i) right to resettlement and rehabilitation with adequate compensation, employment and means of livelihood;

(j) right to traditional means of livelihood and special protection regarding employment;

(k) right to protection of religious, social, institutional, cultural and educational rights;

15 (l) right to protection of customary laws and inheritance rights;

(m) right to traditional community institutions;

(n) right to protection of habitat, ecology and environment;

(o) right to regulate the institutions and functionaries in all social sectors both of the Tribals and non-Tribals;

20 (p) right to repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with Scheduled Tribes;

(q) right to petition the State and all public authorities and obtain redressal within a reasonable time; and

25 (r) such other rights as the Parliament may guarantee progressively by law.

(2) The State shall through law and regulation provide effective mechanisms and take effective measures for guaranteeing the recognition, protection and realization of rights under sub-paragraph (1).";

30 (g) in paragraph 6, after sub-paragraph (2), the following provisos shall be inserted, namely:—

"Provided that the President shall obtain the recommendations of the Tribes Advisory Council, the National Human Rights Commission and the National Commission for Scheduled Tribes before making any order under sub-paragraph (2) of this paragraph:

35 Provided further that the Tribes Advisory Council, the National Human Rights Commission, the National Commission for Scheduled Tribes, and the President shall consider the following criteria before declaring an area as a Scheduled Area:—

(i) area inhabited by preponderance of Scheduled Tribes;

(ii) the ancestral domain of the lands, territory and culture;

40 (iii) the compactness and reasonable size of the area;

(iv) the geographical and cultural spread;

(v) the social and economic disparity; and

(vi) any other existing criterions complementary to the above;

(h) in paragraph 7, after sub-paragraph (I), the following proviso shall be inserted, namely:—

"Provided that the Parliamentary Standing Committee on Home Affairs and Committee on Welfare of Scheduled Castes and Scheduled Tribes shall be consulted before any amendment of this Schedule." 5

STATEMENT OF OBJECTS AND REASONS

Having ratified THE CHARTER OF THE UNITED NATIONS, and the ratification of International Bill of Human Rights viz. Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; and other treaties like International Convention on the Elimination of All Forms of Racial Discrimination, 1965; Convention on the Elimination of All Forms of Discrimination Against Women, 1979; Convention on The Rights of the Child, 1989 [and optional protocol 25 May, 2000 thereunder]; Convention on the Rights of Persons with Disabilities, 2006. Also ILO Convention No. 107 concerning Indigenous Tribal Populations Convention, 1957 and other Conventions Nos. 29, 100, 105, 111, 138, 182 as ratified by Indian State, it has become necessary in view of the principles of *Jus Cogens*, *Jus Strictum* and *Pacta Sunt Servanda* of international law and scope of Article 51(c), 263 and entries 12 and 13 of Union List of the Seventh Schedule to make the provisions of human rights and fundamental freedoms an inalienable part of our Constitution.

This Bill seeks to amend the Fifth Schedule to the Constitution with a view to expand the scope and nature of fundamental human rights by including indigenous rights of the Scheduled Tribes to realize the obligation of the treaties ratified by India:—

(a) providing for appointment of person belonging to the Scheduled Tribes as the Chairperson of the Tribes Advisory Council;

(b) imposing an obligation on the Tribes Advisory Council to advise the States annually and the Governor as and when required on matters pertaining to the human rights, indigenous rights, welfare, development and advancement of the Scheduled Tribes;

(c) providing for the Governor to consult the Tribes Advisory Council while making his Report to the President regarding the administration of Scheduled Areas;

(d) providing for the Governor to make regulations for the human rights and indigenous rights in addition to peace and good government of a Scheduled Area;

(e) guaranteeing the Scheduled Tribes certain indigenous rights in Scheduled Areas.

Hence this Bill.

NEW DELHI;
February 10, 2020.

THOL. THIRUMAAVALAVAN

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

* * * * *

Term of office
of Governor.

FIFTH SCHEDULE

[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A

GENERAL

Report by the
Governor to
the President
regarding the
administration
of Scheduled
Areas.

3. The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

Tribes
Advisory
Council.

4. (1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be:—

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

Law
applicable to
Scheduled
Areas.

5. (1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may:—

(a) prohibit or restrict the transfer of land by or among members of the Scheduled tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C

SCHEDULED AREAS

6. (1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas. Scheduled Areas.

(2) The President may at any time by order:—

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D

AMENDMENT OF THE SCHEDULE

7. (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended. Amendment of the Schedule.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

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LOK SABHA

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BILL

further to amend the fifth Schedule to the Constitution of India.

(Dr. Thol. Thirumaavalavan, M.P.)