

THE NAGALAND VILLAGE AND TRIBAL COUNCILS (FIFTH AMENDMENT) BILL, 2022

A
Bill

AS PASSED BY NL
ON 21/03/2022
Bill No. 21 of 2022

further to amend the Nagaland Village and Tribal Councils Act, 1978

Be it enacted by the Nagaland Legislative Assembly in the 73rd Year of the Republic of India as follows:-

Short title, extent and commencement

1. (i) This Act may be called The Nagaland Village and Tribal Councils (Fifth Amendment) Act, 2022.
- (ii) It extends to the whole of Nagaland.
- (iii) It shall come into force on such date as the State Government may by notification in the Gazette, appoint, and different dates may be appointed for different provisions of the Act.

Amendment of Section 2

2. In section 2 of the Nagaland Village and Tribal Councils Act, 1978 (hereinafter referred as "the Principal Act") after clause (c), the following clause shall be inserted, namely: -

"(cc) "Local Authority" means any authority, body, institution or agency set up under any Act, Rule or Regulation of the Government for discharging public functions."

Amendment of Section 5

3. In section 5 of the Principal Act, -
 - (i) After clause (a), the following clauses shall be inserted, namely:-

"(aa) is an indigenous inhabitant of the State, and

(ab) is a permanent resident of the village, and"

Amendment of section 6

4. In Section 6 of the Principal Act, -

- (i) The heading "**Tenure**" shall be inserted before sub-section (a).
- (ii) For sub-section (a) of section 6, the following shall be substituted, namely:-

" (a) The process of formation of the Village Councils will get initiated with the issuance of a general notification by the Government, and the entire process should be completed within the period given in the said notification, which shall not be more than 3 (three) months. Every Village Council so formed will continue for a tenure of 5 (five) years, provided in case of any new Village Council being constituted during the interregnum period, the said Council shall continue for the remaining tenure as originally notified by the Government;

Provided further that any dispute regarding the constitution of the Village Council or selection of any one as member of the Village Council, the matter shall be referred to the State Government whose decision thereon shall be final."

Amendment of section 14

5. Section 14 of the Principal Act with Title "**Administration of Justice**" (deleted vide Nagaland Village and Area Councils (Amendment) Act, 1985 (The Nagaland Act No.6 of 1987)), shall be re-inserted as under:-

"Administration of Justice

14. (1) The Village Council shall function as Village Court as envisaged under Rules of Administration of Justice and Police in Nagaland, 1937, as amended, and administer justice within the village limits in accordance with the customary law and usages as accepted by the canons of justice established in Nagaland, and the law in this respect as enforced from time to time. Further, any appeal against a decision of the Village Court shall lie with the Subordinate District Customary Court and District Customary Court as decided by the Area Administrative Officer or the Deputy Commissioner.

(2) In case of disputes between/among villages, the Deputy Commissioner, if the villages fall within the same district, or the Commissioner, Nagaland, if the villages fall in different districts, may take up the matter for settlement or refer the dispute to the appropriate authority for settlement."

Amendment of section 16

6. In section 16 of the Principal Act, -

(i) After clause (2), the following clause shall be inserted, namely:-

"(2a) If he is not an indigenous inhabitant of the State or not a permanent resident of the village."

(ii) In clause (6), after the words "*Government servant*", the words "*or employee of an Area Council*" shall stand omitted.

Insertion of new section

7. After section 27 of the Principal Act, the following section shall be inserted with title "**Powers to make Rules**", namely, -

"Powers to make Rules

27A. (1) The State Government may by notification in the Gazette make rules consistent with this Act, to carry out the purpose of this Act.

(2) In particular and without prejudice to the generality of foregoing powers, such rules may provide for the following namely:-

- (a) Procedure for conduct of business of Village Councils;**
- (b) Procedure for maintenance of accounts and audit;**
- (c) Any other connected matter in respect of which it is necessary to make rules for the constitution and proper functioning of the Village Councils.**

(3) Every rule made under this section shall be laid, as soon as may be after it is made before the Nagaland Legislative Assembly while it is in session for a total period of seven days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Nagaland Legislative Assembly agree in making any modification in the rule, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, and any such modification or annulment shall be without prejudice to the validity anything previously done under this rule."



(Y. PATTON)

Deputy Chief Minister

&

Minister- in- charge Home Department

STATEMENT OF OBJECTS AND REASONS

1. The Village Councils in the State are constituted under the Nagaland Village and Tribal Councils Act, 1978 (hereinafter referred as the Act), and are governed by its provisions. On the basis of experiences gathered on various matters related to the functioning of the Village Councils, there has arisen a need for modifying and further clarifying certain provisions of the Act.
2. There is a requirement for making additions in the qualification criteria for becoming a member of the Village Council so that the possibility of non-indigenous persons becoming member of the Village Council is prevented along with those persons who are no more the permanent residents of the village. There is also a need for coming up with clear provisions regarding the tenure of the Councils as well as bringing out clearly that any dispute regarding its constitution shall be brought before the State Government for resolution.
3. The Village Councils have been functioning as customary courts, under the Rules of Administration of Justice and Police in Nagaland, 1937, as amended, but the enabling section in the Act was removed by an earlier amendment, and there is an express need for re-inserting this very important provision in the Act so that there is absolute clarity regarding the customary court powers of the Village Councils as well as of the higher appellate customary courts in the District.
4. The provision allowing the State Government to frame Rules for carrying out the purpose of the Act which was there earlier, got deleted in one of the amendments, and it is vital that a provision giving clear powers to the State Government to frame Rules is inserted again in the Act.
5. The Bill seeks to achieve the above requirements and objectives.


17/03/22.

(Y. PATTON)

Deputy Chief Minister

&


Minister- in- charge Home Department

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill seeks to empower the State Government to make rules consistent with this Act, to carry out the purpose of this Act.

Every rule made under this Bill shall be laid before the Nagaland Legislative Assembly.

The delegated legislation is of normal character.


17/03/22.
(Y. PATTON)
Deputy Chief Minister
&
Minister- in- charge Home Department

FINANCIAL MEMORANDUM

The proposed "Nagaland Village and Tribal Councils (Fifth Amendment) Bill, 2022", will not entail any extra expenditure from the consolidated fund of the State. The Village Councils shall continue to be administered by the existing administrative set up of the Home Department.



Handwritten signature of Y. Patton, dated 19/03/22.

(Y. PATTON)

Deputy Chief Minister

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Minister- in- charge Home Department

ANNEXURE

EXTRACTS FROM THE NAGALAND VILLAGE AND TRIBAL COUNCILS ACT, 1978
(NAGALAND ACT NO. 1 OF 1979)

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2. Definitions

In this Act unless the context otherwise requires:-

- (a) "appropriate authority" or "competent authority" means an authority having administrative jurisdiction with whatever designation called and notified by Government from time to time;
- (b) "Assembly" means the Nagaland Legislative Assembly;
- (c) "Gazette" or "the Gazette" means Nagaland Gazette;
- (d) "Prescribed" means prescribed by rules made under this Act;
- (e) "State Government" means the Government of Nagaland;
- (f) "tribal councils" means the various tribal councils / hohos / unions / organizations existing in Nagaland, and being constituted by the various tribes in accordance with their respective traditions, customary practices and usages.

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5. Qualification for Members

A person shall not be qualified to be chosen as a member of the Village Council unless he:-

- (a) is a citizen of India, and
- (b) has attained the age of 25 years.

6. (a) Every Village Council, unless otherwise dissolved by the State Government, shall continue for five years from the date of appointment; provided that the said period may be extended by the State Government by a Notification in the Gazette for a period not exceeding one year at a time.

(b) All members shall hold office during the life of the Village Council:

Provided that a member chosen to fill in a casual vacancy shall hold office for the remainder of the term of office of the member whom he replaced:

Provided further village institutions which were traditionally established like the "Putu Menden" in Ao area and recognized as Village Council shall continue to function as Village Council according to respective custom and usage.

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14. Deleted

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16. **Disqualification**

A person shall be disqualified from being selected as and for being a member of Village Council:-

- (1) if he is of unsound mind and stands so declared by the competent court or such authority as may be recognized by the State Government, or
- (2) if he is not a citizen of India or has voluntarily acquired citizenship of foreign nation or is under acknowledgement or allegiance to a foreign nation; or
- (3) if he has been convicted by a Court in India for an offence and sentenced to imprisonment for not less than two years unless a period of five years or such less period as the State Government may allow in any particular case, has elapsed since his release; or
- (4) if having held an office under any Council he has been found guilty or corruption, disloyalty or breach of such Council laws; unless a period of five years or such less period as the State Government may determine in any particular case has elapsed since his becoming so disqualified; or
- (5) if he is an undercharged insolvent; or
- (6) if he is a salaried Government servant or employee of an Area Council; or
- (7) if he abstains himself from the majority of the meeting in a year and is unable to explain such absence to the satisfaction of the Council; or
- (8) if he is a member of any other Village Council; or
- (9) if he has been dismissed from the service of the Government or any other local authority for misconduct unless a period of five years has elapsed from the date of dismissal.

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