

Bill No. 203 of 2016

THE CONSTITUTION (AMENDMENT) BILL, 2016

By

DR. SHASHI THAROOR, M.P.

A

BILL

further to amend the Constitution of India.

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

1. (1) This Act may be called the Constitution (Amendment) Act, 2016.

Short title and commencement.

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

2. In article 243Q of the Constitution, in clause (1), after sub-clause (c), the following sub-clause shall be inserted, namely—

Amendment of article 243Q.

"(d) a Metropolitan Authority for Metropolitan areas comprising one of more whole districts with a population of more than ten lakh,".

Amendment of
article 243R.

3. In article 243R of the Constitution,—

(a) in clause (2),—

"(i) in sub-clause (a), for existing proviso, the following proviso shall be substituted, namely:—

"Provided that the persons, members and Chairpersons referred to in paragraphs (i) to (iv) shall not have the right to vote in the meetings of the Municipality.";

(ii) sub-clause (b) shall be omitted.

(b) after clause (2), the following clauses shall be inserted, namely:—

"(3) The Chairperson of a Municipality to be known as Mayor shall be chosen by direct election by electors of the territorial constituencies of a Municipal area, to be held in such manner as the Legislature of a State may, by law, provide.

(4) The term of the office of the Mayor shall be co-terminus with the term of the Municipality.

(5) There shall be constituted by the Mayor, within a period of thirty days of entering into office, a Mayor-in-Council for a Municipal Corporation or Metropolitan Authority, as the case may be.

(6) The Mayor-in-Council shall consist of the Mayor and other members to be nominated by the Mayor from amongst the directly elected members of the Municipal Corporation or the Metropolitan Authority, as the case may be.

(7) The members of the Mayor-in-Council (excluding the Mayor) shall not exceed fifteen per cent. of the total number of directly elected members of the Municipal Corporation or the Metropolitan Authority, as the case may be, or fifteen members, whichever is higher.

(8) The Mayor-in-Council shall exercise such powers and perform such functions as may be assigned to it by the Mayor.

(9) A member of the Mayor-in-Council shall hold office as long as he is a member of the Municipal Corporation or the Metropolitan Authority, as the case may be, unless he resigns or is removed from office by the Mayor by order in writing."

Amendment of
article 243S.

4. In article 243S of the Constitution,—

(a) for clause (1), the following clause shall be substituted, namely:—

"(1) There shall be constituted, within two years from the commencement of this Act, a Ward Committee for every ward within the territorial area of a Municipality having a population of one lakh or more.";

(b) in clause (3), for the words "Wards Committee", the words "Ward Committee" shall be substituted; and

(c) clause (4) shall be omitted;

5. After article 243S of the Constitution, the following article shall be inserted, namely:—

Insertion of
new article
243SA.
Constitution
of Area Sabhas
for one or
more polling
booths.

"243SA. (1) The Mayor of every Municipality shall constitute Area Sabhas, consisting of one or more polling booths but not exceeding five, with all voters registered at the polling booth as its members and shall provide for the purposes of the Area Sabhas.

(2) The Chairperson of an Area Sabha shall be directly elected by members of an Area sabha in such manner as the Mayor may, by order, specify.

(3) The Mayor of a Metropolitan Authority shall constitute Zonal Committees for that Metropolitan Authority, consisting of two or more contiguous wards and shall provide for—

5 (a) the manner of determining the area of jurisdiction of each Zonal Committee having regard to the population of the area, the density of the population therein and such other factors as he may deem fit;

(b) membership to Zonal Committee of persons having special knowledge or experience in Municipal administration or of such other persons as he may deem fit:

10 Provided that not less than two-thirds of the members of such Committee shall be elected members of the Metropolitan Authority from wards within that Committee; and

(c) the purposes of the Zonal Committees;

(4) The Chairperson of the Zonal Committee shall be elected from amongst the elected members of the Metropolitan Authority in such manner, as the Mayor may, by order, specify.

15 **6. In article 243V of the Constitution,—**

Amendment
of article
243V.

(a) in clause (1), for the words "a member of a Municipality", the words "a member of a Municipality or a Mayor" shall be substituted.

(b) in clause (2), for the words "for the decision of such authority and", the words "for the decision of the Governor" shall be substituted.

20 (c) after clause (2), the following proviso shall be added at the end, namely:—

"Provided that the Governor shall, before giving any decision on any such question, obtain the opinion of the State Election Commission and act according to such opinion."

7. In article 243W of the Constitution,—

Amendment
of article
243W.

25 (a) for the words "the Legislature of a State may, by law", the words "the Legislature of a State shall, by law" shall be substituted;

(b) in clause (a) ,

(i) for the words "subject to such conditions as may be specified therein, with respect to", the words "including but not limited to" shall be substituted;

30 (ii) after para (ii), the following proviso shall be inserted, namely:—

"Provided that the Legislature of a State shall, within two years from the commencement of this Act, devolve all powers and responsibilities in relation to the matters listed in the Twelfth Schedule;

(c) after clause (b), the following proviso and new clause shall be added, namely:—

35 "Provided that the Chairpersons of the Committees shall communicate all decisions, information and reports in relation to the matters listed in the Twelfth Schedule to the Mayor of the Municipality concerned and act in consultation with the Mayor;

40 (c) individuals or body corporates or associations or bodies of individuals, with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them in relation to the matters listed in the Twelfth Schedule:

45 Provided that such individual or body corporate or association or body of individuals shall communicate and report all decisions, information and reports in relation to the matters listed in the Twelfth Schedule to the Mayor of the Municipality concerned and act in consultation with the Mayor."

Insertion of
new article
243WA.

Mayor of
Municipality.

8. After article 243W of the Constitution, the following article shall be inserted, namely:—

"243WA. (1) The Mayor of a Municipality shall —

(a) be the executive head of the Municipality and the municipal administration shall be under his control;

(b) convene and preside over any meeting of the members of a Municipality; 5

(c) exercise such powers and discharge such duties of the Municipality as the Legislature of a State may, by law, confer upon him;

(d) exercise overall supervision over the working of the Municipality; and

(e) co-ordinate the functions of the Municipality and the Committees thereof. 10

(2) The Mayor shall have the following powers, namely:—

(a) the Mayor shall give such directions and orders as may be necessary for the efficient management and development of his Municipality, including directions or orders to implement any resolution of the Municipality or Committees: 15

Provided that the Mayor of a Metropolitan Authority shall also give such directions and orders as may be necessary for inter-agency co-ordination, management of Metropolitan services and pan Metropolitan governance;

(b) the Mayor shall exercise administrative powers to implement the provisions of any law made by the Legislature of a State relating to the Municipality; 20

(c) the Mayor shall supervise the acts done by the officers and employees of the Municipality;

(d) the Mayor shall authorise the payment and repayment of money relating to the Municipality; 25

(e) the Mayor shall appoint employees to execute the functions of the Municipality and may suspend from service any such employee in such manner as the Legislature of a State may, by law, provide;

(f) the Mayor may call for from Chairpersons of Committees constituted under article 243S, article 243ZD and article 243ZE or any other officer under the Municipality, any file and record in writing relating to the administration of the affairs of the Municipality concerned and issue appropriate directions and orders; 30

(g) the Mayor may, if he is of the opinion that immediate execution of any work is necessary, direct the execution of such work without the approval of the Members of a Municipality in such manner as the Legislature of a State may, by law, provide; 35

(h) the Mayor may veto any resolution passed by a Municipality, if in his opinion such resolution is in excess of the powers conferred on the Municipality under this Part or by any law made by the Legislature of a State or is likely to endanger public health or safety; and 40

(i) the Mayor shall exercise such other powers and perform such other related functions as may be conferred upon or entrusted to him by law made by the Legislature of a State;

9. For article 243X of the constitution, the following article shall be substituted, namely:—

Substitution of new article for article 243X.

"243X. The Legislature of a State shall, on the recommendations of the State Finance Commission, by law,—

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

5 (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees to enable it to discharge its responsibilities as specified in article 243W in accordance with such procedure and subject to such reasonable limits;

10 (b) **assign to a Municipality such percentage of the net proceeds of taxes, duties, tolls and fees levied and collected by the State Government and such other sums from the Consolidated Fund of the State, as may be necessary to enable it to discharge its responsibilities as specified in article 243W subject to such reasonable conditions and limits;**

15 (c) **provide to such Municipalities as the Legislature of the State may determine to be in need of assistance such annual grants-in-aid from the Consolidated Fund of the State;**

(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;

20 (e) authorise a Municipality to borrow from within the territory of India such reasonable sums,

as may be specified in the law."

10. In article 243Y of the Constitution,—

Amendment of article 243Y.

(a) in clause (1),—

25 (i) for sub-clause (a), the following sub-clause shall be substituted, namely:—

30 "(a) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State and such other sums from the Consolidated Fund of 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) after clause (c), the following clauses shall be inserted, namely:—

35 "(d) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;

(e) the principles which should govern the grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(f) the determination of the limits of borrowings of the Municipalities."

(b) in clause (2), the following proviso shall be added at the end, namely:—

40 "Provided that the explanatory memorandum shall be laid before the legislature of the State within six months from the date of submission of the recommendations by Commission to the Governor."

11. In article 243ZD of the Constitution,—

Amendment of article 243ZD.

(a) for clause (1), the following clause shall be substituted, namely:—

45 "(1) Except for Metropolitan areas under article 243ZE, there shall be constituted, within two years from the commencement of this Act, in every district in every State a District Planning Committee to consolidate any plans

prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(b) in clause (2), for sub-clause (d), the following sub-clause shall be substituted, namely:—

"(d) the manner in which the Chairpersons of such Committees, who shall be Chairpersons of Panchayats or Mayor, shall be chosen.";

(c) after clause (4), the following clause shall be inserted, namely:—

"(5) The State Government shall cause the development plan, as recommended by District Planning Committee, together with an explanatory memorandum as to the action taken thereon, to be laid before the Legislature of the State within six months from the date of submission of such plan to the State Government.".

Amendment of article 243E.

12. After article 243ZE of the Constitution,—

(a) for clause (1), the following clauses shall be substituted, namely:—

"(1) There shall be constituted, within two years of the coming into force of this Act, in every Metropolitan Area under a Metropolitan Authority, a Metropolitan Planning Committee to prepare a draft development plan for the metropolitan area as a whole.

(1A) The Major of the Metropolitan authority shall be the Chairperson of the Metropolitan Planning Committee.";

(b) in clause (2),—

(i) sub-clause (b), the following sub-clause shall be substituted, namely:—

"(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 Metropolitan Authority.

(ii) sub-clause (e) shall be omitted; and

(c) in clause (3), for the words "(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area", the words "any plan prepared by the Zonal Committees in the Metropolitan Areas" shall be substituted; and

(d) after clause (4), the following clause shall be inserted, namely:—

"(5) The State Government shall cause the development plan, as recommended by such Committee, together with an explanatory memorandum as to the action taken thereon, to be laid before the Legislature of the State within six months from the date of submission of such plan to the State Government.".

Insertion of new article 243ZH.

13. After article 243ZG of the Constitution, the following article shall be added at the end, namely:—

Continuance of existing laws.

"243ZH. Notwithstanding anything in this Part, any provision of any law relating to Municipalities or Municipal governance in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution, as amended by this Act, shall continue to be in force until amended or repealed by a competent Legislature of other competent authority or until the expiration of one year from such commencement, whichever is earlier.".

14. In the Twelfth Schedule to the Constitution, after entry 18, the following entries shall be inserted, namely:—

Amendment of
the Twelfth
Schedule.

"19. Public transportation including roads, links, tolls and traffic management.

5 20. Promotion of information technology, internet connectivity and broadband links."

STATEMENT OF OBJECTS AND REASONS

Almost twenty five years after the passage of the Seventy Fourth Amendment to the Constitution, our Municipal Bodies are yet to be fully empowered, both politically as well as functionally.

Fragmented leadership across State Governments, MLAs, Mayors and the City Councils with the resultant fragmentation of service delivery across civic agencies is hurting our cities and citizens. Decentralisation of governance is a national priority so as to enable our cities to achieve their fullest social and economic potential and provide the highest quality of life our citizens deserve. A directly elected Mayor, at the head of the Municipal Body, will be fully empowered with political, functional, and budgetary autonomy and would serve to fix both ownership and accountability for running the town or city. This is the need of the hour.

Moreover, the functions to be devolved to Municipal Bodies with regard to subjects contained in the Twelfth Schedule, have not yet been devolved to elected Local Governments and are currently being undertaken by the departments of State Governments. This directly undermines responsible local self-government.

A constitutional provision to mandatorily devolve such functions in a time bound manner is essential to make effective the institutions of Local Government. It is in this context that the relevant articles of the Constitution are proposed to be amended so as to make it mandatory for State Legislatures to enact laws aimed at conferring Municipal Bodies with such powers and authority as may be necessary to enable them to function as Institutions of Local Government. It is also proposed to strengthen provisions relating to metropolitan governance and constitution of Ward Committees.

Therefore, this Bill.

New Delhi;
July 5, 2016

SHASHI THAROOR

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for election of the Mayor, constitution of Mayor-in-Council for Municipal Corporation or Metropolitan Authority. Clause 4 provides for constitution of the Ward Committees for every ward within territorial area of a Municipality having population of one lakh or more. Clause 5 provides for constitution of Areas Sabhas consisting of one or more polling booths and the Zonal Committees for Metropolitan Authority. The expenditure relating to States shall be borne out of the Consolidated Funds of the States concerned. However, the expenditure in relation to Union territories shall be incurred from the Consolidated Fund of India. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. The Bill, therefore, if enacted, would involve a recurring expenditure of about rupees six hundred and twenty crore per annum.

A non-recurring expenditure of about rupees one hundred and twenty five crore is also likely to be involved.

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

Constitution of Municipalities.

243Q. (1) There shall be constituted in every State,—

(a) * * * * *

(b) * * * * *

(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.

Composition of Municipalities.

243R. (1) * * * * *

(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 Committee 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.

Constitution and composition of Wards Committee.

243S. (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) * * * * *

(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;

(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.

* * * * *

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

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

(a) the Municipalities with such powers and authority as may be necessary to enable them to functions 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 power 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. The Legislature of a State may, by law,— Power to impose taxes by, and Funds of, the Municipalities.

(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.

Finance Commission.

243Y. (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, tools 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) * * * * *

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

* * * * *

Committee for district planning.

243ZD. (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) * * * * *

(b) * * * * *

(c) * * * * *

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) * * * * *

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

Committee for Metropolitan planning.

243ZE. (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) * * * * *

(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;

(3) * * * * *

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

* * * * *

LOK SABHA

A

BILL

further to amend the Constitution of India.

(Dr. Shashi Tharoor, M.P.)