

## Discretionary Powers of the Governor with Special Reference to the Sixth Schedule Area of Mizoram: A Study during the Tenure of Mr. A.R. Kohli

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### Abstract

*The status of Governor is a debatable issue right from the Constituent Assembly and there are many controversies with regard to the role of Governor in Indian Political System. Controversial role of the Governor in the context of the Sixth Schedule have often arisen and the paper attempts to objectively highlight an insight of the controversial role of Governor in governance of the Sixth Schedule Area of Mizoram during the tenure of Mr. A.R. Kohli as Governor of Mizoram. It also analyses the constitutional role of the Governor as per the provision of the Constitution of India.*

**Key Words:** Governor, Discretionary powers, Autonomous District Council, Sixth Schedule, Member of District Council (MDC), Constitution of India, Bordoloi Committee

The provision of the role of the Governor of a state is borrowed from the Government of India Act of 1935. During British rule, provinces in India were classified into Indian Native states and British Indian states. Further, the British Indian states were categorized into Governor's Provinces and Chief Commissioner's Provinces. As Governor happened to be the agent of the crown, certain discretionary powers were exercised by the Governor under the said Act. As a result, the Governor could interfere in the legislative, executive and financial matters of the provinces (Prof C.L Anand, 1935). With the adoption of parliamentary system of government after independence, the Constituent Assembly also continued to adopt

the system of Provincial Governorship with certain modification. It is laid down in Article 163 (1) of the Indian constitution

“There shall be a council of ministers with Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.”  
(Parkash Chander, 2008)

Dr. B.R. Ambedkar also says

“The Governor would have no function to discharge by himself and would have no power to override the ministry, not as the representative of

any particular party but of the people as a whole.”(Parkash Chander, 2008)

So, it is the intention and ambition of the framers of the constitution that the Governor should reign but not rule. As a matter of fact, the Governor should also be above party politics as expressed by Dr. B.R. Ambedkar.

It should be recollected that problematic and complicated situations arose in many states due to controversial and irresponsible role of the person who held the post of Governor. Thus, political and administrative deadlock arises when the Governor tries to rule than reign against the spirit of the Indian constitution. As a matter of fact, the Governor of a state is just a constitutional head and the executive powers of the state are to be exercised either directly or through officers subordinate to him (N.N. Ojha, 1993). In fact, the Governor is the constitutional head of the state and he can only exercise his discretionary powers only under extraordinary circumstances. However, the Governor is not bound and expected to exercise his discretionary powers in a manner prejudicial to the norms of parliamentary democracy (Parkash Chander, 2008). As such, the Governor should carefully observe conventions and precedents in performing his duties which may amount to exercise of his discretionary powers.

The Bordoloi Committee was a sub-committee, duly responsible for establishment of an autonomous, parliamentary democratic and local level institution of

the tribals of the then Assam. Infact, the Sixth Schedule provision of the Indian Constitution can be described as the onus contribution of the Bordoloi Committee. On the basis of the Bordoloi Committee Report, B.N. Rao, the Constitution Adviser of the Constituent Assembly had prepared the first draft of the constitution in 1947 (B.L. Hansaria, 1983) and enshrined few discretionary powers to the Governor of Assam. However, in April 1948, a Special Committee headed by Jawaharlal Nehru recommended the abolition of discretionary powers of the Governor. Consequently, the Drafting Committee in October 1948, decided to remove the Assam Governor’s discretionary role in the annulment and suspension of acts, rules and resolutions of the District Council and the Regional Council as well as withholding of state laws from the Autonomous District Councils. But, the discretion or discretionary power was retained in the Governor’s arbitrary role in the disputes between the State Government and District Council Executive on the sharing of royalties of mining licenses and leases (S.K. Chaube 1999). Justice M. Hidayatullah held the view that if any dispute arises between the State Government and the District Council Executive/Government regarding the sharing of mines and minerals, the decision of the Governor shall be final (M. Hidayatullah, 1979). It is also a significant feature to note that discretionary power was granted to the Governor in Part B of the Sixth Schedule area where District Council could not be established due to backwardness of the peo-

ple, such as, North East Frontier Agency (NEFA) or the present Arunachal Pradesh and the Naga Tribal Areas (the present Mon, Tuensang, Longleng and Kiphire districts of Nagaland) (M. Hidayatullah, 1979). The parliamentary democratic system of functioning could not be established in the two said backward areas, as such, they (NEFA and the Naga Tribal Areas) were placed under the direct rule of the Governor of Assam though they were incorporated under the provision of the Sixth Schedule to the constitution of India.

There was a heated debate in the Constituent Assembly among the members when they discussed about the role and functioning of the Governor in the District Council area of undivided Assam. Kuladhar Chaliha and Rohini Kumar Chaudhuri categorically emphasized the utmost necessity of vesting greater powers to Provincial Government in the administration of the District Councils. They further formulated that the prestige of the State Government will be in question, if the Governor deals directly with the District Council without the official approval of the State Government. In reply to their arguments, Dr. B.R. Ambedkar clarified that where ever the word 'Governor' occurs; it means the Governor acting on the advice of the ministry or State Government (B.L. Hansaria, 1983). As a result, the view expressed by Dr. Ambedkar who was the founding father of the Indian Constitution, concerning the role of the Governor in the Sixth Schedule

area, was generally accepted as the guiding principle for smooth functioning of the District Council system.

The Sixth Schedule found its place in the constitution in Article 244 (2) and Article 275 (1) (The Constitution of India, 1996). Justice M. Hidayatullah described the fifth and sixth schedules as constitution within a constitution (M. Hidayatullah, 1979). It is evident that the discretionary powers of the Governor in the District Council functioning was enshrined only in sub-paragraph 2, Paragraph 9 of the Sixth Schedule with regard to the decision, to be taken by the Governor if disputed arises between the State Government and the District Council from sharing of royalties from extraction of mines and minerals (M. Hidayatullah, 1979). As provided in the Indian Constitution, the Governor can exercise his discretionary power without consulting the State Council of Minister only with respect to the subject, mention in Paragraph 9 (2) of the Sixth Schedule to the constitution of India.

There are now One Territorial Council, two Autonomous Councils and seven Autonomous District Councils under the provision of the Sixth Schedule to the Constitution of India. Certain discretionary powers of the Governor were added through amendment of the Sixth Schedule to the Constitution of India by the Parliament in 1988 and 1995 respectively. As a result, Paragraph 20 BA and Paragraph 20 BB were inserted in the foot note of Page 163 of the Sixth Schedule to the

Constitution of India but they were not included in the main provision of the Sixth Schedule. Paragraph 20 BA deals with Autonomous Councils in Assam and Paragraph 20 BB concerns Autonomous District Councils in Mizoram and Tripura (M. Hidayatullah, 1979). So, only Paragraph 20 BB which concerns the discretionary powers of the Governor in the Autonomous District Council of Mizoram should be briefly analyzed.

Paragraph 20 BB lays down that the Governor in the discharge of his functions under sub-paragraphs (2) and (3) of Paragraph 1, sub-paragraphs (1) and (7) of Paragraph 2, sub-paragraph (3) of Paragraph 3, sub-paragraph (4) of Paragraph 4, Paragraph 5, sub-paragraph (1) of Paragraph 6, sub-paragraph (2) of Paragraph 7, sub-paragraph (3) of Paragraph 9, sub-paragraph (1) of Paragraph 14, sub-paragraph (1) of Paragraph 15 and sub-paragraphs (1) and (2) of Paragraph 16 of the Sixth Schedule to the Constitution of India, shall, after consulting the council of minister, and if he thinks necessary, the District Council or the Regional Council concerned, take such actions as he considers necessary in his discretion (M. Hidayatullah, 1979). So, the Governor is bound to consult the council of minister of state and the concerned District Council in exercising any of the above stated subjects. Further, it is also clearly laid down that the Governor should not exercise his discretionary powers against the parliamentary norms. It is also worth noting that the Paragraph 9 (2) like discre-

tionary power is not accorded to the Governor in the above stated subjects. Thus, the view, expressed by Dr B.R. Ambedkar that “Where ever the word Governor occurs, it means the Governor acting on the advice of the ministry of State Government” (B.L. Hansaria, 1983) is concretely proved in written form in Paragraph 20 BA and Paragraph 20 BB of the Sixth Schedule to the Constitution of India (The Constitution of India, 1996).

Those provisions where the Governor has to exercise his discretionary power with the consent of the State Council of Minister and the District Council should be briefly analysed in different sub-paragraphs and Paragraphs of the Sixth Schedule to the constitution of India as stated below. Sub-paragraph (2) of Paragraph 1 deals with the creation of Regional Council and sub-paragraph (3) of the same paragraph deals with inclusion or exclusion of any areas in the District Council, creation of District Council, increase or decrease of the District Council area, unification of two or more autonomous District Council and change of name of the District Council. Sub-paragraph (1) of Paragraph 2 deals with membership composition and filling up of nominated seats. Whereas sub-paragraph (7) of Paragraph 2 deals with making of rules by the District Council with the approval of the Governor (The Constitution of India, 1996).

Sub-paragraph (3) of Paragraph 3 deals with assenting of laws made by the District Council by the Governor and sub-paragraph (4) of Paragraph 4 deals with

making of laws by the Regional Council and District Council which require the previous approval of the Governor. Paragraph 5 deals with the responsibility of the Governor in the functioning of court and judicial activities in the Regional Council and District Council. Whereas, sub-paragraph (2) of Paragraph 7 deals with making of rules by the Governor concerning the management of District Fund and Regional Fund (The Constitution of India, 1996).

Sub-paragraph (1) of Paragraph 14 deals with appointment of commission by the Governor for investigating any loopholes in the administration of the District Council. Sub-paragraph (1) of Paragraph 15 deals with annulment or suspension of acts or resolutions of the District Council and Regional Council if the safety or sovereignty of India was endangered. Lastly, sub-paragraph (1) of Paragraph 16 deals with notification of order of dissolution of District Council or Regional Council by the Governor as recommended by a commission under Paragraph 14; whereas, sub-paragraph (2) of Paragraph 16 deals with imposition of Administrator's Rule or Governor's Rule in the District Council or Regional Council (The Constitution of India, 1996).

The law-making powers of the Governor shall also be specifically analyzed as stated below. As provided in sub-paragraph (6) of Paragraph 2 of the Sixth Schedule to the constitution of India, the Mizoram Autonomous District Council (Constitution and Conduct of Business of

the District Councils) Rules, 1974 was made by the Administrator of Mizoram and was published for information of the public on 21<sup>st</sup> January, 1975. since then, the said rule became the guiding principle for governance and administration of the three Autonomous District Councils of Mizoram (The Mizoram Gazette, 1989). However, as laid down in sub-paragraph (7), Paragraph 2 of the Sixth Schedule to the Constitution of India, the autonomous District Councils have the power to make new laws for replacing the laws made by the administrator in 1974 (The Constitution of India, 1996). Accordingly, the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2001 was said to be made by the Lai Autonomous District Council in accordance with the provision of sub-paragraph (7) of Paragraph 2 of the Sixth Schedule to the constitution of India. And, the said rule was published in the Mizoram Gazette on 21<sup>st</sup> February, 2003 in Issue No. 38 (The Mizoram Gazette, 2003) which was republished in the Mizoram Gazette again on 6<sup>th</sup> March, 2003 in Issue No. 58 and corrected as the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 (The Mizoram Gazette, 2003). Further, the said rule was supposed to be approved by the Governor of Mizoram on 8<sup>th</sup> August, 2002 as published in the said gazette (The Mizoram Gazette, 2003). However, Mangmunga Chinzah, Chairman, the Lai Autonomous District Council (LADC) has categorically clarified that he might not allow any amendment of the said rule in

the LADC monsoon session as it was not made by the LADC (Phawngpui Express, 25<sup>th</sup> July, 2003). Thus, sub-paragraph (7) of Paragraph 2 of the Sixth Schedule has been grossly violated by its publication in the State Gazette.

Replicas of the laws, introduced in the Lai Autonomous District Council i.e. the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 have also been enforced in the Chakma Autonomous District Council and the Mara Autonomous District Council. Subsequently, the Chakma Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 was published in the Mizoram Gazette Extra Ordinary in Volume XXXII, Issue No. 36 on 21<sup>st</sup> February, 2003. The said rule was supposed to be approved by the Governor of Mizoram on 8<sup>th</sup> August, 2002 as per powers, conferred by sub-paragraph (7) of Paragraph 2 of the Sixth Schedule to the Constitution of India (The Mizoram Gazette, 2003). In the same way, the Mara Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 was published in the Mizoram Gazette Extra Ordinary in Volume XXXVI, Issue No. 76 on 14<sup>th</sup> March, 2007. The said rule was supposed to be approved by the Governor of Mizoram on 8<sup>th</sup> August, 2002 as per powers, conferred by sub-paragraph (7) of Paragraph 2 of the Sixth Schedule to the Constitution of India (The Constitution of India, 1996). It is evident that the content, interpretation and implication of the laws, enforced in the Chakma Au-

tonomous District Council and the Mara Autonomous District Council are the exact copy of the one, introduced in the Lai Autonomous District Council. So, in accordance with the provision, provided in Paragraph 20 BB of the Sixth Schedule to the Constitution of India, the Governor is bound to seek the consent of the District Council concerned for enforcement of the said rules (The Constitution of India, 1996). As Local Government was described as nurseries of democracy by Prabhat Datta (Bipattaran Ghosh, 1997), requisite measures are required to be undertaken for establishment of healthy parliamentary precedence's in the Sixth Schedule Area of Mizoram too. However, the way how the constitution and conduct of business, Rules, 2002 have been introduced in the three Autonomous District Councils was a vivid prove of the violation of parliamentary precedence and constitutional norms by constitutional head of state.

The aim of the Sixth Schedule was to protect hill and other tribal communities from the control, discrimination, exploitation and power of the plain people or powerful elite group from the plains (Government of India, 2001). In fact, the responsibilities for protecting the tribals of the Sixth Schedule areas against discrimination by the State Government as well as plain people lies with the Governor of the state (M. Hidayatullah, 1979). There are certain provisions in the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 which

should be beneficial for smooth functioning and healthy democratic practices of the District Council such as formation of the executive Committee in Rule 22, rules to be observed by members in Rule 42, rules to be made by District Council in Rule 88 and proceedings of the District Council in Rule 139. However, there are certain rules which could hamper the democratic growth and parliamentary norms of the District Council instead of protecting it (District Council) from encroachment and exploitation (The Mizoram Gazette, 2003).

Rule 11 of the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 has disallowed double membership to Member of District Council (M.D.C.) (The Mizoram Gazette, 2003) which may not be in the interest of the tribals. In fact, an amendment of the Representation of People's Act of 1956 accorded double membership to M.D.C. so that, they can also be Member of either house of Parliament or Legislative Assembly of the State. Further, the main objective of introduction of double membership system was to promote better understanding between the State Government and District Council and to enable the tribal leaders to work influentially and powerfully for development of the area (V. VenkataRao., H. Thansanga & Niru Hazarika, 1983).

It is a significant feature that double membership had enabled tribal leaders to judiciously contribute for development of their areas. Therefore, Captain W.A. Sang-

ma defended the double membership on the ground that the District Councils must maintain close contact with the State Government for establishment of cordial relationship and harmony between the two governmental set-ups (V VenkataRao., H. Thansanga & Niru Hazarika, 1983). It is also unequivocal fact to admit that the needs and requirements of the tribals can be known properly only by the tribal leaders of the Sixth Schedule area. As a matter of fact, Captain W.A. Sangma himself was elected as M.L.A. in Assam in 1957 and he also continued to enjoy his membership in the Garo Autonomous District Council. Subsequently, Captain Sangma was sworn in as Cabinet Minister with Tribal affairs as his portfolio. True to his argument and advocacy for double membership, he established the Tribal Affairs Advisory Council, solved the border problems and established cordial relationship between the Hills and Plains; as such, the double membership of Sangma concretized in building up certain gap between the Hills and the Plains. However, the problem cropped up again between the Hills and Plains only with the creation of the state of Nagaland because other tribal areas also aspired for statehood (V VenkataRao, Barrister Pakem & Niru Hazarika, 1874-1983). In such away, the provision of double membership was enjoyed by many tribal leaders of the different Autonomous District Councils under undivided Assam. Due to that, some M.D.C.'s of the erstwhile Mizo District Council, namely, Ch. Saprawnga, K. Thanhlira, Lalmawia (K. Lawmzuala, 2002) and La-

Ibuaia (Lalbuaia, 2002) were also Members of the Legislative Assembly of Assam; and double membership enabled these leaders to raise the problems and hardships, faced by District Council in general and people of the Mizo District Council in particular in the Assam Legislative Assembly. In the like manner, L. Chinzah also held double membership at a time as Member of Regional Council (M.R.C.) of the Pawi Lakher Regional Council and M.L.A. of undivided Assam from Lunglei Assembly constituency (Z. Hengmang, 1987). Even after the separation of Mizoram from Assam, double membership was enjoyed by S. Vadyu from the Mara Autonomous District Council (Mara Autonomous District Council, 2001), C. Thanghluna from the Lai Autonomous District Council (Lai Autonomous District Council, 2002) and Roshik Mohan Chakma from the Chakma Autonomous District Council (Chakma Autonomous District Council, 2002). As the provision of double membership for Autonomous District Council, introduced through amendment of the Representation of People's Act of 1956 by the Indian Parliament has achieved certain beneficiary gains for people of the Sixth Schedule area, it should be specifically preserved constitutionally than encroaching upon its proper enforcement. Therefore, it is democratically desirable to maintain status quo so far as double membership in Autonomous District Councils of the Sixth Schedule areas of Mizoram is concerned.

It is evident that undesirable restriction has been imposed upon Chairman, Deputy Chairman, Chief Executive Member (C.E.M.) and Executive Member (E.M.) of the Autonomous District Councils, not to cross the state boundary for official tour without the prior approval of the Governor in Rule 5 of the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002. This power of the Governor is enshrined to be derived from Governor discretionary power of Paragraph 20 BB of the Sixth Schedule to the Constitution of India (The Mizoram Gazette, 2003). However, it is clearly laid down in Page 163 of the Indian Constitution in the foot note that such discretionary power should be exercised by the Governor only after consulting the State Council of Minister or the Executive Committee of the District Council concerned (R.M. Chakma). Moreover, it is also laid down in Rule 25 of the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 that the Governor can keep the District Council under suspension if Rule 5 is violated. As a matter of fact, Rule 5 and Rule 25 of the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 were totally against the aim and spirit of the Sixth Schedule to the Constitution of India (The Constitution of India, 1996).

It is also laid down in Rule 90 of the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 that when rules are submitted to the



Governor for his approval, he (the Governor) shall have the power to modify the same in consultation with the Law and Judicial Department of the State Government. However, rules under sub-paragraph 7 of Paragraph 2 of the Sixth Schedule with regard to matters, specified in sub-paragraph 6 of the same paragraph (Paragraph 2) are to be drafted and passed by the Executive Committee of the District Council (The Mizoram Gazette, 2003). As a matter of fact, the backward tribes will be deprived of pertinent laws for their protection if the laws, made by District Council can be easily changed by the Governor.

Rule 7(4) of the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 deals with powers of the Governor for appointment of nominated Members in the legislature of the District Council. The said Rule laid down certain qualifications and criteria for persons to be appointed in nominated seats, such as, having special knowledge or practical experience in science, social welfare, co-operative movement etc. Besides these, one seat should also be reserved for women but the minority tribes within the Lai Autonomous District Council found no mention in the nominated seats (The Mizoram Gazette, 2003). All the above mentioned loopholes in the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 have also been found without any slight differences in both the Chakma Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 and the

Mara Autonomous District Council (Constitution and Conduct of Business) Rules, 2002. As such, the loopholes concerning the appointment of nominated seats have also been found in the other two District Councils. It should be noted that there are minority tribes in the L.A.D.C. area, namely, Bawm, Pang, Tlanglau, Mara, Bru (Riang) and Chakma but they are not appointed at all in the nominated posts of the Member of District Council (M.D.C.). Likewise, there are minority tribes in the C.A.D.C. area, namely, Bawm, Pang, Tlanglau and Bru; and sizeable number of Lai and Lusei population are also found in the M.A.D.C. area. Despite the vivid presence of minority tribes within the three Autonomous District Councils, the constitution and conduct of business of the three autonomous District Councils do not clearly inserted the reservation of seats for minority tribes (The Mizoram Gazette, 2003). As the Indian Constitution is so concerned about the violation of the rights of the minorities, certain provisions have been laid down for preservation and protection of the rights of the minorities. In such away, seats are reserved for the Anglo-Indian community in both the Lok Sabha and Vidhyan Sabha under Articles 331 and 333 of the Indian Constitution respectively. In the like manner, seats are also reserved for Scheduled Caste and Scheduled Tribe in the Lok Sabha and Vidhan Sabha under Articles 330 and 332 of the Indian Constitution respectively (The Constitution of India, 1996). It is evident that the role of the Chakma Autonomous District (C.A.D.C.) is most

praise worthy so far as appointment of minority tribes in the nominated seats is concerned, because, minority tribes have been represented in the nominated seats in each term since the very inception of the C.A.D.C. (Chakma Autonomous District Council, 2002). The Mara Autonomous District Council also appointed minority tribes in the nominated seats from time to time but the Lai Autonomous District Council is not doing enough justice in this regard.

The post of Governor is a dignified post because the Governor is the constitutional head of state who is responsible for protection and preservation of the constitution. As a matter of fact, any reckless movement or unwanted action of the person, holding the responsibility of Governor unknowingly polluted the high office of the dignified post. Therefore, convention and precedents should be strictly observed by the Governor in the exercise of his powers for filling up of nominated seats. Over and above that, convention does not favour the direct involvement of the Governor in filling up of nominated seats in the legislature of the District Council. It should be recollected that, at the time when the role of Governor with respect to District Council was hotly debated in the Constituent Assembly. Dr. B.R.Ambedkar clarified that “Whenever the word Governor occurs, it means the Governor acting on the advice of the ministry of state government”. Therefore, the Governor is bound to exercise his discretionary power by consulting the council

of ministers and the District Council concerned, if necessary. So, the Governor is required to act upon the advice of state government and District Council with respect to appointment of nominated members and in some other important decision. The constitutional convention and precedence also demanded that, the role of President in the appointment of nominated members in Lok Sabha and Rajya Sabha be similar to the role of Governor in the appointment of nominated members in the District Council. As such, the Governor was required to approve the name, suggested by the District Council and State government in the nominated seat. However, he might have the liberty to exercise his discretion if minority, person with specialized knowledge and women were not included in the suggested list. A great controversy erupted in the Sixth Schedule Area of Mizoram in 2002 and 2003 during the tenure of Mr. A.R.Kohli as Governor of Mizoram due to the draconian enforcement of the conduct of business of the District Council, Rules, 2002 in the three Autonomous District Councils as well as in his direct involvement in the appointment of the nominated seats. Thus, constitutional convention, precedence and constitutional practices were grossly violated by the then Governor, Mr. A.R. Kohli in 2002. Mr. A.R. Kohli conducted an interview for appointment of nominated M.D.C. in Circuit House, Lawngtlai at 2PM on 2<sup>nd</sup> October 2002 and about 70 aspirants for nominated MDC faced that interview (Government of India, 2009). It was an unusual constitutional practice,

which was against the norm of parliamentary democratic practices. The reason being, it was an attempt to recruit lawmakers of District Council like the recruitment of government servant and it also put a question mark to sanctity of the legislature, because District Council is an effective legislature at the grass-root level, where, tribals practically learn the art of democratic governance and parliamentary norms. As such, a provision is required to be provided to prevent such misuse of discretionary power by any Governor in future. It can be plainly stated that the constitutional head of state is the violator of parliamentary precedence, democratic conventions and the spirit of the Constitution of India with respect to Mr. A.R. Kohli in his conduct of interview for appointment of nominated M.D.C.'s at Lawngtlai on 2nd October, 2002. It is essential to note that in the like manner how it is unconstitutional and not advisable to conduct interview for appointment of nominated members in both the Lok Sabha and Rajya Sabha by the President of India, it is also unconstitutional to conduct interview for appointment of the nominated M.D.C.'s in the District Council by the Governor. The unconstitutional action of Mr. A.R. Kohli would not be remembered as his personal misdeed but it would be remembered as the undemocratic action of the Governor which indeed polluted the sanctity and dignified chair of the Governor.

### **Conclusion**

The discretionary powers of the Governor in Paragraph 20 BB of the Sixth

Schedule to the Constitution of India was mentioned many times in the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2002; the Chakma Autonomous District Council (Constitution and Conduct of Business) Rules, 2002 and the Mara Autonomous District Council (Constitution and Conduct of Business) Rules, 2002. But, it is an undeniable fact to admit that discretionary powers, enshrined in Paragraph 20 BB cannot be exercised directly by the Governor without consulting the State Council of Minister and the concerned District Council Executive Committee. Over and above these, the discretionary powers of the Governor should be exercised for the welfare of tribals of the Sixth Schedule area and protecting them against encroachment and exploitation rather than suppressing the District Council. Therefore, as constitutional head of the state, the Governor is the protector and defender of democratic norms and the constitution of India. The Governor should also be hyper careful in exercising his discretionary powers in order that he may not be charged with violation of the constitution, and he may also be able to act as effective umpire in case of conflict between the State Government and the District Council. It is also evident that any wrong, committed by a person in his capacity as Governor of a state was not remembered as his individual act but recorded as the official action of the Governor. As a matter of fact, the sanctity and dignity of the post of His Excellency, the Governor of a state shall be preserved at all cost.

As District Council is a mini-government, having the three organs of government, such as, legislative, executive and judiciary; the District Council structure cannot be just underestimated like some Local Self Government in other parts of India. Over and above that, the District Council set-up under the provision of the Sixth Schedule to the Constitution of India has been expounded in the pattern of parliamentary democratic structure; and herein lays the uniqueness of the District council set-up under the provision of the Sixth Schedule. So, parliamentary democratic norms should be carefully enforced for smooth functioning of viable democracy in the District Council set-up. The genius of the post of Governor is highly

required for acting as the custodian of parliamentary democratic institution at the grassroots level. Therefore, the post of Governor should be above petty party politics, non-partisan, non-communal, non-parochial, non-controversial, non-over active, persuasive, accommodative and acceptable to the people. So, the tactful role of the Governor of the state as constitutional head is the aim and intention of the framers of the Constitution of India as highlighted in the debate of the Constituent Assembly. Thus, the prestige of the post of Governor depends upon personality and integrity of the person who holds the post which is of immense significance and which carries a lot of responsibilities to uphold the provisions of the Constitution of India in letter and spirit.

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