

Scheduled Areas and Tribal Areas: Fifth Schedule vs Sixth Schedule
(06 December, 2021)

Difference between 5th Schedule (Scheduled areas) and 6th Schedule (Tribal areas)

The fifth Schedule and Sixth Schedule have been explained in the easiest format by Ankit Sir in a comprehensive lecture. [Click here to watch the Youtube lecture.](#)



5th SCHEDULE – Art 244 (1) – Part 10

- It deals with the administration and control of Scheduled Areas and Scheduled Tribes of any states **except Assam, Meghalaya, Mizoram, and Tripura.**

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Missing governors' reports

Available records show that governors in the nine states with Schedule Five areas have till date sent 66 reports (break-up in the map) to the President. In the past 22 years the states should have sent 189 reports



Source: Commonwealth Human Rights Initiative and Samata NGO

- “**Scheduled Areas (SA)**” means such areas as the **President may by order declare** to be the Scheduled Areas. They have been given **autonomy in marriage, law, property, Transfer, Inheritance, etc.**
- They are treated differently because of their socio-economic backwardness and special efforts need to be made to improve their condition.

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- **10 States have Scheduled Areas:** Andhra Pradesh, Telangana, Jharkhand, Chattisgarh, Gujarat, Himachal P, Madhya P, Maharashtra, Odisha, and Rajasthan.

Features of 5th Schedule:

- **Declaration of Scheduled Areas:** President has the authority to **declare** a Schedule area, **alter, increase or decrease the boundaries after the consultation with the Governor of that State.**
- **Executive Power of States and Centre:**
 1. **States administer SAs.** The executive power of Center extends to giving directions to the States with respect to administration of such areas.
 2. **Governor has a special responsibility,** he has to submit report to President with respect to administration of such areas annually or whenever required by President & Centre gives directions to States.
- **Tribes Advisory Council:**
 1. Each State having SAs has to established a **Tribes Advisory Council (TAC)** to advice on welfare & advancement of STs.
 2. It consists of 20 members , 3/4th of whom are to be representatives of ST in STATE LEGISLATIVE ASSEMBLY.
 3. A similar council can also be established in States having STs but not SAs therein, if the President so directs.
 4. If the no. of representatives of STs in STATE LEGISLATIVE ASSEMBLY < no. of seats in TAC to be filled by such representatives, then the remaining seats shall be filled by members of those tribes. Governor may make rules on appointment of Ch. Members etc.
- **Law Applicable to SAs:**
 1. **Governor is empowered to direct** that any particular Act of Parliament or State Legislature doesn't apply to a SAs or apply with specified modifications and exceptions.
 2. He can also make **regulations for peace and good governance of SAs after consulting TAC.** Such regulations may prohibit or restrict transfer of land, regulate the allotment of land and business of money lending with respect to STs.
 3. Also a regulation may repeal or amend any act of Parliament or State Legislature, which is applicable to SA. But all such regulations require President assent.

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- The **Constitution requires President to appoint a commission** to report on the administration of SAs and the welfare of STs in the States. **U N Dhebar committee** was appointed in 1961. 2nd Commission was appointed in 2002 under **Dilip Singh Bhuria**.
- **PESA is applicable to 5th Schedule areas.**

The Provisions of the Panchayats (Extension to the Schedule Areas) Act 1996 (PESA)

- It **safeguards and preserves the traditions and customs** of the people, and their cultural identity, community resources, **customary mode of dispute resolution**.
- PESA empowers **Gram Sabha/Panchayat** at appropriate level with **right to mandatory consultation in land acquisition, resettlement and rehabilitation** of displaced persons.
- PESA seeks to **reduce alienation in tribal areas** as they will have better control over the utilisation of public resources.
- The act recognize and **vested the forestablished rights in FDST and OTFD** (Forestablished Dwelling Scheduled Tribes and Other Traditional Forestablished Dwellers) who have been residing in such forestablisheds for generations.
- **The act identify four types of rights:**
 1. **Title rights:** It gives FDST and OTFD the right to **ownership to land farmed** by tribals or forestablished dwellers subject to a **maximum of 4 hectares**. Ownership is only for land that is actually being cultivated by the concerned family and **no new lands** will be granted.
 2. **Use rights:** The rights of the dwellers extend to extracting **Minor Forestablished Produce, grazing areas, to pastoralist routes**, etc.
 3. **Relief and development rights:** To **rehabilitation in case of illegal eviction or forced displacement** and to basic amenities, subject to restablishedictions for forestablished protection.
 4. **Forestablished management rights:** It includes the right to **protect, regenerate or conserve** or manage any community forestablished resource which they have been traditionally protecting and conserving for sustainable use.
- **Who can claim these Rights?**
 1. **ST who primarily reside in and who depend on** the forestablisheds or forestablished lands.
 2. It can also be claimed by any membersber or community who

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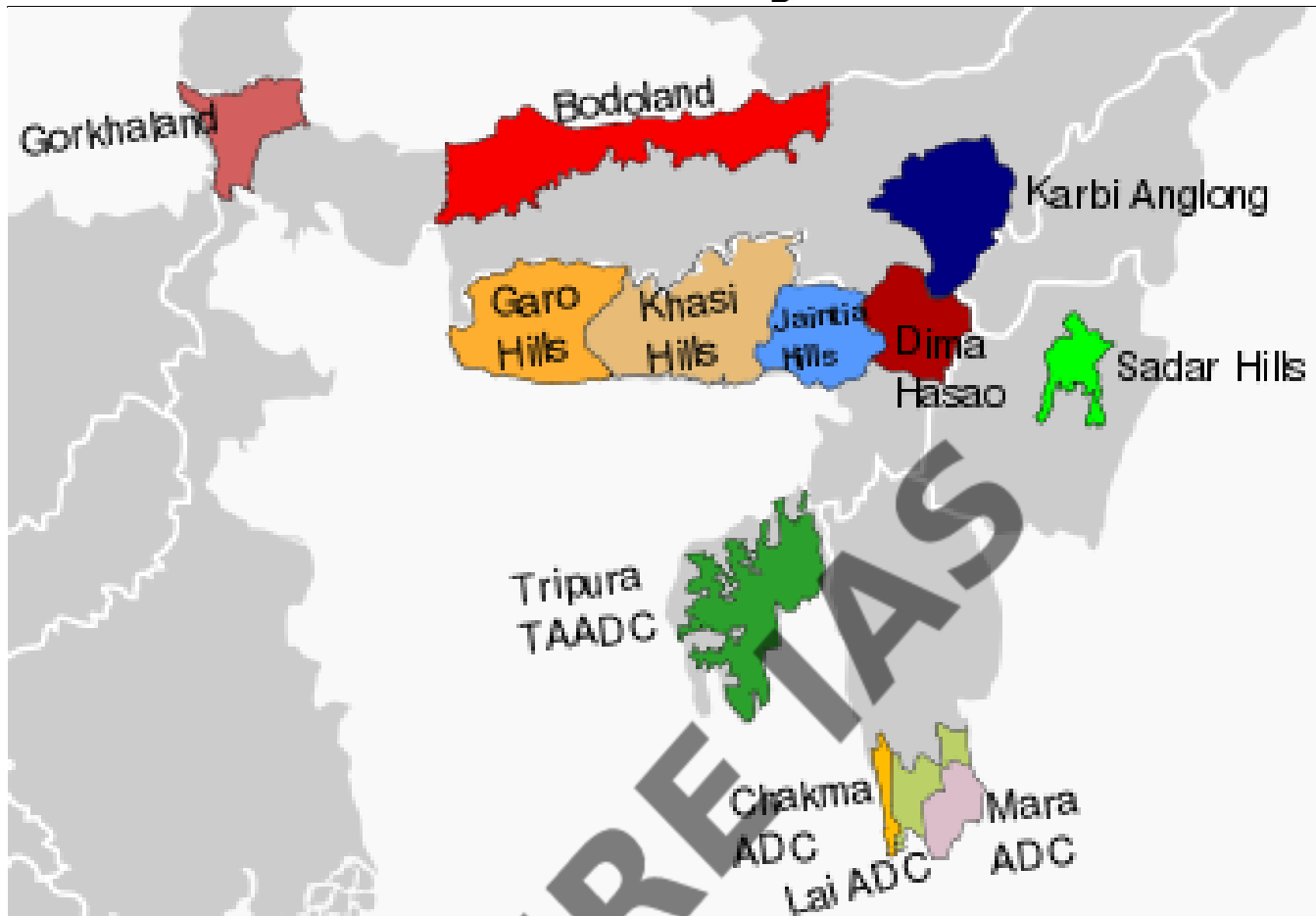
- has for **at least 3 generations** (75 years) prior to the **13 December, 2005** primarily resided in forestland.
3. The **Gram Sabha** is the authority to **initiate the process** for determining the nature and extent of **Individual Forestland Rights (IFR) or Community Forestland Rights (CFR)** or both that may be given to FST and OTED.

6th SCHEDULE: Tribal Areas - Art 244 (2)

It deals with the administration of Tribal Areas in 4 North-eastern States of Assam, Meghalaya, Tripura and Mizoram (AMTM).

- **Rationality:** Tribes in AMTM have not assimilated much with the majority and still have their roots in their own culture, customs etc.
 - The **tribal areas of AMTM** are considered as **Autonomous Districts**. But they do not fall outside the executive authority of the state concerned.
1. Assam – Karbi Anglong, 2 Kachari, Bodoland, Dima Hasao, Rabha Hasong, Mishing, Tiwa, Deori
 2. Meghalaya – Garo, Khasi, Jaintia,
 3. Tripura: Hill dist,
 4. Mizoram – Chakma, Mara, Lai.

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- **Governor** has the authority to re-organize these, **increase or decrease the boundaries, delimitation of areas, elections, qualifications, term of office** etc.
- If there are different tribes in an autonomous district, the **Governor can divide the district into several autonomous regions**.
- Each autonomous district has a **District Council** of 30 members – **26 elected on the UAF, 4 nominated by Governor**. Elected members hold office for 5 years and **nominated members hold office during the pleasure of Governor**.
- Each autonomous region also has a **separate Regional council** for each area constituted as an autonomous area under this schedule.
- **District and Regional Councils** has some **legislative + judicial functions** with the assent of President.

These Powers are

- Allotment / Setting Apart of Land for Agri, residential, grazing, non-agricultural purposes. Management of forests not being a Reserved forest.
- Use of Canal, Regulation of Jhum, Inheritance of Property, Marriage, Social Customs, Headman, Village Committees.

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Construct schools, regulation of money lending and trading by non-tribals.

- **BUT, Governor's assent is required.** (Autonomous State can be formed only within Assam)
 - They can collect and impose tax, Land Revenue constitute Village councils / Court for trial. They hear appeals from them. The jurisdiction of HC is specified by Governor.
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- Acts of Parliament or State legislature do not apply to autonomous district or apply with certain modifications.
 - The power of discretion lies either with President or Governor.
1. In case of Assam, it lies w Governor both with respect to Parliament and State legislature.
 2. In case of MTM, it lies with President with respect to Parliamentary Acts and Governor with respect to State Legislature Acts.
- **Governor can appoint a commission to enquire into their status.** He may dissolve a district on the recommendation of Commission.
 - **Art 275:** Grant in Aids are applicable to 6th Schedule areas.

Cabinet approves amendment in Sixth Schedule to strengthen 10 North East autonomous councils

- The cabinet approves landmark amendment to Article 280 and Sixth Schedule of the Constitution to increase the powers of the autonomous councils in the Sixth Schedule areas of the North East.
- The **Finance Commission** will be mandated to recommend **devolution of financial resources to them.**
- The amendment also provides for **transfer of additional 30 subjects** including departments of Public Works, Forests, Public Health Engineering, Health and Family Welfare, Urban Development and Food and Civil Supply **to Karbi Anglong Autonomous Territorial Council and Dima Hasao Autonomous Territorial Council in Assam.**
- The most important part of these amendments is that these will significantly improve the financial resources and powers of the autonomous districts councils in Assam, Meghalaya, Mizoram and Tripura, fulfilling longstanding aspirations of the tribal population in these northeastern states.
- The proposed amendments provide for **elected village municipal**

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- councils**, ensuring democracy at the grassroots level.
- The village councils will be empowered to prepare plans for economic development and social justice including those related to agriculture, land improvement, implementation of land reforms, minor irrigation, water management, animal husbandry, rural electrification, small scale industries and social forestry.
- At least one-third of the seats will be reserved for women in the village and municipal councils** in the Sixth Schedule areas of Assam, Mizoram and Tripura and **at least two of the nominated members** in all autonomous councils in the North East Sixth Schedule areas resulting in empowerment of women.
- There will be **State Election Commissions for holding elections to the autonomous councils, village and municipal councils** in the areas of Assam, Mizoram and Tripura.
- There will be a **provision for anti-defection too**.
- Meghalaya has for the time being kept out of the purview** of the provision for elected village and municipal councils and one-third reservations for women.
- The amendments propose to rename the existing autonomous councils as
 - Karbi Anglong Autonomous Territorial Council (KAATC),
 - Dima Hasao Autonomous Territorial Council (DHATC),
 - Garo Hills Autonomous Territorial Council (GHATC),
 - Khasi Hills Autonomous Territorial Council (KHATC),
 - Jaintia Hills Autonomous Territorial Council (JHATC) and
 - Tripura Tribal Area Autonomous Territorial Council (TTAATC)as the present jurisdiction of these councils extend to more than one districts.
- There will also be increase in seats in KAATC (from 30 to 50 seats), DHATC (30 to 40 seats), GHATC (30 to 42), KHATC (30 to 40) and JHATC (30 to 34).

What is the news?

- The Rengma Nagas in Assam have written to Union Home Minister Amit Shah demanding an **autonomous district council** amid a decision by the Central and the State governments to upgrade the **Karbi Anglong Autonomous Council (KAAC) into a territorial council**.
- The KAAC population is around 12 lakh and the Karbis constitute only 3 lakh, the remaining are non-Karbhis, including the Rengma Nagas, whose population is around 22,000.
- The **Rengma Naga Peoples' Council (RNPC), a registered body**, said in

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the memorandum that the **Rengmas were the first tribal people in Assam to have encountered the British in 1839**, but the existing Rengma Hills was eliminated from the political map of the State and replaced with that of Mikir Hills (now Karbi Anglong) in 1951.

- Narrating its history, the council said that during the Burmese invasions of Assam in 1816 and 1819, it was the Rengmas who gave shelter to the Ahom refugees.
- The petition said that the **Rengma Hills was partitioned in 1963 between Assam and Nagaland** at the time of creation of Nagaland State and the **Karbis**, who were known as **Mikirs** till 1976, **were the indigeneous tribal people of Mikir Hills**.
- Thus, **the Rengma Hills and Mikir Hills were two separate entities till 1951**. Karbis have no history in the Rengma Hills. People who are presently living in Rengma Hills are from Assam, Arunachal Pradesh and Meghalaya. They speak different dialects and do not know Karbi language of Karbi Anglong.
- The National Socialist Council of Nagaland or NSCN (Isak-Muivah), which is in talks with the Centre for a peace deal, said in a statement that the Rengma issue was one of the important agendas of the “Indo-Naga political talks” and no authority should go far enough to override their interests.
- More than 3,000 Rengma Nagas were forced to relocate to relief camps in 2013 after several people were killed in a series of attacks following a call given by a Karbi insurgent group.

For news on Naga Peace Accord: [Click here](#)