

Bill No. 94 of 2007

THE SIXTH SCHEDULE TO THE CONSTITUTION (AMENDMENT)
BILL, 2007

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BILL

*further to amend the Constitution of India in its application to the Gorkha Hill
Council, Darjeeling in the State of West Bengal.*

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

1. This Act may be called the Sixth Schedule to the Constitution (Amendment) Act, 2007. Short title.

2. The Sixth Schedule to the Constitution shall, in its application to the Gorkha Hill Council, Darjeeling in the State of West Bengal, have effect subject to the following modifications, namely:— Amendment of Sixth Schedule to the Constitution.

(1) In the Sixth Schedule, in the heading, for the words "and Mizoram", the words "Mizoram and the areas under the Gorkha Hill Council, Darjeeling in the State of West Bengal" shall be substituted.

(2) In paragraph 1, in sub-paragraph (1), after the word "Schedule", the words "and the areas under the Gorkha Hill Council, Darjeeling in the State of West Bengal" shall be inserted.

(3) In paragraph 1, after sub-paragraph (2), the following proviso shall be inserted, namely:—

"Provided that nothing in this sub-paragraph shall apply to the areas under the Gorkha Hill Council, Darjeeling in the State of West Bengal."

(4) In paragraph 2, after sub-paragraph (1), the following proviso shall be inserted, namely:—

"Provided that the Gorkha Hill Council, Darjeeling in the State of West Bengal shall consist of not more than thirty-three members, of whom twenty-eight shall be elected on the basis of adult suffrage out of whom ten shall be reserved for the Scheduled Tribes, fifteen for non-tribal communities, three open for all communities and the remaining five, of which at least two shall be women, having same rights including voting rights and privileges as other members, to be nominated by the Governor from amongst the unrepresented communities of the areas under the Council."

(5) In paragraph 2, in sub-paragraph (3), after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that the District Council constituted for the hill areas of Darjeeling District in the State of West Bengal shall be called the Gorkha Hill Council, Darjeeling and it shall comprise of such areas including all the mouzas under Darjeeling, Kurseong and Kalimpong Sub-divisions of Darjeeling District, eighteen mouzas of Siliguri Sub-division, which shall be transferred to Kurseong Sub-division, as may be notified in the Official Gazette by the Government of West Bengal."

(6) In paragraph 3, for sub-paragraph (3), the following sub-paragraph shall be substituted, namely:—

"(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3A or sub-paragraph (2) of paragraph 3B or sub-paragraph (2) of paragraph 3C, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A or sub-paragraph (1) of paragraph 3B or sub-paragraph (1) of paragraph 3C shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

(7) After paragraph 3B, the following paragraph shall be inserted, namely:—

‘3C. Additional Powers of the Gorkha Hill Council, Darjeeling to make laws.— (1) Without prejudice to the provisions of paragraph 3, the Gorkha Hill Council, Darjeeling in the State of West Bengal within its areas shall have power to make laws with respect to: (i) Land and Land Revenue including allotment, occupation or use, or setting apart of land other than any land which is a reserved forest, for the purpose of agriculture or grazing, or for residential or other non-agricultural purposes, or for any other purpose likely to promote the interest of the inhabitants of any village, locality or town provided such allotment, occupation or use, or setting apart, of land is subject to the provisions of the West Bengal Land Reforms Act, 1955 (West Ben. 10 of 1956) and the rules made thereunder; (ii) Management and settlement of land including markets and market sheds controlled by the Darjeeling Improvement Fund; (iii) Management of any forest, not being a reserved forest, [*Explanation.*—“Reserved Forest” shall mean a reserved forest as constituted under the Indian Forest Act, 1927 (16 of 1927)]; (iv) Agriculture; (v) Soil Conservation; (vi) Animal Husbandry and

Veterinary services; (vii) Cooperation; (viii) Fisheries; (ix) Irrigation, drainage and embankments, floods and landslide protection; (x) Water Resources Investigation and Minor irrigation; (xi) School Education including primary education, secondary education, higher secondary education (including vocational training); (xii) College Education including Agricultural and Technical colleges, except Government and Government sponsored colleges; (xiii) Adult Education and library services; (xiv) Health and Family Welfare; (xv) Labour and Employment; (xvi) Panchayats and Rural Development; (xvii) Public Health Engineering; (xviii) Public Works Department and Public Works (Roads) excluding State Highways and National Highways; (xix) Cottage and small scale Industries including Sericulture, handloom and Textiles, Handicrafts and Khadi and Village Industries; (xx) Minor Minerals and Mineral development subject to the provisions of Entry 23 of List-II of the Seventh Schedule; (xxi) Rural Electrification; (xxii) Renewable Sources of Energy including water-power (subject to Entry 56 of List-I and entry 38 of List-III of the Seventh Schedule; (xxiii) Relief; (xxiv) Women and Child Development and Social Welfare; (xxv) Welfare of the Scheduled Castes, the Scheduled Tribes and other Backward classes; (xxvi) Food and Civil Supplies; (xxvii) Sports and Youth Welfare; (xxviii) Tourism; (xxix) Transport; (xxx) Municipalities and Municipal Services; (xxxi) Town and Country Planning; (xxxii) Welfare of Minorities; (xxxiii) Information and Cultural Affairs; (xxxiv) Museums, Ancient and Historical Monuments other than those declared by Parliament to be of National importance; (xxxv) Pounds and prevention of cattle trespass; (xxxvi) Management of burial grounds and cremation grounds; (xxxvii) Management of markets and fairs; (xxxviii) Planning and Development; (xxxix) Statistics; (xl) Printing and Stationery; (xli) Registration of Births and Deaths; (xlii) Lotteries (subject to the provisions of Entry 40 of List-I of the Seventh Schedule); (xliii) Weights and Measures subject to the provisions of Entry 50 of List-I of the Seventh Schedule; (xliv) Theatres and Dramatic Performances subject to the provisions of Entry 60 of List-I; Sports, entertainment and amusements; (xlv) Intoxicating liquors, opium and derivatives, subject to the provisions of Entry 84 of List-I of the Seventh Schedule:

Provided that nothing in such laws shall—

(a) extinguish or modify the existing rights and privileges of any citizen of India including his land rights within the areas under Gorkha Hill Council, Darjeeling in the State of West Bengal on the date of commencement of the Sixth Schedule to the constitution (Amendments Act, 2007, and

(b) disallow any citizen of India from acquiring land either by way of inheritance, allotment, settlement or by any other way of transfer if such citizen is otherwise eligible for such acquisition of land within the areas under the Gorkha Hill Council, Darjeeling in the State of West Bengal.

(2) All laws made under paragraph 3 or under this paragraph shall in so far as they relate to matters specified in List-III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.

(3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom:

Provided that the President may direct the Governor to return the law to the Gorkha Hill Council, Darjeeling, together with the message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and when the law is so returned, the said Council shall consider the law accordingly within a period of six months from the

date of receipt of such message and, if the law is again passed by the said Council with or without amendments it shall be presented again to the President for his consideration.’

(8) In paragraph 4, —

(i) in sub-paragraph (6), for the word "proviso", the words "second proviso" shall be substituted;

(ii) after sub-paragraph (6), the following sub-paragraph shall be inserted, namely:—

"(7) Nothing in this paragraph shall apply to the Gorkha Hill Council, Darjeeling in the State of West Bengal constituted under the third proviso to sub-paragraph (3) of paragraph 2 of this Schedule."

(9) In paragraph 6, after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:—

"(3) The language and medium of instruction in educational institutions in the areas under the Gorkha Hill Council, Darjeeling in the State of West Bengal shall not be changed without approval of the Government of West Bengal."

(10) In paragraph 10,—

(i) in sub-paragraph (4), for the word "proviso", the words "second proviso" shall be substituted;

(ii) after sub-paragraph (4), the following sub-paragraph shall be inserted, namely:—

"(5) Nothing in this paragraph shall apply to the Gorkha Hill Council, Darjeeling in the State of West Bengal constituted under the third proviso to sub-paragraph (3) of paragraph 2 of this Schedule."

(11) After paragraph 12B, the following paragraph shall be inserted, namely:—

"12C. Application of Acts of Parliament and of the Legislature of the State of West Bengal to the Gorkha Hill Council, Darjeeling in the State of West Bengal.— (1) Notwithstanding anything in this Constitution,—

(a) no Act of the Legislature of the State of West Bengal in respect of any of the matters specified in paragraph 3 or paragraph 3C of this Schedule as matters with respect to which the Gorkha Hill Council, Darjeeling may make laws, and no Act of the Legislature of the State of West Bengal prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to the Gorkha Hill Council, Darjeeling unless in either case the Gorkha Hill Council, Darjeeling having jurisdiction over its areas, by public notification so directs, and the Gorkha Hill Council, Darjeeling in giving such direction with respect to any Act may direct that the Act shall in its application to the areas under Gorkha Hill Council, Darjeeling or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of West Bengal to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to the areas under the Gorkha Hill Council, Darjeeling, or shall apply to the areas under the Gorkha Hill Council, Darjeeling or any part thereof subject to such exceptions or modifications as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to the Gorkha Hill Council, Darjeeling in the State of West Bengal, or shall apply to the Gorkha Hill Council, Darjeeling or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect."

(12) In paragraph 19, after sub-paragraph (4), the following sub-paragraph shall be inserted, namely:—

"(5) As soon as possible after the commencement of the Sixth Schedule to the Constitution (Amendment) Act, 2007, an Interim Executive Council for the Gorkha Hill Council, Darjeeling in the State of West Bengal shall be formed by the Governor from amongst representatives of the Government of West Bengal and the existing Darjeeling Gorkha Hill Council, and shall provide adequate representation to the non-tribal communities in that area:

Provided that the Interim Executive Council shall be for a period of six months during which endeavour to hold the election to the Council shall be made."

STATEMENT OF OBJECTS AND REASONS

The provisions of the Sixth Schedule to the Constitution have evolved a separate scheme for the administration of the tribal areas in the States of Assam, Meghalaya, Mizoram and Tripura through the District Councils or Regional Councils. The provisions in paragraphs 1 to 17 of the said Sixth Schedule relate to the administration of the autonomous areas under that Schedule. The Councils are vested with legislative powers on specified subjects and are allotted certain sources of taxation. They have also been given powers to set up and administer their system of justice and maintain administrative and welfare services in respect of land, revenue, forests, education, public health etc. So far, the application of the Sixth Schedule to the Constitution has not been extended to any other State of the Union, besides North-Eastern States.

2. Two Memoranda of Settlement (came to be known as 'Darjeeling Accord') signed between the Government of India, Government of West Bengal and the Gorkha National Liberation Front (GNLF) on 22-23 August, 1988 had put an end to the violent agitation launched by the GNLF primarily demanding creation of a separate State of Gorkhaland, and paved the way for fulfillment of socio-economic and political aspirations of the hill people of Darjeeling district. An autonomous hill council, *viz.*, Darjeeling Gorkha Hill Council (DGHC) was set up through the Darjeeling Gorkha Hill Council Act, 1988 enacted by the Government of West Bengal on 15.10.1988, with full executive control on certain subjects. The DGHC has a council of 42 members with 28 elected and 14 nominated members and with a term of five years.

3. The Darjeeling Accord however, could not fulfill the aspirations of the hill people of Darjeeling and GNLF has been agitating for the past few years for conferring constitutional status on the Nepali dominated areas in the Darjeeling hill areas. A number of tripartite meetings between Government of India, Government of West Bengal and GNLF were held to resolve the issues and it emerged that the only solution lies in according Sixth Schedule status to certain areas of Darjeeling District within the State of West Bengal under exceptional circumstances as was done in the case of Bodoland Territorial Council (BTC) within the State of Assam. An exception was made for BTC and the area was accorded Sixth Schedule status even though the members of the Scheduled Tribe communities (STs) were not in majority and reportedly comprised only 38 per cent of the population of the area. However, certain safeguards for the Non-Tribals residing in the BTC areas were provided and the Sixth Schedule to the Constitution was accordingly amended. As per the sample check carried out during 22—26 October, 2005 by the Registrar-General of India, the total ST population constituted about 31.4 per cent of the total population of existing DGHC areas.

4. An 'In Principle' Memorandum of Settlement (MOS) was signed on 06.12.2005 between the Government of India, Government of West Bengal and Administrator, Darjeeling Gorkha Hill Council (DGHC) for creating an autonomous self governing Council under the Sixth Schedule to the Constitution for the hill areas of Darjeeling District within the State of West Bengal following due consultative, legislative and constitutional processes by the State and Central Governments, so as to fulfil the economic, educational and linguistic aspirations, socio-cultural and ethnic identity of the hill people, duly protecting the rights of the non-tribals, and to speed up the infrastructure development in the hill areas of Darjeeling District. In terms of the MOS, the existing DGHC will be replaced by an autonomous self governing Council called Gorkha Hill Council, Darjeeling (GHC) in the State of West Bengal under the Sixth Schedule to the Constitution. The State Government, at an appropriate time, will dissolve the DGHC and repeal the Darjeeling Gorkha Hill Council Act, 1988 to pave the way for creation of GHC.

5. With a view to meet the aspirations of the people of the hill areas of Darjeeling District and in pursuance of the MOS dated 06.12.2005, it is proposed to—

(i) create an autonomous self governing Council called the Gorkha Hill Council, Darjeeling (GHC) under the Sixth Schedule to the Constitution within the State of West Bengal, which shall have legislative, administrative and financial powers in respect of specified subjects; and

(ii) provide for adequate safeguards for the non-tribals to ensure that any law as may be made by the GHC will not, in particular:—

(a) extinguish or modify the existing rights and privileges enjoyed by any citizen including his land rights within the areas under the GHC at the commencement of the Sixth Schedule to the Constitution (Amendment) Act, 2007; and

(b) bar any citizen from acquiring land either by way of inheritance, allotment, settlement or by way of transfer if such citizen is otherwise eligible for such *bona fide* acquisition of land within the areas under GHC.

6. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;
The 23rd November, 2007

SHIVRAJ V. PATIL

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

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SIXTH SCHEDULE

[Article 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram

1. Autonomous districts and autonomous regions.— (1) Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and IIA and in Part III of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

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2. Constitution of District Councils and Regional Councils.— (1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.

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(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of “the District Council of (name of district)” and “the Regional Council of (name of region)”, shall have perpetual succession and a common seal and shall by the said name sue and be sued.

Provided that the District Council constituted for the North Cachar Hills District shall be called as the North Cachar Hills Autonomous Council and the District Council constituted for the Karbi Anglong District shall be called as the Karbi Anglong Autonomous Council.

Provided further that the District Council constituted for the Bodoland Territorial Areas District shall be called the Bodoland Territorial Council.

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3. (1) * * * * *

(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3A or sub-paragraph (2) of paragraph 3B, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A or sub-paragraph (1) of paragraph 3B shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

Powers of the District Councils and Regional Councils to make laws.

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4. Administration of justice in autonomous districts and autonomous regions.

(1)* * * * *

(6) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule.

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10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals.—

(1) * * * * *

(4) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule.

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LOK SABHA

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further to amend the Constitution of India in its application to the Gorkha Hill Council,
Darjeeling in the State of West Bengal.

(Shri Shivraj Vishwanath Patil, Minister of Home Affairs)