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PART III—Acts of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 331-L.—12th March, 2012.—The following Act of the West Bengal Legislature, having been assented to by the President of India, is hereby published for general information:—

West Bengal Act XX of 2011

**THE GORKHALAND TERRITORIAL ADMINISTRATION
ACT, 2011.**

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the *Kolkata Gazette, Extraordinary*, of the 12th March, 2012.]

An Act to provide for the establishment of a Gorkhaland Territorial Administration for the region comprising the three sub-divisions Darjeeling, Kalimpong, Kurseong and some mouzas of Siliguri sub-division in the district of Darjeeling and for certain matters incidental thereto and connected therewith.

WHEREAS the objective is to establish an autonomous self-governing body to administer the region so that the socio-economic, infrastructural, educational, cultural, and linguistic development is expedited and the ethnic identity of Gorkhas established, thereby achieving all round development of the people of the region;

It is hereby enacted in the Sixty-second Year of the Republic of India, by the Legislature of West Bengal, as follows:—

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter I.—Preliminary.—Sections 1, 2.)*

CHAPTER I

Preliminary

Short title and commencement.

1. (1) This Act may be called the Gorkhaland Territorial Administration Act, 2011.

(2) It shall come into force and shall be deemed to have come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint, and different dates may be appointed for different provisions of this Act.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) “Chief Executive” means the Chief Executive of the Gorkhaland Territorial Administration as specified under sub-section (6) of section 37;
- (b) “constituency” means a constituency provided by an order made under section 6 for the purpose of election to the Gorkhaland Territorial Administration Sabha;
- (c) “election” includes general election and also an election to fill a seat or seats in the Gorkhaland Territorial Administration Sabha;
- (d) “elector” in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force;
- (e) “Executive Sabha” means the Sabha constituted under section 41;
- (f) “Executive Sabha Member” means the person nominated under sub-section (1) of section 41, and includes the Chief Executive or the Deputy Chief Executive of the Gorkhaland Territorial Administration;
- (g) “Gorkhaland Territorial Administration Sabha” means the Gorkhaland Territorial Administration Sabha constituted under this Act;
- (h) “Government” means the Government of the State of West Bengal;
- (i) “Gram Panchayat” means a *Gram Panchayat* constituted under section 4 of the West Bengal *Panchayat Act, 1973*;
- (j) “Member” means a member of the Gorkhaland Territorial Administration Sabha;
- (k) “Municipality” has the same meaning as in clause (38A) of section 2 of the West Bengal Municipal Act, 1993;
- (l) “notification” means the notification published in the *Official Gazette*;
- (m) “*Panchayat Samiti*” means a *Panchayat Samiti* constituted under section 94 of the West Bengal *Panchayat Act, 1973*;
- (n) “prescribed” means prescribed by rules made under this Act;
- (o) “region” means the territory comprising the three hill sub-divisions of the district of Darjeeling, namely, Darjeeling, Kalimpong and Kurseong, and includes the following *mouzas* in the sub-division of Siliguri of that district:
- (i) Lohagarh Tea Garden,
 - (ii) Lohagarh Forest,
 - (iii) Rangmohan,
 - (iv) Barachenga,
 - (v) Panighata,
 - (vi) Chota Adalpur.
 - (vii) Paharu,
 - (viii) Sukna Forest,
 - (ix) Sukna Part I,
 - (x) Pantapati Forest I.

West Ben. Act
XLI of 1973.West Ben. Act
XXII of 1993.

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter I.—Preliminary.—Sections 3-6.)*

- (xi) Mahanadi Forest,
- (xii) Champasari Forest,
- (xiii) Salbari Chhat Part II,
- (xiv) Sitong Forest,
- (xv) Sivoke Hill Forest,
- (xvi) Sivoke Forest,
- (xvii) Chhota Chenga,
- (xviii) Nipania.

- (p) "rules" mean the rules made by the Government and includes the regulation made by the Gorkhaland Territorial Administration under this Act;
- (q) "Fund" means the fund constituted under section 55;
- (r) "State" means the State of West Bengal;
- (s) "State Planning Board" means the West Bengal State Planning Board established by the Government;
- (t) "Zilla Parishad" means a Zilla Parishad constituted under section 140 of the West Bengal Panchayat Act, 1973.

West Ben. Act
XLI of 1973.

Gorkhaland
Territorial
Administration.

3. (1) There shall be a Gorkhaland Territorial Administration comprising the region as specified in the district of Darjeeling.

(2) The Gorkhaland Territorial Administration shall be constituted in the manner provided in this Chapter and shall exercise such powers and perform such functions as are provided in Chapter II.

Incorporation of
Gorkhaland
Territorial
Administration.

4. The Gorkhaland Territorial Administration shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract, and shall, by its corporate name, sue and be sued.

Constitution and
composition of
Gorkhaland
Territorial
Administration
Sabha.

5. (1) The Gorkhaland Territorial Administration shall have a Sabha to be called the Gorkhaland Territorial Administration Sabha consisting of fifty Members, excluding *ex officio* members mentioned in sub-section (3), of whom forty-five shall be elected on the basis of adult suffrage, from the territorial constituencies referred to in section 6 and five shall be nominated by the Governor.

(2) The Members to be nominated under sub-section (1) by the Governor may include due representation of minorities, Scheduled Castes, Scheduled Tribes and women.

(3) The Members of Parliament, the Members of the Legislative Assembly and the Chairpersons of the Municipalities of the region shall be *ex officio* Members of the Gorkhaland Territorial Administration Sabha:

Provided that they shall not have the right to vote.

Delimitation of
constituencies.

6. (1) There shall be 45 constituencies covering the region for election to the Gorkhaland Territorial Administration Sabha. Each constituency shall be a single member constituency and shall be territorial.

(2) The Government may, by order published in the *Official Gazette*, determine the territorial limits of constituencies into which the region shall be delimited for the purpose of election of members to the Gorkhaland Territorial Administration Sabha.

(3) The Government may, by notification, constitute a Committee for examining the question of identification and transfer of additional areas of Siliguri, Terai and Dooars to the region:

Provided that the Committee constituted by the Home Department, Government of West Bengal, vide its notification No. 371-HA of 29th day of July, 2011, and published in the *Kolkata Gazette, Extraordinary*, dated July, 29, 2011 shall be deemed to have been constituted under the provisions of this sub-section.

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter I.—Preliminary.—Sections 7-10.)*

(4) Notwithstanding anything contained in sub-section (3), the electoral process to constitute the Gorkhaland Territorial Administration Sabha shall be based on the delimitation of constituencies in the region as determined under sub-section (2) and the functions of the Committee constituted under sub-section (3) shall not affect the process of election in any manner.

Power to alter or amend delimitation.

7. The Government may, from time to time, by order published in the *Official Gazette*, alter or amend any order made under sub-section (2) of section 6.

Qualification for membership of Gorkhaland Territorial Administration Sabha.

8. A person shall not be qualified to be elected as a Member of the Gorkhaland Territorial Administration Sabha unless he is an elector from any one of the constituencies referred to in sub-section (1) of section 6.

Disqualification of member of Gorkhaland Territorial Administration Sabha.

9. (1) A person shall not be qualified for being elected to the Gorkhaland Territorial Administration Sabha if—

- (a) he is not a citizen of India; or
- (b) he is less than 18 years of age; or
- (c) he has been elected to any municipality, *Zilla Parishad*, *Panchayat Samiti* or *Gram Panchayat* within the region under this Act; or
- (d) he is in the service of the Central or the State Government or a *Gram Panchayat* or a *Panchayat Samiti* or a *Zilla Parishad* or a municipality; or
- (e) he has, directly or indirectly by himself or by his partner or employer or employee, any share or interest in any contract with, by or on behalf of the Gorkhaland Territorial Administration or a municipality or a *Zilla Parishad* or a *Panchayat Samiti* or a *Gram Panchayat* within the region; or
- (f) he has been dismissed from the service of the Central or the State Government or a local authority or a co-operative society or a Government company as defined in the Companies Act, 1956, or a Corporation owned or controlled by the Central or the State Government for misconduct involving moral turpitude and five years have not elapsed from the date of such dismissal; or
- (g) he has been adjudged by a competent Court to be of unsound mind; or
- (h) he is an undischarged insolvent; or
- (i) he being a discharged insolvent has not obtained from the Court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or
- (j) he has been convicted by a Court of an offence involving moral turpitude punishable with imprisonment for a period of more than six months or an offence under Chapter IXA of the Indian Penal Code, 1860 or section 3 or section 9 of the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952 or Chapter III of Part VII of the Representation of the People Act, 1951 and five years have not elapsed from the date of expiration of the sentence.

1 of 1956.

45 of 1860.

West Ben. Act X of 1952.

43 of 1951.

(2) For the purposes of this section, a person shall not be deemed to hold an office of profit under the Gorkhaland Territorial Administration Sabha by reason only of his being a Member, Chief Executive, Deputy Chief Executive, Chairman and Deputy Chairman thereof.

Electoral rolls.

10. (1) So much of the electoral roll for any Assembly Constituency in force on the last date of nominations for the Gorkhaland Territorial Administration Sabha election as relates to the area comprised within a constituency as defined in clause (b) of section 2 shall, subject to the provisions of this Act and the rules made thereunder, be the electoral roll for the election of Members from that constituency.

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(2) Persons whose names are included in the electoral rolls of the relevant Assembly constituencies in force on the last date of nominations for Gorkhaland Territorial Administration Sabha election pertaining to the region under this Act shall be the electorate for the election of Members.

(3) The Government shall, at any time and in the manner prescribed, cause to be published the electoral roll in respect of a constituency of the Gorkhaland Territorial Administration Sabha.

Right to vote.

11. (1) Save as otherwise provided in this Act, every person whose name is, for the time being, entered in the electoral roll of any constituency within the region shall be entitled to vote for in that constituency.

(2) No person shall vote at an election in any constituency, if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950.

43 of 1950.

(3) No person shall vote in more than one constituency.

(4) No person shall vote in the same constituency more than once.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subject to preventive detention under any law for the time being in force.

Election of members.

12. (1) Election of Members shall be held in accordance with the rules made under section 20 and the first election for the purpose of constituting the Gorkhaland Territorial Administration Sabha shall be held on such date or dates as the Government may, by notification, appoint.

(2) The election shall be conducted by the Government.

General election to Gorkhaland Territorial Administration Sabha.

13. (1) A general election subsequent to the first election shall be held for the purpose of constituting a new Gorkhaland Territorial Administration Sabha, before the expiration of the term of office of the Members, or as the case may be, the term of office of the Administrator or the Board of Administrators as specified in section 17 or, in the case of its earlier dissolution, soon after such dissolution, on such day or days within a period of six months as the Government may fix.

(2) The Government may issue such orders as it may consider necessary or expedient to give effect to the provisions of this Act in regard to the holding of the first election referred to in section 12 and in regard to any matter connected therewith or incidental thereto.

(3) If the office of an elected or nominated Member becomes vacant by reason of his death, resignation or otherwise, the vacancy shall be filled by election or nomination, as the case may be, in accordance with the provisions of this Act and the rules made thereunder.

(4) If a person is elected to more than one seat in the Gorkhaland Territorial Administration Sabha, then, unless within a period of thirty days from the last of the dates of election of such person he resigns all but one of the seats by writing under his hand addressed to the authority or officer etc. referred to in clause (b) of section 20, all the seats shall become vacant.

(5) For the purpose of sub-section (4) of this section and sub-sections (3) and (4) of section 16, the date on which a person is declared by the returning officer to be elected to the Gorkhaland Territorial Administration Sabha, shall be the date of his election.

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- Validation.** **14.** Where the Members elected at a general election are restrained from functioning on account of the election as a whole being set aside by order of a Court, anything done or any action taken by such Members before they are so restrained or before the election is so set aside, as the case may be, shall be deemed to have been validly done or taken.
- Publication of results of elections.** **15.** The names of all persons elected or nominated to the Gorkhaland Territorial Administration Sabha shall be published by the Government in the *Official Gazette* and upon such publication, the Gorkhaland Territorial Administration Sabha shall, notwithstanding anything contained elsewhere in this Act, be deemed to have been duly constituted.
- Vacation of seat.** **16.** (1) If an elected Member is chosen to be a Member of Parliament or of the State Legislature then, at the expiration of fourteen days from the date of publication in the *Gazette of India* or the *Official Gazette* of the declaration that he has been so chosen, the seat of such Member in the Gorkhaland Territorial Administration Sabha shall become vacant unless he has previously resigned his seat in Parliament or the State Legislature, as the case may be.
- (2) If a Member of Parliament or the State Legislature is elected as a Member then, at the expiration of fourteen days from the date of publication in the *Official Gazette* of the declaration that he has been so elected, the seat of such Member in the Gorkhaland Territorial Administration Sabha shall become vacant, and he shall be debarred from contesting any election to the Gorkhaland Territorial Administration Sabha for a period of ten years unless he has previously resigned his seat in Parliament or the State Legislature, as the case may be.
- (3) If any Member fails to make and subscribe within three months from the date of his election or nomination to the Gorkhaland Territorial Administration Sabha an oath or affirmation in accordance with the provisions of section 23 or sub-section (10) of section 37, then, at the expiration of the said period, the seat of such Member in the Gorkhaland Territorial Administration Sabha shall become vacant.
- (4) If a person who is already nominated to the Gorkhaland Territorial Administration Sabha is elected to the Gorkhaland Territorial Administration Sabha, his seat in the Gorkhaland Territorial Administration Sabha as a nominated Member shall, on the date of his election, become vacant.
- Term of office of members.** **17.** (1) The elected Members shall hold office for a period of five years from the date appointed by the Government for the first meeting of the Gorkhaland Territorial Administration Sabha after the general election for constitution of the Gorkhaland Territorial Administration Sabha, unless it is dissolved earlier under section 64:
- Provided that the said period of five years may, if the circumstances exist which, in the opinion of the Government, render the holding of the election as aforesaid impracticable, be extended by the Government for a period not exceeding one year:
- Provided further that if it is not possible at any time, within the extended period of one year as specified in the first proviso, to hold the first meeting which is required to be held after each general election for constitution of a new Gorkhaland Territorial Administration Sabha, the Government may, by order, appoint any person to be designated as the Administrator, or constitute a Board of Administrators consisting of several persons, one of whom to be appointed as Chairperson of such Board, to exercise the caretaking powers of the Gorkhaland Territorial Administration Sabha for a period not exceeding six months at a time or until the date on which the first meeting of the newly elected Gorkhaland Territorial Administration Sabha is held, whichever is earlier.
- Provided also that if the Government may consider necessary so to do in the public interest, it may, by order, change the Administrator or reconstitute the Board of Administrators.

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter I.—Preliminary.—Sections 18, 19.)*

(2) An elected Member, other than the Chief Executive of the Gorkhaland Territorial Administration, shall cease to hold office if—

- (a) he ceases to be a Member, or
- (b) he resigns his office in writing under his hand addressed to the Chairman of the Gorkhaland Territorial Administration Sabha, in which case the resignation shall take effect from the date of its acceptance by the Chairman.

(3) A nominated Member shall hold office until—

- (a) he resigns his office in writing under his hand addressed to the Governor, and the resignation shall take effect from the date of its acceptance by the Governor, or
- (b) his nomination is cancelled by the Governor, or
- (c) a fresh nomination is made in his place by the Governor, or
- (d) a new Gorkhaland Territorial Administration Sabha is constituted after a General Election held under sub-section (1) of section 13.

Removal of members.

18. (1) The Government may, after giving an opportunity to an elected Member to show cause against the action proposed to be taken against him, by order, remove him from office—

- (a) if after his election he is convicted by a criminal court of an offence involving moral turpitude punishable with imprisonment for a period of more than six months; or
- (b) if he incurs any of the disqualifications mentioned in sub-section (1) of section 9 after his election as a Member; or
- (c) if he is absent from three consecutive meetings of the Gorkhaland Territorial Administration Sabha without the leave of the Gorkhaland Territorial Administration Sabha; or
- (d) if he does not pay any arrear in respect of any tax, toll, fee or rate payable under this Act or the Bengal Village Self-Government Act, 1919 or the West Bengal Panchayat Act, 1973.

Ben. Act
V of 1919.
West Ben. Act
XLI of 1973.

(2) Any Member who is removed from his office under sub-section (1) may, within thirty days from the date of the order, appeal to such Authority as the Government may appoint in this behalf, and, thereupon, the Authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to such Authority as may be prescribed and after giving the appellant an opportunity of being heard, modify, set aside or confirm the order.

(3) The order passed by the Authority appointed under sub-section (2) on such appeal shall be final.

Disqualification on ground of defection.

19. (1) Notwithstanding anything to the contrary contained elsewhere in this Act, the prescribed authority for the Gorkhaland Territorial Administration Sabha (hereinafter referred to as the prescribed Authority) may, subject to the other provisions of this section, declare, for reasons to be recorded in writing, a Member to be disqualified for being a Member thereof, if—

- (a) he is an elected Member set up by a recognized political party, and has—
 - (i) voluntarily given up his membership of such recognized political party, or
 - (ii) exercised the voting right contrary to the manner of voting of the majority Members set up by such recognized political party; or
- (b) he is an elected Member not set up by any recognized political party and has joined a recognized political party on the expiry of six months from the date of election:

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter I.—Preliminary.—Section 19.)*

Provided that the prescribed Authority shall not declare any Member to be disqualified under this section without giving to such Member a reasonable opportunity to represent his case and to be heard in person:

Provided further that an elected Member referred to in sub-clause (ii) of clause (a) shall not, on the prescribed authority being satisfied in this behalf, be declared to be disqualified if—

- (a) the action of such Member was taken on obtaining prior permission of, or was condoned by, such recognized political party, or
- (b) such Member claims that he and any other Member of such recognized political party constitute a group representing a faction consisting of not less than one-third of the total number of Members set up by such recognized political party in the Gorkhaland Territorial Administration Sabha and that all the Members set up by such group have voluntarily given up their Membership of such recognized political party, or
- (c) the former recognized political party of the Member merges with another recognized political party, and he claims that he and other Members of his former recognized political party—
 - (i) have become Members of such other recognized political party or of a new recognized political party formed out of merger, as the case may be, or
 - (ii) have not accepted the merger, and from the time of such merger, he and such other Members constituting not less than one-third of the total number of members set up by the former recognized political party in the Gorkhaland Territorial Administration Sabha, have opted to remain members of the former recognized political party or have formed a new recognized political party.

(2) On being declared to be disqualified under sub-section (1), a Member shall, subject to the provisions of sub-section (12), stand removed from the Gorkhaland Territorial Administration Sabha from the date of such declaration.

(3) As soon as may be within one month from the date of the first meeting of a Gorkhaland Territorial Administration Sabha, elected Members set up by the recognized political parties shall, by adopting a resolution, select one Member from amongst themselves to be the Leader and such Leader shall, within fifteen days from the date of such selection, furnish to the prescribed Authority referred to in sub-section (1)—

- (i) a copy of the resolution,
- (ii) a signed statement containing the names, addresses and constituencies of himself and other members set up by such recognized political party, and
- (iii) a copy of a set of rules and regulations, if any, by whatever name called, of such recognized political party:

Provided that an office-bearer may also hold the office of the Leader.

(4) Where there is only one elected Member set up by a recognized political party in a Gorkhaland Territorial Administration Sabha, he shall furnish the documents referred to in sub-section (3) in relation to himself:

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Provided that in the event of any increase in the number of Members of such recognized political party, the provisions of sub-section (3) shall apply as if the first meeting of the Gorkhaland Territorial Administration Sabha was held on the date on which such increase took place.

(5) A Member not belonging to any recognized political party shall furnish a statement to that effect to the prescribed Authority referred to in sub-section (1) within one month from the date of the first meeting of the Gorkhaland Territorial Administration Sabha.

(6) In the event of any change of the information furnished under sub-section (3), sub-section (4) or sub-section (5), the Leader or the member, as the case may be, shall, as soon as may be within fifteen days from the date of such change, furnish in writing such change of information to the prescribed Authority referred to in sub-section (1).

(7) The Leader of any recognized political party referred to in sub-section (3) may at any time file a petition endorsed by the General Secretary, or, if there is no General Secretary, the Secretary, of the district unit of such recognized political party to the prescribed Authority referred to in sub-section (1), stating that—

- (a) one or more member of such recognized political party have—
 - (i) voluntarily given up his or her membership of such recognized political party, or
 - (ii) exercised the voting right contrary to the manner of voting of the majority members set up by such recognized political party in the Gorkhaland Territorial Administration Sabha, or
- (b) the member referred to in sub-section (4) has voluntarily given up his membership of the recognized political party that set him up, or
- (c) the member referred to in sub-section (5) has joined a recognized political party on the expiry of six months from the date of election, and that such member or members should be declared to be disqualified under sub-section (1) and should be removed from the Gorkhaland Territorial Administration Sabha.

(8) Every petition referred to in sub-section (7)—

- (a) shall contain a concise statement of the material facts on which the petitioner relies, and
- (b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and, where the petitioner relies on any information furnished to him by any person or persons, a statement containing the names and addresses of such person or persons and the gist of such information as furnished by such person or each of such persons.

(9) On receipt of the petition referred to in sub-section (7), the prescribed Authority referred to in sub-section (1) shall, as soon as possible within six weeks from the date of the receipt of such petition, proceed to make any enquiry to satisfy himself, among others, as to—

- (a) the common decision in regard to the manner of voting to be exercised by the majority members set up by the recognized political party, and

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- (b) whether the member or members against whom such petition is filed, exercised the voting right, in a meeting of the Gorkhaland Territorial Administration Sabha contrary to such manner of voting.

(10) For the purpose of enquiry under sub-section (9), the prescribed Authority may summon such members of the recognized political party or other persons, and require such signed statements from, and production of such documents and records by, the member or other persons as aforesaid, as he may deem necessary.

(11) As soon as possible within eight weeks from the date of receipt of the petition referred to in sub-section (7), the prescribed Authority shall, in consideration of the facts and the documents and the records before it,—

- (a) reject the petition, or
 (b) admit the petition wholly or in part and declare any Member or Members to be disqualified under sub-section (1) for being Member.

(12) Any Member declared disqualified under sub-section (1) or the Leader of the recognized political party referred to in sub-section (7), if aggrieved by the decision of the prescribed Authority may, within thirty days from the date of the order, appeal to such Authority as the State Government may appoint in this behalf, and, thereupon, the Authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to the prescribed Authority, and after giving the appellant an opportunity of being heard, set aside or confirm the order or declare under sub-section (1) any Member or Members to be disqualified for being Members.

(13) The order passed by the Authority appointed under sub-section (12) on the appeal shall be final.

(14) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, no court shall have any jurisdiction in respect of any matter arising out of a Member being declared to be disqualified under sub-section (1) for being a Member.

(15) The State Government may, by notification published in the *Official Gazette*, make rule for carrying out the purposes of this section.

Explanation I.—For the purpose of this section, an elected Member shall be deemed to be set up by a recognized political party if he has contested election within symbol reserved for such recognized political party or if he has contested election with a free symbol and joins a recognized political party and furnishes a declaration to that effect to the prescribed Authority before the expiry of six months from the date of election.

Explanation II.—“Prescribed Authority for the Gorkhaland Territorial Administration Sabha” shall mean an Authority appointed by the State Government by notification published in the *Official Gazette* for the purpose of this section.

20. The Government may, by notification in the *Official Gazette*, make rules to regulate all or any of the following matters for the purpose of holding of elections to the Gorkhaland Territorial Administration Sabha under this Act—

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- (a) the designation of the officer or Authority to whom the power to determine the territorial limits of constituencies under sub-section (2) of section 6 may be delegated and the officer or Authority who may prepare and maintain the electoral roll under section 10;
- (b) the appointment of election authority, election officer, returning officers, presiding officers and polling officers for election and their powers, functions and duties;
- (c) the drawing up of the programme of election;
- (d) the nomination of candidates and the scrutiny of such nomination;
- (e) the deposits to be made by candidates and the time and manner of making such deposits;
- (f) the withdrawal of candidatures;
- (g) the appointment of agents of candidates;
- (h) the filling up of casual vacancy;
- (i) the general procedure at the election including the time, place and hours of poll and the method by which votes shall be cast;
- (j) the requisitioning of vehicles and premises in connection with the conduct of elections and the penalty for contravention of any order regarding such requisitioning;
- (k) any other matter relating to election or election disputes in respect of which the Government deems it necessary to make rules under this section or in respect of which there is no provision in this Act or the provision is insufficient and, in the opinion of the Government, adequate provision is necessary.

Electoral offences.

21. (1) For the purposes of this Act, the electoral offences provided for in section 125 to 136 of the Representation of the People Act, 1951, shall be the electoral offences at or in connection with the elections under this Act.

43 of 1951.

(2) Any person who is guilty of an electoral offence as aforesaid shall be punishable in the same manner as is provided for in the said Act.

Disputes regarding elections.

22. (1) No election shall be called in question except by an election petition presented in such manner as may be prescribed and before such authority as may be appointed by the Government, from time to time, by notification in the *Official Gazette*:

Provided that no person below the rank of a District Judge within the meaning of article 236 of the Constitution of India shall be appointed for the purpose.

(2) No election shall be called in question except on any one or more of the following grounds, namely—

- (a) that on the date of his election the returned candidate was not qualified, or was disqualified, to be chosen to fill the seat in the Gorkhaland Territorial Administration Sabha;
- (b) that a corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent.

Explanation.—For the purposes of this section, “corrupt practice” shall mean any of the corrupt practices specified in section 123 of the Representation of the People Act, 1951;

- (c) that any nomination has been improperly rejected;
- (d) that the result of the election in so far as it concerns the returned candidate has been materially affected—
 - (i) by the improper acceptance of any nomination, or
 - (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or

The Gorkhaland Territorial Administration Act, 2011.

(Chapter I.—Preliminary.—Sections 23, 24.—Chapter II.—Powers and Functions of the Gorkhaland Territorial Administration.—Sections 25, 26.)

- (iii) by the improper reception, refusal or rejection of any vote, or
- (iv) by the reception of any vote which is void, or
- (v) by any non-compliance with the provisions of this Act or of any rules or orders made thereunder.

(3) At the conclusion of the trial of an election petition the authority appointed under sub-section (1) shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

(4) If a petitioner, in addition to calling in question the election of a returned candidate, makes a declaration that he himself or any other candidate has been duly elected, and the authority under sub-section (1) is of opinion that—

- (a) in fact that petitioner or such other candidate has received the majority of valid votes, or
- (b) but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have obtained the majority of the valid votes,

the authority as aforesaid shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

Oath or affirmation by members.

23. Every Member, other than the Chief Executive of the Gorkhaland Territorial Administration shall, before the first meeting of the Gorkhaland Territorial Administration Sabha or as soon as thereafter, make and subscribe before such person as may be appointed by the Government in this behalf, an oath or affirmation, and shall be given a certificate of receipt of the form of oath or affirmation as so made and subscribed, according to the form set out for the purpose in the first schedule.

Allowances of members.

24. Every Member shall be entitled to receive such allowances as may be fixed by the Gorkhaland Territorial Administration Sabha and as may be approved by the Government.

CHAPTER II

Powers and Functions of the Gorkhaland Territorial Administration

Conduct of business.

25. (1) The Gorkhaland Territorial Administration Sabha shall meet for the conduct of business at least once in every three months and shall conduct its business in such manner and in accordance with such procedure as may be determined by it by regulations with the approval of the Government.

(2) The quorum necessary for the transaction of business at a meeting of the Gorkhaland Territorial Administration Sabha shall be not less than one-third of its total number of Members and the decision of the Gorkhaland Territorial Administration Sabha shall be by simple majority of votes of the Members present.

Matter to be under control and administration of Gorkhaland Territorial Administration.

26. Subject to the provisions of this Act and any other law for the time being in force and any general or special direction of the Government, the Gorkhaland Territorial Administration shall have administrative, financial and executive powers in the region in relation to—

- (i) Agriculture, including agricultural education and research protecting against pest and prevention of plants diseases; Horticulture, Floriculture and Food processing;

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter II.—Powers and Functions of the Gorkhaland Territorial Administration.—Section 26.)*

- (ii) Animal Husbandry and Veterinary, that is to say preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practices, cattle pounds; Dairy development;
- (iii) Co-operation;
- (iv) Information and Cultural Affairs;
- (v) School Education including primary education, secondary education, higher secondary education (including vocational training); Physical Education; Government Schools;
- (vi) College Education including Agricultural and Technical Colleges; Local Management of Government sponsored Colleges; Mass Education and Physical Education; Engineering, Medical, Management, and Information Technology with Government and Government sponsored colleges for which wings or cells shall have to be created by the Gorkhaland Territorial Administration for the area under its jurisdiction;
- (vii) Adult Education and Library Services;
- (viii) Fisheries;
- (ix) Irrigation, drainage and embankments, floods and landslide protection;
- (x) Food and Civil Supplies; Consumer Affairs;
- (xi) Management of any forest, not being Reserved Forest;
Explanation.—“Reserved Forest” shall mean a reserved forest as constituted under Indian Forest Act, 1927;
- (xii) Micro and Small Scale Industries, handloom and textiles; handicrafts and *Khadi* and Village industries;
- (xiii) Cinchona plantation and settlement of land in possession of the plantation inhabitants; management of lease of cinchona lands etc. under it;
- (xiv) Woman and Child Development and Social Welfare;
- (xv) District Sainik Board;
- (xvi) “Health including Public Health and Family welfare” including hospitals, dispensaries, health centres and sanatoriums, establishing a Nurses Training School;
- (xvii) Intoxicating liquors, opium derivatives subject to the provisions of Entry 84 of List I of the Seventh Schedule; distilleries—control and regulation, Bonded House and raising of revenue;
- (xviii) Irrigation;
- (xix) Water Resources Investigation and Minor Irrigation;
- (xx) Labour and Employment;
- (xxi) Land and Land Revenue including allotment, occupation or use, setting apart of land other than land with reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes to promote interest of the people;
- (xxii) Library services (financed and controlled by the State Government);
- (xxiii) Lotteries (subject to the provisions of the Entry 40 of the List I of the Seventh Schedule);
- (xxiv) Theatre, dramatic performances and cinemas (subject to the provisions of the Entry 60 of the List I of the Seventh Schedule); sports; entertainment and amusements;

16 of 1927.

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter II.—Powers and Functions of the Gorkhaland Territorial Administration.—Section 26.)*

- (xxv) Markets and fairs;
- (xxvi) Municipal corporation, improvement of trust, district boards and other local authorities; Fire Services;
- (xxvii) Museum and archeology institutions controlled or financed by the State, ancient and historical monuments and records other than those declared by or under any Law made by Parliament to be of national importance;
- (xxviii) *Panchayat* and Rural Development including District Rural Development Agency;
- (xxix) Planning and Development;
- (xxx) Printing and Stationery;
- (xxxi) Public Health Engineering;
- (xxxii) Public Works Department including work relating to State Highways as well as the responsibility discharged by the State Government for maintenance of National Highways within the jurisdiction of Gorkhaland Territorial Administration;
- (xxxiii) Publicity and Public Relations including Regulation of Media—both Print and Electronic media;
- (xxxiv) Registration of births and deaths;
- (xxxv) Relief and Rehabilitation; disaster management;
- (xxxvi) Sericulture;
- (xxxvii) Small cottage and rural industry subject to the provisions of Entries 7 and 52 of List I of the Seventh Schedule;
- (xxxviii) Social Welfare, including welfare of Scheduled Castes and Scheduled Tribes, and Scheduled Castes and Scheduled Tribes Development and Finance Corporation that may be set up for Gorkhaland Territorial Administration; tribal research institutions that may be set up for Gorkhaland Territorial Administration area;
- (xxxix) Soil conservation;
 - (xl) Sports and Youth Welfare;
 - (xli) Statistics;
 - (xlii) Tourism; along with Tourism infrastructure within the jurisdiction of the Gorkhaland Territorial Administration area including Tourism Development Corporation that may be set up for the Gorkhaland Territorial Administration area;
 - (xliii) Transport (roads, bridges, ferries and other means of communication not specified in List I of the Seventh Schedule, municipal tramways, ropeways, inland waterways and traffic thereon, subject to the provision of List I and List III of the Seventh Schedule with regard to such waterways, vehicles and other mechanically propelled vehicles);
 - (xliv) Urban development—town and country planning;
 - (xlv) Weights and measures subject to the provisions of Entry 50 of List I of the Seventh Schedule;
 - (xlvi) Welfare of plain tribes and backward classes subject to the area being under Gorkhaland Territorial Administration only;
 - (xlvii) Welfare of the Scheduled Castes and Scheduled Tribes and Other Backward Classes;
 - (xlviii) Welfare of Minorities;

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter II.—Powers and Functions of the Gorkhaland Territorial Administration.—Sections 27-32.)*

- (xlix) Management and settlement of land including markets and market shed controlled by the Darjeeling Improvement Fund;
- (l) Minor Minerals and Mineral development (subject to the provisions of the Entry 23 of the List II of the Seventh Schedule);
- (li) Rural electrification;
- (lii) Renewable sources of energy including water-power (subject to Entry 56 of the List I and Entry 38 of the List III of the Seventh Schedule);
- (liii) Sharing electricity with Gorkhaland Territorial Administration subject to evolving a mutually agreeable formula with the State Government;
- (liv) Pounds and prevention of cattle trespass;
- (lv) Management of burial grounds and cremation grounds;
- (lvi) Regulation of Cable channels, to the extent the powers of Central Act, i.e. the Cable Television Networks (Regulation) Act, 1995, vests with the State Government;
- (lvii) Tauzi; Tauzi Department of the Collectorate.

7 of 1995.

Regional Transport Authority for Gorkhaland Territorial Administration.

27. There shall be a Regional Transport Authority for the Gorkhaland Territorial Administration area with District Magistrate as the Chairman and two non-official members to be nominated by the Chief Executive.

General powers.

28. Subject to the general policy and direction of the Government, the Gorkhaland Territorial Administration shall—

- (i) formulate integrated development plans for the region, and
- (ii) implement schemes and programmes for development of the region.

Power to acquire, hold and dispose of property etc.

29. The power of the Gorkhaland Territorial Administration to acquire, hold and dispose of property and to enter into contracts under section 4 shall be subject to the condition that in all cases of acquisition or disposal of immovable property, the value of which exceeds rupees one crore or which is outside in the region the Gorkhaland Territorial Administration obtain previous approval of the Government.

Power to make regulations.

30. (1) The Gorkhaland Territorial Administration shall have power, subject to the provisions of this Act, and the rules made thereunder by the Government, to make, regulations to be applicable within the region with respect to all or any of the matters enumerated in section 26 for the regulation and control thereof.

(2) All regulations made under sub-section (1) shall have effect upon their publication in the *Official Gazette*.

Power of Government to entrust functions.

31. Notwithstanding anything in this Act, the Government may, with the consent of the Gorkhaland Territorial Administration, entrust either conditionally or unconditionally to the Gorkhaland Territorial Administration the functions in relation to any matter, not enumerated in section 26, to which the executive power of the State extends.

Property vested in Gorkhaland Territorial Administration.

32. Subject to such restrictions or conditions as the Government may think fit to impose, all properties specified below and situated in the region shall vest in and belong to the Gorkhaland Territorial Administration with all other properties which may become vested in the Gorkhaland Territorial Administration and shall be under the direction, management and control of the Gorkhaland Territorial Administration and shall be held and applied by it for the purposes of this Act, namely:—

- (a) all public buildings constructed and maintained out of the Fund;

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter II.—Powers and Functions of the Gorkhaland Territorial Administration.—Sections 33, 34.)*

- (b) all public roads which have been constructed or maintained out of the Fund and stones and other materials thereof and also trees, erections, materials, implements and things provided for such roads;
- (c) all lands and other properties, movable or immovable, transferred to the Gorkhaland Territorial Administration by the Government;
- (d) all assets and properties owned and controlled by the Darjeeling Gorkha Hill Council in the region or outside.

Power to impose levy, and collect taxes and fees.

33. (1) Notwithstanding anything contained in any other law for the time being in force, the Gorkhaland Territorial Administration shall have power to collect within the region such taxes payable under such law for the time being in force on such terms and conditions as may be notified by the Government:

Provided that the tax or taxes as aforesaid shall be collected by the Gorkhaland Territorial Administration from such date as may be appointed by the Government in this behalf by notification in the *Official Gazette*.

(2) Subject to such maximum rates as the Government may prescribe, the Gorkhaland Territorial Administration may—

- (a) levy tolls on persons, vehicles or animals or any class of them at any toll-bar established by it on any road other than a *kutchra* road or any bridge vested in it or under its management;
- (b) levy tolls in respect of any ferry established by it or under its management;
- (c) levy the following fees and rates, namely:—
 - (i) fee on the registration of boats or vehicles;
 - (ii) fee for providing sanitary arrangements at such places of worship or pilgrimage, fairs and *melas* within its jurisdiction as may be specified by the Government by notification in the *Official Gazette*;
 - (iii) fee for licenses;
 - (iv) water-rate, where arrangements for the supply of water for drinking, irrigation or any other purpose is made by the Gorkhaland Territorial Administration within its jurisdiction;
 - (v) lighting rate, where arrangement for lighting of public streets and places is made by the Gorkhaland Territorial Administration within its jurisdiction.

(3) The Gorkhaland Territorial Administration shall not undertake registration of any vehicle or levy fee therefor and shall not provide sanitary arrangements at places of worship or pilgrimage, fairs, and *melas* within its jurisdiction or levy fee thereof if such vehicle has already been registered by any other authority under any law for the time being in force or if such provision for sanitary arrangement has already been made by any other local authority.

(4) The scales of tolls, fees or rates and the terms and conditions for the imposition thereof shall be such as may be provided by regulations. Such regulations may provide for exemption from all or any of the tolls, fees or rates in any class of cases.

Power of supervision over municipalities, Panchayat Samitis, Gram Panchayats and Zilla Parishad.

34. (1) Notwithstanding the provisions of West Bengal *Panchayat Act, 1973* or the West Bengal *Municipal Act, 1993*, the Gorkhaland Territorial Administration shall exercise general powers of supervision over *Zilla Parishad, Panchayat Samities, Gram Panchayats* and municipalities in the region constituted in accordance with the provisions of the Constitution of India, and it shall be the duty of every such *Zilla Parishad, Panchayat Samiti, Gram Panchayat* or municipality to give effect to any direction of the Gorkhaland Territorial Administration on matters of policy or planning for development.

West Ben. Act
XLI of 1973.
West Ben. Act
XXII of 1993.

The Gorkhaland Territorial Administration Act, 2011.

(Chapter II.—Powers and Functions of the Gorkhaland Territorial Administration.—Sections 35, 36.—Chapter III.—Gorkhaland Territorial Administration Sabha and Committees thereof.—Section 37.)

(2) The Gorkhaland Territorial Administration shall, until the *Zilla Parishad* is constituted under sub-section (1), exercise all the powers of the *Zilla Parishad* under section 153, 154, 155, 156, 157, 158, 159, 160, 161 and 162 of the West Bengal *Panchayat Act, 1973*.

Inspection of
work of
Panchayats.

35. The Gorkhaland Territorial Administration may—

- (a) inspect, or cause to be inspected, any immovable property used or occupies by a *Zilla Parishad, Panchayat Samiti* or *Gram Panchayat* under it or any work in progress under the direction of the *Panchayat Samiti*,
- (b) inspect or examine, or depute an officer to inspect or examine, any department of the *Zilla Parishad, Panchayat Samiti* or *Gram Panchayat* or any service, work or thing under the control of the *Zilla Parishad, Panchayat Samiti, Gram Panchayat*,
- (c) inspect or cause to be inspected utilization of funds, in respect of schemes or programmes assigned to the *Zilla Parishad, Panchayat Samiti, Gram Panchayat* by the Government for execution either directly or through the Gorkhaland Territorial Administration,
- (d) require the *Zilla Parishad, Panchayat Samiti, Gram Panchayat*, for the purpose of inspection or examination as aforesaid,—
 - (i) to produce any book, record, correspondence or other documents, or
 - (ii) to furnish any return, plan, estimate, statement, accounts or statistics, or
 - (iii) to furnish or obtain any report or information.

Disputes.

36. If any dispute arises between a *Gram Panchayat* or a *Panchayat Samiti* or a *Zilla Parishad* or a municipality in the region and the Gorkhaland Territorial Administration such dispute shall be referred by the Gorkhaland Territorial Administration to the Government and the decision of the Government thereon shall be final.

CHAPTER III

Gorkhaland Territorial Administration Sabha and Committees thereof

Chief Executive,
Deputy Chief
Executive,
Chairman, Deputy
Chairman etc.

37. (1) The first meeting of the Gorkhaland Territorial Administration Sabha after each general election shall be held on the date appointed by Government under sub-section (1) of section 17.

(2) There shall be a Chairman who shall be elected in such manner as may be prescribed by rules by the Government, and who shall preside over the conduct of business of the Gorkhaland Territorial Administration Sabha.

(3) The Chairman of the Gorkhaland Territorial Administration Sabha—

- (a) shall cease to hold office as such forthwith if he ceases to be a Member of Gorkhaland Territorial Administration Sabha;
- (b) may, at any time, by giving notice in writing under his hand addressed to the Chief Executive of the Gorkhaland Territorial Administration, resign his office from such date as may be specified in the notice or, if no such date is specified in the notice, from the date of his acceptance by the Chief Executive of the Gorkhaland Territorial Administration;
- (c) may be removed from office by a resolution carried by a majority of the total number of elected Members at a special meeting of the Gorkhaland Territorial Administration Sabha called for this purpose upon a requisition made in writing by not less than one-third of such Members.

(4) There shall be a Deputy Chairman, who shall be elected in such manner as may be prescribed by the Government, who in absence of the Chairman shall conduct

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter III.—Gorkhaland Territorial Administration Sabha and Committees thereof.—Section 38.)*

the business of the Gorkhaland Territorial Administration Sabha. The Deputy Chairman of the Gorkhaland Territorial Administration Sabha shall continue to hold office until—

- (a) he ceases to be a Member, or
- (b) he resigns his office in writing under his hand addressed to the Chief Executive of the Gorkhaland Territorial Administration, in which case the resignation shall take effect from the date of its acceptance by the Chief Executive of the Gorkhaland Territorial Administration, or
- (c) his election as Deputy Chairman is cancelled by the Chief Executive of the Gorkhaland Territorial Administration:

Provided that notwithstanding such cancellation of his election, he shall, subject to the other provisions of this Act, continue to hold office as a Member.

(5) The Government may nominate one of the elected Members, not being a candidate for election as Chairman of the Gorkhaland Territorial Administration Sabha, to preside over the first meeting for the election of Chairman of the Gorkhaland Territorial Administration Sabha.

(6) There shall be a Chief Executive of the Gorkhaland Territorial Administration who shall be elected by the elected members from amongst themselves in such manner as may be prescribed. The election of the Chief Executive of the Gorkhaland Territorial Administration shall be conducted by Chairman who shall preside over the meeting immediately after he is elected as Chairman under sub-section (2).

(7) The outgoing Chief Executive of the Gorkhaland Territorial Administration shall convene the first meeting of the Gorkhaland Territorial Administration Sabha on the appointed date by sending notice, specifying therein the date, time and place of the meeting to the registered address of each Member elected to the Gorkhaland Territorial Administration Sabha at least seventy-two hours before the time fixed for such meeting:

Provided that if the outgoing Chief Executive of the Gorkhaland Territorial Administration fails to convene the meeting on the appointed date, the Government may authorize an officer to convene the first meeting of the Gorkhaland Territorial Administration Sabha on a date to be specified by the Government in this behalf.

(8) In the case of any casual vacancy in the office of the Chief Executive caused by death, resignation, removal or otherwise, the elected Members shall, in accordance with such procedure as may be prescribed, elect one of the Members to fill up the vacancy:

Provided that pending the election of a Chief Executive, the Government may appoint by name one of the Members to be the Chief Executive who shall hold office as Chief Executive and shall exercise all the powers and discharge all the functions of the Chief Executive, until a Chief Executive, elected in accordance with the provisions of this Act and the rules made thereunder, enters upon his office.

(9) The Chief Executive may nominate one Member to be the Deputy Chief Executive.

(10) The Chief Executive shall, within one month from the date of election, make and subscribe before the Governor an oath or affirmation and shall be given a certificate of receipt of oath or affirmation as so made and subscribed according to the form set out for the purpose in the Second Schedule.

Term of office of
Chief Executive,
Deputy Chief
Executive.

38. (1) The Chief Executive—

- (a) shall cease to hold office as such forthwith if he ceases to be a Member of Gorkhaland Territorial Administration Sabha; or
- (b) may, at any time, by giving notice in writing under his hand addressed to the Governor of the State, resign his office from such date as may be specified in the notice or, if no such date is specified in the notice, from the date of his acceptance by the Governor; or

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter III.—Gorkhaland Territorial Administration Sabha and Committees thereof.—Sections 39, 40.)*

(c) may be removed from office by a resolution carried by a majority of the total number of elected Members at a special meeting of the Gorkhaland Territorial Administration Sabha called for this purpose upon a requisition made in writing by not less than one-third of such Members.

(2) The Deputy Chief Executive shall hold office until—

- (a) he ceases to be a Member, or
- (b) he resigns his office in writing under his hand addressed to the Chief Executive, in which case the resignation shall take effect from the date of its acceptance by the Chief Executive, or
- (c) his nomination as Deputy Chief Executive is cancelled by the Chief Executive:

Provided that notwithstanding such cancellation of his nomination, he shall, subject to the other provisions of this Act, continue to hold office as a Member of Gorkhaland Territorial Administration Sabha.

Salaries and Allowances of Executive Sabha Member.

39. The members of the Executive Sabha shall be whole time functionaries and shall be paid out of the Fund such salaries and allowances and shall be entitled to such leave of absence for such period or periods on such terms and conditions as may be prescribed:

Provided that an Executive Sabha Member, not holding any charge of any matter or department of that Sabha, shall be entitled to the same status and privileges to which any other Member is entitled.

Powers, functions and duties.

40. (1) The Chief Executive shall—

- (a) have general responsibility for the financial and executive administration;
- (b) exercise administrative supervision and control over all officers and employees of the Gorkhaland Territorial Administration, and the officers and employees whose services may be placed at the disposal of the Gorkhaland Territorial Administration by the Government;
- (c) for the transaction of business under this Act or for the purpose of making any order under this Act, exercise such powers, perform such functions and discharge such duties as may be exercised, performed or discharged by the Gorkhaland Territorial Administration under this Act or the rules made thereunder:

Provided that the Chief Executive shall not exercise such powers, perform such functions or discharge such duties as may be required by the rules made under this Act to be exercised, performed or discharged by the Gorkhaland Territorial Administration Sabha at a meeting:

- (d) exercise such other powers, perform such other functions and discharge such other duties as the Gorkhaland Territorial Administration may, by general or special resolution, direct or as the Government may, by rule made in this behalf, prescribe.

(2) Notwithstanding anything contained in sub-section (1) or any other provisions of this Act, where the Administrator or the Board of Administrators has been appointed or constituted, as the case may be, by the Government under the second proviso to sub-section (1) of section 17, the powers exercisable, and functions performed, by the Chief Executive under the Act shall be exercised and performed by such authority as the Government may, by notification, specify.

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter III.—Gorkhaland Territorial Administration Sabha and Committees thereof.—Sections 41,42.)*

(3) The Deputy Chief Executive shall—

(a) exercise such of the powers, perform such of the functions and discharge such of the duties of the Chief Executive as the Chief Executive may from time to time, subject to the rules made in this behalf by the Government, delegate to him by order in writing:

Provided that the Chief Executive may at any time withdraw the powers and functions delegated to the Deputy Chief Executive;

(b) during the absence of the Chief Executive, exercise all the powers, perform all the functions and discharge all duties of the Chief Executive:

(c) exercise such other powers, perform such other functions, and discharge such other duties as the Gorkhaland Territorial Administration Sabha may, by general or special resolution, direct or as the Government may, by rules made in this behalf, prescribe.

Executive Sabha.

41. (1) There shall be an Executive Sabha consisting of the Chief Executive and fourteen other Executive members including the Deputy Chief Executive, who shall be nominated by the Chief Executive from the elected or nominated members.

(2) The Chief Executive shall allot among the other Executive Sabha Members the business of the Gorkhaland Territorial Administration by assigning one or more Department(s) to the charge of an Executive Sabha Member:

Provided that nothing in this Act shall prevent the assigning of one Department to the charge of more than one Executive Sabha Member.

(3) The manner of transaction of business of the Executive Sabha shall be such as may be determined by the Gorkhaland Territorial Administration Sabha by regulations.

(4) The Executive Sabha shall be responsible to the Gorkhaland Territorial Administration Sabha.

(5) No Executive Sabha Member shall hold any office of profit for so long as he holds the office of Executive Sabha Member or member of his family shall, either directly or indirectly—

(a) enter into any contract, or

(b) have any dealing or transaction, with the Gorkhaland Territorial Administration Sabha without the specific and prior approval of that Sabha.

Term of office of Executive Sabha.

42. An Executive Sabha Member shall hold office as Executive Sabha Member until—

(a) he ceases to be a Member of Gorkhaland Territorial Administration Sabha, or

(b) he resigns his office in writing under his hand addressed to the Chief Executive and the resignation shall take effect from the date of its acceptance by the Chief Executive, or

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter III.—Gorkhaland Territorial Administration Sabha and Committees thereof.—Sections 43-49.)*

- (c) his nomination as Executive Sabha Member is cancelled by the Chief Executive, or
- (d) a fresh nomination is made in his place by the Chief Executive.

Discharge of functions.

43. (1) The administrative, financial and the executive functions of the Gorkhaland Territorial Administration shall vest in the Executive Sabha.

(2) All orders or instruments made or executed by the Executive Sabha shall be deemed to have been made or executed by or under the authority of the Gorkhaland Territorial Administration and every such order or instrument shall be authenticated by the signature of the head of the Executive Sabha or any other Executive Member or by any officer of the Gorkhaland Territorial Administration authorized in writing by the head of Executive Sabha in this behalf.

Power of Executive Sabha.

44. The Executive Sabha shall refer to the Gorkhaland Territorial Administration Sabha for approval of the following matters, namely:—

- (a) all proposals for making regulations or by-laws under the provisions of this Act;
- (b) all cases affecting the relations of Government with the Gorkhaland Territorial Administration.

General power of Chief Executive.

45. (1) The Chief Executive shall exercise such powers and discharge such functions as are conferred on him by or under this Act.

(2) The Chief Executive shall make, for the convenient transaction of business of the Gorkhaland Territorial Administration Sabha, allocation among such Sabha Members of the said business in so far as it is not business with respect to which the Chief Executive is by or under this Act required to act in his discretion as he thinks fit.

Meeting of the Executive Sabha.

46. The Chief Executive shall preside over the meeting of the Executive Sabha. The Executive Sabha shall meet not less than once in every month for the transaction of business at such place and at such time as the Chief Executive may direct.

Quorum.

47. The quorum necessary for the transaction of business at a meeting of the Executive Sabha shall be one-third of the total number of Members of the Executive Sabha.

Special power of Chief Executive.

48. (1) In case in which the Chief Executive is required to take, in accordance with the provisions of this Act or the rules made thereunder or of any other law for the time being in force, any action subject to the approval of the Executive Sabha, such Sabha may, subject to such conditions, if any, as it may specify authorize the Chief Executive in writing to take such action in anticipation of such approval.

(2) Whenever the Chief Executive takes any action under sub-section (1) he shall inform the Executive Sabha forthwith.

Execution of work etc. in case of emergency.

49. If the Chief Executive is satisfied that an emergency has arisen and is of the opinion that the immediate execution of any work or the doing of any act, which ordinarily requires the approval of the Gorkhaland Territorial Administration Sabha or the Executive Sabha, is necessary for the maintenance of services or the safety of the public or the prevention of extensive damage to any property of the Gorkhaland Territorial Administration, he may direct that the expenses for such execution or doing shall be paid from the Fund:

The Gorkhaland Territorial Administration Act, 2011.

(Chapter III.—Gorkhaland Territorial Administration Sabha and Committees thereof.—Section 50.—

Chapter IV.—Officers and Staff of the Gorkhaland Territorial Administration.—Sections 51-53.)

Provided that the Chief Executive shall report forthwith to the Gorkhaland Territorial Administration Sabha or to the Executive Sabha, as the case may be, the action taken under this section and the reasons thereof.

Committees.

50. The Chief Executive may, from time to time, appoint such committee constituting of members from amongst the Members as may be required for the efficient discharge of the functions of the Gorkhaland Territorial Administration.

CHAPTER IV

Officers and Staff of the Gorkhaland Territorial Administration

Principal Executive Officer.

51. (1) There shall be a Principal Secretary to the Gorkhaland Territorial Administration (hereinafter referred to as the Principal Secretary), not below the rank of Secretary or Commissioner to the State Government, appointed by the Government in consultation with Chief Executive.

(2) The Principal Secretary shall be paid out of the Fund such salaries and allowances as may, from time to time, be fixed by the Government.

(3) The Principal Secretary shall be the Principal Executive Officer of the Gorkhaland Territorial Administration and all other officers of the Gorkhaland Territorial Administration shall be subordinate to him. He shall have the right to be present at a meeting of the Gorkhaland Territorial Administration Sabha or of the Executive Sabha or of any Committee of the Gorkhaland Territorial Administration Sabha and to take part in the discussions as if he were a member of the Gorkhaland Territorial Administration Sabha or of the Executive Sabha or of the committee aforesaid and may, with the consent of the Chief Executive or any other person presiding over such meeting for the time being, as the case may be, at any time make a statement, or give an explanation, of facts, but he shall not be entitled to vote.

(4) (a) The Principal Secretary shall act under the direction of the Chief Executive.

(b) The Principal Secretary shall be responsible for the maintenance of the records of the Gorkhaland Territorial Administration and the Executive Sabha.

(5) The Principal Secretary appointed under sub-section (1) shall not be transferred within a period of two years of the assumption of office, without the consent of the Gorkhaland Territorial Administration.

Appointment of Secretary.

52. The Government may, in consultation with the Chief Executive, place at the disposal of the Gorkhaland Territorial Administration the service of an officer of the Government for appointment as Secretary to the Gorkhaland Territorial Administration.

Deputation of other officers.

53. The Government may, in consultation with Chief Executive, depute such other officers and experts as may be required to assist the Gorkhaland Territorial Administration on such terms and conditions as the Government may determine.

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter IV.—Officers and Staff of the Gorkhaland Territorial Administration.—Section 54.—Chapter V.—Funds and Audit.—Section 55.)*

Officers and other employees.

54. (1) The Gorkhaland Territorial Administration may, with the approval of the Government create such posts as are equivalent to Group B, Group C and Group D posts under the Government and make regulations relating to their conditions of service:

Provided that where any disciplinary or other action is required to be taken against any such employee, the Gorkhaland Territorial Administration shall have the power to initiate such disciplinary action against such employee whereupon the Gorkhaland Territorial Administration shall report the same forthwith to the Government for such further action as the Government may think fit.

(2) The Gorkhaland Territorial Administration may, make appointment of persons to such categories of sanctioned posts as are equivalent to Group 'B', Group 'C' and Group 'D' posts under Government after making regulations relating to the conditions of service of such persons with the approval of the Governor subject to the budgetary provisions including long term liabilities of post retirement benefits such as pension, gratuity etc. Such appointments shall be made through a Subordinate Service Selection Board to be set up for this purpose.

(3) The State Public Service Commission shall be consulted for the recruitment of Group 'A' officers.

CHAPTER V

Funds and Audit

Fund.

55. (1) There shall be a fund to be called the Fund to be held by the Gorkhaland Territorial Administration in trust for the purpose of this Act and all moneys realized or realizable under this Act and all moneys otherwise received by the Gorkhaland Territorial Administration shall be credited thereto.

(2) All funds as may be allocated by the Central Government or the State Government for the Gorkhaland Territorial Administration shall be assigned to it and shall be credited to the Fund.

(3) (i) The allocation sanctioned in the budget of the Fund and all funds sanctioned by the State Government or the Central Government which remain unspent at the close of the financial year shall be taken into account for the purpose of providing additional resources in the Budget of the following year or years and the fund requirements shall be met on a yearly basis.

(ii) The Gorkhaland Territorial Administration may, subject to the provisions of any law relating to the raising of loans by local authorities, raise with approval of the Government loans for the purposes of this Act and create a sinking fund for the repayment of such loan.

(4) The moneys credited to the Fund shall be applied for payment of all sums charges and costs necessary for carrying out the purposes of this Act.

(5) No payment shall be made out of the Fund unless such expenditure is covered by a current budget grant:

Provided that the Gorkhaland Territorial Administration may make payments in terms of refund of deposits by contractors or for urgent works undertaken in an emergency or required by the Government in the public interest or under the decree

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter V.—Funds and Audit.—Sections 56, 57.)*

or order of a civil or criminal court against the Gorkhaland Territorial Administration and for such other cases as may be prescribed:

Provided further that such expenditure shall be reported to the Gorkhaland Territorial Administration for taking such action under the provisions of this Act as may appear to it to be feasible for covering the amount of such payments.

(6) Fund, other than the Fund received either from the Central Government or the State Government standing at the credit of the Gorkhaland Territorial Administration, as are not required for immediate purpose, may be invested in Government Securities, deposits in the Scheduled Commercial Bank and in other similar instruments in accordance with such regulations as may be made by the Gorkhaland Territorial Administration in this behalf.

(7) The Gorkhaland Territorial Administration may make regulations for the management of the Fund and for the procedure to be followed in respect of the payment of moneys into the said Fund, withdrawal of moneys therefrom, the custody of moneys therein and any other matter incidental thereto or connected therewith.

(8) The accounts of the Gorkhaland Territorial Administration shall be kept in such form as may be prescribed in consultation with the Accountant-General.

(9) Subject to the provisions of the Comptroller and Auditor-General (Duties, Powers, and Conditions of Service) Act, 1971, and the rules and the orders made thereunder, the audit of the accounts of the Gorkhaland Territorial Administration shall be entrusted by the Government to the Comptroller and Auditor-General of India who may submit to the Government such report thereon as he may deem fit. The Government shall transmit the report to the Gorkhaland Territorial Administration for discussion and consideration. The Gorkhaland Territorial Administration shall return the report to the Government with comments, if any. The Government shall lay such reports with the comments of the Gorkhaland Territorial Administration before the State Legislature.

56 of 1971.

(10) The Governor shall obtain a report on the functioning of the Gorkhaland Territorial Administration and cause that report to be laid on the table of the Legislative Assembly annually.

Licenses of cases for the purpose of prospecting for or extraction of minerals.

56. Such share of royalties accruing each from forest, fees for grant of license or lease for the purpose of prospecting for, or extraction of minerals granted by the Government and land revenue in respect of region as may be agreed upon between the Government and the Gorkhaland Territorial Administration shall be made over to the Gorkhaland Territorial Administration.

Budget.

57. (1) The Gorkhaland Territorial Administration shall, at such time and in such manner as may be prescribed, prepare in each financial year a budget of its estimated receipts and disbursements for the following financial year and submit it to the Government by the 1st November of the current financial year.

(2) The Government may, within such time as may be prescribed, either approve the budget or return it to the Gorkhaland Territorial Administration for such modifications as it may direct. On such modifications being made the budget shall be resubmitted within such time as may be prescribed for approval of the Government. If the approval of the Government is not received by the Gorkhaland Territorial Administration by the last date of the financial year, the budget shall be deemed to have been approved by the Government.

(3) The Government shall provide formula based plan fund with 60 per cent weightage on population and the balance weightage on area backwardness, hill areas and border areas in two equal instalments every year for executing development works.

The Gorkhaland Territorial Administration Act, 2011.

(Chapter V.—Funds and Audit.—Section 58.—Chapter VI.—
Miscellaneous.—Sections 59-61.)

(4) The Government shall provide Non-plan grant including provisions for bearing the additional Non-plan expenditure for existing employees payable in two instalments in respect of the offices or departments transferred to Gorkhaland Territorial Administration.

(5) No expenditure shall be incurred unless the provisions have been made in the approved budget of Gorkhaland Territorial Administration.

Supplementary
budget.

58. The Gorkhaland Territorial Administration may prepare in each financial year a supplementary estimate providing for any modification of its budget for that year and may submit it to the Government for approval.

CHAPTER VI

Miscellaneous

Inspection of
account etc.

59. Notwithstanding anything contained elsewhere in this Act the Government may—

- (a) if it is of opinion that it is necessary or expedient so to do, cause an inspection to be made of the accounts of the Gorkhaland Territorial Administration from time to time and may, for the conduct of such inspection, appoint in consultation with the Gorkhaland Territorial Administration such officer or officers as the Government may think fit, and
- (b) advise the Gorkhaland Territorial Administration on the accounts of that Sabha.

Transfer of
institution.

60. (1) The Government may transfer any institution under its management or control to the Gorkhaland Territorial Administration, subject to such conditions, limitations and restrictions as may be agreed upon.

(2) When an institution is transferred under sub-section (1), all persons employed in the institution shall, with effect from the date of such transfer, be deemed to be on deputation to the Gorkhaland Territorial Administration and the terms and conditions of service of such persons shall not be less advantageous than what they were entitled to immediately before such transfer.

(3) Persons employed in the Darjeeling Gorkha Hill Council shall, with effect from the date of such transfer, who were borne on Darjeeling Gorkha Hill Council shall be deemed to be the employee of the Gorkhaland Territorial Administration. Those on deputation to Darjeeling Gorkha Hill Council shall be deemed to be on deputation to the Gorkhaland Territorial Administration or shall be permanently placed to Gorkhaland Territorial Administration depending on their option exercised in keeping with the terms and conditions of their service. The terms and conditions of service of such persons shall not be disadvantageous than what they were entitled to immediately before such transfer.

Amendment or
suspension of
regulations, by-
law and
resolutions.

61. If, at any time, the Government is satisfied that a regulation or by-law or resolution made by the Gorkhaland Territorial Administration or the Executive Sabha is contrary to any provision of the Constitution of India or any law for the time being in force, the Government may annul or suspend such regulation or by-law or resolution, as the case may be, and take such steps as it may consider necessary to prevent the enforcement or operation or continuance of such regulation or by-law or the giving effect to such resolution.

*The Gorkhaland Territorial Administration Act, 2011.**(Chapter VI.—Miscellaneous.—Sections 62-68.)*

Power of State
Planning Board.

62. The State Planning Board shall have powers to supervise and evaluate the works of the Gorkhaland Territorial Administration.

Power of issue
directions.

63. In the discharge of its functions, the Gorkhaland Territorial Administration shall be guided by such instructions or directions as may be given to it by the Government from time to time for the proper implementation of the objects of the Act.

Dissolution.

64. (1) If in the opinion of the Government, the Gorkhaland Territorial Administration—

- (i) has shown its incompetence to perform, or has made default in the performance of, the duties imposed on it by or under the Act or any other law for the time being in force, or
- (ii) has exceeded or abused its power,

the Government may, by order to be published in the *Official Gazette* stating the reasons therefor, supersede the Gorkhaland Territorial Administration Sabha and direct that it be re-constituted within such period not exceeding six months as may be specified in the order.

(2) The Government shall before making any order under sub-section (1), give to the Gorkhaland Territorial Administration an opportunity of making representation to the Government in respect of the same.

Effect of
supersession.

65. When an order of supersession has been passed under section 64 with effect from the date of the order—

- (a) all the Members shall vacate their office, and
- (b) all the powers, duties and functions of the Gorkhaland Territorial Administration Sabha and the Executive Sabha shall be exercised, discharged and performed by such Sabha or authorities or such person or persons as may be appointed by the Government in this behalf.

Power to make
rules under
State Acts by
the Gorkhaland
Territorial
Administration.

66. Notwithstanding anything contained in any State Act, the Gorkhaland Territorial Administration shall, with the approval of the Governor, make rules not inconsistent with those Act, or adopt the rules made under those Acts, which may be applicable to the region.

Power to make
rules.

67. (1) The Government may make rules providing for any matter which under any provision of this Act is required to be prescribed or to be provided for by rules.

(2) Every rule made under this section or under section 20 shall be laid as soon as may be after it is made, before the State Legislature, while it is in session, for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the State Legislature agrees in making any modification in the rule or the State Legislature agrees that the rules should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Members,
officers and
employees to be
public servants.

68. The Chief Executive, the Duputy Chief Executive, Chairman, Deputy Chairman, the Members, the officers and other employees of the Gorkhaland Territorial Administration shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

The Gorkhaland Territorial Administration Act, 2011.

(Chapter VI.—Miscellaneous.—Sections 69-74.)

Validation.

69. No act or proceeding of the Gorkhaland Territorial Administration shall be deemed to be invalid merely by reason of existence of any vacancy in the Gorkhaland Territorial Administration Sabha or any defect or irregularity in the constitution thereof.

Indemnity.

70. No suit or other legal proceeding shall lie against the Gorkhaland Territorial Administration or against any Member or against any officer or employee of the Gorkhaland Territorial Administration for anything in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

Interpretation.

71. If any question arises as to the interpretation of any of the provisions of this Act or the rules made thereunder, the same shall be referred to the Government whose decision thereon shall be final.

Removal of difficulties.

72. If any difficulties arise in giving effect to the provisions of this Act, the Government may by order do anything, not inconsistent with the provisions of this Act, as may appear necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of publication of this Act in the *Official Gazette*.

Saving.

73. Nothing in this Act shall affect the application of any law; whether made before or after this Act, to the region, unless such law specifically provided for exclusion of the region from such application.

Explanation.—For the purpose of this section “law” shall include any enactment, ordinance, regulation, order, by-law, rule, scheme, notification or other instrument having the force of law.

Repeal.

74. The Darjeeling Gorkha Hill Council Act, 1988 is hereby repealed.

West Ben. Act
XIII of 1988.

*The Gorkhaland Territorial Administration
Act, 2011.*

(First Schedule.)

FIRST SCHEDULE

(See section 23)

**Form of oath or affirmation of elected (or nominated) member of the
Gorkhaland Territorial Administration Sabha**

I, A.B., having been elected (or nominated) a member of the Gorkhaland Territorial Administration Sabha, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India and integrity of India.

.....
(Signature and name of the member in block letter)

Sworn in the name of God/solemnly affirmed by Shri/Shrimati
..... at (place)
at (hour) on this the day of
....., before me.

(Signature)
(Name, designation and seal)

Certificate of receipt of form of oath or affirmation

Certified that (name), who has been elected to the Gorkhaland Territorial Administration Sabha from
..... Constituency/nominated to the Gorkhaland Territorial Administration Sabha, has made and subscribed the oath/affirmation as required by section 23 of the Gorkhaland Territorial Administration Act, 2011, before me at office at (hour) on the (date).

(Signature)
(Name, designation and seal)

*The Gorkhaland Territorial Administration
Act, 2011.*

(Second Schedule.)

SECOND SCHEDULE

[See section 37(10)]

**Form of oath or affirmation of Chief Executive of the
Gorkhaland Territorial Administration**

I, A.B., having been elected
Chief Executive of the Gorkhaland Territorial Administration, do swear in the name
of God/solemnly affirm that I will bear true faith and allegiance to the Constitution
of India and integrity of India.

.....
(Signature and name of the Chief Executive in block letter)

Sworn in the name of God/solemnly affirmed by Shri/Shrimati
..... at (place)
at (hour) on this the day of
....., before me.

(Signature)
(Governor of West Bengal)

Certificate of receipt of form of oath or affirmation

Certified that (name), who has been
elected Chief Executive of the Gorkhaland Territorial Administration, has made
and subscribed the oath/affirmation as required by sub-section (10) of section 37
of the Gorkhaland Territorial Administration Act, 2011, before the Governor at
..... (hour) on the (date).

(Signature)
Secretary to the Governor of West Bengal.

By order of the Governor,

B. K. SRIVASTAVA,
Secy.-in-charge to the Govt. of West Bengal,
Law Department.