

THE CONSTITUTION (SEVENTY-FOURTH AMENDMENT) ACT, 1992

India

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Statement of Objects and Reasons appended to the Constitution (Seventy-third Amendment) Bill, 1991 which was enacted as the Constitution (Seventy-fourth Amendment) Act, 1992 STATEMENT OF OBJECTS AND REASONS In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.

2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-(a) the functions and taxation powers; and (b) arrangements for revenue sharing; (ii) Ensuring regular conduct of elections; (iii) ensuring timely elections in the case of supersession; and (iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

3. Accordingly, it is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for-

(a) constitution of three types of Municipalities: (i) Nagar Panchayats for areas in transition from a rural area to urban area; (ii) Municipal Councils for smaller urban areas; (iii) Municipal Corporations for larger urban areas. The broad criteria for specifying the said areas is being provided in the proposed article 243-O; (b) composition of Municipalities, which will be decided by the Legislature of

a State, having the following features:(i)persons to be chosen by direct election;(ii)representation of Chairpersons of Committees, if any, at ward or other levels in the Municipalities;(iii)representation of persons having special knowledge or experience of Municipal Administration in Municipalities (without voting rights);(c)election of Chairpersons of a Municipality in the manner specified in the State law;(d)constitution of Committees at ward level or other level or levels within the territorial area of a Municipality as may be provided in the State law;(e)reservation of seats in every Municipality-(i)for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third shall be for women;(ii)for women which shall not less than one-third of the total number of seats;(iii)in favour of backward class of citizens if so provided by the Legislature of the State;(iv)for Scheduled Castes, Scheduled Tribes and women in the office of Chairpersons as may be specified in the State law;(f)fixed tenure of 5 years for the Municipality and re-election within six months of end of tenure. If a Municipality is dissolved before expiration of its duration, elections to be held within a period of six months of its dissolution;(g)devolution by the State Legislature of powers and responsibilities upon the Municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be required to enable them to function as institutions of self-government;(h)levy of taxes and duties by Municipalities, assigning of such taxes and duties to Municipalities by State Governments and for making grants-in-aid by the State to the Municipalities as may be provided in the State law;(i)a Finance Commission to review the finances of the Municipalities and to recommend principles for-(1)determining the taxes which may be assigned to the Municipalities;(2)Sharing of taxes between the State and Municipalities;(3)grants-in-aid to the Municipalities from the Consolidated Fund of the State;(j)audit of accounts of the Municipal Corporations by the Comptroller and Auditor-General of India and laying of reports before the Legislature of the State and the Municipal Corporation concerned;(k)making of law by a State Legislature with respect to elections to the Municipalities to be conducted under the superintendence, direction and control of the chief electoral officer of the State;(l)application of the provisions of the Bill to any Union territory or part thereof with such modifications as may be specified by the President;(m)exempting Scheduled areas referred to in clause (1), and tribal areas referred to in clause (2), of article 244, from the application of the provisions of the Bill. Extension of provisions of the Bill to such areas may be done by Parliament by law;(n)disqualifications for membership of a Municipality;(o)bar of jurisdiction of Courts in matters relating to elections to the Municipalities.

4. The Bill seeks to achieve the aforesaid objectives.

An Act further to amend the Constitution of India.BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:-

1. Short title and commencement.-(1) This Act may be called the Constitution (Seventy-fourth Amendment) Act, 1992.

(2)It shall come into force on such date_681 as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new Part IXA.-After Part IX of the Constitution, the following Part shall be inserted, namely:-

`PART IXA THE MUNICIPALITIES

243P. Definitions.-In this Part, unless the context otherwise requires,-

(a)"Committee" means a Committee constituted under article 243S;(b)"district" means a district in a State;(c)"Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;(d)"Municipal area" means the territorial area of a Municipality as is notified by the Governor;(e)"Municipality" means an institution of self-government constituted under article 243Q;(f)"Panchayat" means a Panchayat constituted under article 243B;(g)"population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities.-(1) There shall be constituted in every State,-

(a)a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;(b)a Municipal Council for a smaller urban area; and(c)a Municipal Corporation for a larger urban area,in accordance with the provisions of this Part:Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.(2)In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

243R. Composition of Municipalities.- (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2)The Legislature of a State may, by law, provide-(a)for the representation in a Municipality of-(i)persons having special knowledge or experience in Municipal administration;(ii)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 the Municipal area;(iii)the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;(iv)the Chairpersons of the Committees constituted under clause (5) of article 243S:Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;(b)the manner of election of the Chairperson of a Municipality.

243S. Constitution and composition of Wards Committees, etc.-(1) There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2)The Legislature of a State may, by law, make provision with respect to-(a)the composition and the territorial area of a Wards Committee;(b)the manner in which the seats in a Wards Committee shall be filled.(3)A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.(4)Where a Wards Committee consists of-(a)one ward, the member representing that ward in the Municipality; or(b)two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.(5)Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the constitution of Committees in addition to the Wards Committees.

243T. Reservation of seats.-(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality 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 Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(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.(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 Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.(4)The offices of Chairpersons in the Municipalities 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.(5)The reservation of seats under clauses (1) and (2) and the reservation of offices 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 Municipality or offices of Chairpersons in the Municipalities in favour of backward class of

citizens.

243U. Duration of Municipalities, etc.-(1) Every Municipality, 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:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.(2)No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).(3)An election to constitute a Municipality shall be completed,-(a)before the expiry of its duration specified in clause (1);(b)before the expiration of a period of six months from the date of its dissolution:Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.(4)A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.

243V. Disqualifications for membership.-(1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality-

(a)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:Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;(b)if he is so disqualified by or under any law made by the Legislature of the State.(2)If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243W. Powers, authority and responsibilities of Municipalities, etc.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a)the Municipalities 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 Municipalities, subject to such conditions as may be specified therein, with respect to-(i)the preparation of plans for economic development and social justice;(ii)the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;(b)the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

243X. Power to impose taxes by, and Funds of, the Municipalities.-The Legislature of a State may, by law,-

(a)authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;(b)assign to a Municipality 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 Municipalities 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 Municipalities and also for the withdrawal of such moneys therefrom.as may be specified in the law.

243Y. Finance Commission.-(1) The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to-

(a)the principles which should govern-(i)the distribution between the State and the Municipalities 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 Municipalities 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 Municipalities;(iii)the grants-in-aid to the Municipalities from the Consolidated Fund of the State;(b)the measures needed to improve the financial position of the Municipalities;(c)any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.(2)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.

243Z. Audit of accounts of Municipalities.-The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA. Elections to the Municipalities.-(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2)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 Municipalities.

243ZB. Application to Union territories.-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:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243ZC. Part not to apply to certain areas.-(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 be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal. (3) Notwithstanding anything in this Constitution, 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.

243ZD. Committee for district planning.-(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect to-(a) the composition of the District Planning Committees; (b) the manner in which the seats in such Committees shall be filled: Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district; (c) the functions relating to district planning which may be assigned to such Committees; (d) the manner in which the Chairpersons of such Committees shall be chosen. (3) Every District Planning Committee shall, in preparing the draft development plan,-(a) have regard to-(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation; (ii) the extent and type of available resources whether financial or otherwise; (b) consult such institutions and

organisations as the Governor may, by order, specify.(4)The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZE. Committee for Metropolitan planning.-(1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2)The Legislature of a State may, by law, make provision with respect to-(a)the composition of the Metropolitan Planning Committees;(b)the manner in which the seats in such Committees shall be filled:Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;(c)the representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;(d)the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;(e)the manner in which the Chairpersons of such Committees shall be chosen.(3)Every Metropolitan Planning Committee shall, in preparing the draft development plan,-(a)have regard to-(i)the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;(ii)matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;(iii)the overall objectives and priorities set by the Government of India and the Government of the State;(iv)the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;(b)consult such institutions and organisations as the Governor may, by order, specify.(4)The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF. Continuance of existing laws and Municipalities.- Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of THE CONSTITUTION (Seventy-fourth Amendment) Act, 1992, 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, whichever is earlier:

Provided that all the Municipalities 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.

243ZG. Bar to interference by courts in electoral matters.- 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 243ZA shall not be called in question in any court;(b)no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.'.

3. Amendment of article 280.- In clause (3) of article 280 of the Constitution, sub-clause (c) shall be relettered as sub-clause (d) and before sub-clause (d) as so relettered, the following sub-clause shall be inserted, namely:-

"(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;".

4. Addition of Twelfth Schedule.-After the Eleventh Schedule to the Constitution, the following Schedule shall be added, namely:-

"TWELFTH SCHEDULE(Article 243W)

- 1. Urban planning including town planning.**
- 2. Regulation of land-use and construction of buildings.**
- 3. Planning for economic and social development.**
- 4. Roads and bridges.**
- 5. Water supply for domestic, industrial and commercial purposes.**
- 6. Public health, sanitation conservancy and solid waste management.**
- 7. Fire services.**

- 8. Urban forestry, protection of the environment and promotion of ecological aspects.**
- 9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.**
- 10. Slum improvement and upgradation.**
- 11. Urban poverty alleviation.**
- 12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.**
- 13. Promotion of cultural, educational and aesthetic aspects.**
- 14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.**
- 15. Cattle pounds; prevention of cruelty to animals.**
- 16. Vital statistics including registration of births and deaths.**
- 17. Public amenities including street lighting, parking lots, bus stops and public conveniences.**
- 18. Regulation of slaughter houses and tanneries."**

[The Constitution (Seventy-fourth Amendment) Act, 1992, dealt with the devolution of power into the systems of Municipalities or Urban Local Governments. It mandated the setting up and devolution of powers to Urban local bodies (ULBs) or city governments as the lowest unit of governance in cities and towns. This landmark initiative of the Government of India was built upon the premise that all 'power' in a democracy rightfully belongs to 'the people'. Power was mandated to be given to the people via the local bodies (referred to as municipalities), namely Municipal Corporations, Councils and Nagar Panchayats, which would have representatives that are elected regularly and have a decisive role in planning, provision and delivery of services. This Act prescribes institutional changes as well, with the setting up of Ward Committees, District Planning Committees and Metropolitan Planning Committees to coordinate planning across jurisdictions, as well as the setting up of State Election Commissions and State Financial Commissions. Effectively, this act gives ULBs a role much larger than just that of service providers that provide water, waste management, electricity, and so on. Also Refer]