

## **SCHEDULE-VI ROLE OF GOVERNOR AND COUNCIL OF MINISTERS**

*By:*

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The administration of the tribal areas in the North East Region which were earlier known as "BACKWARD TRACTS" has a history of its own. The constitution of India aims at the formation of egalitarian order, free from exploitation, the fundamental equality of humans and to provide support to the weaker sections of the society. Schedule VI has been inserted in the Constitution to provide protective umbrella to the tribal for their social emancipation.

### **Articles 244(2) and 275(1)**

### **PROVISIONS AS TO THE ADMINISTRATION OF TRIBAL AREAS IN THE STATES OF ASSAM, MEGHALAYA, TRIPURA AND MIZORAM**

#### **CHAPTERS UNDER SCHEDULE VI**

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|---|----------------|---|
| 1 | Paragraph I    | Autonomous Districts and Autonomous Regions   |
| 2 | Paragraph II   | Constitution of District Councils and Regional Councils   |
| 3 | Paragraph III  | Powers of the District Councils and Regional Councils   |
| 4 | Paragraph IV   | Administration of Justice in Autonomous Districts and Autonomous Regions  |
| 5 | Paragraph V    | Conferment of Powers under the code of Civil Procedure, 1908 and the code of Criminal Procedure, 1898 now 1973 (Act of 1974) on the Regional and District Councils are on certain courts and officers for the trials of certain suits, cases and offences |
| 6 | Paragraph VI   | Powers of the District Councils to establish primary schools etc.   |
| 7 | Paragraph VII  | District and Regional Funds   |
| 8 | Paragraph VIII | Powers to assess and collect revenue and to impose taxes  |
| 9 | Paragraph IX   | Licenses or leases for the purpose of prospecting for or extracting of minerals   |

10	Paragraph X	Powers of District Council to make regulating for the control of money-lending and trading by non-tribals
11	Paragraph XI	Publication of laws, rules and regulations made under the schedule
12	Paragraph XII	Application of Acts of Parliament and of the Legislature of the State of Assam to Autonomous Districts and Autonomous Regions in the State of Assam
12-A	Paragraph 12-A	Application of Acts of Parliament and of the Legislature of the State of Meghalaya to Autonomous Districts and Autonomous Region in the State of Meghalaya
12A-A	Paragraph 12A-A	Application of Acts of Parliament and of the Legislature of the State of Tripura to Autonomous Districts and Autonomous Region in the State of Tripura
12-B	Paragraph 12-B	Application of Acts of Parliament and of the Legislature of the State of Mizoram to Autonomous Districts and Autonomous Region in the State of Mizoram
13	Paragraph 13	Estimated receipts and expenditure pertaining to Autonomous Districts to be shown separately in the annual financial statement
14	Paragraph 14	Appointment of commission to inquiry into and report on the Administration of Autonomous Districts and Autonomous Regions
15	Paragraph 15	Amendment of Suspension of Acts and resolution of District and Regional Councils
16	Paragraph 16	Dissolution of a District or a Regional Council
17	Paragraph 17	Exclusion of areas from Autonomous Districts in forming constituencies in such Districts
19	Paragraph 19	Transitional provision
20	Paragraph 20	Tribal areas
20-A	Paragraph 20-A	Dissolution of the Mizo District Council
20-B	Paragraph 20-B	Autonomous Regions in the Union Territory of Mizoram to be Autonomous Districts and transitory provisions consequent thereto
20-C	Paragraph 20-C	Interpretation
21	Paragraph 21	Amendment of the Schedule

## **PROTECTIVE UMBRELLA UNDER SIXTH SCHEDULE IS NOT FOR ALL TRIBALS**

The constitutional protective umbrella under the Sixth Schedule is not extended to all the tribals. It is extended only to those tribals who are still primitive, educationally, socially, economically backward and away from social mainstream. Any claim made contrary to the above will jeopardise and endanger the long constitutional mandate of the Sixth Schedule hallowed by time and sanctified by the desire of the Founding Fathers of the Constitution.

## **ROLE OF THE GOVERNOR, PRESIDENT AND STATE LEGISLATURE**

### **Role of the Governor**

The Governor occupies a pivotal and key position in the administration of tribal areas under the provisions of the Sixth Schedule to the Constitution. An analysis of the provisions of the Sixth Schedule clearly demonstrate that at every stage, the Governor has to perform a very important role and nothing effective and meaningful action can be taken without involvement of the Governor. It is useful to note the various powers exercised by the Governor under the provisions of the Sixth Schedule and they are as under:

1. The Governor may divide area of District Council into Autonomous Regions [para 1(2)]
2. He may issue notification for inclusion, exclusion, creation, increase, decrease, unite or define areas of District Council or alter the name of any District Council. [paragraph 1(3)]
3. The Governor can nominate four members in each District Council who hold office at his pleasure. [Paragraph 2(1) and 2(6A)]
4. The Governor is empowered to frame of rules for the first constitution of District Council or the Regional Council. [Paragraph 2(6)]

5. The Governor is required to approve the rules made by the District Council and the Regional Council for composition and delimitation of the District and the Regional Council, qualification term of office etc. of its members and generally for all matters regulating the transaction of business pertaining to the administration of the district. [Paragraph 2(7)]
6. Laws made by the District Council and the Regional Council have no force of law unless assented by the Governor. [Paragraph 3(3)]
7. The Governor may specify the extent of jurisdiction of the High Court over suit and cases tried by District Council Courts. [Paragraph 4(3)]
8. Rules made by the District Council and the Regional Council regarding constitution, procedure etc. of the Village Council and District Council Court are required to be approved by the Governor. [Paragraph 4(4)]
9. The Governor may confer power under CPC and Cr.P.C. on the District Council Courts for trial of specified nature of cases and may also withdraw or modify the same. [Paragraph 5]
10. The Regulations for the regulation and control of primary schools, dispensaries, markets, road transport, waterways etc can be framed by the District Council only with the previous approval of the Governor. [Paragraph 6(1)]
11. The Governor may entrust, conditionally or unconditionally, all or any of the executive powers available to the State to the District Council or its officers with the consent of the District Council. [Paragraph 6(2)]
12. The Governor may make rules for the management of District and Regional Fund. [Paragraph 7(2)]
13. Regulations framed by the District and Regional Council for levy and collection of taxes require assent of the Governor to have the force of law. [Paragraph 8(4)]
14. Dispute between District Council and Regional Council in the case of royalty for extraction of minerals, such dispute is required to be referred to the Governor and the decision of Governor is final. [Paragraph 9(2)]

15. The Governors of Tripura and Mizoram may prescribe the period within which the royalty acquiring from grant of lease for extraction of minerals is to be shared between the State Government and District Council. [Paragraph 9(3)]
16. Regulations framed by the District Council for the control of money lending and trading by non tribals require assent of the Governor to have the force of law. [Paragraph 10(3)]
17. The Governor of Assam is empowered to direct that any Act of Parliament or of the State Legislature (other than matters specified in paragraph 3 and legislation prohibiting or restricting the consumption of any non-distilled alcoholic liquor) shall not apply to an autonomous district or an autonomous region or shall apply, subject to such exceptions or modifications, as may be notified. [Paragraph 12 (1)(b)]
18. The Governors of Tripura and Mizoram are empowered to direct that any Act of the State Legislature, (other than matters specified in paragraph 3 and legislation prohibiting or restricting the consumption of any non-distilled alcoholic liquor) shall not apply to an autonomous district or an autonomous region or shall apply, subject to such exceptions or modifications, as may be notified. [Paragraph 12AA(b) & Paragraph 12B(b)]
19. The Governor may appoint a Commission to enquire into the administration of Autonomous District/Regions. [Paragraph 14(1)]
20. Report of Commission appointed under paragraph 14 is required to be laid before the State Legislature with the recommendation of the Governor (except in case of State of Assam) with respect thereto. [Paragraph 14(2)]
21. The Governor may place one of the ministers in charge of the welfare of the autonomous District/Region in the State. [Paragraph 14(3)]
22. The Governor may annul and /or suspend of acts and resolution of the District and Regional Council, if such act or resolution is likely to endanger the safety of India or prejudicial to the public order. [Paragraph 15(1)]

23. The Governor may dissolve a District or Regional Council and assume to himself all or any of the functions or powers of the District or the Regional Council on the recommendation of the Commission appointed under paragraph 14. [Paragraph 16(1)]
24. Governor may dissolve a District or Regional Council and assume to himself all or any of the functions or powers of the District or the Regional Council, if he satisfied that the administration of the autonomous district or region cannot be carried out in accordance with the provisions of the Sixth Schedule to the Constitution. [Paragraph 16(2)]
25. The Governor may declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district, but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order for the purposes of elections to the Legislative Assembly of the State. [Paragraph 17]]
26. The Governor under paragraph 18 was authorized to apply the provisions of the Sixth Schedule to Part B areas (as originally framed). Further, the Governor was to administer these areas, in his discretion, as an agent of the President. However Paragraph 18 has been omitted by the North Eastern Areas (Reorganisation) Act, 1971. [Paragraph 18]]
27. The Governor was required to constitute District Council for each autonomous district as soon as possible and until constitution of District Council, the administration of such district vested in the Governor. [Paragraph 19]]

### **Governor to act on aid and advice of Council of Ministers**

Having noticed the important and pivotal role played by the Governor in the working of the Sixth Schedule, it is necessary to understand, whether the Governor discharges the said function in his personal discretion or on the aid and advice of the Council of the Minister as provided the Article 163 of the Constitution. Article 163 of the Constitution reads as under:

“163. Council of Ministers to aid and advise Governor. –

- (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion.
- (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
- (3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.”

There has been extensive debate on this issue in the Constituent Assembly. Under the scheme of the Government of India Act, 1935, the Governor was to act in his discretion [*vide section 93(3)*] so far as the excluded areas are concerned, and he had a special responsibility to make regulation for peace and good government [*vide section 92(2)*] as regards the partially excluded areas. However, departure was made in the Draft Constitution and discretionary power of the Governor was retained only with respect to annulment and suspension of acts and resolutions of District Council (draft paragraphs 15) and as regards of Constitution of District Council for each autonomous region (draft paragraph 18). But during the course of the debate in the Assembly, Dr. Ambedkar himself moved for deletion of these provisions from the two paragraphs. The discretion was confined only while administering the areas, specified in Part B of the Table appended to Paragraph 20 and as regards resolution of dispute between District Council and State Government in the matter of share of royalty for extracting minerals under paragraph 9(2). For rest of the provisions Dr. Ambedkar stated that “wherever the word Governor occurs, it means Governor acting on the advice on the ministry”.

**POWER OF GOVERNOR IS NOT INDEPENDENT OF REST OF CONSTITUTION – GOVERNOR IS BOUND BY ADVICE GIVEN BY COUNCIL OF MINISTERS.**

PU MYLLAL HLYCHHO

V.

State of Mizoram

A.I.R. 2005 SC 1537

Constitution Bench

In the instant case, the nominated members of the Autonomous District Council held office during the pleasure of the Governor and the Council of Ministers advised the Governor to terminate the membership of these appellants and all relevant records were placed before the Governor. The relevant papers show that the contents of all the relevant files were brought to the knowledge of the Governor and he accepted the advice of the council of Ministers. As the Governor was not left with any discretionary power, he was bound by the advice given by the Council of Minister. The termination of the members from council by Governor is proper.

The above judgement has been delivered by relying upon the judgement of 7 Judges of the Supreme Court as reported in Shamshar Singh V. State of Punjab, (1974)2 SCC 831.

**APPOINTMENT IN SCHEDULED AREAS**

STATE GOVERNMENT MAKING 100% RESERVATION FOR THE LOCAL CANDIDATES/RESIDENTS OF SCHEDULED AREAS IN THE STATE IS VIOLATIVE OF ARTICLE 16(1) AND (2) OF THE CONSTITUTION.

Styajit Kumar

V.

State of Jharkhand

2022(1) SCALE 640

For appointment of trained graduate teachers in the State of Jharkhand, the Governor has issued under Para 5 of the Fifth Schedule of the Constitution of India making 100% reservation for the local candidates/residents of the Scheduled Areas.

The Supreme Court held that the Governor as conferred in Para 5(1) of the Fifth Schedule of the constitution of India cannot issue notification making 100% reservation for the local candidates/residents of the scheduled areas in the state of Jharkhand being violative of Article 16(1) & (2) of the constitution of India.

**NO LAW MANDATES THAT ONLY TRIBAL TEACHERS SHOULD TEACH IN SCHEDULED AREAS**

CHEBROLU LEELA PRASAD RAO

Vs

State of Andhra Pradesh

(2022) 11 SCC 401

The Founding Fathers never envisaged reservation of all seats-The Constitution aims at the formation of egalitarian order, free from exploitation, the fundamental equality of humans and to provide support to the weaker sections of the society and where from there is a disparity to make them equal by providing protective discrimination- The Constitution in the historic perspective leans in favour of providing equality and those aims sought to be achieved by the constitution by giving special protection to the socially and economically backward classes by providing a protective umbrella for their social emancipation and providing them equal justice ensuring right of equality by providing helping hand to them by way of reservation measures. But no law mandates that only tribal teachers will teach in the Scheduled Areas – Such action differs the logic. Another reason given is the phenomenal absenteeism of teachers in schools – That could not have a ground for providing 100% reservation to the tribal teachers in the Scheduled Areas.

**POWER OF THE GOVERNOR TO EXTEND THE TERM OF COUNCIL UNDER PARAGRAPH 2(6A) OF SCHEDULE VI IS DISCRETIONARY**

Jatankumar Thaosen

Vs

State of Assam,

(2009)4 GLR 556

The Division Bench of the Guwahati High Court held that power of the Governor to extend the term of the council is discretionary. Power could be exercised by the Governor in his discretion provided he is of the opinion that circumstances exist which render the holding of the election impracticable.

**PROCLAMATION OF GOVERNORS'S RULES IN GARO HILLS AUTONOMOUS DISTRICT COUNCIL WITHOUT BASING ON MATERIAL THAT ADMINISTRATION OF AUTONOMOUS DISTRICT COUNCIL CANNOT BE CARRIED ON, IS ILLEGAL**

ROYNATH D. SANGMA

Vs

State of Meghalaya,

2010(6) GLJ 683

The Guwahati High Court held Proclamation of Governor's Rule under Paragraph 16(2) of the Sixth Schedule in Garo Hills Autonomous District Council without basing on material that the administration of Autonomous District Council, Garo Hills cannot be carried on in accordance with the provision of Sixth Schedule, is illegal.

## **Role of the President**

In our Constitutional scheme, The Governor is appointed by the President and holds office during pleasure of the President. It has been noticed about that the Governor has all pervasive role over the working of the District Council under the Sixth Schedule, yet in certain cases power has been conferred on the President. In some matters the Governor is required to act on the basis of the recommendation of President, and in some other matters the President is empowered to act directly. The role of President in the functioning of the Sixth Schedule to the Constitution may be summarized hereunder: -

1. Law enacted by the North Cachar Hills Autonomous Council, Kabi Anglong Autonomous Council and Bodo Territorial Council relating to matters specified in List III of the Seventh Schedule are required to be reserved by the Governor for the Consideration of the President and when a law is reserved for the consideration of the President, the President may give assent to the such law or withhold the assent or suggest District Council to reconsider the law or introduce amendments on specific provisions. [*Paragraph 3A(2)(3) & Paragraph 3B(2)(3)*]
2. President has been conferred with power to issue notification amending sub paragraphs (1) to (4) of paragraph 4 (dealing with administration of justice) in relation to such autonomous district or region, as may be specified in the notification, after consulting the concerned State Government. [*Paragraph 4(5)*]
3. The powers of the Governor available under paragraph 5(1) (conferring powers under C.P.C. and Cr.P.C. on District Council Courts) can be withdrawn on and from the date appointed by the President in the notification. [*Paragraph 5(4)*]
4. The President, with respect of any Act of Parliament, may to issue notification, directing that the any such Act will not apply to Meghalaya, Tripura and Mizoram or shall apply with such exception or modification, as may be specified in the notification. [*Paragraph 12A(b),12AA(c) &12B(c)*]
5. The Governor under paragraph 18 was authorized to apply the provisions of the Sixth Schedule to Part B areas (as originally framed), subject previous approval of the President. Further, the Governor was to

administer these areas till application of the provisions of the Sixth Schedule to such areas, as an agent of the President. However Paragraph 18 has been omitted by the North Eastern Areas reorganization Act. 1971. [*Paragraph 18*]

6. Regulation made by the Governor for peace and good government of any area, before District Councils were constituted, required assent of the President to have the force of law. [*Paragraph 19(3)*]

### **Role of State Legislature**

The provisions of the Sixth Schedule has been termed as mini Constitution and the District Council constituted under it possess legislative, executive as well as judicial power. State legislature has minimal role over the functioning of the District Council. Under the provision of paragraph 12, 12AA and 12B, the laws passed by the State legislature of Assam, Tripura and Mizoram are contrary to legislation passed by the District Council, the State legislation are not applicable unless so directed by the District Council. However in case of State of Meghalaya, the State legislation has supremacy over the laws enacted by the District Council under paragraph 12A. Despite the above position, the State legislature has the following functions to perform:

1. The estimated receipts and expenditure pertaining to autonomous district is to be shown separately in the annual financial statement of State which is to be laid before the State Legislature. *(Paragraph 13)*
2. Report of the Commission appointed under paragraph 14 (regarding creation, increase, decrease or uniting areas of District Council, and regarding administration of Autonomous District/Regions) is required to be laid before the State Legislature. *[Paragraph 14(2)]*
3. Order of the Governor annulling and /or suspending any acts and resolution of the District and Regional Council (if such act or resolution is likely to endanger the safety of India or prejudicial to the public order) is to be laid before the State legislature as soon as possible with reasons therefore who can revoke such order of the Governor. *[Paragraph 15(2)]*
4. The Governor may assume to himself all or any of the functions or powers of the District or the Regional Council on the recommendation of the Commission appointed under paragraph 14 only after the concerned District or Regional Council is given an opportunity to place its views before the State legislature. *[Paragraph 16(1)]*
5. The order of the Governor dissolving a District or Regional Council on the satisfaction that the administration of the autonomous district/region cannot be carried out in accordance with the provisions of the Sixth Schedule to the Constitution is also required to be laid before the State legislature, and such order ceases to operate on the expire of thirty days from the date on which the State legislature first sits after the issue of the order, unless approved before the said period. *[Paragraph 16(3)].*

**TRIAL BY FIRST-TRACK COURT UNDER SCHEDULE VI-NO JURISDICTION**

Everest Lyndoh Nongpur  
Vs  
State of Meghalaya,  
2009(4) GLT 514

The Guwahati High Court held that First Track Court are not empowered under Sixth Schedule of the Constitution to try offence involving tribal under Paras 4 and 5. Such courts do not have jurisdiction to try offenses where victim of offense as well as accused are tribal.

**DISTRICT COUNCIL IS NOT CLOTHED WITH PLENARY POWER OF LEGISLATION LIKE PARLIAMENT AND STATE LEGISLATURES:**

The District Council of V.K. & J, Hills, Shillong  
V.  
Miss SITIMON SAWAN  
A.I.R. 1972 S.C. 787  
5 Judges.

The Constitution Bench of the Supreme Court held that the District Councils unlike the Parliament and the State Legislatures are not intended to be clothed with plenary power of legislation. Their power to make laws is expressly limited by the provisions of the Sixth Schedule which has created them and they can do nothing beyond the limits which circumscribe their power. It is beyond the domain of the courts to enlarge constructively their power to make laws.

**SIXTH SCHEDULE - PARAGRAPH 3(1) CLAUSE (A) LAND COMPRISED IN AUTONOMOUS DISTRICT COUNCIL BELONGS TO STATE NOT DISTRICT COUNCIL - DISTRICT COUNCIL CANNOT EVICT PERSON IN OCCUPATION.**

UDALDAS PANIKA PRALLAD CHANDRA DAS  
V.  
KARBI ANGLONG DISTRICT COUNCIL  
(1990)1 GLR 78

The Division Bench of the Gauhati High Court held that land comprised in autonomous District Council belongs to State and not District Council. Eviction person in occupation of the land by District Council by issuing vague notice without giving reasonable opportunity to occupants is hereby quashed.