

FIFTIETH REPORT
STANDING COMMITTEE ON URBAN
AND RURAL DEVELOPMENT
(2003)

(THIRTEENTH LOK SABHA)

THE PROVISIONS OF THE MUNICIPALITIES
(EXTENSION TO THE SCHEDULED AREAS)
BILL, 2001

MINISTRY OF URBAN DEVELOPMENT
AND POVERTY ALLEVIATION
(DEPARTMENT OF URBAN DEVELOPMENT)

Presented to Lok Sabha on

Laid in Rajya Sabha on



LOK SABHA SECRETARIAT
NEW DELHI

November, 2003/Kartika, 1925 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON
URBAN AND RURAL DEVELOPMENT (2003)

Shri Chandrakant Khaire — *Chairman*

MEMBERS

Lok Sabha

- *2. Shri Yogi Aditya Nath
3. Shri Mani Shankar Aiyar
4. Shri S. Ajaya Kumar
5. Shri Ranen Barman
6. Shri Padmanava Behera
7. Shri Jaswant Singh Bishnoi
8. Shri Haribhai Chaudhary
9. Shri Shriram Chauhan
10. Shri Shamsheer Singh Dullo
11. Shrimati Hema Gamang
12. Shri G. Putta Swamy Gowda
13. Shri Jaiprakash
14. Shri Hassan Khan
15. Shri Basavanagoud Kolar
16. Shri Shrichand Kriplani
17. Shri Savshibhai Makwana
18. Prof. Vijay Kumar Malhotra
19. Shri Sadashivrao Dadoba Mandlik
20. Shri Mahendra Singh Pal
21. Shri Chandresh Patel
22. Prof. (Shrimati) A.K. Premajam
23. Shri Nawal Kishore Rai
24. Shri Gutha Sukender Reddy
25. Shri Pyare Lal Sankhwar
26. Shri Maheshwar Singh
27. Shri D.C. Srikantappa
28. Shri V.M. Sudheeran
29. Shri Ravi Prakash Verma
- **30. Shri Pradeep Yadav

* Nominated w.e.f. 4.05.2003 *vice* Shri A. Vijaya Raghavan ceased to be a member w.e.f. 04.05.2003.

** Nominated w.e.f. 01.01.2003.

(iv)

Rajya Sabha

31. Shri S. Agniraj
- ***32. Vacant
33. Shrimati Prema Cariappa
- ****34. Shri Prasanta Chatterjee
35. Shri N.R. Dasari
36. Shri Ramadhar Kashyap
37. Shrimati Gurcharan Kaur
38. Shri Faqir Chand Mullana
39. Shri Rumandla Ramachandraiah
40. Shri Harish Rawat
41. Shri Man Mohan Samal
42. Shri G.K. Vasani
- *****43. Vacant
44. Vacant
45. Vacant

SECRETARIAT

1. Shri N.K. Sapra — *Joint Secretary*
2. Shri K. Chakraborty — *Director*
3. Shrimati Sudesh Luthra — *Under Secretary*

*** Vacancy caused consequent upon retirement of Shrimati Shabana Azmi M.P. (R.S.) from the membership of Rajya Sabha w.e.f. 26.08.2003.

**** Nominated w.e.f. 17.07.2003.

***** Vacancy caused consequent upon appointment of Shri Rajnath Singh M.P. (R.S.) as Minister w.e.f. 24 May 2003.

COMPOSITION OF THE STANDING COMMITTEE ON URBAN
AND RURAL DEVELOPMENT (2002)

Shri Anant G. Geete — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mani Shankar Aiyar
3. Shri Ranen Barman
4. Shri Padmanava Behera
5. Shri Jaswant Singh Bishnoi
6. Shri Haribhai Chaudhary
7. Shri Shriram Chauhan
8. Shri Shamsheer Singh Dullo
9. Shrimati Hema Gamang
10. Shri G. Putta Swamy Gowda
11. Shri Basavanagoud Kolar
12. Shri Shrichand Kriplani
13. Shri Bir Singh Mahato
14. Shri Savshibhai Makwana
15. Dr. Laxminarayan Pandey
16. Shri Sukdeo Paswan
17. Shri Chandresh Patel
18. Shri Laxmanrao Patil
19. Prof. (Shrimati) A.K. Premajam
20. Shri Rajesh Ranjan
21. Shri Gutha Sukender Reddy
22. Shri Pyare Lal Sankhwar
23. Shri Nikhilananda Sar
24. Shri Maheshwar Singh
25. Shri D.C Srikantappa
26. Shri V.M. Sudheeran
27. Shri Chinmayanand Swami
28. Shri Ravi Prakash Verma
29. Shri D. Venugopal
30. Shri Dinesh Chandra Yadav

(vi)

Rajya Sabha

31. Shri S. Agniraj
32. Shrimati Shabana Azmi
33. Shri N.R. Dasari
34. Ven'ble Dhammaviriyo
35. Shri H.K. Javare Gowda
36. Shri Maurice Kujur
37. Shri Faqir Chand Mullana
38. Shri Onward L. Nongtdu
39. Shri A. Vijaya Raghavan
40. Shri Nabam Rebia
41. Shri Solipeta Ramachandra Reddy
42. Shri Man Mohan Samal
43. Shri Devi Prasad Singh
44. Shri Prakanta Warisa

SECRETARIAT

1. Shri P.D.T. Achary — *Additional Secretary*
2. Shri K.V. Rao — *Joint Secretary*
3. Shri K. Chakraborty — *Deputy Secretary*
4. Shrimati Sudesh Luthra — *Under Secretary*

COMPOSITION OF THE STANDING COMMITTEE ON
URBAN AND RURAL DEVELOPMENT (2001)

Shri Anant Gangaram Geete — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mani Shankar Aiyar
3. Shri Padmanava Behera
4. Shri Jaswant Singh Bishnoi
5. Shri Ambati Brahmaniah
6. Shri Swadesh Chakraborty
7. Shri Haribhai Chaudhary
8. Shri Bal Krishna Chauhan
9. Prof. Kailasho Devi
10. Shrimati Hema Gamang
11. Shri Holkhomang Haokip
12. Shri R.L. Jalappa
13. Shri Babubhai K. Katara
14. Shri Madan Lal Khurana
15. Shri Shrichand Kriplani
16. Shri Bir Singh Mahato
17. Shri Punnulal Mohale
18. Dr. Ranjit Kumar Panja
19. Shri Ramchandra Paswan
20. Shri Chandresh Patel
21. Shri Dharam Raj Singh Patel
22. Prof. (Shrimati) A.K. Premajam
23. Shri Rajesh Ranjan
24. Shri Nikhilananda Sar
25. Shri Maheshwar Singh
26. Shri Chinmayanand Swami
27. Shri Sunder Lal Tiwari
28. Shri D. Venugopal
29. Shri Chintaman Wanaga

Rajya Sabha

30. Shri S. Agniraj
31. Shrimati Shabana Azmi
32. Shri Karnendu Bhattacharjee
33. Shri N.R. Dasari
34. Shri R.S. Gavai
35. Shri C. Apok Jamir
36. Prof. A. Lakshmisagar
37. Shri Kalraj Mishra
38. Shri Faqir Chand Mullana
39. Shri Onward L. Nongtdu
40. Shri A. Vijaya Raghavan
41. Shri Solipeta Ramachandra Reddy
42. Shri Man Mohan Samal
43. Shri Suryabhan Patil Vahadane

SECRETARIAT

1. Shri S.C. Rastogi — *Joint Secretary*
2. Shri K. Chakraborty — *Deputy Secretary*
3. Shrimati Sudesh Luthra — *Under Secretary*

INTRODUCTION

I, the Chairman of the Standing Committee on Urban and Rural Development (2003) having been authorised by the Committee to submit the Report on their behalf, present the Fiftieth Report on 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001'.

2. 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001' was introduced in Rajya Sabha on 30 July 2001 and was referred to the Committee (2001) by the Hon'ble Speaker, Lok Sabha, under Rule 331 E (1) (b) of the 'Rules of Procedure and Conduct of Business in Lok Sabha' on 6 August 2001 for examination and report.

3. The Committee obtained written information on the various issues related to the Bill from the nodal Ministry, *i.e.* the Ministry of Urban Development and Poverty Alleviation (Department of Urban Development). They were also briefed on various provisions of the Bill by the representatives of nodal Ministry at their sitting held on 18 October 2001. Before the Committee could proceed further with the examination of the Bill, their term expired. The Committee (2002) resumed examination of the Bill and invited views/opinions on various provisions of the Bill from experts/organisations/individuals. Four such memoranda were received, a copy each of which is given in *Appendix-III*. However, the term of the Committee (2002) expired before the examination of the Bill could be completed.

4. The Committee (2003) decided to take up the subject from the stage where the earlier Committee had left. They heard the views of two experts at their sitting held on 12 March 2003 and had further briefings in respect of the aforesaid Bill by the nodal Ministry as well as the other concerned Ministries, *viz.* the Ministries of (i) Law and Justice, (ii) Tribal Affairs, (iii) Rural Development, (iv) Environment and Forests, and (v) Home Affairs. The Committee took oral evidence of the representatives of the Department of Urban Development (Ministry of Urban Development and Poverty Alleviation) on 5 September 2003. The representatives of other concerned Ministries as mentioned above, except for the Ministry of Home Affairs, were also present at the said sitting to assist the Committee.

(x)

5. The Committee, thereafter, undertook clause-by-clause consideration of the aforesaid Bill at their sittings held on 24 and 25 September 2003. The representatives of the Ministries of (i) Urban Development and Poverty Alleviation, and (ii) Law and Justice assisted the Committee at the said sittings.

6. The draft Report was then considered and adopted by the Committee at their sitting held on 8 October 2003.

7. The Committee would like to place on record their deep sense of appreciation of the work done by the earlier Committees (2001) and (2002) respectively. They wish to express their thanks to the officers of the Department of Urban Development (Ministry of Urban Development and Poverty Alleviation), who appeared before the Committee and placed their considered views. They further wish to thank the officers of the other concerned Ministries as mentioned above, who assisted the Committee and gave their valuable suggestions. The Committee would also like to thank them for furnishing the requisite material on the points raised by the Committee in connection with the examination of the Bill.

8. The Committee were also benefited from the views/suggestions of experts/organisations on the various issues related to the Bill. They express their thanks to all of them who furnished memoranda and/or tendered evidence before the Committee as referred to in para 3 above.

9. The Committee would also like to place on record their deep sense of appreciation for the invaluable assistance rendered to them by the officials of Lok Sabha Secretariat attached to the Committee.

NEW DELHI;
19 November, 2003

28 Kartika, 1925 (Saka)

CHANDRAKANT KHAIRE,
Chairman,
Standing Committee on
Urban and Rural Development.

REPORT

PART I

BACKGROUND OF THE BILL

'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001' (*Appendix-I*) was introduced in Rajya Sabha on 30 July 2001 and was referred to the Committee on Urban and Rural Development on 6 August 2001 for examination and report.

1.2 The Statement of Objects and Reasons appended to the Bill, *inter alia* states the following:

".....the provisions of the Bill seek to achieve the objective of setting up of Urban Local Bodies in the Scheduled Areas as per the provisions of Part IXA of the Constitution, subject to various exceptions and modifications..... All provisions of Part IXA of the Constitution are proposed to be extended to the Scheduled Areas with certain modifications. The main modifications are as under:

- (i) Urban Local Bodies under Scheduled Areas may be designated as Nagar Panchayats, Municipal Councils, Municipal Corporations and Industrial or Mining Townships;
- (ii) seats may be reserved for Scheduled Tribes in proportion to their population or one-third whichever is higher;
- (iii) in all programmes of developments like housing colonies, trading centres, etc., and also in educational institutions, industrial training institutions, reservations shall be made for the tribal people in proportion to their population;
- (iv) there shall be constituted a Standing Committee for Tribal Affairs and a Standing Committee for Rural Development in each Municipality;
- (v) municipality in a Scheduled Area shall be endowed with powers and responsibilities of preparing five year development plan and annual plan for development of human resources and socio-economic advancement of the community;

- (vi) no land may be acquired except for specific purpose. Where land is acquired, reasonable and adequate compensation shall be paid and alternative means of livelihood to an affected person shall be made available, so, however, that no Scheduled Tribe is rendered landless on such acquisition;
- (vii) no urban tax shall be leviable on a tribal who continues to live in his traditional style as per the norms as prescribed in the Bill; and
- (viii) functional power as mentioned in clause 4 of the above Bill would also be devolved on Urban Local Bodies in the Scheduled Areas.”

1.3 The Constitution (Seventy-fourth Amendment) Act (*Appendix-II*), which was enacted in 1992, inserted ‘Part IXA’ in the Constitution relating to the Municipalities. This Part contains 18 articles (243P to 243ZG) dealing with constitution, composition, election, and duration of Municipalities and their powers and functions. Clause 1 of article 243 ZC provides that nothing in Part IXA shall apply to the Scheduled Areas referred to in clause 1, and the tribal areas referred to in clause 2, of article 244 of the Constitution. In terms of article 243ZC(3), the Parliament may, by law, extend the provisions of Part IXA to these areas with such exceptions and modifications as may be specified in such law.

1.4 It has been mentioned in the Statement of Objects and Reasons of the Bill and in the material furnished by the Ministry that it was considered necessary to make use of the above provisions for the benefit of the Scheduled Areas referred to in clause 1 of article 244. A Committee of select Members of Parliament and experts was constituted under the Chairmanship of Shri Dilip Singh Bhuria to examine the issue relating to extension of the provisions of Part IXA of the Constitution to the Scheduled Areas and to make its recommendations. The Committee presented its Report in 1995 making a number of recommendations and observations. The Bill is based on the recommendations of the Bhuria Committee as well as comments of the concerned Central Ministries, viz. (i) Law and Justice, (ii) Home Affairs, (iii) Rural Development, and (iv) Tribal Affairs, and the concerned State Governments having Scheduled Areas.

1.5 In view of the aforesaid position, the Government introduced ‘The Provisions of the Municipalities (Extension to the Scheduled Areas)

Bill, 2001' in Rajya Sabha on 30 July 2001. The Bill was referred to this Committee on 6 August 2001. The Committee (2001) accordingly obtained written information on various issues which might have a direct bearing on the Bill from the nodal Ministry, *i.e.* the Ministry of Urban Development and Poverty Alleviation (Department of Urban Development). The Committee were also briefed by the representatives of the nodal Ministries on the various provisions of the Bill at their sitting held on 18 October 2001. The Committee (2002) invited the views/opinions of the experts in the form of written memoranda. Memoranda only from four experts were received, a copy each of which is given in *Appendix-III*. The Committee (2003) then heard the views of two experts at their sitting held on 12 March 2003. While deliberating on the various issues, the Committee realized that there were certain contradictions on various issues related to the aforesaid Bill, *viz.* (i) criteria for declaring an area as 'Scheduled Area'; (ii) definition of 'encroachment' in view of the conflicting situation arising out of the Supreme Court Order, 2001 dealing with the eviction of encroachers on forest land and the proposed Bill which seeks to protect tribals; and (iii) conflicting and overlapping jurisdiction of 'The Forest Conservation Act, 1980' and the proposed Bill. The Committee, therefore, decided to have further briefings by the nodal Ministry as well as Ministries of (i) Law and Justice, (ii) Home Affairs, (iii) Rural Development, (iv) Tribal Affairs and (v) Environment and Forests on 6 May 2003 and 25 July 2003. The Committee took oral evidence of the representatives of the Ministry of Urban Development and Poverty Alleviation (Department of Urban Development) on 5 September 2003. The representatives of the Ministries of (i) Law and justice, (ii) Tribal Affairs, (iii) Rural Development, and (iv) Environment and Forests were also present during the evidence to assist the Committee. Subsequently, the Committee undertook clause-by-clause consideration of the Bill at their sittings held on 24 and 25 September 2003, in which they were also assisted by the representatives of the Ministries of (i) Urban Development and Poverty Alleviation and (ii) Law and Justice.

1.6 The statement indicating the clause-by-clause suggestions made by the Bhuria Committee, experts and other concerned Ministries, State Governments and the comments of the nodal Ministry is given at *Appendix-IV*.

PART II

ANALYSIS OF 'THE PROVISIONS OF THE MUNICIPALITIES (EXTENSION TO THE SCHEDULED AREAS) BILL, 2001'

2.1 After a thorough examination of the various clauses of the Bill, and taking into consideration the views expressed by the Bhuria Committee, experts, comments of the concerned Ministries and the nodal Ministry of Urban Development and Poverty Alleviation, the Committee propose certain modifications/suggestions in the Bill as enumerated in the succeeding paragraphs:

Clauses 2 and 3 pertaining to applicability of the Bill

2.2 As per clause 3 of the Bill, the provisions of Part IXA of the Constitution related to the Municipalities are extended to the Scheduled Areas, subject to exceptions and modifications as proposed in the subsequent clauses. As per clause 2 of the Bill "Scheduled Areas" mean the Scheduled Areas as referred to in clause 1 of article 244 of the Constitution. As per article 244 of the Constitution, the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. In Part C of the Fifth Schedule to the Constitution, it has further been clarified that the expression, "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas. Part 'D' of the said Schedule, clarifies that Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of the Schedule. As per the information provided by the Ministry of Urban Development and Poverty Alleviation, there are eight States in the country, which have Scheduled Areas namely, Andhra Pradesh, Chhattisgarh (including Madhya Pradesh the then State, which included Chhattisgarh), Gujarat, Himachal Pradesh, Jharkhand (including Bihar, the then State which included Jharkhand), Maharashtra, Orissa and Rajasthan.

2.3 Bhuria Committee in its Report observed that bulk of the tribal areas are covered under the Fifth Schedule, but in spite of that a sizeable tribal majority area has remained outside its purview. It has also been indicated that the process of bringing all tribal areas under the Fifth Schedule was taken up in 1976 as a part of the programme

for preparation of tribal sub-plans. However, the process of scheduling came to a halt in 1978 and has remained unattended thereafter. Bhuria Committee in its Report recommended that all the remaining tribal areas should be brought under the Fifth Schedule within one year. It has also been suggested in the Report that this process of bringing all the remaining tribal areas under the Fifth Schedule should be completed before taking up the administrative organization suggested by the Committee in keeping with the physical, social and economic situation in each case.

Criteria for declaring an area as Scheduled Area

2.4 While clarifying the criteria to declare an area as 'Scheduled Area', the Ministry of Tribal Affairs has stated that the President, on the recommendation of the concerned State Governments, notifies the area under the Fifth and Sixth Schedules of the Constitution. It was stated that the first Scheduled Areas and Scheduled Tribes Commission or the Dhebar Commission (1960-61) had laid down the following criteria for declaring an area as Scheduled Area:—

- (i) preponderance of tribal population, which should not be less than 50 per cent;
- (ii) compactness and reasonable size of the area;
- (iii) underdeveloped nature of the area; and
- (iv) marked disparity in the economic standard of the people.

However, it is appalling to note that in the list of the Municipal area in the Fifth Scheduled Areas, as furnished by the nodal Ministry (*Appendix-V*), the ratio of 'Scheduled Tribes' population as against the total urban population shown in various areas of the concerned States, is nowhere near 50 per cent. Even the combined SC/ST population fail to reach the 50 per cent margin in majority of the areas with the exception of Himachal Pradesh. While analysing the data of Scheduled Tribes population as given in the Appendix, it is striking to observe that in some of the areas Scheduled Tribes population consists of only 9 to 10 per cent of the total urban population.

2.5 When asked to clarify the above position, the Ministry of Tribal Affairs was emphatic that at no point of time, areas having 10 per cent Scheduled Tribe population, were notified as Scheduled Areas. At

the time of notification of Scheduled Areas, it is ensured that only those areas having more than 50 per cent of ST population are considered to be Scheduled Areas. However, according to them due to industrialization of migrant population, the percentage of ST population might have reduced subsequently.

2.6 Further, when asked whether there is any periodic review of the Scheduled Areas, the Ministry has informed that the Scheduled Areas and the Scheduled Tribes Commission constituted under article 339 reviews the Fifth Scheduled Areas. First such Commission (Dhebar Commission) was constituted in 1960-61. The Second Scheduled Areas and the Scheduled Tribes Commission, which was set up on 18 July 2002, would examine the issue of extension of Fifth Scheduled Areas and other related issues. The tenure of the Commission has been extended upto 31 March 2004 to enable it to finalise its report. When pointed out that there is a time lag of about four decades between the constitution of two Commissions, during which period the demographic composition of these areas might have undergone a vast change, the Ministry of Tribal Affairs is not categorical in its views. It has, however, admitted that frequent and periodic surveys or reviews of Scheduled Areas are required so that the benefits/special provisions intended for the marginalised groups reach the target.

2.7 When asked whether this Bill would be applicable after its enactment to areas which may be freshly notified as Scheduled Area or denotified as a result of the Report of the Second Scheduled Areas and Scheduled Tribes Commission, the Secretary (Department of Urban Development) stated as below:

“The question of whether new Scheduled Areas get added or deleted or get identified by one Commission or another is an ongoing activity. If a new area gets identified and notified as a Scheduled Area, this Constitution Amendment would apply to that area.”

2.8 The Committee find that the Scheduled Areas were initially notified in 1950. They also find that as per article 339 of the Constitution, the Scheduled Areas and Scheduled Tribes Commission review the Fifth Scheduled Areas. First such Commission, i.e. the Dhebar Commission was constituted in 1960. Thereafter, the second Commission has been constituted in July 2002, i.e. nearly after a gap of four decades. The Committee are concerned to note such a huge

gap and the way the Government have been addressing such an important issue. Such a cavalier treatment of the tribals and their peculiar problems cannot be condoned. As is given to understand, the Committee feel that during the intervening period of the constitution of the two Commissions, the demographic composition as well as socio-economic character of the Scheduled Areas might have undergone a vast change. Due to lack of periodic reviews, there might be tribal dominant areas in the country, which are economically backward and isolated, but have not been notified as the Fifth Scheduled Area. Consequently, these areas are not getting any benefits meant for the marginalised tribals. On the other hand, there are Scheduled Areas with even 10 per cent tribal population enjoying all the benefits meant for the Scheduled Areas.

The Committee, therefore, recommend that:

- (i) No extension of time limit should be given to the Second Scheduled Areas and Scheduled Tribes Commission and the Report of the said Commission should be presented within the stipulated period *i.e.* March 2004. Further, it should be ensured that the various recommendations made by the said Commission in their Report and various issues dealt by them should be addressed expeditiously; and
- (ii) Some sort of mechanism should be evolved to conduct frequent and periodic surveys of the Scheduled Areas, so that the benefits/special privileges intended for the marginalised groups reach them. The process of reviewing the Scheduled Areas may be undertaken to notify fresh areas as Scheduled Area and also to denotify the areas after applying the relevant criteria judiciously after a specified period of time. Without proper categorization of tribal dominant areas in the list of Scheduled Areas and their administrative reorganization, benefits of any number of progressive or benevolent legislation will not reach the majority, giving rise to discontent and unrest among the excluded category of tribal population.

2.9 The Committee are not satisfied with the reply of the Ministry about the applicability of the Bill to the freshly notified Scheduled Areas, after its enactment and therefore, desire that no ambiguity is left in law in this regard. Specific provisions in this regard should be made in the Bill before the same becomes an Act.

Clause 3 (2) pertaining to exceptions/modifications in article 243S relating to “Constitution and composition of Wards Committees, etc.”

2.10 Clause 3(2)(1) provides for the constitution of a Standing Committee for tribal affairs in each Municipality in the Scheduled Area, comprising tribal members of the Municipality with the Chairman or the Vice-Chairman of the Municipality, as its Chairman. Recommendations of this Committee shall ordinarily be binding on the Municipality. Further, clause 3(2)(2) provides for the constitution of a Standing Committee for rural development. Nothing has been stated about the nature of its recommendation.

2.11 When clarification was sought regarding the use of the term ‘ordinarily’, the nodal Ministry has informed that the recommendations of the Standing Committee for Tribal Affairs shall not be binding on the Municipality. Rather they will ‘ordinarily’ be binding. The word ‘ordinarily’ has been added to maintain the supremacy of the Municipality. Since the Standing Committee will be subordinate to the Municipal body, its recommendations shall ordinarily be binding on the Municipalities. When asked as to whether the use of the word ‘ordinarily’ would create confusion and result in differences between the authority of the Municipality and the Standing Committee for tribal affairs, the nodal Ministry has clarified that it does not foresee any confusion in implementation of the above provisions.

2.12 Some experts were of the view that by making the decision of any of these Committees binding on the Municipalities, the supremacy of the Municipal Council will get eroded. These Committees, more or less, operate as parallel functional bodies to the Municipality. There should be some mechanism to check decisions of these Standing Committees. A wider discussion on the issues of tribal affairs and rural development in the Municipal Council in an overall perspective should be provided. The Standing Committees will have the task of examining the issues deeply and at length.

2.13 However, the Ministry has stated that these issues are part of the State list and hence can be dealt with in the concerned State Municipal Law. These special purpose Committees must be an integral part of the Municipality and their recommendations will be subject to approval by the Municipality. Further clarifying the issue, the Secretary, during the oral evidence, stated as below:

“This is a specific recommendation that was made by the Bhuria Committee. When you use the word ‘ordinarily’ binding, the

normal sense of it would be that in most cases, ordinarily, it will be binding, but it is not mandatorily binding. We do not want to have a situation where whatever the Standing Committee says has the absolute force of law and the Municipal Committee or the local government body need not apply its mind further.”

2.14 The Committee after considering the concerns expressed by various experts and the views of the Union Ministry, would like to make the following observations/recommendations:

- (i) The Committee are apprehensive regarding the use of the term ‘ordinarily’ in the clause under consideration. They feel that the interpretation of this particular term can be varied and ambiguous and may lead to differences and conflict between the Standing Committee for tribal affairs and the concerned Municipality. The Committee are of the view that in a legislation of this nature, which is more like a guideline to the concerned State Governments, nothing should be left undefined, particularly for subjects pertaining to the State List; otherwise situation may arise where the conformity legislation enacted by the State Governments may not be in line with the spirit of the Central Act.**
- (ii) While appreciating that the decisions of the Standing Committees to be constituted as per clauses 3(2)(1) and 3(2)(2) should be given due consideration by the Municipalities, the Committee are of the view that a mechanism to review the decisions made by the aforesaid Standing Committees should also be evolved. The various issues related to tribal affairs and rural development should be examined deeply and at length by the said Standing Committees and thereafter the observations/recommendations made by these Standing Committees should be discussed in a wider forum in the Municipal body before decisions are taken on the various issues. The Committee would further like to recommend that in cases where the Municipality does not agree with any of the recommendations of the Standing Committees, this should be recorded in writing along with the reasons for its disapproval.**

The Committee would therefore, like that in view of the observations/recommendations made by them in the aforesaid paras, clauses 3(2)(1) and 3(2)(2) should be reviewed.

Clause 3(3) pertaining to exceptions/modifications in article 243T relating to “Reservation of Seats”.

2.15 Clause 3(3) provides for an elaborate scheme of reservation of seats for Scheduled Tribes in every Municipality in the Scheduled Area, in conformity with the recommendations of the Bhuria Committee. The said clause provides that seats shall be reserved in every Municipality in the Scheduled Areas in proportion to the population of the Scheduled Tribes in the Municipal area or one-third of the total number of seats, whichever is higher. Further, 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. Not less than one-half of the members of Nagar Panchayat shall be from Scheduled Tribes. The seat of Chairman or Vice-Chairman shall be reserved. Along with these, in all programmes of development, like housing colonies, educational institutions, etc., reservation shall be made in favour of tribal people in proportion to their population in the concerned district and there shall be no de-reservation.

2.16 When asked to justify the varying scheme of reservation at various levels of Municipalities, the Ministry has stated that it has been provided keeping in view the size of the Municipality, *i.e.*, smaller the unit, higher the representation. Gram Sabha and Tribal Mohallas/Ward Sabhas, being the smallest unit of local governments, the tribals have been provided with bigger representation. The higher level of Municipalities in Scheduled Areas, *i.e.*, Nagar Panchayat or Municipal Council will have lower level of reservation in comparison to the Gram Sabhas and Tribal Mohallas/Ward Sabhas so as to provide opportunities to other communities (non-tribals) living in the municipal limit to have their representation in such bodies. The Ministry has further informed that reservation in all programmes of development in Scheduled Areas has been provided in favour of Scheduled Tribes with a view to ensure that they get due representation in such schemes. The concept of ‘no de-reservation’ has been incorporated in the Bill to ensure that no attempt is made in any way to de-reserve such seats on any premise. It will be the responsibility of the implementing agency of the State Government to get such reserved seats filled by the Scheduled Tribe candidates.

2.17 However, one of the experts has opined that a heavy dose of reservation has been contemplated for the Scheduled Tribes. Some of the experts have stated that the provision regarding the reservation of seats for Chairman and Vice Chairman is highly desirable as the Bill is meant for the empowerment and development of Scheduled Areas. The Chairman would need to be devolved with executive powers so that he/she is not reduced to the status of a nominal head.

2.18 While endorsing the extensive scheme of reservation for the marginalised Scheduled Tribes in every Municipality in the Scheduled Areas as provided in clause 3(3) of the Bill, the Committee express their reservations as indicated below:

- (i) **The Committee find that at present there is no mechanism for periodical review of the population of the Scheduled Tribes in the Fifth Scheduled Areas. This has resulted in the decrease of Scheduled Tribes population due to migration and industrialisation as has been admitted by the Ministry as well as observed by the Bhuria Committee in its Report. They further find, from the data made available to the Committee that in certain areas, Scheduled Tribes population has decreased to a level of even 10 per cent, although the set criteria for declaring an area as Scheduled Area is the preponderance of Scheduled Tribe population or an area which has 50 per cent or more of tribal population. Due to the aforesaid fact, the Committee have their apprehension that a conflicting situation between tribals and non-tribals residing in the Scheduled Areas may arise. The Committee would like to recommend to the Government to consider the aforesaid apprehension of the Committee and accordingly take the corrective measures in this regard.**
- (ii) **The Committee further note that as per clause 3(3)(4) of the Bill, in all programmes of development like housing colonies, trading centres, 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. While appreciating Government's concern to protect the interests of the tribal population in Scheduled Areas, the Committee would like to recommend to the Government to oversee that there is no conflict between tribals and non-tribals due to de-reservation and also to see that the posts at various levels, as provided in clause 3(3)(4) of the Bill, do not remain vacant due to non-availability of Scheduled Tribes.

- (iii) The Committee welcome the provision for reservation of seats for Chairman and Vice-Chairman. The Committee, however, feel that this should be accompanied by adequate devolution of executive powers so that the position of Chairman or Vice-Chairman is not reduced to the status of a nominal head.**

Clause 3(4) pertaining to exceptions/modifications in article 243W relating to "Powers, authority and responsibilities of Municipalities, etc."

2.19 As per clause 3(4) of the Bill, 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 powers and responsibilities upon Municipality with respect to preparing five year development plans and annual plan for the development of human resources, socio-economic advancement of the community, reinforcement of the infrastructure and augmentation of civic amenities in the area; fostering tribal endogenous institutions; undertaking schemes for development of khadi, cottage and small-scale industries, electrification including distribution, women and child development, social welfare; identifying and removing unauthorised occupation of land; acquiring land for public purposes with payment of reasonable and adequate compensation and alternative means of livelihood to the affected person, etc.

2.20 Some experts were of the opinion that the Bill envisages devolving of a wide range of functions to the Municipalities such as development of khadi, cottage, small-scale industries, cooperative movement, secondary school, non-formal education, electrification including distribution, acquisition of land for electricity generation, railways, communication etc. These functions are not in the nature of

Municipal functions, rather these are more in the nature of State functions. Hence, these could be entrusted to the concerned State Departments/Development Councils.

2.21 Moreover, the Committee raised certain issues regarding the devolution of powers and functions to the Municipalities in the Scheduled Areas during the clause-by-clause consideration of the Bill. The concerns expressed by them were as below:

- (i) Some of the functions devolved to the Municipalities in the Scheduled Areas, in addition to those already listed in the Twelfth Schedule to the Constitution, are not in the nature of Municipal functions and ideally belong to the functional domain of the State Governments; and
- (ii) Lack of adequate funds, functionaries and expertise at the disposal of the Municipal bodies in the Scheduled Areas corresponding with the devolution of additional functions to these bodies.

However, while stating the reasons for devolving such additional functions to the Municipalities in Scheduled Areas, without the devolution of adequate finances, functionaries and expertise, the representative of the Department of Urban Development stated:

“We stand by the view which we have given. These functions need to be delegated to them because it says that these are the functions and powers that should be devolved. In addition to that, in fact, the State Government Departments communicated that they can give more powers but this is the minimum that should be given....During the consultations, the State Governments having Scheduled Areas have agreed with these provisions.”

Further, the representative of the Ministry of Law and Justice stated:

“It very clearly provides that the States shall, by law, endow the Municipality in the Scheduled Areas with such power and authority as may be necessary. It says ‘as may be necessary’, which is very important.”

It was also stated that this is just an enabling provision. Local self-government is in the State List as per the Seventh Schedule of the Constitution and as such, making further laws in this regard as well as their implementation rest with the State Government.

2.22 The Committee note that as per clause 3(4) of the Bill, Municipalities in the Scheduled Areas have been endowed with certain powers, authority and responsibilities to enable them to function as institutions of self-government. They also note that the functions listed in clause 3(4) are in addition to Twelfth Schedule to the Constitution, related to endowment of functions to Municipalities in general under clause 243W of the Constitution. They further note that while proposing the said clause, concerned State Governments have been duly consulted and they have given their consent in this regard. While appreciating the laudable objective of the Bill to give more powers, authority and responsibilities to Municipalities in tribal areas, the Committee feel that mere endowment of these functions would not yield the desired results if the same does not match with the ground reality. A heavy dose of devolution without the support of means of implementation will not perhaps lead to the intended goal. To enable the Municipalities to work effectively and to enable them to discharge the various functions in an efficient manner, it is necessary that these Municipalities in the Scheduled Areas have requisite funds, functionaries and expertise. Thus, the Committee feel that capacity building of the Municipalities is the key issue in this regard.

In view of what has been stated above, the Committee feel that funds and functionaries are the pre-requisite to enable the Municipalities to function in an effective manner. The Committee, therefore, would like to strongly recommend to the Government to issue some directions to the State Governments asking them to ensure that before devolving the functions as enlisted in clause 3(4) of the Bill as well as those enlisted in Twelfth Schedule of the Constitution, Municipalities in Scheduled Areas are equipped with the requisite funds/functionaries and expertise to enable them to function effectively.

Acquisition of land in the Scheduled Areas.

2.23 Clause 3(4)(8) read alongwith provisos 1 and 2 provides that land may be acquired for public purposes with the payment of 'reasonable and adequate compensation' and 'alternative means of livelihood'. It has also been provided that the affected person is not rendered landless as a result of land acquisition. In this context, the Bhuria Committee has observed that acquisition of land for public purposes has been one of the major causes of land alienation among

the tribals. Unsatisfactory state of land records and connivance of local officials further worsen the condition of tribals. Moreover, it has been pointed out that the 'Land Acquisition Act, 1894', under which land acquisition takes place, is based on the principle of individual ownership and does not take cognizance of the customary regulation of common property resources in tribal areas. Therefore, stringent regulations should be made to prevent alienation of tribal lands, identification of alienated land and their restoration as a time-bound programme.

2.24 While commenting on the said clause of the Bill, the Ministry of Rural Development has vouched for removal of the two provisos to the said clause, which states 'reasonable and adequate compensation', relates to the payment of compensation, which at present is determined by the 'Land Acquisition Act, 1894'. However, this Act does not define the term 'reasonable and adequate compensation'. Even the proposed Bill under consideration does not define the terms. Therefore, it is felt that introducing a new concept without any clear-cut definition is likely to create complications. The Ministry has further stated that the proposals relating to amendment of 'Land Acquisition Act, 1894' are under consideration of the Union Government, which would address the issue of compensation in a comprehensive manner, especially with respect to: (i) liberal compensation; (ii) expeditious disposal of acquisition process; (3) transparency; and (4) reduced litigation. It has been suggested by the Ministry that there is no need for the Part (a) of the first proviso to clause 3(4)(8) and it may be deleted.

2.25 With reference to part (b) of the said proviso, it has been informed that adequate provisions for alternative means of livelihood and providing land for land to the tribals in affected areas (subject to its availability) are proposed to be included in the Project Affected Families (Resettlement and Rehabilitation) Bill, 2002. Therefore, it is suggested that part (b) of the first proviso as well as the second proviso may also not be included in the proposed Bill.

2.26 Further, it has been suggested by the Ministry of Rural Development that provision similar to 'The Panchayats (Extension to the Scheduled Areas) Act, 1996' (PESA), regarding consultation with local bodies at the appropriate level before making acquisition of land in the Scheduled Areas for development projects and before rehabilitating persons affected by such projects, should also be inserted in the present Bill.

2.27 However, replying to this the nodal Ministry stated that since the purposes for which land may be acquired in terms of the provisions of the Bill are very specific and are in public interest, no provision is perhaps necessary for inclusion in the Bill that the local bodies be necessarily consulted before acquisition of such land. Moreover, the interpretation of the terms “adequate compensation” and “alternative means of livelihood” will be regulated as per the provisions of respective law under which land will be acquired. It will be for the concerned authority to ensure availability of land to the concerned person in conjunction with reasonable and adequate compensation. It is not necessary that equal size of land will be made available as a consequence of acquisition. The condition is that the concerned person will not be rendered landless as a result of land acquisition.

2.28 When asked whether a Municipality in the Scheduled Area will be well-equipped to discharge the function of land acquisition and subsequent payment of compensation, the representative of the Department of Urban Development stated:

“Under the Land Acquisition Act, there is a Land Acquisition Collector who can be the District Collector or any other Officer appointed by the State Government. The Act provides for it....The State Government can designate any Officer as Collector under Land Acquisition Act for the purpose of land acquisition. As far as compensation is concerned, it is the Department for which the land is acquired has to pay the money. If it is acquired for the Railways, then the Railways will pay the money...We have basically drawn this particular provision from the Bhuria Committee Report....So care should be taken—since it is a predominantly tribal area—to see that it (land) is acquired for a proper purpose, for a just purpose and for a correct purpose; and compensation is adequately ensured....it is an additional safeguard.”

The representative of the nodal Ministry has further stated that this is just an enabling provision, so that Municipalities can also have their say at the time of land acquisition. The State Governments would have to work out the details in the conformity legislations.

2.29 While noting the provisions made for land acquisition as per clause 3(4)(8) of the Bill as well as the valuable suggestions/clarifications given by the Ministries of Rural Development and the

nodal Ministry, *i.e.* Urban Development and Poverty Alleviation, the Committee observe that:

- (i) The whole procedure for acquisition of land is governed by 'Land Acquisition Act, 1894' in which a set procedure has been prescribed for land acquisition;
- (ii) The Ministry of Rural Development is in the process of revising the 'Land Acquisition Act, 1894';
- (iii) Further, the issues related to liberal compensation are being addressed to in the proposed amendment of the 'Land Acquisition Act, 1894'. With regard to adequate provisions for alternative means of livelihood and providing land for land to the tribals in affected areas, these issues are proposed to be taken care of in the 'Project Affected Families (Resettlement and Rehabilitation) Bill, 2002';
- (iv) Provisos (a) and (b) to clause 3(4)(8) are additional safeguards provided to the tribal people in case of acquisition of their land for various developmental programmes;
- (v) Different opinions have been expressed by the Ministries of Rural Development and Urban Development and Poverty Alleviation with regard to the justification of the said provisos in the Bill. The Ministry of Rural Development has suggested that there is no need for the said provisos since the issues would be taken care of by the proposed amendment of the 'Land Acquisition Act, 1894' and the proposed 'Project Affected Families (Resettlement and Rehabilitation) Bill, 2002', as stated above. The Ministry of Urban Development and Poverty Alleviation, however, has opined that this is an additional safeguard based on the Bhuria Committee Report.
- (vi) A similar legislation related to Panchayats in tribal areas, *i.e.* PESA, contains adequate provision for consulting the Panchayats at the appropriate level before making acquisition of land in the Scheduled Areas for developmental projects.

While analysing the provisions related to acquisition of land of tribals and adequate compensation, the Committee observe that safeguarding the interests of the tribals in case of acquiring their land for development projects is the key issue which should be

carefully addressed to. They note that as stated by the Ministry of Rural Development, these issues would be addressed by them in the proposed legislations pertaining to land acquisition and resettlement and rehabilitation of the affected person. The said legislations are, however, pending for the last so many years and may take further time in finalisation. In view of this, the Committee would like that the provisions made in clause 3(4)(8) and its provisos should be retained. However, after the proposed amendment to the 'Land Acquisition Act, 1894' has been made and the 'Project Affected Families (Resettlement and Rehabilitation) Bill, 2002' has been passed, the Government may review the need for maintaining these provisos.

2.30 While acquisition of land for public purpose is necessary, the Committee feel that such issues should be deliberated at an appropriate forum where the tribals whose land will be acquired should be represented to present their view point. In this regard, the Committee find that in PESA there is a provision to consult the Panchayats in every case of land acquisition in Scheduled Areas. The Committee would like that to protect the interests of the tribals, provision should be made under the proposed Bill for consultation with the Municipality concerned in every case of land acquisition in the urban Scheduled Areas. The Committee further find that since acquisition of land for public purpose is one of the major causes of land alienation amongst the tribals, the land should be acquired, only when it is absolutely necessary and it is genuinely in the public interest.

2.31 The Committee further note that unsatisfactory status of land records and connivance of local officials are responsible for the miserable condition of the tribals. It is necessary that these aspects should be seriously looked into and the Government should come forward with the requisite ameliorative steps to root out such evil once and for all. The Committee agree with the suggestion of the Bhuria Committee that stringent regulations should be made to prevent alienation of land of tribals, identification of alienated land and their restoration in a time bound manner.

Clause 3(5) pertaining to exceptions/modifications in article 243X relating to "Power to impose taxes by, and Funds of the Municipalities".

2.32 As per clause 3(5), no urban tax shall be leviable on a tribal who continues to live in his traditional style. To determine whether a

tribal continues to live in his traditional style or otherwise, certain 'norms' will be followed, such as whether (1) he belongs to Scheduled Tribe for that State or Union territory, (2) he is a *bona fide* resident of the urban area concerned, or (3) he continues to pursue traditional occupation of farming, petty business as artisan, labourer, or the like. Thus, 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, then income shall not be the criterion.

2.33 In this context, the Bhuria Committee has observed that heavy tax burden on the tribal living in his traditional style, inevitably results in alienation of land and exodus of tribals. Keeping this in view, it has been proposed that no urban tax shall be leviable on a tribal who continues to live in his traditional style.

2.34 The Ministry in its written reply has stated that to prevent misuse of such concession, certain "norms" have been identified to determine whether tribals continue to live in their traditional style or otherwise. As income cannot be a criterion to define traditional style, occupation has been taken as one to ensure that the benefit is not availed of by non-tribals. Also, tribals who abandon their traditional style will be subject to levy of urban taxes. Further, it has been informed that as per article 243X, Legislature of a State may, by law specify (1) taxes, duties, fees, etc. which would be levied and collected by the Municipalities; (2) taxes, duties, fees etc., which would be levied and collected by the State Government and a share passed on to the Municipalities; (3) grants-in-aid that would be given to the Municipalities from the State; and (4) constitution of funds for crediting and withdrawal of money by Municipalities. Besides, State Finance Commission (SFC) will also look into the financial matters of the Municipalities. These provisions are sufficient for strengthening the financial position of the Municipalities in Scheduled Areas.

2.35 However, some of the experts have expressed apprehension that this particular clause proposes to restrict the scope of article 243X by stating that the Municipalities in the Scheduled Areas will not levy any taxes on the tribals who continue to live in their 'traditional style'. It is purely based on occupation rather than income. The Scheduled Areas, by and large, will have substantial segment of tribals living in

traditional style. Thus, the tax base of the Municipalities will be too narrow to sustain even operation and maintenance of services. Even the non-tax sources and user charges will be too narrow to make the Municipalities viable institutions of self-government making them dependent on grants-in-aid from the Central and State Governments. Thus, devolving of functions without the devolution of tax authority will not lead to an effective system of decentralisation and empowerment. Though certain incentives and concessions could be given to these areas, a blanket ban on local taxation appears not only discriminatory, but may also affect local resource mobilisation efforts adversely. Special provisions for transfer of adequate funds from the State Government to compensate the revenue loss of the Municipality due to non-levying of taxes should be made.

2.36 The Committee note that the term 'traditional style' is a broad and open-ended term. Even though certain norms have been fixed to determine 'traditional style' of living, it leaves an element of discretion and arbitrariness to the deciding authority as to who should be included in the category of living in 'traditional style' and whom to exclude. This may lead to harassment of tribals and their exploitation. Further, the Committee are apprehensive that this would lead to division among the various tribal communities and may give rise to resentment among those who have been adjudged as not living in 'traditional style' and hence have to bear the tax burden. The Committee, therefore, would like the Government to take note of the said apprehension of the Committee carefully and devise some suitable criteria instead of the existing one for giving tax exemption to a particular segment of tribals. They would also like that the criteria in this regard should be more specific and comprehensive so that the genuine, deprived and needy tribals are benefited by the said provision. While devising the criteria, it should also be ensured that the demarcation between the 'tax-paying tribals' and 'non tax-paying tribals' is clear and unambiguous in order that the conflicting situations between them are avoided.

2.37 The Committee further recommend that in view of the narrow tax base of the Municipalities in the Scheduled Areas, special provisions for transfer of adequate funds from the State Government to compensate the revenue loss of the Municipality due to non-levying of taxes, should be made.

Miscellaneous issues

(1) Tribal-forest interface.

2.38 A problematic issue of concern is that of tribal rights to forest land. 'The Forest Conservation Act, 1980' (FCA), made forest a subject in the Concurrent List from that of the State List, implying that for non-forest use of forest land, prior permission of the Central Government is needed. The Ministry of Environment and Forests has stated that there are tribal habitations inside Reserved and Protected Forests on account of encroachments and also due to faulty or non-settlement of rights during revision surveys. However, no estimation has been done for such lands. When asked to furnish the data regarding tribal habitations/habitants in the Fifth Scheduled Areas falling in forest areas covered under 'The Forest Conservation Act of 1980' (FCA), the Ministry has informed that such information is not maintained.

2.39 Further, it has been informed that the policy guidelines of the Government clearly categorized the "Eligible and Non-eligible" encroachments :

"(1) Eligible category of encroachments: Pre-1980 subsisting encroachments where the State Governments had taken a decision to regularize the encroachments based on certain eligibility criteria before the enactment of the FCA, 1980 on 25.10.1980.

(2) All remaining pre-1980 encroachments on which no such decision has been taken by State Governments will be treated as ineligible encroachment, which in addition to all encroachments after 24.10.1980, should be evicted.

Though the Supreme Court *vide* its Orders made in November 2001 has restrained the Central Government from regularizing any encroachments on forest land and has also directed the Central Government to take action for the eviction of encroachers from forest lands, it has been informed by the Ministry of Environment and Forests that the Central Government is committed to regularize the pre-1980 eligible encroachment as per the guidelines issued on 1 September 1990 under the FCA 1980. More than 85 per cent of the cases, which the Ministry has regularised, belong to the category of STs.

2.40 When asked as to whether there is any special consideration for tribal encroachers, especially in the Fifth Scheduled Areas, the

Ministry has informed that there is no such special consideration. However, they have laid down a Guideline for forest-tribal interface, which applies all over the country. Its salient features are;

- (1) A mechanism of review of disputed claims over the forest lands arising out of settlements through field verification;
- (2) Disputes regarding *pattas*/leases/grants involving forest land based on field verification;
- (3) Conversion of forest villages into revenue villages on receipt of proposals from the States.

2.41 To review the cases of disputed claims of tribals over forestlands, State/Union territory Governments should constitute a Committee at the district level, comprising officials from the Revenue, Forest and Tribal Welfare Departments. Such cases if referred to the Ministry shall be examined and in genuine cases permission for diversion of forest lands shall be granted. However, when asked to furnish the details regarding constitution of such Committees, it has been informed that except Gujarat, no information has been received from any State Governments regarding constitution of such Committees. Moreover, independent sources have claimed that these Guidelines are hardly ever put to use. Most forest officials in States do not know of these Guidelines.

2.42 Another important aspect involved in the forest-tribal interface, especially in the context of the present legislation is that of the impact of the FCA 1980 on developmental activities in the Scheduled Areas. The Ministry of Rural Development has earlier stated that there is no specific provision with regard to the overriding effect of FCA over the provisions of PESA. A representative of the Government while enumerating the difficulties being faced in the implementation of PESA, stated that in PESA also they are facing the problems with regard to the conflicting jurisdiction of PESA and Forest Conservation Act, 1980. However, while discussing the impact of FCA, 1980 on the developmental activities in the Scheduled Areas, the Secretary of the nodal Ministry stated that the FCA does not prohibit developmental activity. Rather, it is a regulatory Act and case-by-case sanction process is followed for giving approval to proposed developmental activities. Holistic and composite development proposals are encouraged. Further, the Ministry of Environment and Forests has informed as below:

“To carry out any developmental work by the Municipalities in forest areas, prior permission of the Central Government under

Forest Conservation Act, 1980 is required. In order to smoothen the process of disposing the diversion proposals upto five hectares of forest area for developmental activities (non-forestry purposes), the Regional Officers of the Ministry have been authorized to dispose of all such proposals except in case of regularization of encroachments and mining.”

However, lack of clarity persists on this issue. The representative of the Department of Urban Development has stated as below:

“An area which constitutes a Nagar Panchayat within the Scheduled Area, or an area which constitutes a Municipality within the Scheduled Area, should be outside the Forest Conservation Act. Otherwise, it will be a problem and we cannot extend Municipal services.”

Similarly, the Ministry of Environment and Forests has informed as below:

“The provisions of the proposedMESA do not extend to forest areas in Scheduled Areas. Even when enacted the provisions of the Forest Conservation Act, 1980, being a special Act will have overriding effect.”

On the contrary, the Department of Urban Development has stated as below:

“The Forest Conservation Act, 1980 is a regulatory legislation applicable in forest areas of the country. As the proposed Bill and the Forest Conservation Act, 1980 have different objectives, this Department does not see any conflict in their implementation.

2.43 Moreover, apprehension has been expressed in various quarters that ground reality is something different. FCA impedes developmental activities in the Scheduled Areas, whereas exploitation of forest resources by unscrupulous elements takes place in flagrant violation of the FCA.

2.44 While endorsing ‘The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001’ with certain amendments/observations as given in the preceding chapters of the Report, the Committee make the following general observations:

- (i) Different Ministries of the Government of India involved in various activities for the welfare of the Scheduled Tribes have never undertaken any survey to find out the area/population falling within the forest areas which are covered under 'Forest Conservation Act, 1980' and the extent to which this differs from the area/population covered by the definition of 'forests' under the 'The Indian Forest Act, 1927';
- (ii) The Ministry of Environment and Forests has issued certain guidelines according to which the State/Union territory Governments should constitute a Committee at the District level to address the problem of disputed tribal land rights. However, it has been admitted by the Ministry that except from Gujarat, no information regarding constitution of such Committees has been received from any of the State Governments;
- (iii) With regard to the jurisdiction of the present Bill when enacted, and the Forest Conservation Act, 1980, divergent views have been expressed by different Ministries. The Committee deliberated in detail on the said issue at their sittings held on 6 May, 25 July and 5 September 2003, with the representatives of the various concerned Ministries, viz. (i) Environment and Forests, (ii) Tribal Affairs, (iii) Rural Development, (iv) Law and Justice, and (v) the nodal Ministry of Urban Development and Poverty Alleviation. They find that views expressed by the representatives of these Ministries are vague. Even the representatives of the nodal Ministry have given the contradictory views as is evident in the preceding paras. While on the one hand, they declare that it would be difficult to extend Municipal services to forest areas falling in the Scheduled Areas, where 'The Forest Conservation Act, 1980' is in force, on the other hand, the Committee are informed that no conflict between the jurisdiction of the proposed Bill and 'The Forest Conservation Act, 1980' is foreseen. Further, the Committee note that in the implementation of the similar legislation for rural areas, i.e. PESA, which was enacted in 1996, the Government is facing the problem in regard to the conflicting jurisdiction of PESA and Forest Conservation Act; and

- (iv) The Committee find that the Supreme Court has given directions for eviction of encroachers in the forest land. They also note that although the Government is committed to regularise the pre-1980 eligible encroachers, as per the guidelines issued in 1990, under the Forest Conservation Act, they are apprehensive about the fate of post-1980 tribal encroachers. Similarly, the Committee express their concern about those tribals who have been living in forests for several generations, but do not have the legal title of the land where they are residing.

In view of this scenario, the Committee would like to recommend:

- (a) A survey should be carried out within one year to find out as to how much land in the Scheduled Areas is under the forest cover as per the definition of 'forests' under 'The Forest Conservation Act, 1980' and the "The Indian Forest Act, 1927'. The data should be collected regarding the number of tribals living in these areas, how many of them are illegal encroachers and how many of them are eligible for settlement of land rights and rehabilitation. The data should also be collected to find out the number of tribals living in forests for generations but do not have title of land in their name. Once the primary data in this regard is available, the forest issues related to the tribal land rights in forest land can be properly addressed;
- (b) With regard to the jurisdiction of the proposed Bill, when enacted and 'The Forest Conservation Act, 1980', the Committee would like to strongly recommend that the various concerned Ministries should sit across the table and decide about the overlapping jurisdiction of the proposed Bill and the Forest Conservation Act, 1980 after considering the practical difficulties that would be faced once the Bill is enacted and also after seeing the present difficulties being faced in the implementation of PESA. A suitable formula needs to be evolved to settle all the related issues before the Bill is passed by the Parliament;
- (c) The Committee would like to urge the Government to enlighten the various State Governments to take the

desired action as per guidelines issued by the Ministry of Environment and Forests regarding forest-tribal interface. They should motivate the State Governments to constitute the Committees as given in the guidelines for settling disputed land rights of tribals in various areas. Besides, the forest officials should also be made aware of all the aforesaid guidelines. Once the State Governments are sensitised about the numerous problems being faced by the tribals, it is expected that they would set up such Committees and consequently the various problems encountered by the tribals regarding settlement of land rights might be solved.

(2) Tribes Advisory Council.

2.45 Tribes Advisory Council (TAC) is an important and distinguishing feature of the Fifth Scheduled Areas. as per Part B of Fifth Schedule to the Constitution, 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. A TAC is to be established to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to it by the Governor. TAC is only an advisory body. However, the Bhuria Committee has found that TACs in many States have, by and large, become dysfunctional, with insignificant contribution to policy making or monitoring implementation of tribal programmes. Moreover, many of the TACs have not held their meetings regularly. Concern has also been expressed that with such a record, it is possible that the TAC becomes an obstacle in the local government structure. When the attention of the Department of Urban Development was drawn towards the said comments of the Bhuria Committee, it has stated that TAC and Municipal body in the Scheduled Areas are governed by separate set of statues and hence, no conflict is foreseen in their working.

2.46 With regard to the meetings of Gram Sabha to be constituted in Panchayats under article 243(b) of the Constitution, reference may be made to para 4.5 of 37th Report, wherein it has been mentioned that the Union Government has issued certain directions to State

Governments/Union Territory administrations to ensure that Gram Sabha should meet at least once in each quarter of a year.

2.47 The Committee find that the Tribes Advisory Council (TAC) is an important constitutional body to be constituted with the noble objective of advising on matters pertaining to the welfare and advancement of the Scheduled Tribes in the respective States. However, they are concerned to note the observation of Bhuria Committee according to which by and large TACs have become dysfunctional. They also note that to strengthen the role of Gram Sabha in Panchayats, the Union Ministry of Rural Development has issued certain directions to the respective State Governments/Union Territories to hold at least one meeting in each quarter of a year. The Committee feel that in line with the directions issued with regard to meetings of Gram Sabha, the Union Government should issue certain directions regarding meetings of TACs. This is high time to initiate certain measures to strengthen TACs since the Second Scheduled Areas and Scheduled Tribes Commission is reviewing the Fifth Schedule at present. The Committee further note that elected members of Parliament can play an important role in the functioning of TACs and in view of it, the Government should think of involving local members of Parliament in the functioning of TACs.

2.48 The Committee note with concern the observation of the Bhuria Committee that the TAC can become an obstacle in the Panchayati Raj/Municipal Government structure. While the nodal Ministry has denied this, the Committee are of the view that the matter needs serious consideration. The Committee are not convinced with the reply furnished by the nodal Ministry that since separate set of statutes govern the working of TACs and Municipal body, no conflict is foreseen in their working. They would like that the apprehension expressed by the Bhuria Committee needs to be taken seriously and necessary steps are taken to avoid any such conflicts. The Committee would, therefore, like that the advice tendered by TAC on major policy issues should be taken into consideration by the Municipality but the decision thereon should be taken by the elected Municipality alone.

(3) Migrant Tribal Labour.

2.49 The Bhuria Committee has observed that the question of migrant tribal labour needs to be specially taken care of. Due to his

vulnerable situation, his exploitation may assume extreme forms. Keeping this in view, it has been recommended that provisions similar to the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979 may be made in case of Scheduled Tribes to cover the situation, where migration may be within the State and outside the Scheduled Districts to which the labourers belong.

2.50 However, the Ministry has informed that these are issues of local nature and may be looked into by the State Government or the Municipality concerned. The migration of Scheduled Tribes within the same States may have local ramification and as such there is no need to go in for legislation on the lines of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979.

2.51 The Committee are aware of the marginalized position of the migrant tribal labour. Moreover, they note that these groups are neither organised nor in a position to influence the decisions of the Government or the local bodies affecting their interests and to act as an interest group. Further, the present Bill does not have any provision addressing their problem. Therefore, the Committee recommend that guidelines in this regard should be framed by the Union Government, and the State Governments in turn should be directed to address the problems of these groups on a priority basis.

(4) Implementation of the Bill after its enactment

2.52 The Ministry clarified the administrative arrangements it proposes to make for ensuring that after the passage of the Bill, it would be actually implemented by the concerned States. It stated that as per Entry 5 of the State List of the Seventh Schedule to the Constitution, "Municipality" is a State Subject. In view of this, it would, thus, be the responsibility of the State Governments to implement any legislation relating to Municipalities in relation to their States.

2.53 Further, when asked whether the Government have a specific plan for the monitoring of the implementation of the Bill in the Scheduled Areas, the Ministry stated that after enactment of the proposed legislation, the matter would be taken up with the concerned State(s) for implementation of the provisions of the proposed legislation. The Ministry has assured that it would play an important role in monitoring and implementation, by ensuring that the mandatory

provisions of the Bill are implemented in letter and spirit by the State Governments through appropriate legislation. As per the information furnished by the Ministry, the provisions of Part IXA of the Constitution, which are proposed to be extended to Scheduled Areas by this Bill are:

- (i) Constitution of Municipalities;
- (ii) Composition of Municipalities;
- (iii) Constitution and composition of Wards Committees, etc;
- (iv) Reservation of Seats;
- (v) Duration of Municipalities;
- (vi) Disqualifications for Membership;
- (vii) State Finance Commission;
- (viii) Elections to Municipalities;
- (ix) Committee for District Planning; and
- (x) Committee for Metropolitan planning.

All these mandatory provisions would apply to Scheduled Areas subject to such exceptions and modifications as are contained in the aforesaid Bill. Necessary action will be taken through meetings of the State Secretaries in-charge of local self-Governments and other State Government officials to speed up the implementation process of the proposed legislation at the State level.

2.54 While noting the comments of the nodal Ministry regarding the steps taken to ensure proper implementation of the Bill after its enactment in the concerned States, the Committee would like to recommend to the Government that once the proposed Bill is passed by the Parliament and enacted, its implementation should be carefully monitored. There should be some mechanism available with the Union Government to ensure that all the mandatory Constitutional provisions are implemented as per the spirit of the Constitution and the provisions which are not mandatory, are monitored carefully with feedback from the State Governments on a regular basis. They would also like to recommend that the Union Government should monitor that the State Governments enact the conformity legislation within one year as stipulated in clause 3(6) of the Bill. It should also be

monitored that the conformity legislation enacted by the various State Governments are in the true spirit of the various provisions made under the Central Act. The Committee would also like to recommend that the nodal Ministry *i.e.* the Ministry of Urban Development and Poverty Alleviation should submit an Annual Report to the Parliament on the progress of the implementation of the various provisions enumerated in the Bill after its enactment.

NEW DELHI;
19 November, 2003
28 Kartika, 1925 (Saka)

CHANDRAKANT KHAIRE,
Chairman,
Standing Committee on
Urban and Rural Development.

APPENDIX I

AS INTRODUCED IN THE RAJYA SABHA

30 July 2001

Bill No. XLIX of 2001

**THE PROVISIONS OF THE MUNICIPALITIES (EXTENSION
TO THE SCHEDULED AREAS) BILL, 2001**

A

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 Fifty-
second Year of the Republic of India as follows:—

1. This act may be called the Provisions of the Municipalities (Extension to the Scheduled Areas) Act, 2001. Short title.

2. In this Act, unless the context otherwise requires, “Scheduled Areas” mean the Scheduled Areas as referred to in clause (1) of article 244 of the Constitution. Defintion.

3. The provisions of Part IXA of the Constitution relating to the Municipalities are hereby extended to the Scheduled Areas, subject to such exceptions and modifications as are provided hereinafter. Extension of Part IXA of the Constitution.

1. Article 243Q relating to “Constitution of Municipalities” will 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 infra-structure, 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 predominately 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.

2. Article 243S relating to "Constitution and composition of Wards Committees, etc.," will apply with the following exceptions and modifications—

There shall be constituted—

(1) a Standing Committee for tribal affairs in each Municipality located within the Scheduled Area. The Committee shall comprise tribal members of the Municipality with the Chairman or the Vice-Chairman, as the case may be, as its Chairman. Recommendations of this

Committee shall ordinarily be binding on the Municipality;

(2) a Standing Committee for rural development in each Municipality responsible for the advancement of those engaged in agriculture and allied activities.

3. Article 243T relating to "Reservation of Seats" will 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) Either the Chairman or the Vice-Chairman 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.

4. Article 243W relating to “Powers, authority and responsibilities of Municipalities, etc.,” will 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, defence, 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.

5. Article 243X relating to “Power to impose taxes by, and Funds of, the Municipalities” will 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 *bona fide* 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 should not be the criterion.

6. Article 243ZF relating to "Continuance of existing laws and Municipalities" will 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, 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

Parliament enacted the Constitution (Seventy-fourth Amendment) Act in 1992. This Act has inserted 'Part IXA' in the Constitution relating to Municipalities. Clause (1) of article 243ZC provides that nothing in Part IXA shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244. However, clause (3) of article 243ZC provides that notwithstanding anything in the Constitution, Parliament may, by law, extend the provisions of Part IXA to the Scheduled Areas and the tribal areas referred to in article 244 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 the Constitution for the purposes of article 368.

2. It is considered necessary to make use of the above provisions for the benefit of the Scheduled Areas referred to in clause (1) of article 244 of the Constitution. A Committee of select Members of Parliament and experts was constituted to examine the issues relating to extension of the provisions of Part IXA of the Constitution to Scheduled Areas and to make its recommendations. The bill is based on the recommendations of this Committee as well as consultations with the concerned Ministries of the Central Government, and the State Governments having Scheduled Areas. All provisions of Part IXA of the Constitution are proposed to be extended to the Scheduled Areas with certain modifications. The main modifications are as under:—

- (i) Urban Local Bodies under Scheduled Areas may be designated as Nagar Panchayats, Municipal Councils, Municipal Corporations and Industrial or Mining Townships;
- (ii) seats may be reserved for Scheduled Tribes in proportion to their population or one-third whichever is higher;
- (iii) in all programmes of development like housing colonies, trading centers, etc., and also in educational institutions, industrial training institutions, reservations shall be made for the tribal people in proportion to their population;
- (iv) there shall be constituted a Standing Committee for Tribal Affairs and a Standing Committee for Rural Development in each Municipality;

- (v) municipality in a Scheduled Area shall be endowed with powers and responsibilities of preparing five year development plan and annual plan for development of human resources and socio-economic advancement of the community;
- (vi) no land may be acquired except for specific purposes. Where land is acquired, reasonable and adequate compensation shall be paid and an alternative means of livelihood to an affected person shall be made available, so, however, that no Scheduled Tribe is rendered landless on such acquisitions;
- (vii) no urban tax shall be leviable on a tribal who continues to live in his traditional style as per the norms as prescribed in the Bill; and
- (viii) functional powers as mentioned in clause 4 of the above Bill would also be devolved on Urban Local Bodies in the Scheduled Areas.

3. In the light of the aforesaid, the provisions of the Bill seek to achieve the objective of setting up of Urban Local Bodies in the Scheduled Areas as per the provisions of Part IXA of the Constitution, subject to various exceptions and modifications illustrated in the preceding paragraphs.

NEW DELHI;
The 19th July, 2001.

JAGMOHAN.

RAJYA SABHA

A

BILL

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

*(Shri Jagmohan, Minister of Urban Development
& Poverty Alleviation)*

APPENDIX II

**THE CONSTITUTION
SEVENTY-FOURTH AMENDMENT
ACT 1992
ON MUNICIPALITIES**



MINISTRY OF URBAN DEVELOPMENT
GOVERNMENT OF INDIA
NEW DELHI

THE CONSTITUTION (SEVENTY-FOURTH AMENDMENT)
ACT, 1992

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

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

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

‘PART IXA

THE MUNICIPALITIES

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

(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.

Constitution
of Muni-
cipalities.

243Q. (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. (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.

Composition
of Muni-
cipalities.

(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. (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.

Constitution
and
composition
of Wards
Committees,
etc.

(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.

Reservation
of seats.

243T. (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 office 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 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 Municipality or office of Chairpersons in the Municipalities in favour of backward class of citizens.

243U. (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:

Duration of
Municipalities,
etc.

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 the 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 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.

Disquali-
fication for
membership.

243V. (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. Subject to the provisions of this Constitution, the Legislature of 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 function as institutions of self-government and such law may contain provision 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 matter 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. 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, 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. The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the audit of such accounts.

Audit of accounts of Municipalities.

243ZA. (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.

Elections to the Municipalities.

(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. 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:

Application to Union Territories.

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.

Part not to apply to certain areas.

243ZC. (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.

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) 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. (1) There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft

Committee
for
Metropolitan
planning.

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 of 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 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. 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:

Continuance
of existing
laws and
Municipalities.

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.

Bar to interference by courts in electoral matters.

243ZG. 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;

Amendment of article 280.

3. In clause (3) of article 280 of the Constitution, sub-clause (c) shall be lettered 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;”.

Addition of Twelfth Schedule.

4. 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 ponds; 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.”

EXTRACT OF ARTICLE 243I & 243K FROM CLAUSE 2 OF
THE CONSTITUTION (73RD AMENDMENT) ACT, 1992
WHICH ARE REFERRED TO IN THE CONSTITUTION
(74TH AMENDMENT) ACT, 1992

Constitution
of Finance
Commission
to review
financial
position.

243I. (1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, 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—

(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) the measures needed to improve the financial position of the Panchayats;

(c) 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.

(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.

243K (1) The Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a state Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

Elections to
the
Panchayats.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Clause (1).

(4) 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.

APPENDIX III

LOK SABHA SECRETARIAT

(COMMITTEE ON URBAN AND RURAL DEVELOPMENT)

List of memoranda received from experts/organisations on the
“Provisions of the Municipalities (Extension to the Scheduled Areas)
Bill, 2001”

Memo No.	Name of the experts/organisations
1.	National Institute of Urban Affairs (Prof. Vinod Tewari, Director), I & II Floor, Core 4-B, India Habitat Centre, Lodhi Road, New Delhi-110 016.
2.	Regional Centre for Urban and Environmental Studies (RCUES), (Prof. S.K. Dwivedi, Director), Opp. Registrar's Office Lucknow University, Lucknow-226 007
3.	Regional Centre for Urban and Environmental Studies (RCUES), (Prof. V. Lakshmipathy, Director), Osmania University, Hyderabad-500 007
4.	Centre for Policy Research {Prof. K.C. Sivaramakrishnan, IAS (Retd.)}, Dharma Marg, Chanakyapuri, New Delhi-110 021

Memorandum No. 1 on 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2002' as furnished by National Institute of Urban Affairs, (Prof. Vinod Tewari, Director), New Delhi-110 016

Memorandum on "The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001"

The Bill envisages creating institutions of self-government for the local communities in the Scheduled Areas and hence it is a progressive step.

Specific comments and suggestions on the various aspects covered in the Bill are as follows:

- 1. Classification of an Area as Urban and Creation of Mechanism for Rural Development:** The Bill requires the Governor to "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..." in consultation with the Tribes Advisory Council. It would be better if in the declaration of urban areas the current criteria and practices are used. Once a settlement is declared an urban area on the basis of attributes mentioned above, creation of a "Standing Committee for rural development in each Municipality" in an urban area seems to be incongruous. This seems to be all the more so as the Bill provides that the inhabitants who have got "assimilated in urban economy with agriculture and allied activities receding into the background, shall be included in Tribal Mohalla or Ward Sabha". Once an area is declared as urban, creating mechanism for 'rural development' within a municipal government structure does not go with urban governance. It would be better therefore if the areas with predominantly rural character are not brought within the fold of municipal body.
- 2. Tribal Mohalla or Ward Sabha:** With a view to provide focused attention to the welfare of the habitants in Scheduled Areas, the bill envisages creation of Tribal Mohalla or Ward Sabha. A pragmatic option could have been to create Ward

Committees in each local electoral ward that will elect a local Councillor to a municipality in addition to the Wards Committees that are required to be constituted in urban areas with a population of more than 3 lakhs. The States of West Bengal, Madhya Pradesh and Chhattisgarh already have such Ward Committees. The Councillor elected from the electoral ward concerned becomes the Chairperson of the Ward Committee. Other members and focus groups within the wards concerned could be represented on this Committee to facilitate focused attention on the socio-economic development of the inhabitants of the ward.

3. **Chairman:** The Bill provides for filling-in of the position of Chairman or Vice-Chairman of the urban local body by a member of scheduled tribes. This is highly desirable as the Bill is meant for the empowerment and development of Scheduled Areas. The Chairman would need to be devolved with executive powers so that s/he is not reduced to the status of a nominal head.
4. **Empowerment of Women:** Though the Bill provides for reservation of seats in every Municipality for Scheduled Tribes in proportion to their population or one-third of the total number of seats, whichever is higher, it is silent on reservation of seats for the women. The provision in the Constitution (74th Amendment) Act, 1992 will therefore apply for reservation for women in the municipalities.
5. **Inclusion of Gram Sabhas:** The Bill provides for inclusion of Gram Sabha (in the para relating to Article 243T of the Constitution) in the Municipality in the Scheduled Areas. Once an area is declared as urban, inclusion of a Gram Sabha in Municipalities does not seem practical. Gram Sabha would need to be included in the Panchayati Raj institutions, not in a municipality.
6. **Functions:** The Bill envisages devolving of a wide range of functions to the Municipalities. Some of the functions are not in the nature of municipal functions. Fostering tribal endogenous institutions, development of Khadi, Cottage and small-scale industries, cooperative movement, secondary school, non-formal education, electrification including distribution, non-conventional energy sources, women and

child development, managing hats and markets, maintaining places for rest and stay, protecting and maintaining all cultural and religious places of tribal people, acquisition of land for electricity generation, railways, communication etc. are examples of functions that are more in the nature of state functions. Hence, these could be entrusted to the concerned state departments/Development Councils.

7. **Reservation:** Reservation in educational institutions, industrial training institutes etc. also does not come under the purview of municipalities and therefore it does not seem to be relevant to include this as a provision in this Bill.
8. **Finance:** Devolving of functions without the devolution of tax authority will not lead to an effective system of decentralisation and empowerment. The Bill proposes to restrict the scope of Article 243X relating to “Power to impose taxes by, and Funds of the Municipalities”. Accordingly, the Municipalities will not levy any tax on the tribals who continue to live in his ‘traditional style’. The Scheduled Areas, by and large, will have substantial segment of tribals living in traditional style. The tax base of the municipalities will be therefore too narrow to sustain even operation and maintenance of services let alone their augmentation through capital investments. Even the base for non-tax sources and user charges will be too narrow to make the municipalities viable institutions of self-government. Therefore, special provisions for transfer of adequate funds from the state government to compensate the revenue loss of the municipalities due to non-levying of taxes will have to be made.

**Memorandum No. 2 on 'The Provisions of the Municipalities
(Extension to the Scheduled Areas) Bill, 2001' as furnished
by the Regional Centre for Urban and Environmental
Studies (RCUES), Lucknow. (Prof. S.K. Dwivedi, Director)**

COMMENT ON BILL NO. XLIX OF 2001

We find the bill another bold measure to consolidate and revitalise urban administration in the country. Scheduled Areas which have special status in the Constitution deserve to be brought to the urban mainstream. The bill intends to extend the provisions of Part IXA which is a welcome move. The status of traditional local administration and Tribal Advisory Council has been kept intact and their active involvement in urban administration is a *sine qua non*. The Ministry deserves appreciation for such a commendable action.

Sd/-

**Memorandum No. 3 on 'The Provisions of the Municipalities
(Extension to the Scheduled Areas) Bill, 2001' as furnished
by the Regional Centre for Urban and Environmental Studies
(Prof. V. Lakshmipathy, Director), Hyderabad**

EXTENSION OF THE PROVISIONS OF THE MUNICIPALITIES
TO THE SCHEDULED AREAS BILL, 2001

1. The Scheduled Areas are considered backward—politically, economically and socially—compared to the mainstream areas. That is why, certain exclusive provisions are incorporated in the Constitution in the form of fifth schedule to protect their interests and administer these areas. The administration of Scheduled Areas is put under the charge of the State Governor. The Tribes Advisory Council is provided at the State level to advise the Governor on matters pertaining to the welfare and advancement of the tribes in the State. Powers are giving to these institutions for prescribing regulations and repealing or amending the State and Parliament laws to safeguard the interests of tribes in the State. The President and the Parliament shall guide and monitor the implementation of these special provisions relating to the Schedule Areas.
2. The Constitution, thus, provided adequate provisions to protect the tribes from exploitation, promote their traditional occupations and at the same time, develop their economic and social status on par with the other communities.
3. The urbanization process being a global phenomenon did not spare the Scheduled Areas. These areas are slowly being urbanized. In view of backwardness of the tribes, there is a danger that they may be pushed back further by the mainstream communities in terms of political representation and development. Urbanization definitely poses a threat to their traditional occupations, lands and environment.
4. Extension of the Part IXA of the Constitution to the Scheduled Areas, though a progressive step, must be viewed in this perspective.
5. Extension of the Part IXA of the Constitution, *i.e.*, Constitution 74th Amendment Act (74 CAA), to the

Scheduled Areas aim to provide a local Government set-up based on the provisions of the 74 CCA and integrate the Scheduled Areas into the mainstream areas while safeguarding the political, economic and social interests of the tribal communities.

6. The 74 CAA is considered to be a significant step towards strengthening of the urban local bodies in terms of their democratic functioning, decentralization and financial resources. The mandatory provisions, *viz.*, reservations to the SCs, STs and women, setting-up of the State Election Commission, conduct of regular elections to ULBs, State Finance Commission, Committees at district and metropolitan level for integrated planning and wards committees are instituted in the Constitution itself in this direction. A separate list of municipal functions in the form of 12th Schedule, though discretionary in nature, is also provided. All these provisions are expected to enhance the status of the ULBs. The national scenario reveals that there has been marked improvement in the regular conduct of elections to ULBs, devolution of financial resources to ULBs based on SFC recommendations and political empowerment of weaker sections *viz.*, SCs, STs and Women in the form of reservations.
7. The extension of part IXA of the Constitution naturally brings these advantages to the Scheduled Areas. The local governments in these areas would be strengthened under the constitutional back-up provided.
8. Certain modifications are proposed to the provisions of the Part IXA of the Constitution in the Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001. These provisions are intended to provide adequate representation to the Scheduled Tribes in the local governance and institutional support for their active involvement and advancement. Implications of these provisions are discussed critically in the following.
9. **Constitution of Municipalities:** Scheduled Areas could be totally urban or transitional with the dominance of rural economy. The inhabitants of the former are proposed to be included in the Tribal Mohalla or Ward Sabha and inhabitants of the latter in the Gram Sabha.

Comment: The Article 243Q relating to the constitution of municipalities does not contain institutions like Gram Sabha or Ward Sabha. Whether they should be equated with municipal wards or municipal election constituency or any other meaning contemplated must be clarified. It is stipulated that the tribal habitation in an urban setting shall be treated as a separate unit for the purpose of local self-government. The question is, in a rapidly changing urban scenario, will such isolation ever integrate the tribes into the mainstream development?

10. **Committees:** Two Standing Committees shall be constituted in each municipality, one for the tribal affairs and the other for rural development in the Scheduled Areas.

Comment: The provision gives an impression that the two Standing Committees are obligatory committees and are in addition to the Wards Committees. The committees for tribal affairs comprises tribal members of the municipality and will be chaired either by the chairman or vice-chairman of the municipality. It is also mentioned that the recommendations of this committee are ordinarily binding on the municipality. Similar stipulations are not made in case of the Standing Committee for rural development. By making the decisions of these committees binding on the municipality, the supremacy of the municipal council gets eroded. They, more or less, operate as parallel functional bodies in the municipality. There should be some mechanism to check decisions of these standing committees. A wider discussion on the issues of tribal affairs and rural development in the municipal council in an overall perspective should be provided while the standing committees deliberate deeply and decide over the issues.

11. **Reservations:** Reservation of seats to the Scheduled Tribes is made as follows. All seats in the Gram Sabhas and Tribal Mohallas/Ward Sabhas, 50 per cent in case of the Nagar Panchayats, and in proportion to tribal population or one third whichever is greater in case of the municipalities. Either the chairman or vice-chairman also must be a member of the Scheduled Tribes.

Comment: A rather heavy dose of reservation is contemplated for the Scheduled Tribes in the urban governance of the Scheduled Areas. The rationale of reservation, one-third in case of municipalities and one-half in case of the Nagar Panchayats is not made clear.

12. **Powers, Authority and Responsibilities:** The Article 243W of the Part IXA of the Constitution provided a discretionary blanket provision to the State Legislature with respect to powers, authority and responsibility of the municipalities. It was stated that the State Legislature may endow the ULBs with such powers and authority to enable them to perform the functional responsibilities developed on them including the 12th Schedule. While retaining these provisions, the proposed modification for the Scheduled Areas stipulated that the State Legislature shall, by law, endow the municipality with such powers necessary to enable them to urban function as institution of self-government and shall contain provisions for devolution of powers and responsibilities upon municipality with respect to:
- Preparing a five year development plan and annual plan for development of human resources, socio-economic advancement of the community, reinforcement of infrastructure and augmentation of civic amenities in the area;
 - Fostering tribal endogenous institutions;
 - Undertaking schemes for development of khadi, cottage and small-scale industries, cooperative movement, water supply, public health, sanitation, hospitals, communication, primary and secondary education, adult and non-formal education, electrification, non-conventional energy sources, women and child development, social welfare, etc.;
 - Managing of haats and markets.
 - Maintaining places of rest and stay for tribal people;
 - Protecting and maintaining all cultural and religious places of tribal people;
 - Identifying and removing un-authorized occupations of land; and

- Acquiring land for public purposes with reasonable competition and providing alternative means of livelihood and with a provision that no Scheduled Tribes person shall be rendered landless in the process.

Comment: It is interesting that while Article 243W of the Part IXA of the Constitution left the issue relating to devolution of adequate powers, authority and responsibilities to the Municipalities to the discretion of the State Legislature, the proposed modification in respect of the Scheduled Areas made this an obligation or mandatory provisions compelling the State Legislature to devolve certain powers, authority and listed functional responsibilities to the municipalities in the Scheduled Areas.

In fact, this provision makes the Municipalities more powerful and responsible in the Scheduled Areas. Such a mandatory provision also must be made in case of the ULBs in non-Scheduled Areas compelling the State Legislature to devolve specified powers, authority and functional responsibilities on the ULBs.

13. **Taxation:** While applying the Article 243X of the Part IXA of the Constitution to Scheduled Areas, it is proposed that no urban tax shall be levied on a Scheduled Tribe who continues to live in his traditional style. In deciding this, it is stipulated that the person should belong to the notified scheduled tribes, a *bona fide* resident of the urban area concerned or should continue to pursue his traditional occupation like farming, petty business as artisan, laborer, etc. Further, the main family occupation must be taken into consideration if, he lives with the family. If other conditions are fulfilled, the income should not be the criterion.

Comment: This provision conditions the municipality not to tax the Scheduled Tribes if, they pursue their traditional occupations. It is purely based on occupation rather than income. The question of levying service charges is not mentioned. This implies that the development of Scheduled Areas and the Scheduled Tribes must be undertaken only with the grant-in-aid from the Central and State Governments. This blanket provision, in fact, nullifies the very concept of self-government. Though certain incentives and concessions could be given to these areas, a blanket ban of local taxation appears not only discriminatory, but also may affect local resources mobilization efforts adversely.

14. The modified provisions of the part IXA of the Constitution, though welcome as far as safeguarding the specific interests and needs of the Scheduled Tribes in the Scheduled Areas is concerned, due care must be taken to avoid a parallel system of local government within the exiting local government system in the urban areas. These provisions endow much more powers, authority and responsibility on the Municipalities in the Scheduled Areas compared to the ULBs in the Non-Scheduled Areas. This situation further widens the function finance mismatch unless concrete measures are taken to provide adequate finances for the development of Scheduled Areas in the form of grant-in-aid.

**Memorandum No. 4 on 'The Provisions of the Municipalities
(Extension to the Scheduled Areas) Bill, 2001' as furnished
by Centre for Policy Research (Prof. K.C. Sivaramakrishnan),
New Delhi**

1. While the extension as envisaged is welcome in principle it is to be considered whether an elaborate category of Nagar Panchayats, Municipalities, Corporations and Individual Townships will have the interest of the scheduled areas or whether a simpler arrangement will be better. In this connection the following data from the census is relevant.
2. We have looked into Census 2001 of Assam, Tripura, Meghalaya and Mizoram. In Assam, there are 4 towns in North Cachar Hills with population ranging from 5,485 in Mahur to 35,906 in Haflong and 6 towns in Karbi Anglong district ranging from 4,670 in Dokmoka to 52,062 in Diphu.
3. In Meghalaya 6 out of the 7 districts included in the Sixth Schedule are tribal areas and have 15 towns out of total 16 towns. The population of towns varies from 8,643 in Baghmara in South Garo Hills district to 1,32,876 in Shillong in East Khasi Hills district.
4. The entire Tripura state comprising 4 districts except the district Dhalai is tribal. There are 23 towns of which 20 fall in the tribal areas district ranging from 5,766 in Sabroom town to 1,89,327 in Agartala city in West Tripura District.
5. In Mizoram State, it is not clear which are the towns which are included in VI schedule. But most of the towns are less than 10,000 population size.

Article 243Q: Constitution of Municipalities

6. The proposed Bill envisages 4 Categories of urban local bodies which include: Nagar Panchayats, Municipal Councils, Municipal Corporations and Industrial or Mining Townships. We feel that Nagar Panchayats have less power and far less functions as compared to a rural Panchayat. The Nagar Panchayat was introduced as a hybrid category to deal with areas in

transmission from rural to urban but in reality they have just become small-scale municipalities without powers or functions. In many cases they do not satisfy even the criteria of census town. Such a category may not be needed in the scheduled areas. In any case, small settlements in scheduled areas would be inhabited by tribal population who will continue to live in the traditional style. As such there may not be much use in converting such small settlements into Nagar Panchayats.

7. The Industrial or Mining Townships as a category need also to be excluded from being designated as ULB. This escape clause was provided in the 74th CAA for self-contained Industrial Townships in scheduled areas there are no such self-contained townships. In future they can be designed as a municipality as and when need arises.

Article 243T: Reservation of Seats

8. No comments.

Article 243W: Powers, Authority and Responsibilities of Municipalities

9. The 12th Schedule lists 18 functions where as the proposed Bill contains 8 functions only. Some of the omissions from 12th schedule are glaring. It would be appropriate that all the 18 functions of the 12th schedule are included in the Bill. List of functions of 12th schedule and those incorporated in the bill are compared below:

Incorporated in the Bill:

- (1) Planning for economic and social development
- (2) Water supply for domestic, Industrial and commercial purposes
- (3) Public health, sanitation conservancy and solid waste management
- (4) Safeguarding the interests of the weaker sections
- (5) Provision of urban amenities and facilities
- (6) Promotion of cultural, education and aesthetics aspects.

Not Incorporated in the Bill:

- (7) Urban Planning including town planning
- (8) Regulation of land-use and construction of buildings
- (9) Roads and bridges
- (10) Fire services
- (11) Urban forestry
- (12) Slum improvement and upgradation
- (13) Urban poverty alleviation
- (14) Burial and burial grounds
- (15) Cattle ponds, 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.

Additional items included in the Bill:

- Fostering tribal endogenous institutions
- maintaining places for rest and stay, which are neat, open and congenial for the tribal people visiting the town
- identifying and removing unauthorised occupation of land
- acquiring land for the purposes of education, health, railways, communication, defence, electricity generation, water supply, sanitation projects, laying electricity lines.

APPENDIX IV

'THE PROVISIONS OF THE MUNICIPALITIES (EXTENSION TO THE SCHEDULED AREAS) BILL, 2001' : CLAUSE-BY-CLAUSE ANALYSIS

Background

The Constitution (Seventy-fourth Amendment) Act, which was enacted in 1992, came into force on 1 June 1993. This Act inserted 'Part IXA' in the Constitution relating to the Municipalities (18 articles from 243P to 243ZG). However, clause (1) of article 243ZC provides that nothing in Part IXA shall apply to the *Scheduled Areas* (under the *Fifth Schedule of the Constitution*) referred to in clause(1), and the *Tribal Areas* (under the *Sixth Schedule* of the Constitution) referred to in clause (2) of article 244, respectively. Clause (3) of article 243ZC, however, provides that Parliament, may, by law, extend the provisions of Part IXA to these areas subject to such exceptions and modifications as may be specified in such law. This flexible frame has been provided in the Constitution keeping in view the special characteristics of these areas.

A Committee of select Members of Parliament and experts was constituted under the Chairmanship of Shri Dileep Singh Bhuria to examine the issues relating to extension of the provisions of Part IXA of the Constitution to the Scheduled Areas and to make its recommendations. The Bhuria Committee in its Report made 28 recommendations out of which 15 main recommendations have been included in the proposed Bill. It was clarified by the nodal Ministry of Urban Development and Poverty Alleviation that all those recommendations of the Bhuria Committee have been accepted, which have direct bearing with the provisions of the Constitution (Seventy-fourth Amendment) Act, 1992. The other recommendations, which do not have direct bearing on the said Act have not been included in the Bill.

Objective of the Bill

It has been stated in the 'Statement of Objects and Reasons' of the Bill that the present Bill brought in conformity with article 243ZC(3)

of the Constitution is based on the recommendations of the Bhuria Committee as well as comments of the concerned Ministries of the Central Government*, and the eight State Governments having Scheduled Areas. *All provisions of Part IXA of the Constitution are proposed to be extended to the Scheduled Areas with certain modifications in six articles, i.e. 243Q, 243S, 243T, 243W, 243X and 243ZF.* The provisions of the Bill seek to achieve the objective of setting up of Urban Local Bodies in the Scheduled Areas as per the provisions of Part IXA of the Constitution, subject to various exceptions and modifications.

Clause (2) pertaining to applicability of the Bill

In this Act, unless the context otherwise requires, “Scheduled Areas” mean the Scheduled Areas as referred to in clause (1) of article 244 of the Constitution.

(1) Comments of the Ministries

The Ministry of UDPA has stated that there are eight States in the country which have Scheduled Areas, namely Andhra Pradesh, Chhattisgarh (including Madhya Pradesh, the then State which included Chhattisgarh), Gujarat, Himachal Pradesh, Jharkhand (including Bihar, the then State which included Jharkhand), Maharashtra, Orissa and Rajasthan. Further, *the Ministry of Tribal Affairs* stated that according to the report of the first Scheduled Areas and Scheduled Tribes Commission (Dhebar Commission), the Scheduled Areas extend over *99,693 square miles*. The President, on the recommendation of the concerned State Governments, notifies the area under the Fifth and Sixth Schedules of the Constitution. It has also furnished the criteria followed for declaring an area as Scheduled Area:

- (i) preponderance of tribal population;
- (ii) compactness and reasonable size of the area;
- (iii) underdeveloped nature of the area; and
- (iv) marked disparity in the economic standard of the people.

Though preponderance of tribal population is one of the important criteria, in the list of the Municipal areas in the Fifth Scheduled Areas

*The Ministries of (1) Law and Justice, (2) Home Affairs, (3) Rural Development, and (4) Tribal Affairs were consulted.

as furnished by the nodal Ministry, the ratio of Scheduled Tribe population as against the total urban population shown in various districts of the concerned States is nowhere near 50 per cent. Even the combined SC/ST population fail to reach the 50 per cent margin in majority of the districts with the exception of Himachal Pradesh only.

It has been stated by the Ministry of Tribal Affairs that 'preponderance of tribal population' is understood in terms of majority of tribal population in number. However, there is no fixed percentage of tribal population to declare an area as Scheduled Area. Further, it has been informed that at no point of time, areas having 10 per cent ST population were notified as Scheduled Areas. Due to industrialization of migrant population, the percentage of ST population might have reduced. At the time of notification of Scheduled Areas, it is ensured that only those areas having preponderance of tribal population is covered.

(2) Observations of the Bhuria Committee

The *Bhuria Committee* noted that the situation is rather complex in the categorization and inclusion of tribal areas under the Fifth Schedule. This is specially so in the North Eastern States. For example, Arunachal Pradesh, the largest tribal State in the region has no area under the Fifth or Sixth Schedules of the Constitution. Consequently, both Parts IX and IXA automatically cover Arunachal Pradesh without any modification. No part of Nagaland is scheduled. It has been exempted from coverage by Part IX but not Part IXA. Similarly, the hill areas of Manipur have been excluded from the purview of Part IX, but there is no such exemption in relation to Municipalities.

It has been further pointed out that the process of bringing all tribal areas under the Fifth Schedule was taken up in 1976. But the process of scheduling came to a halt in 1978 and has remained unattended thereafter. The Bhuria Committee had recommended in its Report, which was submitted in 1995 that all the *remaining tribal areas* should be brought under Fifth Schedule within one year. This includes Tribal Sub Plan areas in the States of Kerala, Karnataka, West Bengal, Uttaranchal, Uttar Pradesh, Jammu & Kashmir, Sikkim and Tamil Nadu and in the Union territories of Andaman & Nicobar, Daman & Diu, Lakshadweep and Dadra & Nagar Haveli. Hence, these areas need to be addressed on a priority basis for their classification and inclusion in the appropriate Schedule.

Constitution of the Second Scheduled Areas and Scheduled Tribes Commission

When asked whether there is any periodic review of the Scheduled Areas, the *Ministry of Tribal Affairs* has informed that the Scheduled Areas and the Scheduled Tribes Commission constituted under article 339 reviews the Fifth Scheduled Areas. First Commission was constituted in 1960-61. The Second Scheduled Areas and the Scheduled Tribes Commission under article 339(1) of the Constitution, which was set up on 18 July 2002, would examine the issue of extension of Fifth Scheduled areas and other related issues as specified above. The Commission is expected to submit its report to the President within one year. However, its tenure has been extended upto 31 March 2004 to enable finalisation of its report.

Non-applicability of the Bill to the tribal dominant Sixth Scheduled Areas

The tribal dominant Sixth Scheduled areas are outside the purview of the Bill.

Detailed list of the areas under the Sixth Schedule of the Constitution

- | | | |
|-----|-----------|-------------------------------------|
| (1) | Assam | (a) The North Cachar Hills District |
| | | (b) The Karbi Anglong District |
| (2) | Meghalaya | (a) Khasi Hills District |
| | | (b) Jaintia Hills District |
| | | (c) The Garo Hills District |
| (3) | Tripura | (a) Tripura Tribal Areas District |
| (4) | Mizoram | (a) The Chakma District |
| | | (b) The Mara District |
| | | (c) The Lai District |

(1) Comments of the Ministry

When asked as to why the provisions of the Bill are not extended to the Sixth Scheduled Areas, the Ministry of UDPA stated that the Tribal Areas governed by the Sixth Schedule are already enjoying local

self government arrangements. Therefore, the extension of Part IXA relating to establishment of urban local self-government to these areas was not considered necessary.

However, the *Bhuria Committee* has earlier observed in its report that the self-government arrangements in these Sixth Scheduled Areas are plagued by many ills. The Autonomous District Councils (ADCs) have become weak financially and the Village Councils are dependent on the ADCs for their formal recognition. Thus, a thorough examination of the role and the responsibility of the ADCs was recommended.

It has been stated by the *Ministry of Home Affairs*, which is administratively concerned with the matters under Sixth Schedule of the Constitution, that it is considering a proposal for amendments in the Sixth Schedule to make the ADCs more effective. The proposal envisages a two-fold exercise: (i) to enhance the powers of the ADCs in Sixth Scheduled Areas and (ii) to incorporate certain provisions Seventy-third and Seventy-fourth Amendment Acts of the Constitution relating to PRIs and Municipalities. The Ministry of Home Affairs has further informed in the written note that a comprehensive view is required to be taken on the various issues involved and it may not be possible to set a timeframe within which certain provisions of Part IXA of the Constitution would be made applicable to the Sixth Scheduled Areas. It has been mentioned that any changes being made in the Sixth Scheduled especially with reference to the local administration should have the agreement of the ADCs and also the State Governments for effective implementation.

Clause 3(1) pertaining to exceptions/modifications in article 243Q states that article 243Q relating to "Constitution of Municipalities" will 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'.

(1) Observations of the Bhuria Committee

The Bhuria Committee noted that the problems in industrial and mining centres set up in the tribal areas are qualitatively different. These are related to disruption of traditional communication links,

destruction of water sources, establishment of railways and highways, pollution, etc., which often go unnoticed. The tribals who suffer most are denied even the small benefits of the new economic activity either for want of skills or their inability to compete with more articulate groups. Keeping this in view, it has been recommended to constitute appropriate for the management of Industrial and Mining townships.

(2) Comments of the Ministry

The *Ministry of UDPA* has stated that to deal with the specific problems of such areas in proper context and to enable them to become partners in the national development process, a separate category of 'Industrial or Mining Townships' has been included in the Bill. When asked about the parameters to be considered for classifying an area as Industrial/Mining township, it was stated that there are no guidelines to classify an area as Industrial/Mining Township. The Governor may, having regard to the size of the urban area or part thereof and municipal services being provided or proposed to be provided by an industrial establishment in that area and other factors as he may deem fit, by public notification specify to be an industrial township. List of Industrial/Mining townships under the Fifth and Sixth Schedules of the Constitution is not available with the Ministry. The administration of these areas shall be governed by the provisions of the concerned State laws. On being asked whether public enterprises in tribal dominated urban Scheduled Areas can be changed to private enterprises without consulting the concerned Municipalities, it is stated that these issues fall within the purview of the State Government.

(3) Views of the experts

One of the experts has stated in the memorandum that the category of Industrial/Mining Townships is being provided for in the Constitution (Seventy-fourth Amendment) Act, keeping in view the self-contained character of these areas. However, in Scheduled Areas, there are no such self-contained townships and hence this category needs to be excluded from being designated as an urban local body. These areas can be designated as a Municipality as and when need arises.

The experts have expressed doubts about the necessity of the category of Nagar Panchayat in Scheduled Areas. It is stated that Nagar

Panchayats have less power and lesser number of functions as compared to rural Panchayats. The Nagar Panchayat was introduced as a hybrid category to deal with areas in transition from rural to urban, but in reality it has just become a small-scale Municipality without powers or functions. In many cases, it does not satisfy even the criteria of census towns. Hence, there is no need for such a category in the Scheduled Areas. Moreover, since small settlements in Scheduled Areas are inhabited by tribal population living in their traditional style, there may not be much use in converting such small settlements into Nagar Panchayats.

Clause 3(1)(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.

(1) Comments of the Ministries

This clause has specific reference to the Tribes Advisory Council (TAC) with three-fourths of its members being Scheduled Tribe MLAs, which is an important and distinguishing feature of the Fifth Scheduled Areas. The Ministry of Tribal Affairs has informed that as per the Fifth Schedule, a TAC is to be established 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. However, the Bhuria Committee has found that the TACs in many States have, by and large, become dysfunctional, with insignificant contribution to policy making or monitoring implementation of tribal programmes. Concern has also been expressed that the TACs can become an obstacle in the Panchayati Raj/Municipal Government structure. When enquired whether there should be a clear demarcation of the sphere of activity to avoid conflict between the TACs and the Municipal bodies in the urban Scheduled Areas, the Ministry of UDPA has stated that TAC and Municipal body in the Scheduled Areas are governed by a separate set of statutes and hence, no conflict is foreseen in their working. The TAC, which is an advisory body is constituted at the State level, whereas the Municipalities are formed at the level of towns and cities.

Clause 3(1)(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.

(1) Comments of the Ministries

According to the Ministry of Rural Development while there is no objection to distinguish tribal habitations in two separate groups based on economy, the nomenclature of 'Gram Sabha' in the urban context is not appropriate. Article 243(b) of the Constitution defines 'Gram Sabha' as a body consisting of persons registered in the electoral rolls relating to a village comprised within a Panchayat at the village level. Therefore, employing the term 'Gram Sabha' in another context and to describe another body would not be permissible. However, the Ministry of Urban Development and Poverty Alleviation commenting on the said observation, has stated that the nomenclature of 'Gram Sabha' mentioned in article 243(b) is very special in rural context. The word 'Gram Sabha' used in the urban context will be a body consisting of persons registered in the electoral rolls within the area of a Municipality. The economy of a tribal habitation within a Municipality is either based on agricultural and allied activities reflecting a rural character or has got assimilated in urban economy. Since the characters of these two units are different, therefore, the tribal habitation with rural interface are proposed to be called 'Gram Sabha' while the habitation based on urban economy will be called Tribal Mohalla or Ward Sabha. In view of this, the Gram Sabha referred to in article 243(b) of the Constitution has nothing to do with the Gram Sabha proposed to be created within a Municipality in urban Scheduled Areas.

Also, it is stated in the said clause that the tribal habitation in any urban setting shall be treated as a separate unit for the purpose of local self-government. On being asked whether this provision is practicable in a rapidly changing urban scenario, the Ministry has replied in the affirmative stating that it will help urban Scheduled Areas to be governed by the principle of self-governance. Some of the experts have expressed apprehension that this provision would lead to isolation of tribal units. Further, doubt has been expressed over the

integration of tribals into the mainstream development process. But, the Ministry has replied that the intention of treating the tribal habitation in urban setting as a separate unit for the purpose of local self-government is to give them adequate opportunity to be a part of mainstream development process.

(2) Views of the Experts

It has been stated by an expert that once an area is declared as urban, inclusion of Gram Sabha in the Municipality does not seem practical. Gram Sabha should be included in the Panchayati Raj Institutions and not in Municipality. Article 243Q of Part IXA relating to the “Constitution of Municipalities” does not contain institutions like Gram Sabha and Ward Sabha and, therefore, in the context of the Bill, whether they should be equated with Municipal Wards or Municipal election constituency, or any other meaning that have been contemplated for these bodies must be clarified.

In a written memorandum, one of the experts has stated that though the Bill envisages creation of Tribal Mohalla or Ward Sabha, a pragmatic option could have been to create Ward Committees in each local electoral ward in addition to the Wards Committees that are required to be constituted in urban areas with a population of more than three lakh. The States of West Bengal, Madhya Pradesh and Chhattisgarh already have such Ward Committees. The Councillor elected from the electoral ward concerned becomes the Chairperson of the Ward Committee. Other members and focus groups within the ward concerned could be represented on to this Committee to facilitate focussed attention on the socio-economic development of the inhabitants of the ward.

Clause 3(2) pertaining to exceptions modifications in article 243S

Article 243S relating to “Constitution and composition of Wards Committees, etc.,” will apply with the following exceptions and modifications—

There shall be constituted—

(1) a Standing Committee for tribal affairs in each Municipality located within the Scheduled Area. The Committee shall comprise tribal members of the Municipality with the Chairman or the Vice-Chairman, as the case may be, as its Chairman. Recommendations of this Committee shall ordinarily be binding on the Municipality;

(2) a Standing Committee for rural development in each Municipality responsible for the advancement of those engaged in agriculture and allied activities.

(1) Observations of the Bhuria Committee

The Bhuria Committee has recommended for the constitution of the special Standing Committees to devote attention to matters of tribal development. It is recommended that the Standing Committee on tribal affairs should act as a watchdog committee. Moreover, it should have specific responsibility for the protection, welfare and advancement of tribal people. Decisions of this Committee should be binding on the Municipality.

(2) Comments of the Ministry

The Ministry of UDPA has clarified that recommendations of the Standing Committee on rural development have not been made binding on the Municipalities. Even the recommendations of the Standing Committee on tribal affairs shall not be binding on the Municipality. Rather they will “ordinarily” be binding. The word “ordinarily” has been added to maintain the supremacy of the authority of the Municipality in its municipal area. Since the Standing Committee will be subordinate to the Municipal body, its recommendations shall ordinarily be binding on the Municipalities. When asked as to whether the use of the word “ordinarily” would not create confusion and result in differences between the authority of the Municipality and the Standing Committee on Tribal Affairs, the nodal Ministry has clarified that it doesn’t foresee any confusion in implementation of the above provisions.

(3) Views of the Experts

As per the opinion of the expert, once a settlement is declared an urban area on the basis of attributes as specified in clause 3(1)(2), creation of a “Standing Committee for rural development in each Municipality” in an urban area seems to be incongruous. Creating mechanism for ‘rural development’ within a Municipal Government structure does not go with urban governance. Therefore, it would be better if the areas with predominantly rural character are not brought within the fold of municipal body. But the Ministry of UDPA has

stated that the economy of tribal habitation within a Municipality is either based on agriculture and allied activities reflecting a rural character or have got assimilated in urban economy. To assist the Nagar Panchayat in handling the matters having a rural character, the provision for Standing Committee on Rural Development has been proposed in the Bill.

Further, apprehension has been expressed by some experts that by making the decision of any in these Committees binding on the Municipalities, the supremacy of the Municipal Council will get eroded. These Committees, more or less, operate as parallel functional bodies to the Municipality. There should be some mechanism to check decisions of these Standing Committees. A wider discussion on the issues of tribal affairs and rural development in the Municipal Council in an overall perspective should be provided while the Standing Committee will have the task of examining the issues deeply and at length.

However, the Ministry has stated these issues are part of the State list and hence can be dealt with in the concerned State Municipal Law. However, these Committees must be an integral part of the Municipality and their recommendations will be subject to approval by the Municipality. Further, it has been stated that the Standing Committees on rural development and tribal affairs are special purpose Committees and will be working in their respective areas as may be defined in the State legislation.

Clause 3(3) pertaining to exceptions/modifications in article 243T

Article 243T relating to "Reservation of Seats" will 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) *Either the Chairman or the Vice-Chairman 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.

(1) Observations of the Bhuria Committee

The Bhuria Committee in its report has observed that the demographic structure in the Scheduled Areas has changed over the years due to in-migration, with the result that tribal population in these areas, especially in the urban centres has reached an abysmally low figure. It is suggested that measures must be taken forthwith to arrest and to reverse this process and give the tribal people an effective say in the functioning of the urban bodies, guiding the development processes and becoming partners in development. With these observations, the Bhuria Committee has recommended for an extensive scheme of reservation in the urban local bodies in Scheduled Areas.

(2) Comments of the Ministry

As per the Ministry of UDPA, in view of these recommendations, reservation of seats for Scheduled Tribes has been provided in the urban local bodies in the Scheduled Areas. The Ministry justified the varying scheme of reservation at various levels of Municipalities by stating that it has been provided keeping in view the size of the Municipality, *i.e.*, smaller the unit, higher the representation. Gram Sabha and Tribal Mohallas/Ward Sabhas, being the smallest unit of local governments, the tribals have been provided with bigger representation. The higher level of Municipalities in Scheduled Areas, *i.e.*, Nagar Panchayat or Municipal Council will have lower level of reservation in comparison to the Gram Sabhas and Tribal Mohallas/Ward Sabhas so as to provide opportunities to other communities (non-

tribals) living in the municipal limit to have their representation in such bodies.

As regards reservations in all programmes of development, it has been found that most of these facilities become defunct as enough number of ST beneficiaries do not turn up. Further, in the absence of the provision for de-reservation, funds allotted/investments made by the Municipality are blocked for years together. The Ministry stated that reservation in all programmes of development in Scheduled Areas has been provided in favour of Scheduled Tribes with a view that they get due representation in such schemes. The concept of 'no de-reservation' has been incorporated in the Bill to ensure that no attempt is made in any way to de-reserve such seats on any premise. It will be the responsibility of the implementing agency to get such reserved seats filled by the Scheduled Tribes candidates. After the Bill is enacted as an Act of Parliament, it will be the responsibility of the State Government concerned to implement the above provision.

(3) Views of the Experts

One of the experts has opined that a rather heavy dose of reservation is contemplated for the Scheduled Tribes in the urban governance of the Scheduled Area. Some of the experts have stated that the provision regarding the reservation of seats for Chairman and Vice-Chairman is highly desirable as the Bill is meant for the empowerment and development of Scheduled Areas. The Chairman would need to be devolved with executive powers so that she/he is not reduced to the status of a nominal head. However, as "Municipality" is a State subject, no norms or specific guidelines are proposed by the Ministry in this regard.

Clause 3(4)(1 to 6) pertaining to exceptions/modifications in article 243W

Article 243W relating to "Powers, authority and responsibilities of Municipalities, etc.," with 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;*

(1) Observations of the Bhuria Committee

The Bhuria Committee had observed that in almost every case, the urban centres in tribal areas begin almost from the scratch with the setting up of a few trading, administrative and/or industrial establishments. In the absence of any planning at this stage, there is virtual chaos. Growth tends to proceed in a totally uneven fashion and without any discernible pattern and weaker sections of the community are gradually pushed out. To ensure that growth of urban centres in the tribal areas take place in a well-planned manner in harmony with its surroundings, the Bhuria Committee *inter-alia* recommended:

- (1) Preparation of a Master Plan should be made obligatory for every urban local body in the Scheduled Area;
- (2) Wherever such Master Plans have not been prepared so far, they should be prepared within a period of three years; and

- (3) Master Plans should focus *inter-alia* on issues concerning the tribal people and harmonious growth of the region around.

(2) Comments of the Ministries

When asked as to which authority will be responsible for the preparation of Master Plan, the Ministry of UDPA has stated that this would be governed by the provision of the State law. Further, on the question of involvement of District Planning Committee (DPC) in coordination with the Standing Committees on Tribal Affairs and Rural Development in the preparation of Master Plan, it has been stated that the Standing Committees on Tribal Affairs and Rural Development would be an integral part of the Municipality in the Scheduled Areas. The main function of DPC is to consolidate plans prepared by the Panchayats and the Municipalities in the District and to prepare a draft development plan for the District as a whole. In view of this, there seems to be no need to provide any mechanism for consultation of the above Standing Committees by the DPC. This is more pertinent in view of the fact that both these Committees are Special Purpose Committees and no conflict is foreseen between them while discharging their assigned functions.

(3) Views of the Experts

Commenting on this particular sub-clause, one of the experts has opened that the proposed modification in article 243W for the Scheduled Areas stipulates that the State Legislature shall, by law, endow the Municipality with such powers necessary to enable them to function as institutions of urban self-government. Thus, while article 243W of Part IXA of the Constitution left the issue relating to devolution of adequate powers, authority and responsibility to the Municipalities to the discretion of the State Legislature, the proposed modification in respect of the Scheduled Areas made this an obligation on the State Legislature to devolve certain powers, authority and listed functional responsibilities to the Municipalities in the Scheduled Areas. It has been stated that this provision makes the Municipalities more powerful and responsible in the Scheduled Areas.

Opinion has also been expressed that the Bill envisages devolving of a wide range of functions to the Municipalities, some of which are

not in the nature of Municipal functions. Fostering tribal endogenous institutions, development of khadi, cottage, small-scale industries, cooperative movement, secondary school, non-formal education, electrification including distribution, non-conventional energy sources, women and child development, managing *haats* and markets, maintaining places for rest and stay, protecting and maintaining all cultural and religious places of tribal people, acquisition of land for electricity generation, railways, communication etc. are examples of functions that are more in the nature of State functions. Hence, these could be entrusted to the concerned State Departments/Development Councils.

Clauses 3(4)(7) and 3(4)(8)

(7) identifying and removing unauthorised occupation of land;

(8) acquiring land for the purposes of education, health, railways, communications, defence, 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 Tribes person shall be rendered landless as a consequence of acquisition of land as aforesaid.

(1) Comments of the Bhuria Committee

The Bhuria Committee in its report has stated that the only asset of the tribal people is their land, which is also their source of livelihood. No person should be deprived of his primary source of livelihood without providing an alternative, which is acceptable to him and ensures him an honourable position in the new setting. No land may be acquired by any authority except for the purposes of education, health, railways, communication and defence without the prior consent of the mohalla/ward sabha or the gram sabha, and of the person concerned, provided further that an alternative means of livelihood

acceptable to the affected person is provided. It has, however, been observed that acquisition of land for public purposes has been one of the major causes of land alienation among the tribals. Unsatisfactory state of land records and connivance of local officials further worsen the condition of tribals. Moreover, it has been pointed out that the Land Acquisition Act, 1894, under which land acquisition takes place, is based on the principle of individual ownership and does not take cognizance of the customary regulation of common property resources in tribal areas. Therefore, stringent regulations should be made for prevention of alienation of tribal lands in the urban areas, identification of alienated land and their restoration as a time-bound programme.

(2) Comments of the Ministries

The Ministry of UDPA has stated that there is no provision proposed in the Bill to involve the affected people in deciding about the compensation for acquiring their land though the concerned tribal people will be involved in the matter of compensation while acquiring land for public purposes. But there is no uniform guideline regarding the interpretation of the terms “adequate compensation” and “alternative means of livelihood”. These will be regulated as per the provisions of respective law under which land will be acquired. It will be for the concerned authority to ensure availability of land to the concerned person in conjunction with reasonable and adequate compensation. It is not necessary that equal size of land will be made available as a consequence of acquisition. The condition is that the concerned person will not be rendered landless as a result of land acquisition.

The Ministry of Rural Development while commenting on the aforesaid provision of the Bill has differed with the Ministry of UDPA and vouched for removal of the two provisos to this clause, 8(a) and 8(b). It has been stated that proviso 8(a) of the clause relates to the payment of compensation under the Land Acquisition Act, 1894. At present, compensation for acquisition of land for various purposes is determined based on the Land Acquisition Act, 1894. However, this Act does not define the term ‘reasonable and adequate’. Even the proposed Bill under consideration does not define it. It is felt that introducing a new concept without any clear cut definition or scope is likely to create complications in the matter of determining compensation for acquisition of land by the Collector in the Scheduled Areas. Thus, there is no necessity to incorporate this new concept for

payment of compensation for acquisition of land in Scheduled Areas as contained in proviso 8(a) and requires to be deleted.

Further, the Ministry of Rural Development has stated that the proposals relating to amendment of Land Acquisition Act, 1894 are under consideration of the Union Government with the objective of: (i) liberal compensation; (ii) expeditious disposal of acquisition process; (iii) transparency; and (iv) reduced litigation.

With reference to proviso 8(b), the Ministry of Rural Development has stated that the same relates to the Project Affected Families (Resettlement and Rehabilitation) Bill, 2002 under finalisation in the Ministry of Rural Development. Adequate provisions for alternative means of livelihood and providing land for land to tribals in affected areas (subject to its availability) are proposed to be included in the Project Affected Families (Resettlement and Rehabilitation) Bill, 2002. Therefore, it is suggested that proviso 8(b) as well as the second proviso may also not be included in the proposed Bill.

However, the nodal Ministry replied that the above provisions have been included in view of the Bhuria Committee recommendation. Since land will be acquired in terms of the 'Land Acquisition Act', compensation will be governed as per the provisions of the same Act. Hence, there is no need to provide definition of 'reasonable and adequate compensation' in the Bill.

Further, it has been stated that the Panchayat (Extension to the Scheduled Areas) Act, 1996, contains provision regarding acquisition of land in Scheduled Areas:

“4(i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;”

The Rural Development Ministry is of the opinion that insertion of a similar clause in the proposed Bill could perhaps serve the purpose. However, replying to this the nodal Ministry stated that since the purposes for which land may be acquired in terms of the provisions

of the Bill are very specific and are in public interest, no provision is perhaps necessary for inclusion in the Bill that the ULBs be necessary consulted before acquisition of such land.

Clause 3(5) pertaining to exceptions/modifications in article 243X

Article 243X relating to "Power to impose taxes by, and Funds of the Municipalities" will 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 this traditional style for 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 bona fide 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.

(1) Observations of the Bhuria Committee

The Bhuria Committee in its Report has observed that with the growth of urban and industrial centres, the value of land gradually appreciates. Nevertheless, the tribal may continue to live in his traditional style for a long time. Any tax by the urban body on his property with reference to the appreciated value becomes a heavy burden on him. This inevitably results in alienation of land and exodus of tribals. This process must be checked. Moreover, he must be enabled to take advantage of and participate in the new development in the urban centres. Keeping this in view, it has been proposed that no urban tax shall be leviable on a tribal who continues to live in his

traditional style. This recommendation has been accepted and included in the Bill.

(2) Comments of the Ministry

The Ministry of UDPA has informed that the non-Scheduled Tribes in the Scheduled Areas would be required to pay taxes to urban local bodies. When asked about the precautions being made to ensure that non-tribals living in the Scheduled Areas do not get the said benefits by fraudulent means, the Ministry has replied that in order that such concession is not misused by non-tribals, provisions are proposed in the Bill in terms of “norms” to determine whether tribals continue to live in their traditional style or otherwise. It has been stated that the said provision has been included in the Bill to protect the tribals from levy of taxes who continue to live in their “traditional style”. As income cannot be a criterion to define traditional style, occupation has been taken as one to ensure that the benefit is not availed by non-tribals. Also, tribals who abandon their traditional style will be subject to levy of urban taxes.

(3) Views of the Experts

However, some of the experts have expressed apprehension that devolving of functions without the devolution of tax authority will not lead to an effective system of decentralisation and empowerment. The Bill proposes to restrict the scope of article 243X by stating that the Municipalities in the Scheduled Areas will not levy any taxes on the tribals who continue to live in their ‘traditional style’. It is purely based on occupation rather than income. The Scheduled Areas, by and large, will have substantial segment of tribals living in traditional style. Thus, the tax base of the Municipalities will be too narrow to sustain even operation and maintenance of services let alone their augmentation through capital investments. Even the non-tax sources and user charges will be too narrow to make the Municipalities viable institutions of self-government making them dependent on grants-in-aid from the Central and State Governments. Though certain incentives and concessions could be given to these areas, a blanket ban on local taxation appears not only discriminatory, but also may affect local resource mobilisation efforts adversely. Special provisions for transfer of adequate funds from the State Government to compensate the revenue loss of the Municipality due to non-levying of taxes should be made.

However, the Ministry of UDPA is of the opinion that as per article 243X, Legislature of a State may, by law specify the matter relating to imposition of taxes. Such law may specify (1) taxes, duties, fees, etc. which would be levied and collected by the Municipalities; (2) taxes, duties, fees, etc., which would be levied and collected by the State Government and a share passed on to the Municipalities; (3) grants-in-aid that would be given to the Municipalities from the State; and (4) constitution of funds for crediting and withdrawal of money by Municipalities. Besides, State Finance Commission (SFC) will also look into the financial matters of the Municipalities. These provisions are sufficient for strengthening the financial position of the Municipalities in Scheduled Areas. Moreover, SFC set up under Articles 243I and 243Y of the Constitution may also look into these aspects.

Some Other Pertinent Issues

(1) Tribal-forest interface

It has been informed by the Ministry of Environment and Forests that there are tribal habitations inside Reserved and Protected Forests primarily on account of encroachments and also due to faulty or non-settlement of rights during revision surveys. However, no estimation has been done for such lands. When asked to furnish the data regarding tribal habitations/habitants in the Fifth Scheduled Areas falling in forest areas covered under the 'Forest Conservation Act of 1980' (FCA). The Ministry has informed that such information is not maintained. The FCA, 1980, is uniformly applicable to all States/UTs of the country except Jammu and Kashmir.

Elaborating on the overall policy of the Government dealing with encroachments, specifically with regard to the land occupied by the Scheduled Tribes in the Fifth Scheduled Areas, the Ministry of Environment and Forests stated that the policy guidelines clearly categorize the "Eligible and Non-eligible" encroachments;

“(i) Eligible category of encroachments: Pre-1980 subsisting encroachments where the States Governments had taken a decision to regularize the encroachments based on certain eligibility criteria before the enactment of the FCA, 1980 on 25.10.1980.

(2) All remaining pre-1980 encroachments on which no such decision has been taken by States Government will be treated as

ineligible encroachment, which in addition to all encroachments after 24.10.1980, should be evicted. Further, in no case encroachments, which have taken place after 24.10.1980 should be regularized. Various States/ UT Governments have taken action as per the guidelines issued on 18 September 1990 under the FCA, 1980. About 3.64 lakh hectares of encroached forest land has been regularized (about 2.58 lakh hectare final approval and 1.06 lakh hectare in principle) by the Central Government.”

However, the Supreme Court *vide* its Orders made in November 2001 has restrained the Central Government from regularizing encroachments on forest land and has also directed the Central Government to take action for the eviction of encroachers from forest lands. Consequently, the forest areas are being evicted of illegal encroachers. It has also been submitted that out of 13.5 lakh hectares of encroached forest land, 47,700 hectares of land could be evicted of encroached dwellers. However, it has been informed by the Ministry of Environment and Forests that the Central Government is committed to regularize the pre-1980 eligible encroachment as per the guidelines issued on 1 September 1990 under the FCA 1980. More than 85 per cent of the cases which the Ministry has regularised belong to the category of STs.

When asked as to whether there is any special consideration for tribal encroachers, especially in the Fifth Scheduled Areas, the Ministry has informed that there is no such special consideration. The policy guidelines issued by the Government of India equally apply to all encroachers of forest lands including tribals and Scheduled Areas.

However, they have laid down a procedure for forest-tribal interface. It applies all over the country including tribal areas. Its salient features are:

- (1) A mechanism of review of disputed claims over the forest lands arising out of settlements through field verifications;
- (2) Disputes regarding *pattas*/leases/grants involving forest land based on field verification;
- (3) Conversion of forest villages into revenue villages on receipt of proposals from the States.

To review the cases of disputed claims over forest lands and examine the genuineness of the claims, State/UT Governments should

constitute a Committee at the district level, comprising Revenue Officer, concerned Divisional Forest Officer and an official from the Tribal Welfare Department. Such cases, if referred to the Ministry shall be examined and in genuine cases permission for diversion of forest lands shall be granted. The ineligible encroachers will be rehabilitated by the State Governments. When asked to furnish the details regarding constitution of such Committees, it has been informed that except Gujarat, no information has been received from any State Governments regarding constitution of such Committees. The action lies with the State Governments. Government of India have again requested the various States on 30.10.2002 to take time bound action in this regard.

(2) Impact of the 'Forest Conservation Act, 1980' on developmental activities in the Scheduled Areas

The issue regarding the implementation of the MESA after its enactment in the Scheduled Areas, where the FCA is already in force remains unclear. The Ministry of Environment and Forests has informed that the proposed Bill does not extend to forest areas in the Scheduled Areas. Even when enacted, the provisions of the FCA, 1980, being a special Act will have overriding effect. On the contrary, the nodal Ministry has informed that the proposed Bill seeks to extend Part IXA of the Constitution to Scheduled Areas with exceptions and modifications, whereas the FCA, 1980 is a regulatory legislation applicable in forest areas of the country. As the proposed Bill and the FCA have different objectives, this Department do not see any conflict in their implementation. However, the Ministry of Rural Development has earlier stated that there was no specific provision with regard to the overriding effect of FCA over the provisions of PESA and also no coordination between the two which gave rise to a lot of difficulties.

Discussing the impact of FCA, 1980 on the developmental activities in the Scheduled Areas, the Secretary of the nodal Ministry stated that the FCA does not prohibit development activity. Rather, it is a regulatory Act and case by case sanction process is followed for giving approval to proposed developmental activities. Holistic and composite development proposals are encouraged.

However, apprehension has been expressed that ground reality is something different. FCA impedes developmental activities in the Scheduled Areas, whereas exploitation of forest resources by unscrupulous elements take place in flagrant violation of the FCA.

(3) Migrant Tribal Labour

The Bhuria Committee has observed that the question of migrant tribal labour needs to be specially taken care of. Due to his vulnerable situation, his exploitation may assume extreme forms. Keeping this in view, it has been recommended that provisions similar to the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) act, 1979 may be made in case of Scheduled Tribes to cover the situation, where migration may be within the State and outside the Scheduled Districts to which the labourers belong.

However, the Ministry of UDPA has informed that these are issues of local nature and may be looked into by the State Government or the Municipality concerned. The migration of Scheduled Tribes within the same States may have local ramification and as such there is no need to go in for legislation on the lines of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979.

When asked about the provisions being made to ensure well being of nomadic tribal communities, the Ministry has stated that it would be the responsibility of the concerned Municipal body to look into the matter relating to their welfare according to the provisions of the concerned law.

APPENDIX V

LOK SABHA SECRETARIAT
(Committee on Urban and Rural Development)

**MUNICIPAL AREAS IN THE
SCHEDULED AREAS
(FIFTH SCHEDULE)**

Information on
Civic Status
Area
Population (Total)
Population (SC)
Population (ST)

as per Census of India 1991

Prepared by

National Institute of Urban Affairs
New Delhi

Note: The following observations have been used to denote the Civic Status of Urban Units.

CANTT	-	Cantonment
CT	-	Census Town
INA	-	Industrial Notified Area
M	-	Municipality
MC	-	Municipal Committee (Muni. Corp. in U.P.)
M Corp	-	Municipal Corporation
NAC	-	Notified Area Committee
NM	-	Non-Municipal
NP	-	Nagar Panchayat
NA	-	Notified Area
TC	-	Town Committee
VP	-	Village Panchayat

Jharkhand

Name of the District	Name of the Town	Civic Status	Area	Population		
				Urban	SC	ST
1	2	3	4	5	6	7
Palamu	Garhwa (M)	M	12.45	27751	3495	856
Ranchi	Muri (CT)	CT	5.49	10342	828	1221
Ranchi	Khunti (NA)	NA	38.58	24183	1703	7165
Ranchi	Bundu (NA)	NA	13.24	16064	1304	2026
Ranchi	Itaki (NA)*	NA	46.18	26956	556	11971
Ranchi	Khelari (CT)	CT	16.66	14180	2695	3836
Ranchi	Churl (CT)**	CT	16.78	19633	4396	1673
Ranchi	Ray (CT)**	CT	5.85	4502	318	254
Ranchi	Ranchi (M. Corp)	M. Corp	177.19	599306	26259	121111
Ranchi	Kanke (CT)	CT	4.90	15489	664	4563

1	2	3	4	5	6	7
Purbi Singhbhum	Ghatshila (CT)	CT	13.21	32417	3595	3125
Purbi Singhbhum	Chakulia (NA)	NA	15.02	12716	915	1848
Purbi Singhbhum	Musabani (CT)	CT	14.05	36909	3107	6750
Purbi Singhbhum	Jadugora (CT)	CT	9.79	16506	1265	3757
Purbi Singhbhum	Jamshedpur (NA) + Rly. Colony	NA	0.00	478950	27781	22554
Purbi Singhbhum	Jamshedpur (NA)	NA	0.00	460577	26693	22027
Purbi Singhbhum	Tata Nagar Rly. Colony		0.00	18373	1088	527
Purbi Singhbhum	Jugsalai (M)	M	3.69	38623	1286	265
Purbi Singhbhum	Bagbera (CT)	CT	10.70	57039	1657	16556
Purbi Singhbhum	Mango (NA)*	NA	19.45	108100	2349	6846
Purbi Singhbhum	Chota Gobindpur (CT)*	CT	2.63	19368	160	739
Purbi Singhbhum	Haludbani (CT)**	CT	3.92	14830	638	4854
Purbi Singhbhum	Sarjamda (CT)**	CT	2.21	10338	478	5890
Purbi Singhbhum	Ghorabhandha (CT)**	CT	3.23	9533	178	502
Purbi Singhbhum	Gadhra (CT)*	CT	4.10	14587	326	3660
Pashchimi Singhbhum	Chaibasa (M)	M	8.60	56729	3923	12705
Pashchimi Singhbhum	Jhinkpani (CT)	CT	17.10	11043	817	4270
Pashchimi Singhbhum	Noamundi (CT)	CT	28.80	15289	2090	4562
Pashchimi Singhbhum	Gua (CT)	CT	4.01	9608	1216	3101
Pashchimi Singhbhum	Kiriburu (CT)	CT	2.65	9043	1105	2892
Pashchimi Singhbhum	Chakradharpur (M)+ Rly. Colony	M	7.35	47666	3275	6309

1	2	3	4	5	6	7
Pashchimi Singhbhum	Chakradharpur (M)	M	7.35	32737	1032	5023
Pashchimi Singhbhum	Chakradharpur Rly. Colony		0.00	14929	2243	1286
Pashchimi Singhbhum	Seraikela (M)	M	8.92	11178	572	1470
Pashchimi Singhbhum	Sini (CT)	CT	2.02	6766	582	434
Pashchimi Singhbhum	Kharsawan (NA)	NA	6.96	5735	459	551
Pashchimi Singhbhum	Chiria (CT)*	CT	1.12	4627	306	2573
Pashchimi Singhbhum	Danguwapasi (CT)**	CT	4.33	5084	367	1519
Pashchimi Singhbhum	Jaganathpur (CT)**	CT	5.64	5312	219	914
Pashchimi Singhbhum	Manoharpur (CT)**	CT	10.90	9981	870	3859
Pashchimi Singhbhum	Kandra (CT)**	CT	2.69	6551	536	288
Pashchimi Singhbhum	Adtiyapur (NA)	NA	49.82	77803	4446	10605
Gujarat						
Panchmahals	Santrampur (NP)	NP	17.15	13921	878	2769
Panchmahals	Devgadbaria (NP)	NP	10.25	17608	929	2517
Panchmahals	Halol (NP)	NP	16.26	27349	957	2720
Panchmahals	Dohad (M)	M	0.00	66500	2815	9440
Vadodara	Chota Udaipur (NP)	NP	4.01	19006	1070	4384
Bharuch	Bharuch INA (INA)	INA	0.00	3029	158	100
Bharuch	Hansot (VP)	VP	16.23	9589	422	1732
Surat	Songadh (NP)	NP	5.69	16009	459	4377
Surat	Vyara (M)	M	7.92	30908	909	10881
Surat	Bardoli (M)	M	6.47	38377	1283	7562

1	2	3	4	5	6	7
Valsad	Pardi (NP)	NP	13.10	19863	460	6604
Valsad	Dharampur (NP)	NP	15.51	16588	396	8471
Valsad	Kaliawadi (VP)	VP	0.34	4438	21	1083
Sabarkantha	Khedbrahma (NP)	NP	27.32	17231	1439	1494
Sabarkantha	Talod (NP)	NP	22.40	15197	1115	104
Madhya Pradesh & Chhattisgarh						
Morena	Sheopur (M)	M	3.99	39047	5222	955
Ratlam	Alot (M)	M	2.78	17638	1633	119
Ratlam	(i) Sailana (M)	M	2.59	9833	1340	724
Jhabua	Bamnia (NA)*	NA	0.58	6751	277	4056
Jhabua	(i) Petlawad (M)	M	5.11	9932	674	1707
Jhabua	Thandla (M)	M	0.39	10349	526	2179
Jhabua	Jhabua (M)	M	6.34	22644	1126	5799
Jhabua	Ranapur (M)	M	12.16	10405	622	2960
Jhabua	(i) Bhabra (M)*	M	22.30	7462	328	3827
Jhabua	Jobat (M)	M	1.33	8096	539	1646
Jhabua	Alirajpur (M)	M	13.32	21900	1709	5169
Dhar	Sardarpur-Rajgarh (M)	M	4.48	16893	1295	2946
Dhar	Dhar (M)	M	17.48	59246	3935	5457
Dhar	Manawar (M)	M	15.08	20323	1687	3029
Dhar	Kukshi (M)	M	12.37	19838	1550	4031
Khargone	Maheshwar (NM)	NM	6.09	15345	1717	830

1	2	3	4	5	6	7
Khargone	Barwani (M)	M	6.58	33678	3197	4774
Khargone	Rajpur (M)	M	9.00	14396	1099	1297
Khargone	Bhikangaon (M)	M	1.79	11812	1193	1799
Khargone	Khargone (M)	M	10.00	66786	4163	2493
Khargone	Sendhwa (M)	M	2.32	36432	2249	2915
East Nimar (Khandwa)	Harsud (M)**	M	4.76	13685	1996	577
East Nimar (Khandwa)	Burhanpur (MC)	MC	12.67	172710	10311	712
Betul	(i) Betul (M)	M	15.70	63534	6285	4166
Betul	Betul Bazar (M)	M	1.19	9605	626	86
Betul	Bhainsdehi (M)*	M	4.46	14074	1413	778
Hoshangabad	Honshangabad (M)	M	24.27	70914	11048	4368
Mandla	Shahpura (M)**	M	29.45	9893	523	2408
Mandla	Dhindori (M)	M	11.56	13213	627	2808
Mandla	(i) Mandla (M)	M	8.37	38402	2519	2320
Mandla	Nainpur (M)	M	18.98	20209	3741	1994
Mandla	Bamhani (M)*	M	8.88	8093	385	1045
Chhindwara	Amarwara (M)**	M	11.93	9208	1201	690
Chhindwara	Jamai (M)	M	11.42	21879	3619	1853
Chhindwara	Sausar (M)	M	15.92	18803	1612	1256
Seoni	Lakhanadon (M)**	M	18.79	11410	1367	1112
Seoni	Seoni (M)	M	8.47	64532	6242	2985
Balaghat	Baihar (M)*	M	29.15	13442	710	3339

1	2	3	4	5	6	7
Surguja	Ramanuj Ganj (M)	M	6.70	7834	281	649
Surguja	Charcha (NM)*	NM	0.85	13404	1397	1861
Surguja	West Chirmiri (NM)*	NM	0.81	8889	689	1651
Surguja	Baikunth Pur (M)	M	2.29	8316	363	833
Surguja	Manendra Garh (M)	M	6.93	26326	1687	2576
Surguja	Koria Block (NM)*	NM	5.84	8863	875	1530
Surguja	Suraj Pur (M)	M	13.67	13049	685	1814
Surguja	Vishram Pur (NM)*	NM	3.68	11313	818	1283
Surguja	Khonga Pani (NM)*	NM	4.21	14297	2002	2734
Surguja	Jhagrakhand (M)	M	14.46	13933	1944	2255
Surguja	(i) Ambika Pur (M)	M	9.39	50277	2036	5003
Surguja	(a) Kurasia (NM)	NM	5.31	15898	2065	1159
Surguja	(b) N.C.P.H. Colliery (NM)*	NM	13.60	16205	1634	2255
Surguja	(c) Gelha Pani (NM)*	NM	0.77	4939	780	781
Surguja	(d) Doman Hill Collery (NM)*	NM	9.07	14706	1481	2570
Surguja	(e) Chirmiri		8.49	19960	2795	2428
Surguja	(i) Chirmiri (NM)	NM	3.36	15861	2322	1508
Bilaspur	Katghora (M)*	M	17.98	14761	1462	1937
Bilaspur	(a) Bilaspur		35.92	192396	22545	7106
Bilaspur	(i) Bilaspur (MC)	MC	26.35	179833	21008	6183
Bilaspur	(b) Bilaspur Rly. Colony (NM)*	NM	4.07	28132	3943	1523
Bilaspur	(c) Sirgiti (NM)	NM	6.48	9087	903	1037

1	2	3	4	5	6	7
Raigarh	Jashpur Nagar (M)	M	12.66	14788	1367	4890
Raigarh	Gharghoda (M)	M	12.74	7040	728	2197
Raigarh	(i) Kharsia (M)	M	3.24	14236	1574	613
Raigarh	(i) Raigarh (M)	M	18.26	86767	13970	7258
Rajnandgaon	Rajnandgaon (MC)	MC	93.34	125371	15729	6027
Durg	Balod (M)	M	9.35	17916	1294	1703
Durg	(d) Chhaoni (NM)*	NM	8.02	25058	2936	1045
Raipur	Bagbahara (M)**	M	12.62	14801	3293	1743
Raipur	Dhamtari (M)	M	23.40	69357	6370	6189
Bastar	(i) Kanker (M)	M	9.51	20206	1462	3321
Bastar	Kondagaon (M)**	M	10.28	24398	2512	6032
Bastar	(i) Jagdalpur (M)	M	8.50	66154	6652	8455
Bastar	Bade Bacheli (NM)*	NM	15.74	12582	1366	2898
Bastar	Kirandul (NM)	NM	10.58	19623	2579	4402
Maharashtra						
Thane	Dahanu (M)	M	20.74	33599	1454	7771
Thane	Jawhar (M)	M	3.52	9325	663	2791
Thane	Vada (CT)	CT	10.83	11418	673	2794
Thane	Shahapur (CT)	CT	6.41	9207	347	867
Nashik	Trimbak (M)	M	1.89	7883	442	2418
Nashik	Igatpuri (M)	M	10.36	22868	4439	977
Dhule	Nawapur (M)	M	14.50	23958	1217	6677

1	2	3	4	5	6	7
Dhule	Nandurbar (M)	M	31.41	78378	5869	7665
Dhule	Talode (M)	M	2.16	21700	1161	5381
Nanded	Kinwat (M)	M	13.74	21917	3721	1542
Amravati	Chikhaldara (M)	M	3.94	3081	619	929
Yavatmal	Pandharkaoda (M)	M	3.99	22813	1825	3017
Orissa						
Sambalpur	Kochinda (NAC)	NAC	16.84	12161	1240	4138
Sundargarh	Sundargarh (M)	M	23.83	30352	2957	7091
Sundargarh	Rajagangapur (M)	M	26.16	39549	2904	9640
Sundargarh	Biramitrapur (M)	M	35.22	33556	6284	13721
Sundargarh	(a) Raurkela Steel Township		132.86	233058	22992	35262
Sundargarh	Raurkela (S.T.) (NAC)	NAC	121.73	215509	22256	30869
Sundargarh	(b) Raurkela		18.13	152690	11188	23678
Sundargarh	(i) Raurkela (M)	M	0.00	140408	10506	18122
Sundargarh	(c) Jalda (CT)	CT	6.18	13116	1507	7687
Kendujhar	barbil (M)	M	41.44	42032	5530	11904
Kendujhar	Kendujhar (M)	M	26.40	41945	5690	10482
Mayurbhanj	Rairangpur (NAC)	NAC	14.38	18097	1678	2596
Mayurbhanj	(i) Baripada (M)	M	10.00	49619	5400	3757
Mayurbhanj	Udala (NAC)	NAC	7.89	11289	980	3248
Mayurbhanj	Karanjia (NAC)	NAC	18.64	17623	2612	5270
Baleshwar	Nilagiri (NAC)	NAC	20.44	12800	1986	2617

1	2	3	4	5	6	7
Koraput	Jeypur (NAC)	NAC	25.90	65246	6869	7373
Koraput	Sunabeda (NAC)	NAC	76.48	52507	10110	10587
Koraput	Koraput (NAC)	NAC	61.07	34924	4987	6409
Koraput	Kotpad (NAC)	NAC	12.95	13309	1763	3016
Ganjam	Surada (NAC)	NAC	4.92	13268	3421	62
Phulbani	G. Udayagiri (NAC)	NAC	13.24	8508	1041	1867
Rajasthan						
Dungarpur	Dungarpur M	M	10.24	35681	2639	3454
Dungarpur	Sagwara M	M	7.00	22240	1894	5229
Dungarpur	Galiakot CT	CT	10.03	5896	931	1456
Banswara	Partapur* CT	CT	3.97	9477	905	1189
Banswara	Borkhera* CT	CT	3.67	2468	654	210
Banswara	Kushalgarh M	M	1.00	9341	628	1319
Banswara	(i) Banswara M	M	16.01	66632	4498	5653
Banswara	(ii) Bhawanpura & Thikaria Indu		0.94	1276	4	48
Udaipur	Salumbar M	M	4.00	13981	1814	250
Chittaurgarh	Pratapgarh M	M	24.50	29443	3567	1528
Sirohi	(i) Abu Road M	M	12.35	38982	9382	3213

Himachal Pradesh

Name of the District/Area	Population	SC&ST
Lahaul Spiti District	31294	84.08%
Kinnaur District	71270	82.45%
Pangi Tehsil	14960	94.75%
Bharmaur Tehsil	33909	96.58%

APPENDIX VI

COMMITTEE ON URBAN AND RURAL DEVELOPMENT (2001)

EXTRACT OF MINUTES OF THE TWENTY-THIRD SITTING OF THE
COMMITTEE HELD ON THURSDAY, THE 18TH OCTOBER, 2001.

The Committee sat from 1100 hrs. to 1300 hrs. in Room No. '139',
First Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Anant Gangaram Geete—*Chairman*

MEMBERS

Lok Sabha

2. Shri Mani Shankar Aiyar
3. Shri Padmanava Behera
4. Shri Jaswant Singh Bishnoi
5. Shri Ambati Brahmaniah
6. Shri Swadesh Chakraborty
7. Shri Haribhai Chaudhary
8. Shri Bal Krishna Chauhan
9. Shrimati Hema Gamang
10. Shri Holkhomang Haokip
11. Shri Babubhai K. Katara
12. Shri Shrichand Kriplani
13. Shri Bir Singh Mahato
14. Dr. Ranjit Kumar Panja
15. Shri Ramchandra Paswan
16. Shri Dharam Raj Singh Patel
17. Shri Chinmayanand Swami
18. Shri Chintaman Wanaga

Rajya Sabha

19. Shrimati Shabana Azmi
20. Shri N.R. Dasari
21. Shri C. Apok Jamir
22. Prof. A. Lakshmisagar
23. Shri Kalraj Mishra
24. Shri Faqir Chand Mullana
25. Shri A. Vijaya Raghavan
26. Shri Suryabhan Patil Vahadane

SECRETARIAT

1. Shri S.C. Rastogi — *Joint Secretary*
2. Shri K. Chakraborty — *Deputy Secretary*
3. Shrimati Sudesh Luthra — *Under Secretary*

**Representatives of the Ministry of Urban Development
and Poverty Alleviation**

(Department of Urban Development)

1. Shri K. Kosal Ram — Secretary (UD)
2. Shri S. Banerjee — Joint Secretary (UD)
3. Shri S.K. Singh — Director (UD)

**Representatives of the Ministry of Law, Justice and Company
Affairs**

(i) (Department of Legal Affairs)

Shri D.P. Sharma — Additional Secretary

(ii) (Legislative Department)

1. Dr. Santokh Singh — Jt. Secy. and Legislative
Counsel
2. Shri N.K. Ambastha — Assistant Legislative
Counsel

2. The Chairman at the outset, welcomed the members to the sitting of the Committee.

3. ** ** ** **

4. Hon'ble Chairman informed the Committee that the Ministry of Urban Development and Poverty Alleviation had furnished a list of experts on the 'Provision of the Municipalities (Extension to Scheduled Areas) Bill, 2001'. He apprised the Committee about the names of the said experts. The Committee, thereafter, decided that written views of the experts in the form of Memorandum may be invited and thereafter, they could be heard, if necessary, at the sitting of the Committee at some future date.

5. Thereafter, the representatives of the Ministry of Urban Development and Poverty Alleviation (Department of Urban Development) and the Ministry of Law-Justice and Company Affairs were called in. The Committee were then briefed by the representatives of the Ministry of Urban Development and Poverty Alleviation on the provisions of the aforesaid Bill.

The Committee then adjourned.

**Relevant portions of the minutes not related to the subject have been kept separately.

APPENDIX VII

COMMITTEE ON URBAN AND RURAL DEVELOPMENT

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE HELD ON WEDNESDAY, THE 12TH MARCH, 2003

The Committee sat from 1600 hrs. to 1830 hrs. in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Shri Chandrakant Khaire—*Chairman*

MEMBERS

Lok Sabha

2. Shri Padmanava Behera
3. Shri Jaswant Singh Bishnoi
4. Shri Haribhai Chaudhary
5. Shrimati Hema Gamang
6. Shri Hassan Khan
7. Shri Basavanagoud Kolur
8. Shri Savshibhai Makwana
9. Shri Chandresh Patel
10. Shri D.C. Srikantappa
11. Shri Ravi Prakash Verma

Rajya Sabha

12. Shri N.R. Dasari
13. Shri Ramadhar Kashyap
14. Shrimati Gurcharan Kaur
15. Shri Faqir Chand Mullana
16. Shri Harish Rawat
17. Shri Man Mohan Samal

SECRETARIAT

1. Shri K. Chakraborty — *Deputy Secretary*
2. Shrimati Sudesh Luthra — *Under Secretary*
3. Shri N.S. Hooda — *Under Secretary*

Names of the experts called to tender evidence

1. Prof. V. Lakshmipathy, Director, Regional Centre for Urban and Environmental Studies, Osmania University, Hyderabad-500007.
2. Prof. Vinod Tewari, Director, National Institute of Urban Affairs, India Habitat Centre, New Delhi-110016

**Representatives of Ministry of Urban Development
and Poverty Alleviation**

1. Shri M. Rajamani, Joint Secretary
2. Shri S.K. Singh, Director

**Representatives of Ministry of Law and Justice
(Legislative Department)**

Dr. Santokh Singh, Joint Secretary and Legislative Counsel

Department of Legal Affairs

Shri R.L. Koli, Joint Secretary and Legal Adviser

2. At the outset, the Chairman, welcomed the members to the sitting of the Committee convened to take oral evidence of the experts on the 'Provisions of the Municipalities (Extension to Scheduled Areas) Bill, 2001', which was introduced in Rajya Sabha on 30th July, 2001, and was referred to this Committee on 6th August, 2001, for examination and report. He briefly touched upon the main provisions of the Bill followed by a brief summary of the work done so far by the Committee regarding its examination. Outlining the aims and objectives of the Bill, the Chairman stated that though the Constitution (Seventy-fourth Amendment) Act, 1992, which inserted Part IXA in the Constitution, made Municipal bodies based on popular representation, mandatory in urban areas of the country, it is not applicable to Scheduled Areas referred to in article 244 of the Constitution. The said Bill based on the recommendations of the Bhuria Committee proposes to extend Part IXA of the Constitution to the Scheduled Areas with certain exceptions/modifications. The Committee were also apprised that the views of the concerned eight States with Scheduled Areas to which the Bill will be made applicable, could be obtained, and if found necessary, some of these areas may be visited by the Committee to have direct interaction.

3. Thereafter, Prof. V. Lakshmi pathy, Director, Regional Centre for Urban and Environmental Studies, Hyderabad, and Prof. Vinod Tewari, Director, National Institute Urban Affairs, New Delhi, were called in separately for tendering oral evidence. The representatives of the Ministry of Urban Development and Poverty Alleviation and Ministry of Law and Justice were also present to assist the Committee. The experts placed their considered views before the Committee on the various issues pertaining to the Bill and also replied to the various clarificatory queries raised by the Committee. On the queries to which they could not reply at that time, they were asked to send their replies to the Committee at the earliest.

4. Both the experts agreed that the Bill is an appreciable effort in the right direction of devolving power to the marginalized tribal communities and to integrate them into the mainstream political process. However, it was pointed out that the processes of integration and development should be based on felt needs of the people, especially so, for the weaker sections of the society. The Committee also agreed that since Scheduled Tribes is not a homogenous group, there must be certain provision in the Bill to ensure that the proposed benefits/opportunities reach the target group. The experts were of the view the diagnostic study by the Parliamentary Committee should be undertaken to find out how the special needs of these people can be addressed through proper legislation. Moreover, a real time monitoring system should be set up, so that the Centre can keep a watch over the process of implementation and its effectiveness of all such legislations. The issue of functional devolution was also raised by the experts, wherein it was pointed out that the Municipalities in the Scheduled Areas have been given a number of developmental functions, most of which are non-municipal in nature and, therefore, it would be appropriate to evolve certain mechanism to deal with these functions at the District administration level.

5. The Committee also sought clarification from the representatives of the Ministry of Urban Development and Poverty Alleviation and Ministry of Law and Justice regarding categorization of areas as Scheduled Areas and they were asked to provide the Committee with the latest list of all such Scheduled Areas. While agreeing to furnish latest information in this regard to the Committee, the representatives of the Ministry of Urban Development and Poverty Alleviation stated that keeping in view the special nature and characteristic of tribal society, the Bill seeks to extend the practice of self-governance by

granting certain special privileges to the tribals, like reservation. Further, the Committee were also apprised about the criteria for declaring an area as Scheduled Area. On the query of the Committee regarding non-inclusion of certain tribally dominant areas in the Fifth or Sixth Schedules, it was informed that the Second Scheduled Areas and Scheduled Tribes Commission has been set up which would examine this issue of extension and would submit its report by July this year.

6. The Committee then decided that in their next sitting for the examination of the Bill, which may be held sometimes during the Budget Session itself, they would like to take oral evidence of the representatives of the Ministry of Urban Development and Poverty Alleviation. They also desired that the Ministry of Tribal Affairs should also be called to tender evidence before the Committee, as the Bill pertains to tribal dominant areas.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

APPENDIX VIII

COMMITTEE ON URBAN AND RURAL DEVELOPMENT (2003)

MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE HELD ON TUESDAY, 6 MAY, 2003

The Committee sat from 1600 hrs. to 1730 hrs. in Committee Room No. 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Chandrakant Khaire—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. Ajaya Kumar
3. Shri Haribhai Chaudhary
4. Shri Shriram Chauhan
5. Shri Shamsher Singh Dullo
6. Shrimati Hema Gamang
7. Shri Basavanagoud Kolur
8. Shri Savshibhai Makwana
9. Shri Sadashivrao Dadoba Mandlik
10. Shri Mahendra Singh Pal
11. Prof. (Shrimati) A.K. Premajam
12. Shri Maheshwar Singh
13. Shri Pradeep Yadav

Rajya Sabha

14. Shrimati Shabana Azmi
15. Shrimati Prema Cariappa
16. Shri N.R. Dasari
17. Shri Ramadhar Kashyap
18. Shrimati Gurcharan Kaur
19. Shri Man Mohan Samal

SECRETARIAT

1. Shri N.K. Sapra — *Joint Secretary*
2. Shri K. Chakraborty — *Deputy Secretary*
3. Shrimati Sudesh Luthra — *Under Secretary*
4. Shri N.S. Hooda — *Under Secretary*

**Representatives of the Ministry of Urban Development and
Poverty Alleviation**

(Department of Urban Development)

- (i) Shri P.K. Hota, Additional Secretary
- (ii) Shri M. Rajamani, Joint Secretary
- (iii) Shri Subhash Chandra, Under Secretary

Representatives of the Ministry of Tribal Affairs

- (i) Shri B.S. Baswan, Secretary
- (ii) Shri S. Chatterjee, Joint Secretary
- (iii) Shri P.L. Yadav, Deputy Director

Representatives of the Ministry of Environment and Forests

- (i) Shri N.K. Joshi, Additional Director General of Forests
(Additional Secretary)
- (ii) Shri V.K. Bahuguna, Inspector General of Forests
(Joint Secretary)

Representatives of the Ministry of Rural Development

- (i) Ms. Lalita Kumar, Joint Secretary (Department of Land Resources)
- (ii) Shri S.D. Meena, Director, Land Reforms

Representatives of the Ministry of Home Affairs

- (i) Shri Rajiv Aggarwal, Joint Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee convened to have further briefing by the

representatives of the concerned Ministries on the 'Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001', which was introduced in Rajya Sabha on 30 July 2001 and was referred to this Committee on 6 August 2001 for examination and report. The Chairman also indicated in brief the reasons for calling the meeting, followed by a summary of the work done so far by the Committee regarding its examination.

3. The members were also apprised that, if they all agreed, a study visit to some of the areas particularly in the States of Orissa, Rajasthan, Maharashtra, Gujarat etc., under the purview of the Bill could be undertaken, to have a clear understanding of the existing ground realities.

4. Then the representatives of the Government were called in. The Chairman welcomed the representatives of the Ministries of (i) Urban Development and Poverty Alleviation, (ii) Tribal Affairs, (iii) Environment and Forests, (iv) Rural Development and (v) Home Affairs, to the sitting. He also drew their attention to Direction 55(1) of the 'Directions by the Speaker, Lok Sabha'.

5. Thereafter, the representatives of the above mentioned Ministries elaborated on the points raised by the members of the Committee. However, due to time constraint, discussion could not be held in detail and representatives of the Ministries were asked to send written replies concerning points raised, which needed further elucidation. As the discussion could not be concluded, the Committee decided to call the representatives of the concerned Ministries again at a later date.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

APPENDIX IX

COMMITTEE ON URBAN AND RURAL DEVELOPMENT (2003)
MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE
HELD ON FRIDAY, 25 JULY, 2003

The Committee sat from 1530 hrs. to 1700 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Chandrakant Khaire—*Chairman*

MEMBERS

Lok Sabha

2. Shri Haribhai Chaudhary
3. Shri Shriram Chauhan
4. Shrimati Hema Gamang
5. Shri G. Putta Swamy Gowda
6. Shri Hassan Khan
7. Shri Shrichand Kriplani
8. Shri Savshibhai Makwana
9. Shri Mahendra Singh Pal
10. Prof. (Shrimati) A.K. Premajam
11. Shri Ravi Prakash Verma

Rajya Sabha

12. Shri S. Agniraj
13. Shrimati Prema Cariappa
14. Shri Ramadhar Kashyap
15. Shrimati Gurcharan Kaur
16. Shri Harish Rawat
17. Shri G.K. Vasani

SECRETARIAT

1. Shri N.K. Sapra — *Joint Secretary*
2. Shri K. Chakraborty — *Deputy Secretary*
3. Shrimati Sudesh Luthra — *Under Secretary*
4. Shri A.K. Shah — *Assistant Director*

**Representatives of the Ministry of Urban Development and
Poverty Alleviation**

(Department of Urban Development)

- (i) Shri N.N. Khanna, Secretary
- (ii) Shri M. Rajamani, Joint Secretary
- (iii) Shri Subhash Chandra, Under Secretary

Representatives of the Ministry of Tribal Affairs

- (i) Shri S.P. Arya, Secretary
- (ii) Shri Ramesh Chandra, Director

Representatives of the Ministry of Environment and Forests

- (i) Shri N.K. Joshi, Additional Director General of Forests & Special Secretary
- (ii) Shri V.K. Bahuguna, Inspector General of Forests

Representative of the Ministry of Rural Development

- (i) Shri P.S. Rana, Additional Secretary (Department of Land Resources)

Representatives of the Ministry of Home Affairs

- (i) Shri Rajiv Agarwal, Joint Secretary (NE)
- (ii) Shri Ajay Kanoujia, Desk Officer (NE IV)

Representatives of the Ministry of Law and Justice

- (i) Shri R.L. Koli, Joint Secretary & Legal Adviser
(Department of Legal Affairs)
- (ii) Dr. Santokh Singh, Joint Secretary & Legislative Counsel
(Legislative Department)

2. At the outset, the Chairman welcomed the members to the sitting of the Committee. He indicated that the sitting had been convened to continue the briefing on 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001' by the representatives of the nodal Ministry and other concerned Ministries, which could not be concluded at the sitting of the Committee held on 6 May 2003. He also gave a summary of the work done so far, regarding the examination of the aforesaid Bill, which was introduced in Rajya Sabha on 30 July 2001 and was referred to this Committee on 6 August 2001 for examination and report.

3. Thereafter, the representatives of the above mentioned Ministries were called in. The Chairman welcomed the representatives to the sitting and drew their attention to Direction 55(1) of the 'Directions by the Speaker, Lok Sabha'.

4. The representatives, then, elaborated on the various points raised by the members. However, some members were apprehensive about the lack of clarity in certain provisions of the Bill. Moreover, members also felt that concerned Ministries were not acting in tandem and there was lack of coordination between them, which might give rise to contradictory and conflicting situations and unnecessary litigation in future. The Committee discussed at length and sought further clarifications on the following issues:

- (i) Criteria for declaring an area as 'Scheduled Area', especially with reference to the condition of 'preponderance of tribal population';
- (ii) Definition of 'encroachment' in view of the Supreme Court Order, 2001 dealing with the eviction of encroachers and the proposed 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001' which seeks to protect tribals. The nodal Ministry was asked as to how it would maintain the balance between conflicting situations, especially when tribal interests and welfare are involved;
- (iii) Conflict of the present legislation after its enactment with the already existing 'Forest Conservation Act' in the forestlands of 'Scheduled Areas'. Due to the overriding provisions of the FC Act, Municipalities would not be able to carry out any developmental work without the permission from the forest authorities, thus making the entire process

complex. Clarification was thus sought from the nodal Ministry as to how this dilemma could be resolved; and

- (iv) Comparative analysis with 'The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996' pointed out that a lot of difficulties were being faced as it was not a substantive and self-contained piece of legislation. these lacunae should be addressed in case of MESA and rectified accordingly.

5. The Committee, thereafter, directed the nodal Ministry, *i.e.*, the Ministry of Urban Development and Poverty Alleviation to discuss the aforesaid conflicting issues with the concerned Ministries and clarify the same during the course of evidence on the aforesaid Bill, at the next sitting of the Committee scheduled to be held on 5 August 2003.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

APPENDIX X

COMMITTEE ON URBAN AND RURAL DEVELOPMENT (2003)

MINUTES OF THE TWENTY-FIRST SITTING OF THE COMMITTEE
HELD ON FRIDAY, 5 SEPTEMBER, 2003

The Committee sat from 1100 hrs. to 1315 hrs. in Committee Room No. 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Chandrakant Khaire — *Chairman*

MEMBERS

Lok Sabha

2. Shri S. Ajaya Kumar
3. Shri Ranen Barman
4. Shri Haribhai Chaudhary
5. Shri Shamsher Singh Dullo
6. Shri Jaiprakash
7. Shri Basavanagoud Kolar
8. Shri Shrichand Kriplani
9. Shri Savshibhai Makwana
10. Shri Mahendra Singh Pal
11. Prof. (Shrimati) A.K. Premajam
12. Shri Pyare Lal Sankhwar
13. Shri D.C. Srikantappa
14. Shri V.M. Sudheeran
15. Shri Pradeep Yadav

Rajya Sabha

16. Shrimati Prema Cariappa
17. Shri Prasanta Chatterjee
18. Shri N.R. Dasari
19. Shri Ramadhar Kashyap
20. Shrimati Gurcharan Kaur
21. Shri Faqir Chand Mullana
22. Shri Rumandla Ramachandraiah
23. Shri Harish Rawat
24. Shri Man Mohan Samal

SECRETARIAT

1. Shri N.K. Sapra — *Joint Secretary*
2. Shri K. Chakraborty — *Deputy Secretary*
3. Shrimati Sudesh Luthra — *Under Secretary*
4. Shri A.K. Shah — *Assistant Director*

**Representatives of the Ministry of Urban Development and
Poverty Alleviation**

(Department of Urban Development)

- (i) Shri N.N. Khanna, Secretary
- (ii) Shri M. Rajamani, Joint Secretary
- (iii) Shri Vijay Dev, Director
- (iv) Shri Subhash Chandra, Under Secretary

Representatives of the Ministry of Tribal Affairs

- (i) Dr. A.V.S. Reddy, Secretary
- (ii) Shri S. Chatterjee, Joint Secretary

Representatives of the Ministry of Environment and Forests

- (i) Dr. V.K. Bahuguna, Inspector General of Forests
- (ii) Shri J.V. Sharma,, Deputy Inspector General of Forests

Representative of the Ministry of Rural Development

- (i) Shri P.S. Rana, Additional Secretary (Department of Land Resources)

**Representatives of the Ministry of Law and Justice
(Legislative Department)**

- (i) Dr. Santokh Singh, Joint Secretary & Legislative Counsel
- (ii) Shri N.K. Ambastha, Deputy Legislative Counsel

(Department of Legal Affairs)

- (i) Shri R.L. Koli, Joint Secretary & Legal Adviser

2. At the outset, the Chairman welcomed the members and the representatives of the Ministries to the sitting of the Committee convened to take oral evidence of the representatives of the nodal Ministry of Urban Development and Poverty Alleviation (Department of Urban Development) on 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001', which was introduced in Rajya Sabha on 30 July 2001 and was referred to this Committee on 6 August 2001 for examination and report. The representatives of the Ministries of (i) Tribal Affairs, (ii) Environment and Forests, (iii) Rural Development, and (iv) Law and Justice were also present to assist the Committee.

3. The Chairman indicated in brief some of the major issues pertaining to the aforesaid Bill on which contradictory statements had been furnished by the concerned Ministries. He hoped that the nodal Ministry would be able to clarify all such issues in detail during the course of the sitting. He also drew their attention towards Direction 55(1) of the 'Directions by the Speaker, Lok Sabha'.

4. The Committee then took oral evidence of the representatives of the nodal Ministry on the aforesaid Bill. They deliberated in detail on the various issues related to the Bill, especially the implications of the conflicting and overlapping jurisdiction of the 'Forest Conservation Act, 1980' after the Bill under consideration is enacted. Some of the other issues on which discussion took place were:

- (i) The extent to which the FCA impedes development activities in the Scheduled Areas and the exploitation of forest resources by unscrupulous elements in flagrant violation of the FCA;
- (ii) Eviction of encroachers from forest land, particularly the tribal inhabitants settled in forests for generations; and
- (iii) Position regarding settlement of disputed land rights of tribals.

The members raised various clarificatory queries, which were responded to by the representatives of the concerned Ministries.

5. Thereafter, the Committee decided to hold clause-by-clause consideration of the Bill at the next two sittings of the Committee to be held on 24 and 25 September 2003.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

APPENDIX XI

COMMITTEE ON URBAN AND RURAL DEVELOPMENT (2003)

MINUTES OF THE TWENTY-SECOND SITTING OF THE COMMITTEE HELD ON WEDNESDAY, 24 SEPTEMBER, 2003

The Committee sat from 1500 hrs. to 1700 hrs. in Room No. '139',
First Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Chandrakant Khaire — *Chairman*

MEMBERS

Lok Sabha

2. Shri S. Ajaya Kumar
3. Shri Ranen Barman
4. Shri Shamsheer Singh Dullu
5. Shrimati Hema Gamang
6. Shri Jaiprakash
7. Shri Shrichand Kriplani
8. Shri Sadashivrao Dadoba Mandlik
9. Prof. (Shrimati) A.K. Premajam
10. Shri V.M. Sudheeran
11. Shri Ravi Prakash Verma

Rajya Sabha

12. Shrimati Prema Cariappa
13. Shri Prasanta Chatterjee
14. Shrimati Gurcharan Kaur
15. Shri Faqir Chand Mullana
16. Shri Rumandla Ramachandraiah
17. Shri Harish Rawat
18. Shri Man Mohan Samal

SECRETARIAT

1. Shri K. Chakraborty — *Deputy Secretary*
2. Shri A.K. Shah — *Assistant Director*

**Representatives of the Ministry of Urban Development and
Poverty Alleviation**

(Department of Urban Development)

- (i) Shri N.N. Khanna, Secretary
- (ii) Shri M. Rajamani, Joint Secretary
- (iii) Shri Vijay Dev, Director

**Representatives of the Ministry of Law and Justice
(Legislative Department)**

- (i) Dr. Santokh Singh, Joint Secretary & Legislative Counsel
- (ii) N.K. Ambastha, Deputy Legislative Counsel

(Department of Legal Affairs)

- (i) Shri D.R. Meena, Joint Secretary & Legal Adviser

2. At the outset, the Chairman welcomed the members and the representatives of the Ministries to the sitting of the Committee convened to have clause-by-clause consideration of 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001'. He outlined in brief some of the major issues that have emerged during the course of examination of the aforesaid Bill. Further, the Chairman invited the members' suggestions in regard to modifications, amendments, additions or deletions pertaining to any of the clauses of the Bill.

3. The Committee, thereafter, took up clause-by-clause consideration of the aforesaid Bill. They first took up clause (3) for discussion, which pertains to applicability of the Bill to the Scheduled Areas under the Fifth Schedule to the Constitution. After certain clarifications from the representatives of the nodal Ministry of Urban Development and Poverty Alleviation regarding the applicability of the Bill to the Scheduled Areas which might be freshly notified, the Committee decided to agree to the said clause of the Bill in principle.

4. The Committee, thereafter, considered clause 3(1)(2) of the Bill, in which reference has been made to the constitutional body of Tribes Advisory Council. They expressed concern regarding the comments of the Bhuria Committee that Tribes Advisory Council, which is an important feature of the Fifth Scheduled Areas, has become dysfunctional in many States and suggested that proper steps should be taken to strengthen this constitutional body constituted with the noble objective of advising on matters pertaining to tribal welfare.

5. The Committee, thereafter, took up for consideration clause 3(2) of the Bill pertaining to the constitution of Standing Committees for tribal affairs and rural development in each Municipality located within the Scheduled Areas. After deliberations, the Committee expressed their apprehension regarding the use of the term, 'ordinarily' in clause 3(2)(1) of the Bill and felt that this particular term can lead to differences and conflict between the Standing Committee for tribal affairs and the concerned Municipality in the Scheduled Areas.

6. The Committee then considered clause 3(3) of the Bill relating to reservation of seats in Municipalities in Scheduled Areas. They, while endorsing the extensive scheme of reservation for Scheduled Tribes as provided in the said clause of the Bill, expressed apprehension that conflicting situations may arise between tribals and non-tribals residing in the Scheduled Areas due to vast change in the demographic composition of the said areas and suggested that corrective measures should be taken by the Government to avoid such a scenario.

7. Thereafter, clause 3(4) of the aforesaid Bill pertaining to powers, authority and responsibilities of the Municipalities in Scheduled Areas was taken up for consideration. The members raised certain clarificatory queries on the said clause of the Bill, especially on sub-clause (8) of the said clause pertaining to acquisition of land in the Scheduled Areas. The representatives of the nodal Ministry were asked to resolve the query at the next sitting of the Committee scheduled to be held on the next day *i.e.* 25 September 2003.

A verbatim record of the proceedings was kept.

*The Committee then adjourned to meet on
25 September 2003 at 1100 hrs.*

APPENDIX XII

COMMITTEE ON URBAN AND RURAL DEVELOPMENT (2003)

MINUTES OF THE TWENTY-THIRD SITTING OF THE COMMITTEE HELD ON THURSDAY, 25 SEPTEMBER, 2003

The Committee sat from 1100 hrs. to 1240 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Chandrakant Khaire—*Chairman*

MEMBERS

Lok Sabha

2. Shri Ranen Barman
3. Shri Haribhai Chaudhary
4. Shri Shamsher Singh Dullo
5. Shrimati Hema Gamang
6. Shri Shrichand Kriplani
7. Shri Sadashivrao Dadoba Mandlik
8. Prof. (Shrimati) A.K. Premajam
9. Shri Gutha Sukender Reddy
10. Shri D.C. Srikantappa
11. Shri V.M. Sudheeran
12. Shri Ravi Prakash Verma

Rajya Sabha

13. Shrimati Prema Cariappa
14. Shrimati Gurcharan Kaur
15. Shri Faqir Chand Mullana
16. Shri Rumandla Ramachandraiah
17. Shri Harish Rawat
18. Shri G.K. Vasani

SECRETARIAT

1. Shri K. Chakraborty — *Director*
2. Shri A.K. Shah — *Assistant Director*

**Representatives of the Ministry of Urban Development and
Poverty Alleviation**

(Department of Urban Development)

- (i) Shri M. Rajamani, Joint Secretary
- (ii) Shri Vijay Dev, Director

**Representatives of the Ministry of Law and Justice
(Legislative Department)**

- (i) Dr. Santokh Singh, Joint Secretary & Legislative Counsel
- (ii) N.K. Ambastha, Deputy Legislative Counsel

(Department of Legal Affairs)

- (i) Shri D.R. Meena, Joint Secretary & Legal Adviser

2. The Committee resumed consideration of the remaining clauses of 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001'. The representatives of the nodal Ministry explained in detail the set procedure for acquisition of land under the 'Land Acquisition Act, 1894'.

3. Thereafter, the Committee considered clause 3(5) of the Bill relating to "Power to impose taxes by, and Funds of, the Municipalities" in the Scheduled Areas. As per this clause to urban tax is to be leviable on tribals living in 'traditional style' in the Scheduled Areas. The Committee felt that use of the term 'traditional style' is ambiguous. Though certain norms have been fixed to determine 'traditional style' of living, it leaves an element of discretion and arbitrariness to the deciding authority as to who should be included in the category of living in 'traditional style' and whom to exclude.

4. Subject to modifications suggested in the respective clauses, the Committee agreed to the provisions contained in the Bill. Thereafter, the Committee decided to consider and adopt the draft Report on the Bill at their next sitting.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

APPENDIX XIII

COMMITTEE ON URBAN AND RURAL DEVELOPMENT

MINUTES OF THE TWENTY-FOURTH SITTING OF THE COMMITTEE HELD ON WEDNESDAY, 8 OCTOBER , 2003

The Committee sat from 1500 hrs. to 1615 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Chandrakant Khaire—*Chairman*

MEMBERS

Lok Sabha

2. Shri Mani Shankar Aiyar
3. Shri S. Ajaya Kumar
4. Shri Ranen Barman
5. Shri Padmanava Behera
6. Shri Haribhai Chaudhary
7. Shri Shriram Chauhan
8. Shri G. Putta Swamy Gowda
9. Shri Basavanagoud Kolar
10. Shri Savshibhai Makwana
11. Prof. (Shrimati) A.K. Premajam
12. Shri D.C. Srikantappa
13. Shri Ravi Prakash Verma

Rajya Sabha

14. Shri S. Agni Raj
15. Shri Prasanta Chatterjee
16. Shri N.R. Dasari
17. Shri Faqir Chand Mullana
18. Shri Harish Rawat
19. Shri Man Mohan Samal
20. Shri G.K. Vasan

SECRETARIAT

1. Shri N.K. Sapra — *Joint Secretary*
2. Shri K. Chakraborty — *Director*
3. Shrimati Sudesh Luthra — *Under Secretary*
4. Shri A.K. Shah — *Assistant Director*

2. At the outset, the Chairman welcomed the members to the sitting of the Committee convened to consider and adopt the draft Report on 'The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001'.

3. Thereafter, the Committee took up for consideration the above-mentioned draft Report and after some discussion, the said draft Report was adopted by the Committee with slight modifications as indicated in the Annexure.

4. The Committee then authorised the Chairman to finalise the Report after getting it factually verified from the concerned Ministry and present the same to the Houses of the Parliament.

The Committee then adjourned.

ANNEXURE

(See Para 3 of the minutes of the sitting of the
Committee held on 8 October 2003)

Page No.	Para No.	Line No.	Modifications
1	2	3	4
13.	2.14 (i)	10	<p><i>Add after:</i></p> <p>“...nothing should be left undefined;”</p> <p>“particularly for subjects pertaining to the State List;”</p>
19.	2.21	2 from below	<p><i>For:</i></p> <p>“When asked to state the reasons”</p> <p><i>Substitute:</i></p> <p>“Moreover, the Committee raised certain issues regarding the devolution of powers and functions to the Municipalities in the Scheduled Areas during the clause-by-clause consideration of the Bill. The concerns expressed by them were as below:</p> <p>(i) Some of the functions devolved to the Municipalities in the Scheduled Areas, in addition to those already listed in the Twelfth Schedule to the Constitution, are not in the nature of Municipal functions and ideally belong to the functional domain of the State Governments; and</p>

1	2	3	4
			<p>(ii) Lack of adequate funds, functionaries and expertise at the disposal of the Municipal bodies in the Scheduled Areas corresponding with the devolution of additional functions to these bodies.</p> <p>However, while stating the reasons...”</p>
27.	2.29	4 from below	<p><i>For:</i></p> <p>“However, due care should be taken to ensure that there is no overlapping between the provisions made in the aforesaid Bill and the proposed amendments to be made in the Land Acquisition Act, which may further complicate the matters and affect the interests of the tribals in this regard.”</p> <p><i>Substitute:</i></p> <p>“However, after the proposed amendment to the ‘Land Acquisition Act, 1894’ has been made and the ‘Project Affected Families (Resettlement and Rehabilitation) Bill, 2002’ has been passed, the Government may review the need for maintaining these provisos.”</p>
28.	2.30	5	<p><i>For:</i></p> <p>“The Committee would like that to protect the interests of the tribals, similar provision should be made under the proposed Bill.”</p> <p><i>Substitute:</i></p> <p>“The Committee would like that to protect the interests of the tribals,</p>

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			provision should be made under the proposed Bill for consultation with the Municipality concerned in every case of land acquisition in the urban Scheduled Areas.”
31.	2.36	8 from below	<p><i>For:</i> “dejected”</p> <p><i>Substitute:</i> “deprived”</p>
36.	2.44(i)	8	<p><i>Add after</i></p> <p>“...under ‘Forest Conservation Act, 1980;”</p> <p>“and the extent to which this differs from the area/population covered by the definition of ‘forests’ under the ‘Indian Forest Act, 1927;”</p>
37.	2.44(a)	5 from below	<p><i>For:</i> “A survey should be carried out within one year to find as to how much land in the Scheduled Areas is under the forest cover, <i>i.e.</i> under the ‘Forest Conservation Act, 1980’.”</p> <p><i>Substitute:</i> “A survey should be carried out within one year to find out as to how much land in the Scheduled Areas is under the forest cover, as per the definition of ‘forests’, under the ‘Forest Conservation Act, 1980’ and the ‘Indian Forest Act, 1927’.”</p>
39.	2.44(c)	1 from below	<p><i>For:</i> “would automatically”</p>

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			<p><i>Substitute:</i></p> <p>“might”</p>
43.	2.48		<p><i>Add at the end:</i></p> <p>‘The Committee would, therefore, like that the advice tendered by TAC on major policy issues should be taken into consideration by the Municipality but the decision thereon should be taken by the elected Municipality alone.’</p>
45.	2.51	2	<p><i>For:</i></p> <p>“Moreover, they not that these groups are often in a minority to influence the Government decision and to act as an interest group.”</p> <p><i>Substitute:</i></p> <p>“Moreover, they note that these groups are neither organized nor in a position to influence the decisions of the Government or the local bodies affecting their interests and to act as an interest group.”</p>
45.	2.51(a) and 2.51(b) ¹		<p><i>Add two new paras after para 2.51</i></p> <p>“(4) Implementation of the Bill after its enactment</p> <p>2.52 The Ministry clarified the administrative arrangements it proposes to make for ensuring that after the passage of the Bill, it would be actually implemented by the concerned States. It stated that as per Entry 5 of the State List of the</p>

¹Renumbered as Para Nos. 2.52 and 2.53.

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			<p>Seventh Schedule to the Constitution, “Municipality” is a State Subject. In view of this, it would, thus, be the responsibility of the State Governments to implement any legislation relating to Municipalities in relation to their States.</p>
			<p>2.53 Further, when asked whether the Government have a specific plan for the monitoring of the implementation of the Bill in the Scheduled Areas, the Ministry stated that after enactment of the proposed legislation, the matter would be taken up with the concerned State(s) for implementation of the provisions of the proposed legislation. The Ministry has assured that it would play an important role in monitoring and implementation, by ensuring that the mandatory provisions of the Bill are implemented in letter and spirit by the State Governments through appropriate legislation. As per the information furnished by the Ministry, the provisions of Part IXA of the Constitution which are proposed to be extended to Scheduled Areas by this Bill are:</p>
			<ul style="list-style-type: none">(i) Constitution of Municipalities;(ii) Composition of Municipalities;(iii) Constitution and composition of Wards Committees, etc;(iv) Reservation of seats;(v) Duration of Municipalities;

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			<ul style="list-style-type: none"> (vi) Disqualifications for membership; (vii) State Finance Commission; (viii) Elections to Municipalities; (ix) Committee for District Planning; and (x) Committee for Metropolitan Planning. <p>All these mandatory provisions would apply to Scheduled Areas subject to such exceptions and modifications as are contained in the aforesaid Bill. Necessary action will be taken through meetings of the State Secretaries in-charge of local self-Governments and other State Government officials to speed up the implementation process of the proposed legislation at the State level.”</p>
48.	2.52 ²	—	<p><i>Add at the end:</i></p> <p>“The Committee would also like to recommend that the nodal Ministry <i>i.e.</i> the Ministry of Urban Development and Poverty Alleviation should submit an Annual Report to the Parliament on the progress of the implementation of the various provisions enumerated in the Bill after its enactment.”</p>

²Renumbered as Para No. 2.54.