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**Amendment in the Panchayat Act for  
Tribal Areas in Gujrat**

**Provisions and Suggestions**

**By**

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## **INTRODUCTION**

The 73<sup>rd</sup> Amendment the constitution has conferred the status of the third level government after central and state governments to local bodies i.e. Panchayats. After the said amendment the states have enacted new laws for the same. Gujrat has also replaced the old Gujrat Panchayat Act -1961 with the new one in 1993. Though this was being done in the states, the central government at the same time found these laws ill-equipped to deal with the scheduled areas. So, the central government had constituted a committee under the chairmanship of a tribal leader of Madhya Pradesh and former member of parliament Mr. Dilipsinh Bhuria to recommend the ways and means to extend the 73<sup>rd</sup> amendment to the scheduled areas. Following the recommendations of the said committee the central government had enacted a law in December 1996, called as 'Panchayat Provisions (Extension to Scheduled Areas) 1996', and called upon the states to enact laws for the scheduled areas in their respective territories for extension of their panchayat acts. The states were given a time period of one year to make the said change.

This meant that the Gujrat state assembly should have enacted the said law by December 1991. Instead of enacting a full-fledged law. the Gujrat government promulgated an ordinance to that effect on December 20, 1997. As per the constitutional provisions, any ordinance has a maximum life of six months, and the said ordinance was to expire on June 20, 1998. Gujrat state assembly, therefore, enacted a law for the scheduled areas of the state in June 1998. The said act is called as Gujrat Panchayat (Amendment) Act- 1998.

This amendment to the Gujrat Panchayat Act-1993 will be applied to a total of 5055 villages of 33 talukas or 7 districts. According to the constitutional provisions wider schedule -5 these tribal areas are declared as scheduled areas. As per 1991 census these 33 talukas (as per old division) have a population of about 62 lakhs. Thus, this amendment is going to be applied to 15% of the total population and 28% of the total villages in the state.

## **PROVISIONS IN THE LAW:**

The provisions applied to the scheduled areas through the amendment in the Gujrat Panchayat Act-1993 are as follows:

### **Gram Sabha**

- 1) The village will have a Gram Sabha. It will be made of all the voters of the village.
- 2) The Gram Sabha shall endeavor to safeguard and preserve the traditions and customs of the inhabitants of the village, their cultural identity, community resources and the customary mode of dispute resolution.

- 3) The Gram Sabha shall approve plans, programmes and projects for social and economic development before they are taken up by the village panchayat for implementation.
- 4) The Gram Sabha shall be responsible for the identification or selection of persons as beneficiaries under poverty alleviation and other programmes in the village.
- 5) The village panchayat will have to receive a certificate for the utilization of village fund for any plan programme or project from the Gram Sabha.

### **Reservations and Appointments**

- 1) The village Panchayat of tribal area shall have at least 50% of the total seats of the panchayat as reserved for the tribal.
- 2) The taluka panchayat of tribal area shall have at least 50% of the total seats of the panchayat as reserved for the tribal.
- 3) The district panchayat of tribal area shall have at least 50% of the total seats of the panchayat as reserved for the tribal.
- 4) If, for any reason, an election does not result in the return of requisite number of representatives in a taluka panchayat or district panchayat, then the state government may nominate the tribal in the respective panchayats. The number of thus appointed members will not be more than one-tenth of the total number of members in the respective panchayat.
- 5) In all the tribal areas of the State, the sarpanch of village panchayats will be tribal,
- 6) In all the tribal areas of the state the presidents of the taluka panchayats will be tribal.
- 7) In all the tribal areas of the state, the presidents of the district panchayats will be tribal,

### **Minor Forest Produces**

- 1) The minor forest produces found in the forest areas in the jurisdiction of the village of the tribal area shall be vested in the village panchayat. This does not include the areas of national parks and sanctuaries. This means that the minor forest produces found in the national parks and sanctuaries are not vested in the village panchayat.
- 2) The sale proceeds of the minor forest produce shall be deposited with the village fund. That is, it will form part of the village fund.
- 3) The forest land is not vested in the village panchayat.
- 4) Hence, the minor forest produces will be as defined in the Gujarat Minor Forest Produce Trade Nationalization Act, 1979. Now, the village panchayats have ownership over all these minor forest produces.

### **Other Economic Matter**

- 1) The taluka panchayat shall be consulted before acquiring any land for any development project under the Land Acquisition Act 1894.

2) The taluka panchayat shall be consulted before resettling or rehabilitating persons affected by any development project.

3) The village panchayat shall have to perform the duties as follows:

(a) to enforce prohibition and regulate or restrict the sale and consumption of intoxicants.

(b) to exercise and manage the water bodies.

(c) to exercise control over institutions and functionaries in all social sectors.

The duties of taluka panchayat will be:

-to control local plans and resources including tribal sub-plans

### **The Bombay Land Revenue Code - 1879**

In addition to the aforesaid provisions, 4 amendments have also been made in the Bombay Land Revenue Code-1879 through the Gujrat Panchayat (Amendment) Act-1998. The meanings of these amendments are as follows:

1) An occupancy of any tribal shall not be transferred to any person without the prior sanction of the district panchayat. Previously, the sanctioning authority was the collector.

2) The prior sanction of the district panchayat may be given in such circumstances and subject to such conditions as may be prescribed. Previously, the sanctioning authority was the collector.

3) If a tribal transfer his occupancy to any person without prior sanction of the district panchayat, the district panchayat will have powers to restore the occupancy to the same tribal or his successor. Previously, these powers vested in the collector,

4) Through this amendment now the words are "where tribal transfers the possession of his occupancy to any person" instead of "where tribal transfers the possession of his occupancy to another tribal". This means that any tribal will not be able to transfer his occupancy without the prior sanction of the district panchayat to any person - tribal or non-tribal.

### **The Bombay Money Lenders Act - 1946**

One amendment has been made in the Bombay Money Lenders Act-1946 through the Gujrat Panchayat (Amendment) Act - I 998. This amendment means that-

No money lender shall lend any money to a tribal residing in a scheduled area of the state without prior sanction of the village panchayat.

**SUGGESTIONS:**

To make the self-governance more effective in the tribal areas of Gujrat, the following provisions should be incorporated in the Gujrat Panchayat Act-1993:

**1) Minor Forest Produces**

Minor forest produces found in the areas situated in the jurisdiction of the village will be vested in the village panchayat, this clearly means that the monopoly of the Gujrat State Forest Development Corporation over the minor forest produces will now cease to exist. Indeed, this is a very welcome development. It also means that the village people through the village panchayat are now free to sell the minor forest produces to whomsoever they want to sell and the sale proceeds of the same will be deposited with the village fund. Therefore the village panchayat has powers to dispose them of.

Yet, this does not mean that the ownership of the forest land has been transferred to the village panchayat. The reserved and protected forest areas are by law, vested in the forest department. The village does not have any powers in the reserved or protected forest areas. We, therefore, feel that some areas within the reserved or protected forest areas should be vested in the village panchayat, the state government should demarcate the forest areas village-wise in the scheduled areas and notify them as vested in the respective village panchayat. If the forest land is thus demarcated for each village in the scheduled areas, it will be vested in the village panchayat and the village panchayat will have the rights for collection and sale of the minor forest produces found in such forest land.

**2) Minor Minerals**

This amendment has not conferred any powers to the Gram Sabha, so far as the minor minerals are concerned, according to the model central act, the recommendations of the Gram Sabha or the panchayats at the appropriate level should be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the scheduled areas. The prior sanction of the Gram Sabha, therefore, should have been made mandatory in this amendment. Only after the sanction given by the Gram Sabha, the village panchayat can issue a license for the same. The amendment does not confer any powers either to Gram Sabha or village panchayat for issuing licenses for exploration or mining of minor minerals. We, therefore, suggest a suitable amendment in the act.

**3) Land Acquisition**

As per the act, the taluka panchayat will be consulted before acquiring any land or any development project. Here, only a consultation not consent is made mandatory for land acquisition, and that too at the taluka panchayat level. In fact, a prior informed consent of the Gram Sabha and the village panchayat before any land acquisition should be made mandatory. Only a consultation at the taluka level should not be considered as sufficient. A suitable amendment in the act is needed to this effect.

#### 4) Dispute Settlement

For dispute settlement the village panchayats had been given powers to elect nyaya panchayats under the Gujrat Panchayat Act-1961. The new act of 1993 altogether deleted this provision from the statute book. Also, the amendment of 1998 does not utter a single word about the previous system of dispute redressal. In this regard, the village panchayats should be conferred powers for dispute redressal. The Madhya Pradesh Gram Nyayalaya Act can serve as a guideline in this regard which is applicable to the whole state of Madhya Pradesh and with some modifications to the scheduled areas of the slate. In addition, the model central act does stipulate that the Gram Sabha should safeguard and preserve the customary role of dispute resolution. Therefore, a suitable amendment in the act is much needed, so that the role of police in redressing the disputes in tribal villages is minimized.

#### 5) Transfer of Land

A provision has been made to the effect that no tribal will be allowed to transfer his occupancy to any other person without the prior sanction of the district panchayat. The Prime objective of this provision is to save the tribal from becoming landless and prevent the snatching of their land by others. At the same time, the state government as a policy wants to develop the backward areas. The I. G. Patel Committee appointed by the Gujrat government in the late 1980s, had identified 56 talukas as back ward, of which 32 are tribal talukas. Interesting enough, the state government offers innumerable incentives for the establishment of industrial units in these talukas, As and when they are established, the prices of land in the vicinity shoot up. Even here, if the tribal want to sell their land, they are required to get a prior sanction from the village panchayat. This is a major bottleneck for the tribal who do not want to continue the landholding and want to sell it. Actually, those tribal who do not want to cultivate their land and want to sell it voluntarily should be permitted to sell it as and when they want without any administrative hitch. Simultaneously, an independent mechanism should be established to ensure that appropriate market value is offered to the tribals for their land, in which the members of all layers of panchayats should be included. Moreover, the Gram Sabha's sanction for sale of the land should be made mandatory.

#### 6) Credit

A provision has been made to the effect that no money lender will lend any money to tribal residing in a scheduled area without prior sanction of the village panchayat. Naturally, this will create another middleman at the panchayat level, and will prove as an obstacle to the tribal who want credit for any social or commercial purpose. Though the objective of this provision is to prevent the tribals from becoming debtors to the private money lenders, it creates impediments for meeting the actual and real credit needs of the tribals. In fact, an amendment should be made so that the money lender is prohibited from giving credit to the tribals in lieu of their assets like house or land.

#### 7) Market Management

Though in the central act the panchayats at the appropriate level and the Gram Sabha are endowed with the powers to manage markets, the amendment in the Gujrat Panchayat Act has not made any provision for the same. A suitable amendment is needed to confer powers to the Gram Sabha in this regard.

## 8) Control on Resources

Whereas the central act has also suggested that the panchayat at the appropriate level and the Gram Sabha should be given powers to have control over resources of local plans and other Plans including the tribal sub-plans, the aforesaid amendment, instead of conferring powers to the Gram Sabha, has listed this as a duty of the taluka panchayat. This should also be rectified to make micro planning more decentralized and effective.

### CONCLUSION:

UNNATI organised a working meeting after the ordinance issued by the Gujrat government in December-1997 with the concerned officials of the State government and suggested number of amendments to it for making tribal self-governance more effective. Regrettably, except one or two points raised therein, most of the suggestions have not been incorporated in the act and the ordinance has been converted into an act almost in to.

Moreover, as in Madhya Pradesh there is an urgent need to have a separate chapter in the Gujrat Panchayat Act-1993 for tribal areas. By not doing this, the state government has created a sort of confusion among the general public and various amendments in different sections made the act too difficult to understand thoroughly for tribal self-governance.

Looking at the details of the act, the amendments made in the Gujrat Panchayat Act 1993. It can easily be concluded that they are only related with the tribal representation at different levels in the Panchayati raj system. But the same amendments do not confer any special or additional powers to the panchayats in the tribal areas. 1110 powers supposed to be conferred on the panchayats and the Gram Sabha according to the model central act, are not incorporated in the act in Gujrat and thus, it gives tribals only representation in the administrative structure without much powers. We feel, therefore, that for empowerment of the tribals, their organisations and the NGOs will have to strive hard in the coming days.

| S.no | District    | Taluka (Block) | No. of Villages | Area (in sq. Km) | Population |                               |            |
|------|-------------|----------------|-----------------|------------------|------------|-------------------------------|------------|
|      |             |                |                 |                  | Population | Population of Scheduled Tribe | Percentage |
| 1    | Sabarkantha | Khedbrahma     | 137             | 846              | 166151     | 104232                        | 62.73      |
| 2    | Sabarkantha | Vijaynagar     | 85              | 456              | 73391      | 53868                         | 73.40      |
| 3    | Sabarkantha | Bhiloda        | 168             | 720              | 175395     | 93858                         | 53.51      |
| 4    | Sabarkantha | Meghraj        | 129             | 545              | 114410     | 43407                         | 37.94      |
| 5    | Panchmahal  | Dahod          | 120             | 875              | 401389     | 309793                        | 77.18      |
| 6    | Panchmahal  | Jhalod         | 151             | 798              | 275817     | 242163                        | 87.80      |
| 7    | Panchmahal  | Santanpur      | 395             | 1360             | 427665     | 330594                        | 79.15      |
| 8    | Panchmahal  | Limkheda       | 242             | 1064             | 287204     | 178601                        | 62.19      |
| 9    | Panchmahal  | Devghadbaria   | 187             | 1145             | 340799     | 127817                        | 37.51      |

|    |          |               |     |      |        |        |       |
|----|----------|---------------|-----|------|--------|--------|-------|
| 10 | Vadodara | Chota Udaipur | 278 | 1379 | 304275 | 269642 | 88.62 |
| 11 | Vadodara | Naswadi       | 219 | 535  | 107435 | 90825  | 84.54 |
| 12 | Vadodara | Tilakwada     | 97  | 245  | 51483  | 26089  | 50.67 |
| 13 | Vadodara | Jetpur-Vapi   | 213 | 806  | 199632 | 163193 | 81.75 |
| 14 | Bharuch  | Dediapada     | 213 | 1024 | 114618 | 109042 | 94.14 |
| 15 | Bharuch  | SAGbara       | 98  | 364  | 74561  | 67956  | 91.14 |
| 16 | Bharuch  | Valia         | 96  | 514  | 116265 | 88973  | 76.53 |
| 17 | Bharuch  | Nandod        | 206 | 1091 | 208714 | 139234 | 66.71 |
| 18 | Bharuch  | Jhaghdia      | 168 | 813  | 151335 | 99536  | 65.77 |
| 19 | Surat    | Songadh       | 179 | 1192 | 172959 | 142684 | 82.50 |
| 20 | Surat    | Uchchchal     | 68  | 622  | 63639  | 62194  | 97.73 |
| 21 | Surat    | Vyara         | 150 | 813  | 218762 | 190017 | 86.86 |
| 22 | Surat    | Valod         | 40  | 202  | 76965  | 57134  | 74.23 |
| 23 | Surat    | Nizar         | 87  | 396  | 94654  | 74044  | 78.23 |
| 24 | Surat    | Mandavi       | 149 | 723  | 161315 | 124751 | 77.33 |
| 25 | Surat    | Mahuva        | 69  | 354  | 126097 | 100491 | 79.69 |
| 26 | Surat    | Mangrol       | 157 | 782  | 196702 | 128115 | 65.13 |
| 27 | Surat    | Bardoli       | 86  | 369  | 178864 | 91501  | 52.16 |
| 28 | Valsad   | Vansada       | 95  | 600  | 173752 | 156632 | 90.15 |
| 29 | Valsad   | Dharampur     | 238 | 1650 | 304206 | 288728 | 94.91 |
| 30 | Valsad   | Chikhali      | 92  | 575  | 260787 | 183020 | 70.18 |
| 31 | Valsad   | Paradi        | 81  | 428  | 272219 | 139165 | 51.12 |
| 32 | Valsad   | Umargam       | 50  | 361  | 181622 | 97929  | 53.92 |
| 33 | Dang     | Alwa (Dang)   | 311 | 1764 | 144091 | 135386 | 93.96 |

Source : 'Sarpanch' Year 1, No. 3, January-March 1997, Western India Panchayati Raj Forum Ahmedabad

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