

31 MAY 1991

Bill No. 158 of 1991.

THE CONSTITUTION (SEVENTY-SECOND AMENDMENT) BILL, 1991

A

BILL

further to amend the Constitution of India.

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

1. (1) This Act may be called the Constitution Seventy-second Amendment) Act, 1991.
- 5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short
title
and
com-
mence-
ment.

2. After Part VIII of the Constitution, the following Part shall be inserted, namely:—

Insertion
of new
Part IX.

'PART IX

10

THE PANCHAYATS

243. In this Part, unless the context otherwise requires,—

Defini-
tions.

(a) "district" means a revenue district in a State;

(b) "intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;

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(c) "Panchayat" means an institution (by whatever name

called) of self-government constituted under article 243B, for the rural areas;

(d) "Panchayat area" means the territorial area of a Panchayat;

(e) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;

(f) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified. 10

Gram
Sabha.

243A. (1) A Gram Sabha may exercise such powers at the village level as the Legislature of a State may, by law, provide.

(2) In this article, "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level. 15

Constitu-
tion of
Pan-
chayats.

243B. (1) There shall be constituted in every State, Panchayats at the village level in accordance with the provisions of this Part.

(2) The Legislature of a State may, by law, provide for the constitution of Panchayats at the intermediate level or the district level or both in accordance with the provisions of this Part. 20

Composi-
tion of
Pan-
chayats.

243C. (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State. 25

(2) All the seats in a Panchayat at the village level and intermediate level, if any, shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The seats in a Panchayat at the district level, if any, shall be filled by election in such manner as the Legislature of a State may, by law, provide. 35

(4) The Legislature of a State may, by law, provide for the representation, in such manner and subject to such conditions as may be specified in such law,— 40

(a) of the Chairpersons of the Panchayats at the village level in the Panchayats at the intermediate level, or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, if any, in the Panchayats at the district level, if any; 45

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat.

5 (5) The Chairperson of a Panchayat at the village level or intermediate level, if any, and other members of such Panchayat chosen by direct election from territorial constituencies in the Panchayat area shall alone have the right to vote in the meetings of the Panchayat.

10 (6) The Chairperson of a Panchayat at the district level, if any, and other elected members of such Panchayat shall alone have the right to vote in the meetings of the Panchayat.

(7) The Chairperson of—

15 (a) a Panchayat at the village level or intermediate level, if any, shall be chosen by direct election; and

(b) a Panchayat at the district level, if any, shall be chosen by election in such manner as the Legislature of the State may, by law, provided.

20 243D. (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to be total population of that area and such seats shall be allotted by rotation to different constituencies in a Panchayat.

Reserva-
tion of
seats.

25 ✓(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

30 ✓(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and allotted by rotation to different constituencies in a Panchayat.

35 (4) The office of Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

40 Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

45 ✓ Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

50 Provided also that the number of seats reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of office of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or office of Chairpersons in the Panchayats at any level in favour of backward class of citizens. 5

Duration
of Pan-
chayats,
etc.

243E. (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of that Panchayat. 10

(2) Where a Panchayat is dissolved before the expiration of its duration, an election to constitute the Panchayat shall be completed, as soon as may be, and in any case before the expiration of a period of six months from the date of such dissolution: 15

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat. 20

(3) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved. 25

Disquali-
fications
for
member-
ship.

243F. (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

(a) If he holds any office of profit under the Government of India or the Government of any State or a Panchayat, other than an office declared by the Legislature of the State, by law, not to disqualify its holder; 30

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State; 35

(e) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned; 40

(f) if he is so disqualified by or under any law made by the Legislature of the State 45

(2) if any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of the Governor and his decision shall be final.

243G. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

Powers, authority and responsibilities of Panchayats.

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243H. The Legislature of a State may, by law,—

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

Power to impose taxes by, and Funds of, the Panchayats.

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received respectively, by or on behalf of the Panchayats and also for the withdrawal of such money therefrom, as may be specified in the law.

243-I (1) The Governor of a State shall as soon as may be within one year from the commencement of the Constitution (Seventy-second Amendment) Act, 1991, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to—

Constitution of Finance Commission to review financial position.

(a) the principles which should govern—

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats.

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(b) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them. 5

(4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State. 10

243J. The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

243K. Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats under the superintendence, direction and control of the chief electoral officer of the State. 15

243L. (1) The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly. 25

(2) Notwithstanding anything in clause (1), the President may, by public notification, direct that the provisions of this Part shall not apply to any Union territory or any part thereof or shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification. 30

243M. (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part shall apply to—

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the Hill Areas in the State of Manipur for which District Councils exist, and the Hill Areas of the District of Darjeeling in the State of West Bengal for which the Darjeeling Gorkha Hill Council exists, under any law for the time being in force. 40

Audit of accounts of Panchayats.

Powers of Legislature of a State to make provisions with respect to elections to Panchayats.

Application to Union territories.

Part not to apply to certain areas.

(3) Notwithstanding anything in this Constitution,—

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243N. Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy-second Amendment) Act, 1991, which is inconsistent with the provisions of this Part, 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 such commencement or until the expiration of the longest duration of the Panchayats, at any level, existing in that State immediately before such commencement, whichever is later:

Continu-
ance
of exist-
ing laws
and Pan-
chayats.

Provided that all the Panchayats existing immediately before such commencement 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 a Legislative Council, by each House of the Legislature of that State.

243-O. Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the Legislature of a State.

Bar to
interfe-
rence
by courts
in electo-
ral mat-
ters.

3. After the Tenth Schedule to the Constitution, the following Schedule shall be added, namely:—

Addition of
Eleventh
Schedule.

"ELEVENTH SCHEDULE

(Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement and soil conservation.
3. Minor irrigation, water management and watershed development.

4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries. 5
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means 10
of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programmes.
17. Education, including primary and secondary schools. 15
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs. 20
23. Health and sanitation, including hospitals, primary health
centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and 25
mentally retarded.
27. Welfare of the weaker sections, and in particular, of the
Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets." 30

✓ Bill No. 158 of 1991

The Constitution (Seventy-Second Amdt) Bill, 1991

STATEMENT OF OBJECTS AND REASONS

Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic development and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the chief electoral officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.

4. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;

G. VENKAT SWAMY.

The 10th September, 1991.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to insert a new Part IX in the Constitution consisting of articles 243 to 243-O.

2. Articles 243G and 243H of the Bill envisage that the Legislature of a State may confer such powers and authority (including the power to levy, collect and appropriate taxes, duties, tolls and fees on the Panchayats as may be required to enable them to function as institutions of self-government. Article 243-I requires the constitution of the Finance Commission by the States to review the financial position of Panchayats and recommend principles governing distribution of taxes and grants-in-aid. The strengthening of Panchayats as envisaged may call for the strengthening of their administrative capabilities and training requirements. As article 243L of the Bill makes its provisions applicable to the Union territories, the expenditure which may have to be incurred in relation to the Union territories, will have to be met by the Government of India out of its Consolidated Fund. It is, however, difficult to estimate the annual recurring expenditure as it will depend on the powers and authority conferred on these institutions.

3. The Bill, when enacted, will not involve any other recurring or non-recurring expenditure

LOK SABHA

A
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further to amend the Constitution of India.

*(Shri G. Venkat Swamy,
Minister of State in the
Ministry of Rural Develop-
ment.)*