

POWER TO PEOPLE IN MEGHALAYA



Editors

**N. Karna • L.S. Gassah
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POWER TO PEOPLE IN MEGHALAYA

(Sixth Schedule and the 73rd Amendment)



Edited By

**M.N. Karna
L.S. Gassah
C.J. Thomas**



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FOREWORD

It gives me immense pleasure to write the foreword to this book. The present study is based on the research papers presented and discussed at the Sub-Regional Workshop on Panchayati Raj sponsored by the Rajiv Gandhi Foundation, New Delhi and organised by the Indian Council of Social Science Research during October 12-14, 1995 at Shillong.

The Seventy-Third Amendment Act seeks to ensure democracy at the grass roots, as it intends to give power to the people. The authors of the various articles presented in this book extensively analysed the existing traditional political institutions in Meghalaya and the relevance of 73rd Amendment Act to the State of Meghalaya. I would resist the temptation of commenting on the book further. I only wish the work finds proper attention from policy makers both in Meghalaya and New Delhi, students, scholars, officials at the Autonomous District Councils and the general public.

December, 1997

Professor B. Pakem
Vice-Chancellor, NEHU
&
Chairman, ICSSR-NERC
Shillong

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INAUGURAL ADDRESS

Shri M M Jacob

Governor of Meghalaya

I am thankful to the North Eastern Regional Centre of Indian Council of Social Science Research for inviting me to inaugurate the Sub-Regional Workshop on Panchayati Raj this morning. It is really very encouraging to see that the Rajiv Gandhi Foundation has selected Shillong as the venue for the Workshop despite the lack of adequate facilities available here for holding such an important function. I am told that the Rajiv Gandhi Foundation has constituted a Task Force on Panchayati Raj primarily to act as a catalyst for proper implementation of the Seventy-third Constitutional amendment so that the Panchayat units that are being set up will truly be institutions of self-government. The present workshop is a part of the series of Regional and Sub-Regional Workshops which have been sponsored by the Foundation in different parts of the Country. I am happy to see that a good number of prominent persons including important academicians are present here. It is also heartening to note that the number of senior citizens attached to the three Districts Councils of Meghalaya, Non-Governmental organizations and Government officials have evinced keen interest in the Workshop by actively participating in its deliberations.

Panchayats have been part and parcel of rural Indian social life since time immemorial. India is a land of villages. More than 80 percent of its population live in villages. Panchayati Raj system in India has been in existence in some form or other during different periods of our history. But during the long period of foreign rule, the traditional frame of this body underwent some changes. When India became independent, it was imperative on the part of the Government to bring the small communities of villages into the orbit of democratic structure. There is no Panchayati Raj system in Meghalaya but the traditional tribal community, village and social structures have deep roots. The

development programmes are implemented through the agency of Block Development Committees consisting of Gram Sevaks, progressive farmers, members representing women's organizations, Co-operative Societies and small industries etc. The District Councils which are the creatures of the Sixth Schedule to the Constitution are highly democratic bodies charged with the administration of land, forest, trade, traditional and customary laws and practices. They also have some developmental role but it sometimes overlaps with that of the State Government.

It was a long cherished dream of our Father of the Nation, Mahatma Gandhi to see 'Gram Swaraj' in post-Independent India. In furtherance of our national urge to establish Panchayati Raj several attempts were made by various States in India to achieve this laudable objective. The experiments carried out during the early years of our community development efforts, in States like Rajasthan, Andhra Pradesh and Gujarat helped us to understand the implications of this system vis-a-vis the legislative bodies at States and national level. I recollect the various steps taken by the late Prime Minister Rajiv Gandhi in eliciting public opinion through a series of conference of Parliamentarians, other elected representatives and civil servants, to work out a system congenial to the nation. Rajiv Gandhi was a young and dynamic statesman with lofty vision and firm purpose who handled the manifold problems faced by our nation with courage and determination. It was he who took the lead in preparing the nation for transferring power to the people through elected Panchayats by necessary legislative backing. Rajiv Gandhi had a great faith in the capacity and wisdom of our people. In the true spirit of statesman he said : "We trust the people. We have faith in the people. It is the people who must determine their own destinies and the destiny of the nation. To the people of India, let us ensure maximum democracy and maximum devolution. Let the people be empowered."

The atmosphere created by the tireless efforts of Rajiv Gandhi is not only favourable but essentially congenial to introduce basic changes even in the existing institutions of self-government.

The historic 73rd Amendment which has given a Constitutional status to Panchayats in the country is a major development in the post Independent India. This 73rd Constitutional Amendment has given the Panchayat system not only identity and

legitimacy but has made it a true institution of self-government. Now it is in a position to involve itself in active process of decentralized planning. By providing reservation of not less than one-third of the total number of seats and offices for women, a landmark decision has been taken to empower women. Through the establishment of State Finance Commission adequate funds have been ensured to the Panchayats to carry out their plans. Specific responsibilities have been entrusted to the Panchayats to prepare plans for economic development and social justice in respect of matters listed in the Eleventh Schedule. Thus endowed with constitutional status possessing comprehensive power and authority, the Panchayats are going to play an epoch making role in the rural transformation in the country. It will bring about a vibrant democracy and development at the grass-root level. Only strong democratic, dynamic and responsive self-governing institutions can ensure a genuine participatory developmental process at the village level. By involving the local people in the process of decision-making a true peoples' path of development can be attained.

It is noteworthy that a workshop on Panchayat has been organized at a place which has been kept out of the purview of the Seventy-third Amendment. The amendment provides that nothing in this Part shall apply to the Scheduled Areas referred to in Clause (1) and the tribal areas referred to in Clause (2) of Article 244 and to the States of Nagaland, Meghalaya and Mizoram. It is not difficult to ascertain why these tribal areas have been excluded from the scope of the Amendment. Although the existing arrangements in these areas have necessitated the present step, it can, however, be mentioned that the philosophy and ideology of panchayat are not alien to tribal societies. The tribal people have been living in a strong and autonomous village setting. The traditional institution of village Durbar or Village Government has been a constant source of all social, cultural, economic and political activities at and across the villages. These age-old self-governing institutions have been endowed with considerable power and authority. Their mandate has been so encompassing that no one could escape their command. The tribal people have, no doubt, successfully negotiated with the problems of their daily life while preserving their identity and ethos but it is my considered view that no society and people can afford to remain isolated from the modern development and change.

A special provision in the form of Sixth Schedule was incorporated in the Constitution just after Independence to provide separate political and administrative structure for the hill tribal areas of the North East. The primary objectives of this arrangement have been to maintain the distinct customs and culture of the people so that they could preserve their identities. Accordingly, the Autonomous District Councils have been functioning in Meghalaya for more than four decades. The structure and function of these Councils have been adequately tested during this period. I, however, feel that a detailed in depth study of the present arrangements should be undertaken keeping specially their power, functions and effectiveness in view. An investigation into the existing tribal institutions in the villages, their linkages and relationships with the Autonomous District Councils and the State Government within the framework of the division of power and functions will also be in order. It may also be emphasized that a comparative assessment of the prevailing institutional structure and positive aspects of the sound of ideology and principles behind the Panchayati Raj as incorporated in the 73rd Amendment Act 1992 may also be useful in the present context. I have no doubt that such an exercise will help to see whether the basic principles of the Seventy-third Amendment can be harmonized with the local ethos, tradition and institutions so as to have democracy and autonomy with continuity.

I hope this timely workshop in its deliberations for the next three days will initiate a valuable discussion on the Panchayati Raj in the State. I am eagerly looking forward to its recommendations which I sincerely feel would be of immense importance for all of us committed to the decentralization of power. I am confident that the Panchayati Raj institutions will cover the North Eastern region in greater depth and detail as suggest a workable and meaningful resolution, so as to make Panchayati Raj a useful and result-oriented mode of self-governance, which would be in the interest of the community, the State and the country.

With these words and wishing the Sub-Regional Workshop on Panchayati Raj all the best, I have great pleasure in inaugurating the Workshop.

INTRODUCTION

The Panchayati Raj has been acclaimed as an essential element of Indian democracy. Ever since the Balwant Rai Mehta Committee recommended the statutory panchayat system in India way back in 1957, several attempts have been made, at the national as well as state levels to strengthen it in the country. Although the panchayat had found a place in the constitution of India under the Directive Principles of State Policy - yet, the panchayats have not been able to deliver goods effectively due to the absence of constitutional status. In order to rectify this basic lacuna, the Congress government under the leadership of Rajiv Gandhi, (during his short span of political life) took the major step in providing the constitutional status to the panchayats when he introduced the constitution Sixty-Fourth Amendment Bill in the Lok Sabha in May 1989. The Lok Sabha supported and passed it, but the Rajya Sabha could not enact it. However, it was in 1991, the constitution Seventy-Third Amendment Bill was brought in the Lok Sabha, which passed it on December 22, 1992, and the Rajya Sabha approved it, the following day. After the ratification of more than half the States, the President gave his assent to the Bill on April 20, 1993, and it became an Act with effect from April 24, 1993.

The Seventy-Third Amendment Act seeks to ensure democracy at the grass roots, as it intends to give power to the people. It aims at decentralisation of political administration and institutions for development. It envisages to achieve grass root democratic polity by making panchayati raj system an instrument of local government and community development. The Act provides for a constitutional status to the Panchayats and gives reservation to women and other weaker sections to ensure their participation at all levels of the panchayat system. Such a decentralisation is of great significance as people have been given much power and responsibility in carrying out the development programmes.

The Seventy-Third Amendment Act contains Article 243M which states that the Act is not applicable to the States of Nagaland, Meghalaya and Mizoram. The Act also has not been extended to the District Council areas of Manipur and the areas covered by the Gorkha Hill Council in the Darjeeling District of West Bengal. Further it is not applicable to the Fifth Schedule areas in the country and the Sixth Schedule districts and regions. The Parliament has been authorised by the law to extend it to these two categories of areas, subject to such exceptions and modifications as may be specified. It has also been clarified that such a law is not to be deemed as Amendment of the constitution.

While enacting the constitution Seventy-Third Amendment Act, it appears that the Parliament decided deliberately that the provisions of the Act should not be imposed to the Fifth Schedule areas and the Sixth Schedule districts and regions. The reason is that they have their traditional system similar to the panchayati raj that must not be disturbed.

The entire State of Meghalaya is covered under Sixth Schedule of the constitution. The main aim of such an arrangement has been to maintain the distinct customs and culture of the people and to ensure autonomy of the tribal people. Accordingly, the Autonomous District Councils have been functioning here for more than four decades. However, with the enactment of the Seventy-Third Amendment Act to the constitution of India on the panchayats a substantive change has taken place in the country. Endowed with the constitutional status coupled with tremendous power and authority, the panchayats are expected to bring a vibrant democracy and true autonomy at the village level. Naturally, the new panchayati system has substantial benefits to offer.

It is in this background that the Rajiv Gandhi Foundation had undertaken the task of organising a series of National, Regional and Sub-Regional Workshops on Panchayats in different parts of the country during the last three years to create awareness with regard to the various provisions of the Seventy-Third Constitution Amendment Act 1992 and to identify impediments in the effective functioning of the panchayati raj institutions. One such Sub-Regional Workshop was organised at Shillong by the North Eastern Regional Centre of the Indian Council of Social Science Research during 12-14 October 1995. The basic objective of this workshop was to initiate the debate and ascertain people's opinion about the rel-

evance of the Seventy-Third Amendment Act to the areas covered under the Sixth Schedule in general and Meghalaya in particular. The most crucial issue under the discussion was how it is possible to harmonise the basic principles of the Amendment Act with the local ethos, tradition and institutions so as to have true democracy and autonomy, with continuity. The Workshop thus attempted to generate public debate and by doing so intended to pave the way for implementing the Seventy-Third Amendment Act in the State with such exceptions and modifications as may be required.

The workshop was inaugurated by the Governor of Meghalaya Shri M.M. Jacob and chaired by Professor B. Pakem, Vice-Chancellor, North Eastern Hill University, Shillong. Shri D. Bandyopadhyay, Convenor, Task Force on Panchayati Raj, Rajiv Gandhi Foundation delivered a special lecture. While twelve papers were presented in three Plenary Sessions, the two Working Groups had detailed and frank discussions on the applicability of the Seventy-Third Amendment Act to Meghalaya and on finance and resource mobilization. The Valedictory Session was to be addressed by the Chief Minister of Meghalaya Shri Salseng C. Marak but he could not attend due to his sickness. His address was read by Professor M.N. Karna, the Director of the Workshop.

Some of the major viewpoints which emerged and recommendations provided at the Workshop are the following:

- 1) Further in-depth study of the relative functions/powers of the Autonomous District Councils under the Sixth Schedule of the constitution vis-a-vis the functions/powers of the panchayats enshrined by the Seventy-Third Amendment of the constitution be made by organising district level seminars at Tura, Jowai and Shillong.
- 2) The Autonomous District Councils under the Sixth Schedule of the constitution (Article 275(i)) should continue with greater financial support from the Union government. Simultaneously, there should be attempts to remove the defects in the present working of the ADCs.
- 3) One minority view was that the traditional institutions such as the Chiefs and the *Syiems* should be restored to their pre-British positions by statutory provisions. However, this will not be viable in the context of the Garo Hills.
- 4) The constitution (73rd Amendment) Act, 1992 be introduced in Meghalaya with suitable adoption of the traditional names.

Assuming that Meghalaya accepts the Seventy-Third Amendment Act, the Workshop further recommended:

- i) State Finance Commission be set up to look into and consider the matters of financial and resource mobilization aspects.
- ii) The financial and political empowerment as per the Seventy-Third Amendment should be seriously taken note of, political power *sans* financial power meaningless.
- iii) Finances should match functions at different levels or tiers of administrative hierarchy.
- iv) Empowerment at the grass-root level, that is, right from the village level, including financial power, should be extended in order to strengthen the democratic processes as well as decentralization of financial power. It was also felt that women and women NGOs should also be involved while deciding financial matters.
- v) A comparative study be conducted on the structure of income/sources or flow of income and the over-all financial position between the panchayati raj institutions and the Autonomous District Councils. Such structure of income should include both the tax and non-tax revenues.
- vi) An integrated approach to planning, programming and budgeting should be adopted with a view to effectively utilise the potential of decentralised planning.
- vii) A proper implementation of Article 243J of the Seventy-Third Amendment should be carried out in letter and spirit, especially with regard to periodical auditing of the accounts.

We take this opportunity to express our thanks and gratitude to the Rajiv Gandhi Foundation for sponsoring the Sub-Regional Workshop on Panchayati Raj in Shillong during October 12-14, 1995, under the Indian Council of Social Science Research, North Eastern Regional Centre at Shillong. We express our thanks to the ICSSR-NERC Screening Committee for asking us to edit the volume and particularly to its Chairman Professor B. Pakem whose constant help and support made the task easier. We also express the neat typing assistance rendered by Mrs. Jean Blah and Mrs. Carmela Shati. Lastly we owe our thanks and appreciation to Mr. Arun Kumar Verma, Regency Publications for having agreed to undertake the work of its publications.

**M.N. Karna, L.S. Gassah
C.J. Thomas**

CHAPTER 1

THE SIXTH SCHEDULE AND THE 73RD AMENDMENT: AN ANALYSIS

L.S. Gassah

The administration of the Tribal Areas of the North-Eastern region which were earlier known as 'Backward Tracts' has a history of its own. The Grant of the Diwani of Bengal to the East India Company in 1765 by Shah Alam II, secured for the East India Company "superintendence of all revenues" in the Presidency of Bengal. Even prior to the taking over of the territories formerly administered under the East India company by the British sovereign in 1858, following the Sepoy Mutiny of 1857, the making of laws was entrusted to the Governor General-in-Council by the Government of India Acts of 1833 and 1853. These statutes allowed laws to be made directly for the areas which were earlier under the authority of the East India Company.

In the subsequent years, many Acts and Regulations were passed which affected the North Eastern region in diverse ways — like the Inner Line Regulation of 1873, the Scheduled Districts Act 1874, the Government of India Acts 1919 and 1935. Under the scheme of Provincial Autonomy, the hill areas of the then province of Assam fell into two categories, viz., the Excluded and Partially Excluded Areas, as scheduled in the Order-in-Council under the Government of India Act 1935. The main concern of the administration at that period of time was more static than dynamic. Thus, the administrative insulation contributed to the prolongation of backwardness of the North-Eastern region especially the areas predominantly inhabited by the tribal people. The British did everything possible to check the

emotional integration between the tribals and non-tribals for the evolution of a spirit of common identity superseding ethnic diversities. There were even abortive attempts at keeping the North-Eastern tribal areas outside the Indian Dominion when the Indian Independence Act of 1947 was being passed by the British Parliament.

But, in free India, under the inspiring leadership of Jawaharlal Nehru, the policy of winning the confidence of the tribal people and promoting closer contacts and intercourses between the tribals and non-tribals, ensuring the protection of interests of the tribals in their lands and autonomy to shape their lives as they desire, was followed. In the Constituent Assembly, Jawaharlal Nehru moved the historic objectives Resolution which was adopted on 22 January 1947. These objectives have actually shaped the making of the Constitution. This Resolution proclaimed that India would be an Independent Sovereign Democratic Republic wherein, *inter-alia*, "adequate safeguards shall be depressed and other backward classes."

When the Indian Constitution was adopted, it envisaged strong democratic institutions at the grass-root level as well as concerning the affairs of the tribal communities. Consequently, democratic decentralisation and establishment of Panchayati Raj became one of the Directive Principles of State Policy. However, in the case of the Tribal Areas in the country, especially those in the North-East, there are certain specific provisions provided in the Constitution. The Constitution makers also recognised the necessity of a separate political and administrative structure for the hill Tribal Areas of the erstwhile province of Assam by enacting the Sixth Schedule to the Constitution of India. In doing so, they were guided broadly speaking by three major considerations:

- (i) the necessity to maintain the distinct customs, socio-economic and political culture of the tribal people of the region and to ensure autonomy of the tribal people and to preserve their identities;
- (ii) the necessity to prevent their economic and social exploitation by the more advanced neighbouring people of the plains;
- (iii) to allow the tribal people to develop and administer themselves according to their own genius.

In pursuance of paragraph 20 of the Cabinet Mission Statement of May 16, 1946, an Advisory Committee on Fundamental Rights of Minorities in Tribal Areas, was constituted by the Constituent Assembly in India. One of the sub-committees constituted by the Advisory Committee was the North-East Frontier (Assam) Tribal and Excluded areas Sub-Committee under the chairmanship of Gopinath Bordoloi (popularly known as Bordoloi Sub-Committee). The Sub-Committee visited the tribal areas in the then composite State of Assam and interacted with the representatives of the hill people in order to formulate a model administrative set up for these areas within the State of Assam. When the Sub-Committee studies the problems of the tribal people of the region, it realized that these areas needed protection and safeguard so that they might be able to preserve their way of life and at the same time participate in political life of the country along with others. It also noted the existence of the traditional tribal self-governing institutions which functioned democratically and settled their disputes in accordance with their own customs and traditions. The Sub-Committee sought to evolve a system by which it could be possible to remove the apprehensions of the tribal people, simple and backward as they were, so that they might not be exploited, subjugated and oppressed by the more advanced people.

The recommendations of the Sub-Committee were incorporated in the Sixth Schedule to the Constitution. The idea behind the Sixth Schedule was to provide the tribal people with a simple and inexpensive administration of their own, so that they could safeguard their own customs, traditions, culture, etc., and to provide them maximum autonomy in the management of their tribal affairs. The Bordoloi Sub-Committee in particular, appreciated that the tribal people were particularly sensitive about their lands, forests, traditional system of justice and social customs.

In acceptance of the recommendations of this Sub-Committee, the Sixth Schedule to the Constitution of India was adopted. This provided for the Constitution of the Autonomous District Councils (ADCs) in certain hill districts of the then composite State of Assam.

The Autonomous District Councils (ADCs) in certain hill districts (except Naga Hills) of the then composite State of Assam were first introduced in 1952, and in 1953 Regional councils

(now District Councils) were introduced in the then Lushai Hills District (now Mizoram), as per the provisions of the Sixth Schedule. For the last more than forty years, these ADCs have functioned in their respective autonomous districts. Many of these ADCs have passed from time to time a number of laws, rules, regulations, acts, etc., dealing with and affecting the people of their respective areas in diverse ways — relating to such pertinent issues like land, forest, primary school education, planning processes, markets, trade, developmental activities, etc., to mention a few of them. Some such Acts have direct effects on the traditional institutions like the chiefs, tribal councils etc.

Many changes have taken place since 1952. The role, functions and workings of these constitutional institutions have been studied from time to time by many scholars of the region itself. A number of criticisms have also been leveled against the working and effective functioning of these Councils. The relevance of the ADCs today has been questioned from time to time especially after the creation of full-fledged States where District Councils are in existence. On the part of the District Councils, they have been demanding more autonomy and direct funding from the Central government itself to strengthen their power and functions.

Examining the role of the ADCs from another angle, it should be noted that it was an institutional innovation of effecting decentralisation of power at the district level covering under its general framework the problems and issues down to the village level as devolved under the Constitution of India. However, soon after the creation and the setting up of the ADCs in the Sixth Schedule areas of North-East India, they have been persistently voicing their grievances against the treatments meted out to them by the different State Governments in the matters of provision of grants, according of approval of the legislative proposals of the ADCs, super session of the ADCs, etc. Before the re-organization of the then composite State of Assam (pre-1972), such grievances were directed against that State. The situation is not so different today even after the re-organisation of Assam which gave way to the formation/establishment of full-fledged States like Meghalaya, Mizoram, Manipur, Tripura, etc. For instance, in Meghalaya today, a tug-of-war is still continuing between the State Government and the three ADCs over a

particular paragraph (paragraph 12A) of the Sixth Schedule. The ADCs in Meghalaya, Mizoram, Tripura, the hill districts of Assam (Karbi Anglong and North-Cachar) are unhappy and dissatisfied with the decisions of their respective State Governments.

The ADCs were created in the hill areas of North East India in response to the demands of the tribal people for autonomy out of their apprehensions about the preservation of their ethnic identity and their rights over the lands, natural resources, customary laws, traditions, etc. They were conceived to ensure the right of self-rule of the tribal people, to manage their affairs according to their own genius, to enable them to preserve their ethnic identity and to face the forces of assimilation squarely from their more advanced neighbours in the plains.

The underlying factor contributing to whatever achievements of the ADCs is the tribal people's emotional and active involvement in asserting their rights of self-rule and to run the administration by their own elected tribal representatives for promoting, preserving and protecting their rights on their lands and natural resources which are so dear to their own hearts and the over-all economic interests in general. No wonder, the concept of the ADC has served as the basic model for meeting the demands for autonomy.

The autonomy of the ADCs has been much affected in the area of financial independence. They have to depend on their respective State governments in matters of financial allotments. This in turn has reduced and restricted their autonomy and performances. One of the sources of finance of the ADCs is the share of royalty accruing each year from licenses and leases for the purpose of prospecting for or extraction of minerals granted by the State government in respect of any area within an autonomous district. Many ADCs have complained that they are not given their due share from the collection of royalties and taxes. Secondly, the ADCs alleged that because of the obstructive attitude of the respective State governments in the matter of the release of fund, they had been forced to adopt undesirable practices so as to raise fund in order to discharge their constitutional obligations like running of primary schools, dispensaries and even to meet the salaries of the employees.

The Sixth Schedule confers few developmental functions on the ADCs, though there is an enabling clause whereby the State

governments can entrust such functions with them. On the event of the re-organisation of States in North East India in 1971, there was some sort of understanding at the political level as a result of which a number of developmental functions were conferred on the ADCs. In this aspect, certain ADCs in North East India experienced subsequently that this arrangement was a fragile one. Lacking in statutory support, the ADCs had to depend on the changing political relations with the State leadership. The developmental activities of the ADCs therefore depend very much on the political party or parties that run the State administration. If the same political party is in power both at the State and District Council levels, the latter may have a smooth sailing in its programme of developmental activities. If it is otherwise, a number of obstacles and hurdles may be created by the party in power at the State level to jeopardize the plan of action that might be framed by the District Council for the development of the autonomous districts.

The 73rd Amendment of the Constitution relating to Panchayat institutions which was passed by the Parliament in December 1992 and brought into effect on April 24, 1993, is going to have an effect on the ADCs in the States like Assam and Tripura. The Panchayat Raj institutions would cover as many as 29 subjects within their jurisdiction. When all those provisions of the 73rd Amendment about the power, scope of function and financial support for the exercise of power and discharge of the responsibilities by the Panchayati bodies are compared with those attached to the ADCs under the Sixth Schedule, it is found that while the ADCs have several regulatory powers subject to State control, the Panchayati bodies are in a more advantageous position in respect of developmental functions. In fact, in the matter of exercise of developmental function, the ADCs are at the mercy of the State governments. However, a large number of developmental functions come within the operational jurisdiction of the Panchayati bodies. In some cases, even the level of operation is higher for the Panchayati bodies.

A careful comparison of the provisions of the Sixth Schedule as amended from time to time and of the 73rd Amendment of the Constitution, makes it clear that while the Democles's sword of the State power is moving closer and closer to the ADCs, a

liberalisation process has been set in motion in respect of the Panchayati bodies.

A comparative study of the Sixth Schedule and the 73rd Amendment of the Constitution has become necessary for certain reasons. Compared to the Panchayati bodies, the Autonomous District Councils have few development and welfare functions and those are of lower order.

If the Panchayati bodies under the Amendment Act are not introduced in the Sixth Schedule areas, these areas will enjoy less power of self-government (in development aspect) than the rest of the country. On the other hand, Panchayati bodies with powers exercisable on matters listed in the 11th Schedule as ancillary to the 73rd Amendment Act are introduced in Sixth Schedule areas, these may generate political foul weather by arrangement with the respective State Governments. If these powers are also taken away from them, they are left with regulatory functions only. They will have no alternative to recouring to inflammatory politics with narrow focus so as to be able to maintain their influence.

Further, when all the provisions of the 73rd Amendment about the powers, scope of function and financial support for the exercise of the powers and discharge of the responsibilities by the Panchayati bodies are compared with those attached to the Autonomous District Councils under the Sixth Schedule, it is found that while the ADCs have several regulatory powers subject to State Government control, the Panchayati bodies are in a more advantageous position in respect of developmental functions. In fact in the matter of exercise of developmental functions, the ADCs are at the mercy of the State Governments. For example, in the recent meeting of the team from Meghalaya, which consisted of the CEMs, EMs, and other members of the ADCs with the Union Minister and Deputy Chairman, Planning Commission, they appraised him of the need of ADCs of the State for direct funding from the Centre and enhancement of funds. The outcome of this meeting was the sanction of Rs. 3 crore for the three ADCs in Meghalaya (one crore each). What is interesting to note is that this amount would be channelised through the State Government, which means that the latter has an overall financial control over the former. The Eleventh Schedule of the Constitution on the other hand, ensures that a large

number of development functions come within the operational jurisdiction of the Panchayati bodies. For instance, whereas the ADC may establish construct of manage primary schools, the functional jurisdiction of Panchayati bodies cover even secondary schools, (incidentally, the management of all the primary schools in Meghalaya has been taken over now by the State Government on the failure of the ADCs to run the same.) Similarly, whereas the ADCs may have dispensaries established by them, hospitals and primary health centres come within the purview of the Panchayati bodies.

In the tribal predominant States, the ADCs are facing problems of a different order. In Meghalaya, there are three Autonomous District Councils, namely, the Khasi Hill Autonomous District Council, the Jantia Hills Autonomous District Council and the Garo Hills Autonomous District Council. These three ADCs cover all the present seven district of the State.

When Meghalaya was created as a separate State, over-riding power was given to legislation enacted by the State over the matters included in the jurisdiction of the ADCs by an amendment of the Sixth Schedule and an insertion of paragraph 12 A in the Sixth Schedule. This paragraph states very clearly that if the State Government and the District Councils make laws on the same subject, the legislation or laws of the State Government shall prevail over those of the District Councils. This paragraph therefore lays down the over-riding authority of a law made by the State Legislature over a similar law made by the District Councils in Meghalaya in case of the question of repugnancy arises. The paragraph spells out that in case any provision of a law made by the District Council "is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council . . . shall to the extent of the repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail."

This paragraph has agitated the minds and thoughts of the leaders of the Regional Political Parties in Meghalaya. It has found its place in the manifestoes of these political parties from time to time, where they have reiterated all along the urgent need to delete what they call the "discriminatory" paragraph 12 A of the Sixth Schedule. The main complain is that this para-

graph empowers the laws of the State Government to over-ride the laws passed by the ADCs 'even in matters allotted to the District Councils by the Constitution.' Mr S.K. Dutta, the former Chief Justice of the Gauhati High Court and the Chairman of the Commission of Inquiry on Autonomous Districts Administration in the State of Meghalaya, in his report on this vexed issue stated "... the status of the District Councils in Meghalaya has been reduced more or less to that of a Municipal Board by the insertion of Paragraph 12A in the Sixth Schedule...The District Council, therefore, can function only if it maintains harmonious relationship with the State Government."

Apart from having a close comparative analysis of the role, power and functions between the ADCs under the Sixth Schedule and the Panchayati Raj institutions as envisaged by the 73rd Amendment, we in Meghalaya have possibly to find suitable adjustments which would fit the traditional socio-political institutions like the *Syiemships*, *Doloiships*, *Nokmaships* and the *Durbars* (Councils) in the whole scheme. Under the Sixth Schedule, the offices of the *Syiem*, *Doloi*, and *Nokma*, in Khasi, Jaintia and Garo Hills respectively are treated as subordinate officials of the ADCs. Most of their traditional power and functions have either been curtailed or taken away by the ADCs. Under the provisions of paragraph 3(i)(g) of the Sixth Schedule, the District Council can regulate the appointment and succession of chiefs and headmen.

The United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act 1959, and its subsequent amendments made provisions for removal and suspension and even debaring the chiefs, deputy chiefs and acting chiefs from taking part in politics and elections either to the Parliament, State Legislature and District Council by the Executive Committee of the District Council if in its opinion these incumbents violate the terms and conditions of their appointment. Armed with such constitutional powers, the District Council has, therefore, put under it a complete control over the traditional institutions. Thus, under the new constitutional set up, the traditional chiefs are pushed behind the line of leadership. This constitutional development makes us to ponder over the question — what is going to happen to the traditional socio-political institutions in Meghalaya, if tomorrow the State of

Meghalaya decides to adopt in letter and spirit the 73rd Amendment of the Constitution? This Workshop may therefore debate over this important issue.

The 73rd Constitution Amendment Act has brought out more than anything else the extremely limited power of self-government conferred on the Sixth Schedule. The Sixth Schedule is a long history of tribal struggle for identity assertion. It cannot be easily dispensed with, without causing serious doubt about the intention of the Indian State. The whole issue of inter-articulation of the institutional arrangements and operational range under the Sixth Schedule and the 73rd Amendment Act will have to be carefully examined and a substantially altered Sixth Schedule by synthesising the positive thrust of both will have to be evolved.

CHAPTER 2

THE SEVENTY THIRD AMENDMENT ACT, 1992 AND THE STATE OF MEGHALAYA

B. Datta Ray

The Constitution (Seventy third Amendment) Act, 1992 was passed with near unanimity by Parliament in December 1992. With its ratification by 17 State Assemblies, it has emerged as the Constitution (Seventy third Amendment) Act 1992 and came into force from April 1993.

Salient features of the Panchayati Raj Act are:

The Gram Sabha will be a body comprising of all the adult members registered as voters in the Panchayat area. There shall be a three-tier system of Panchayat at the village, intermediate and district level. Smaller States with populations below 20 lakhs will have the option not to have the intermediate level Panchayat.

Seats in Panchayats at all three levels shall be filled by direct election. In addition, Chairpersons of village Panchayats can be made members of the Panchayats at intermediate level and Chairpersons of Panchayats at the intermediate level can be members of the Panchayat at the district level. MPs, MLAs and MLCs could also be members of Panchayats at the intermediate or the district level.

In all the Panchayats, seats would be reserved for Scheduled castes and Scheduled Tribes in proportion to their population. One third of the total number of seats will be reserved for women. One-third of the seats reserved for Scheduled castes and Scheduled tribes will also be reserved for women.

Posts of the Chairpersons of the Panchayat at all levels, shall be reserved for Scheduled castes and Scheduled tribes in proportion to their population in the State. One-third of the posts

of Chairpersons of Panchayats at all levels shall also be reserved for women. It shall be open to the Legislature of the State to provide reservation of seats and posts of Chairpersons in Panchayats for backward class of citizens.

Every Panchayat shall have a uniform five years term and elections to constitute new bodies shall be completed before the expiry of the term. In the event of dissolution, elections will be compulsorily held within six months. The reconstituted Panchayat will serve for the remaining period the five year term. It will not be possible to dissolve the existing Panchayats by amendment of any Act, before the expiry of its duration. The Panchayats existing on 24th April 1993 will be allowed to complete their full term, except when they are dissolved by the House by a resolution.

A person who is disqualified under any law for elections to the Legislature of the State or under any law of the State, will not be entitled to become a member of a Panchayat.

An independent Election Commission will be established in the State for superintendence, direction and control of the electoral process and preparation of electoral rolls.

The Act also indicate a set of items in the Eleventh Schedule of the Constitution which may be entrusted to the Panchayats. This is in addition to any other schemes for economic development and social justice that may also be entrusted to them by the State governments. For the implementation of development schemes, the main responsibility will be entrusted to the Panchayat.

The Panchayat will receive adequate funds for carrying out their functions. Grants from the State government will constitute an important source of funding but State governments are also expected to assign the revenue of certain taxes to the Panchayat. In some cases, the Panchayat will also be permitted to collect and retain the revenue it raises.

In each State, a Finance Commission will be established within one year, and then after every five years, to review the financial position of the Panchayats; to make suitable recommendations to the State on the distribution of funds between the State and the Panchayats at every level.

In the interest of social justice, the 73rd Constitutional Amendment Act, 1992, provides for reservation for women, scheduled

castes and scheduled tribes. In the 500,000 Panchayats with three million members about a million women will get elected to these Panchayats and about half a million representatives will be from socially handicapped and disadvantaged people. Even if they commit mistakes in initial years, they would learn a good deal and would be careful in future. Once they are elected to the decision-making centres they will demand a particular type of development which will be beneficial to the disadvantaged people. At least 5,000 good grass-root level leaders in the country side will emerge, knowing local problems of poverty, social exploitation and will function with the control and supervision of the local people who elected them for a term.

Panchayati Raj institutions at different layers after initial years of mistakes and blunders may revolutionise the rural sectors of our society particularly in the field of education, literacy, agriculture, forestry, horticulture, health and family welfare, housing and co-operative farming and marketing. There will be quiet development of what is known as peoples' power which can bring about changes in institutions and social situation in which a wrong is resisted and existing state of things is changed. The Act is a charter for empowerment of women. The Constitutional (73rd Amendment) Act provides that not less than one-third of the total number of seats for the offices of the chairpersons at each level, would be reserved for women. This would be an effective method to ensure women's position as the head of the institution at every level. This may not immediately any social change in the face of attitudinal, social and structural obstructions. But at least it will ensure the women of the villages with the release of their potentialities and political contributions in a massive way to the total development of the community. The National Perspective Plan for Women (1988) promised that 30 percent of executive head positions from the village to district level in all statutory institutions should be reserved for women.

The Constitution (73rd Amendment) Act under its Article 243M states that the Act in its present form will not apply to (a), (b) the States of Nagaland, Meghalaya and Mizoram, (c) the hills areas in the State of Manipur for which District Councils exist. However the Act provides that the Amendment may apply to Nagaland, Meghalaya and Mizoram provided that the State Legislative Assembly of the concerned State passes a resolution to

the effect by a majority of total membership of that house and by a majority of not less than two-thirds of the members of that house present and voting. There are similar provisions for urban areas under the 74th Amendment of the Constitution. The Article also may be law extend the provisions of the Amendment to the Scheduled Areas and Tribal Areas subject to such modifications and exception as may be specified in such law.

The Sixth Schedule

With Independence, the Constitution of India provided for protection of the interests of the tribal peoples of the hills of northeastern India, including their interest in land and forest resources and allowed them autonomy in social and political development. The Sixth Schedule of the Constitution provided the legal framework for this protection. In pursuance of this objective, autonomous district councils were set up in the North Cachar and Mikir Hills (now known as Karbi Anglong), Lushai Hills (present-day Mizoram) and in the United Khasi and Jaintia Hills districts and in the Garo Hills. The Jaintia Hills district Autonomous Council was set up. All the tribal chiefs and headmen were placed under the jurisdiction of this autonomous district council. The appointment and succession of the chiefs and headmen was wholly regulated by the district council. On 1 October 1964, this council was bifurcated into two autonomous district councils, namely, the Khasi Hills Autonomous District Council and the Jaintia Hills Autonomous District Council. All the seven districts of Meghalaya were covered by three autonomous district councils. With the introduction of the district council, the traditional arrangement of local self-government became complex, with overlapping jurisdiction.

There were in each of the district councils twenty-nine members elected on the basis of universal adult suffrage and one member nominated by the Governor of Meghalaya. There was a chairperson and a Deputy Chairperson in each of the district councils, who held a position similar to the Speaker and Deputy Speaker of the Legislative Assembly. The District Council was administered by an Executive Council headed by the Chief Executive Member and two Executive Members. The tenure of the district council was normally five years but elections were not

regularly held. This had eroded its authority. Although the society was matrilineal and despite the existence of adult franchise, female representation in local self-government institutions was dismal. In the early 1950s there was only one nominated woman member in the Shillong municipality, which was outside the jurisdiction of the district council. The Shillong Municipality had its first elected women member only 1966, while in 1971 the first elected lady Chairperson was appointed. There was the solitary instance of a female Executive Member, Estrice Syiem, in the Khasi Hills Autonomous District Council in 1977-78 but her term lasted only for five months.

The Sixth Schedule empowered the autonomous district councils of Meghalaya to make laws and regulations on all matters relating to the customs, traditions and practices of the tribal people, land tenure systems, water courses, forest and forest management other than reserved forests, marriage, divorce, inheritance, appointments and succession of the chiefs and headmen. It also provided a mechanism for prevention of economic exploitation by non-tribals. The District Councils had the power to regulate money-lending and trading by the non-tribals. The councils were also empowered to make laws relating to the establishment of town committees and village committee for local administration including the village or town police. All such laws were, however, subject to the approval of the Governor of the State.

The autonomous district councils had the powers to assess and collect land revenue, impose taxes on professions, trades and employment, animals, vehicles, boats, ferries, entry of goods into a market for sale, and so on, and fees for the purpose of prospecting for or extraction of minerals under leases granted by the State Government. They could establish primary school, dispensaries, markets, cattle pounds, ferries, fisheries, roads, provide road transport and, subject to the jurisdiction of the Gauhati High Court, exercise certain judicial powers both civil and criminal.

Over and above the aforementioned sources of income, the autonomous district councils received financial help from the Union Government through the State Government besides grants-in-aid from the latter, share of the state taxes and grants for hill development schemes and forest protection schemes.

The Sixth Schedule thus provided a compact mechanism for self-government in the tribal state of Meghalaya, safeguarding the traditional customs, rights and practices of the tribal people and preserving their distinct culture and identity. It gave them an instrument to bring a limited change within a static framework. This mechanism underwent many changes after 1952 through constitutional amendments, Presidential orders and legislations.

In 1969, the Sixth Schedule was amended to empower the State Government to entrust the autonomous district council with functions relating to agriculture, animal husbandry, community development projects, cooperative societies, social welfare, village planning, or any matter within the executive power of the State Government. Although the District Councils had powers to make laws for land reforms and land development, they had not taken any steps in these areas. They failed to inject dynamism for social change. The State legislature could make laws even on those subjects relating to land which had been allotted to the District Councils and the State laws prevailed over the laws of the District Councils.

The District council could thus not be said to have been conceived as an organization for promoting participatory process for formulation and execution of socio-economic development plans. It was meant only to provide autonomy to the districts, which were inhabited by fairly homogeneous tribal groups, in social and cultural spheres and matters relating to the tribals' everyday life. In course of time it lost its earlier administrative initiative in matters of social transformation. The State government had practically taken over from the District Councils the responsibility for primary education. Over the last four decades, there was a constant friction between them and the Government of Meghalaya in various spheres. For example, although the District Councils controlled 95 per cent of the forest area of the State, the central fund for afforestation and forest management was routed through the State Government.

Inadequacy of financial resources and administrative expertise were other major constraints in the proper functioning of the District Councils. The revenue collected by them and the grants-in-aid from the State government were too meager even to cover their administrative costs. It was also necessary for them

to develop an infrastructure for bringing about social and economic changes in their areas. The traditional tribal land relations were giving way to emerging private property and the peasant economy was gaining importance in place of a vanishing jhum or shifting cultivation. The local self-government structure in Meghalaya, of which the District Council is the key constituent, needed to be adjusted accordingly to maintain the new social balance.

An interesting aspect of the working of the District Councils was the effect inter-party rivalries had on their relationship with the State Government, on the one hand, and the traditional tribal chiefs, on the other. In the event of there being different political parties at the helm at the State and District Council level, the two were often engaged in a tug-of-war and would use the tribal chiefs as their pawns. The undesirable consequences of this antagonistic bilateral relationship between the two top tiers for the functioning of the institutional mechanism as a whole should have been taken care of for a smooth working of the entire set up.

The provisions of the Sixth Schedule to the Constitution have evolved a separate scheme for the administration of the tribal areas of the composite state of Assam which included the present-day Meghalaya and Mizoram and to which areas were added. Nagaland rejected the scheme from the very beginning and it evolved its own system of functional village councils for local development works. For the composite state of Assam, the scheme provided for institutions of Autonomous District Councils and Regional Councils. Assam has two autonomous district councils to-day.

There is a qualitative difference between the tribal situation in Autonomous District Council areas in the North East India and the Panchayati Raj Institutions in the rest of the country. The Autonomous District Council areas are mostly located on international borders or nearby like North Cachar Hills of Assam.

The socio-political milieu in the Sixth Schedule areas particularly of Meghalaya in North East India is entirely different from the rest of the country. The historical background of the district council areas of Meghalaya, the structural arrangements, functioning and operations have very little semblance with those of

Panchayati Raj institutional areas as envisaged under 73rd and 74th Constitutional Amendment areas.

The provisions of the 73rd Amendment Act 1993 are wholesome and should be extended to Meghalaya under the enabling provisions of Article 243 M (4(a) & (b)). Many tribal societies under Autonomous District Council Areas have their own customary laws, traditional practices, community ethos, political and administrative systems which may run counter to the provisions under 73rd Constitutional Amendment Act 1992. Their present day predicament of exploitation, deprivation and marginalisation have to be kept in view and the task of blending on traditional and the Panchayati Raj superstructure is indeed challenging one.

The provisions of the 73rd Amendment Act 1992 should be considered as a broad and powerful over-arching frame serving as the fountain head and an essential vehicle for democratization of tribal society with a tradition of semi-feudal social set up in rural economy of Meghalaya. The design and the content of the Sixth Schedule have failed to inspire the process of democratization of society. The near fifty years of operations of Sixth Schedule, although in its initial years promised much to bringing about social changes in Meghalaya, failed miserably in later years. This is primarily due to feebleness of the emerging middle class in the tribal social set up. The middle class and the tribal semi-feudal social and economic milieu are antithesis to each other. The clan and tribal chiefs proved to be still too strong and have asserted themselves in the Autonomous District Council arena during the last two decades. The field operation of the provisions of the Sixth Schedule resulted in developing an identity syndrome which retarded the democratic process in social and economic activities in bringing significant changes at the grass root levels. The rural economy remain as backward with declining agricultural productivity as before. This is due to lack of equal access to the basic resources - those of land and forest, the prime assets of any society. The Sixth Schedule has totally failed as an instrument of self-management and social and economic changes in the rural sectors in Meghalaya. The Eleventh Schedule (under Article 243 G) under the 73rd Amendment Act promises more democratic way of land and community asset management for a better rural society of economic viability. It

provides for empowerment of the socially vulnerable sectors and particularly women.

The eighties India has witnessed the process of an significant shift in women's development strategy. The National Perspective Plan for Women (1988) is a living testimony of such shift in strategy for women's empowerment and development. The 73rd Constitutional Amendment Act is an enabling mechanism for bringing women in the national development process in democratizing rural society by raising women's status on an equal footing with that of men. The matriliney in Khasi-Pnar-Garo set up could not protect women's equal right in the polity. Panchayati Raj Institution promises equal empowerment to women in Meghalaya.

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CHAPTER 3

HOW EFFECTIVE ARE AUTONOMOUS DISTRICT COUNCILS ?

C. Changsan

The Autonomous District Councils were constituted according to the provisions of the Sixth Schedule to the Constitution of India since 1950s, initially for a period of ten years. Since then there are many changes and amendments in our constitution. It is my opinion that the time has come to go for detail evaluation of the working of the District Councils. A peculiar situation is now obtained to the fact that, where there is a Council its existence and continuity is being questioned, on the other hand, demand for implementation of this constitutional scheme arises and the people demand for it where there is no such council. Therefore, this constitutional scheme is debated on many platforms and some of its provisions are discussed on the floor of the high courts in the country and many interpretations of the provisions are made accordingly.

Paragraph 2(1) of the Sixth Schedule provides that the council shall consist of not more than 30 members, of whom not more than four persons shall be nominated by the governor and the rest shall be elected on the basis of Adult Suffrage.

All the political parties, National or Regional can participate in the election. A person not belonging to Schedule Tribe shall not be entitled to vote unless he is permanent, or resident within the territorial limits of the said Autonomous Council and for the purpose of this rule, a person shall be deemed to be permanently resident within the territorial limits of an Autonomous District if he has taken up his fixed or permanent habitation with his family or made his permanent home in that

district and resided continually therein for a period of not less than twelve years on the qualifying date. Therefore, many non-tribals are today listed as voters in the Council elections and they are playing very important roles in the Council Administration.

But the provision for nomination of a person as a member of the Council has created a controversy between the District Council and the Government on many occasions. (The case of Daolagupu and 3 others vs Government of Assam (AIR 1974) Gauhati High Court in Karbi Anglong Council, and Khasi and Garo Hills District Councils).

The aforesaid provision for nomination of a person as member of the Council is always utilized in favour of the party in power in the State. District Council made rules and passed resolutions for nomination of a member according to the advices of the party in power under the council but such rules and resolutions of the Council are always not accepted by the State government. Therefore, the party in power in the State can effectively interfere in the formation of the government in the Council.

This provision may be examined in depth and it is my opinion that this provision should be deleted, so as to have a fair play in the game of politics.

Under para 3, the District Councils are vested with the power to make laws. The subjects are listed in the Constitution.

All the District Councils made rules for the administration of the listed subjects. The laws made by the Council for administration of the aforesaid subjects shall have the force of law only when assented by the Governor.

Now let us examine the limitations of the Council laws with reference to adaptation of State Laws e.g. Assam Land and Revenue Manual 1886 and Assam Forest Act 1891.

As the allotment, occupation or use, or the setting apart, of land, other than any land is the language of the Constitution for Revenue Administration for the Council as per provisions of the Assam Land and Revenue Regulation.

But many of the provisions of the Assam Land and Revenue Manual can not apply for Revenue Administration under-Council specially for the A'khing Lands in Garo Hills or Village lands situated in hill areas of the North Cachar Hills district of Assam.

CHAPTER 4

SOCIAL CHANGE AND TRADITIONAL TRIBAL POLITICAL SYSTEMS IN MEGHALAYA

Gurudas Das

The basic objective of this workshop, as I understand, is to enquire into the fact whether the Seventy-Third Amendment Act, 1992, of the Indian Constitution has any relevance in the areas covered under the sixth schedule in general and in Meghalaya in particular. As the Act proposes to create a three-tier Panchayat with the Village Panchayats at the bottom, block (i.e. intermediate level between the village and district) panchayats in the middle and the district panchayats at the top, it directly encroaches upon the constitutional jurisdiction of the district councils in the areas under sixth schedule. Perhaps, it is because of this that these areas have been exempted from the purview of the Act. As a result, any attempt to understand the relevance of the Act in Meghalaya necessitates a thorough examination of (i) the comparative constitutional position of both the sixth schedule and the Act in order to assess as to how the latter would delimit the powers and functions of the institutions formed under the former, and (ii) the evolution of the traditional political institutions and their position in relation to the constitutional bodies formed under the sixth schedule so as to understand whether the provisions of the Act are conflicting or complementary to the traditional tribal ethos.

This paper intends to deal with the latter issue. It attempts to describe and analyse three related questions: (i) What had been the nature of traditional political systems among the Khasis, Jaintias, and Garos of Meghalaya prior to the advent of the

British ? (ii) What was the impact of British rule on the traditional political institutions of these three tribes? and (iii) What happened to these institutions after the commencement of the sixth schedule in post-Independent India?.

The Traditional Political Systems: A Generalised Approximation

Long before the advent of the British, the indigenous people in the hills of north-east India had organised themselves under the political systems of their own which had been the natural outcome of their social evolution. Two distinctly different types of system of governance had been evolved in the hills, i.e., democratic system in the clan-based village societies controlled by the village councils and village headmen, and autocratic system of chieftainship controlled by the clan or village chiefs. The extent of power and authority of these traditional political institutions in relation to their people used to vary from tribe to tribe. While in certain communities these traditional institutions were well organised and well structured and even, in few cases, they led to the formation of miniature states, in some communities these institutions were loosely organised without any central authority.

Unlike other hill tribes, the Khasis evolved a unique three-tier democratic system of governance with villages at the bottom, *Raids* at the middle and *Syiemships* at the top. The Jaintias in the hills, though ruled by the *Dolois*, had a titular king who actively ruled the plains portion from Jaintiapur, the capital of his Kingdom. Unlike the Khasis and Jaintias, the traditional political system of the Garos was not institutionalised beyond the village boundaries. However, the Garo system of governance of clan based village community seemed to be much immature compared to that of the Khasis and Jaintias.

It may be noted that no written records pertaining to the functioning of these traditional political institutions were maintained by the indigenous people. And except a few casual reference in the chronicles of neighbouring Kingdoms like Assam and Cachar,¹ no written documents were available on the traditional tribal system of governance prior to the advent of the British in the hills of north-east India. In fact, it was the British

CHAPTER 5

PARAGRAPH 12A OF THE SIXTH SCHEDULE AND MEGHALAYA POLITICS*

Dr. L.S. Gassab

The Autonomous District Councils in Meghalaya were first introduced in 1952 in the then United Khasi-Jaintia Hills District and the Garo Hills District along with other Autonomous District Councils in the other hill districts of the then composite State of Assam. A separate District Council for the then Jowai sub-division (now Jaintia Hills District) was created in 1964 (but started actual functioning) in 1967 after its bifurcation from the then United Khasi-Jaintia Hills District. At present there are three Autonomous District Councils as per the Sixth Schedule to the Constitution of India for the seven districts in Meghalaya.

When the North Eastern Re-organisation Act of 1971 came into force in 1972, a full-fledged State of Meghalaya was born. This Act has also its effect on certain paragraphs of the Sixth Schedule. A prominent new paragraph was inserted in paragraph 12 of the Sixth Schedule where a new sub-paragraph was added, thus making it paragraph 12A. This Paragraph states thus:

Notwithstanding anything in this Constitution if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of the Schedule or if any provision of any regulation made by a District Council or a Regional Council

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in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail.

Paragraph 12A of the Sixth Schedule states very clearly that 'if the State Government and the District Councils make laws on the same subject, the legislation or laws of the State Government shall prevail over those of the District Councils'. This Paragraph therefore lays down the over-riding authority of a law made by the Legislature of the State of Meghalaya over a similar law made by the District Councils in the State in case of the question of repugnancy arises. The Paragraph spells out that in case any provision of a law made by the District Council "is repugnant to any provision of a law made by the Legislature of the State of Meghalaya shall prevail."

This Paragraph has agitated the minds and thoughts of the leaders of the Regional Political Parties in Meghalaya, especially that of the Hill State People's Democratic Party (HSPDP). This party has for several years been demanding for the deletion of Paragraph 12A from the Sixth Schedule of the Constitution. True to what those leaders spoke in public, this certain Paragraph found its place in the election manifesto of this party in the elections to both the Legislative Assembly and District Councils. The demand for deletion of this Paragraph also appeared almost every year in the Annual General meetings of the party and in its memoranda and appeals to various bodies, organisations and the public in general. This particular political party has not as yet stopped to make fervent appeal and demand for the deletion of Paragraph 12A. The other major Regional Political Parties in the State like the Hill People Union (HPU) and the Public Demands Implementation Convention (PDIC) have also demanded the same. These three Regional Political Parties have reiterated all along, the urgent need to delete what they call the "discriminatory" Paragraph 12A of the Sixth Schedule. The main complain is that this Paragraph empowers the laws of the State Govern-

duty and responsibility. They seem to devote their time and thought to development works rather than to the enactment of laws for the protection of healthy customs and usages relating to their democratic systems of administration, inheritance of property, marriage and divorce and other social customs . . . Indeed, the District Council members do not appear to have realised that with the formation of Meghalaya, the status of the District Councils in Meghalaya has been reduced more or less to that of a Municipal Board by the insertion of Paragraph 12 A in the Sixth Schedule . . . The District Council, therefore, can function only if it maintains harmonious relationship with the State Government."

CHAPTER 6

WOMEN IN MEGHALAYA AND THE CONSTITUTION 73RD AMENDMENT ACT, 1992 — PROBLEMS AND EXPECTATIONS

M.P.R. Lyngdoh

It was the dream of Mahatma Gandhi, to have a fully decentralised form of Government in Independent India. He lamented at the non inclusion of the Panchayati Raj system in the constitution, as to him independence must begin at the bottom and every village will be a republic or Panchayat. Gandhi said in India of my dreams that. "true democracy cannot be worked by twenty men sitting at the Centre. It has to work from below by the people of every village". Rajiv Gandhi, during his short span of political life, took the major step in achieving the objective of decentralisation of power, when he introduced the Constitution 64th Amendment Bill in the Lok Sabha in May, 1989. The Lok Sabha supported and passed it, but the Rajya Sabha could not enact it. Again, it was in 1991, under the present government led by P.V. Narasimha Rao, that the Constitution 72nd Amendment Bill was brought in the Lok Sabha, which passed it on December, 22, 1992, and the Rajya Sabha approved it, the following day. After the ratification of more than half the states the President gave his assent to the Bill on April, 20, 1993, and it became an Act with effect from April, 24, 1993.

The 73rd Amendment Act aims at the decentralisation of political administration, as well as decentralisation of institutions

The views expressed in this paper are solely of the writer and do not reflect or represent the views of any organisation, social or political.

for development. It also aims at achieving grassroot democratic polity, by making the Panchayati Raj system an instrument of local self government and community development. The Act provides for a constitutional status to the Panchayats and gives reservation to women and other weaker sections, to ensure their active participation at all levels of the Panchayati Raj system. This decentralisation is of great significance as people have been given so much of responsibility in carrying out the development programmes which will bring about a quick rural development.

The Constitution 73rd Amendment Act and Meghalaya

The framers of the Constitution of India realised the necessity of a separate political and administrative structure for the hill areas of the erstwhile Province of Assam. Therefore, certain provisions were made under the Sixth Schedule to the Constitution, to maintain the distinct culture of the hill people, to prevent them from socio-economic and political exploitation, and to allow them to administer according to their own genius. In the states of North East India like Nagaland, Mizoram and Meghalaya, the people have their own traditional system of self government since time immemorial. In the areas covered by the Sixth Schedule, where the Autonomous District Councils have been established, the traditional system remains undisturbed.

The 73rd Amendment Act contains Article 243 M¹, which states that the Act is not applicable to the states of Nagaland, Meghalaya and Mizoram. The Act does not also extend to the District Council areas of Manipur and the areas covered by the Gorkha Hill Council in the Darjeeling District of West Bengal. It is not applicable to the Fifth Schedule areas in the country, and the Sixth Schedule districts and regions. The Parliament has been authorised by law to extend it to these two categories of areas, subject to such exceptions and modifications as may be specified. It has also been clarified that such law is not to be deemed as Amendment of the Constitution.

While enacting the Constitution 73rd Amendment Act, it appears that the Parliament decided deliberately that the provisions of the Act should not be imposed to the Fifth Schedule areas and the Sixth Schedule districts and regions. The reason is that they have their traditional system, similar to the Panchayati Raj,

that must not be disturbed but require a carefully considered treatment.

In Meghalaya the people have their own traditional socio-political system since the earliest time. They have their self governing institutions right from the grassroot at the village level, which function in a very democratic manner. In the Khasi and Jaintia Hills, the traditional Chiefs are the Syiem, Lyngdoh, Sirdar, Wahadadar, Doloi, Pator and the Rangbah Shnong or Village Headmen. They look after the administration of the Syiemship, elaka and villages according to customs and traditions. The will of the people and the *Dorbar* or traditional councils are supreme and they play a very important role in the administration and decision making.

In Garo Hills, the institution of Nokmaship and the Village Council are the two traditional institutions. However, the Nokma does not enjoy autocratic powers as all the decisions are taken at a joint assembly of the village elders. These traditional institutions play a very important role in the socio-economic and political life of the people of Meghalaya.

Under the Sixth Schedule to the Constitution, the Autonomous District Councils have been established in the United Khasi and Jaintia Hills in 1952. Later, the people of Jaintia Hills felt that a separate District Council was needed for the Jowai Sub-division. In 1963, the Jarman Commission was appointed in connection with the bifurcation. The history of the United Khasi and Jaintia Hills Autonomous District Council took a new turn when in 1966, the Commission recommended a separate Autonomous District Council for Jowai Sub-division, for administrative convenience and the first election was held in 1967. Thus Meghalaya has three Autonomous District Councils, one each in Khasi Hills, Jaintia Hills and Garo Hills. The District Councils play a supervisory role and act as guardians of the customs and traditions of the people. However, since independence, under the new administrative set up, the powers of the traditional heads have been reduced. The various acts enforced from time to time by the District Councils effect the appointment and succession of Chiefs and headmen in the Khasi and Jaintia Hills. As a result there are misunderstandings between the Districts and the traditional heads. There is no smooth sailing between the State Government and the District Councils, the latter are

CHAPTER 7

PANCHAYATI RAJ AND TRADITIONAL KHASI INSTITUTIONS: A COMPARISON

Juanita War

Introduction

This paper seeks to compare traditional Khasi institutions of local self-government with the newly introduced Panchayati Raj institutions (PRI's) which came about in 1993 through the Seventy-third Amendment. Concepts of 'Panchayat' 'Panch Parmeshwar' 'Pansheel' however date many centuries back.

The purpose of comparison is to have a better understanding of both types of local self-government and to offer some suggestions.

The concept of self-government right upto the grassroot level is present in most tribal societies of the past. In the Khasi polity too the practice of self-government was well-defined and universal in all the Khasi-Jaintia Hills.

Bareh (1985) distinguishes between the earlier state systems such as Basanship, Doloiship and Lyngdohship, and the later ones such as Syiemship, Wahdadarship and Sirdarship. Historically, the evolution of Syiemship came about when Basans, Lyngdohs and the petty rulers combine to form a confederation of States, i.e., a Syiemship. The Syiemship was nominated and elected by an electoral council comprising the State Officials-Basans, Lyngdohs, Sirdars, Lyngskors, Metabors, etc. as well as elected representatives. Such senior members of ruling clans are collectively known as *Ki Bakbraw* (the great ones).

Though it may not be possible to go into the details of traditional Khasi political organizations, a brief summary is given to indicate the four-tier structures.

- 1) *Ka Dorbar ka Hima Pyllun* (full-state Dorbar) was the supreme authority of the state, and the highest legislative, judicial and executive body. It was convened when the State faces calamities, epidemics or to discuss issues like extra-territorial rights, defence and foreign policies. A Cabinet or Executive Council handled other State subjects like trade, communications, principal markets rivers, forests and day-to-day administration. The Dorbar Hima acted as a supreme court and had judicial functions such as disposal of cases of petitioners and land disputes. *Ki Myntri*, *Basan*, *Lyngdoh*, *Lyngskor*, *Metabar*, were attached to the *Syiem* to carry out their various duties and submit judicial reports to the *Syiem*. *U Syiem Khyinnab* (Deputy *Syiem*) also assisted the *Syiem* in administration, while *Ka Syiem-Sad* helped in the preparation and organization of State rituals. In addition to the Chief and *Ki Bakhrav Ka Dorbar Hima* included representatives of the *Dorbar Raid*, *Dorbar Shnong* and *Dorbar Kur*.
- 2) *Ka Dorbar Raid* or *Ka Dorbar Ki Laiphew Shnong*⁽¹⁾ (Dorbar of the Thirty Villages) co-ordinated the affairs of constituent villages, (not necessarily 30 in numbers, but it included the whole commune or circle). All village headmen were members of a *Dorbar Raid*, with additional representatives whenever necessary. The Dorbar elected the *Rangbah Raid* (Head of the *Raid*) as Chairman and executive head, while members acted as advisors. The Dorbar supervised administration, improvement of markets, roads, collection of common market levies, maintenance of *Raid* lands and allocation of the same to landless people. It also arranged rituals and ceremonies, and sent offerings (such as a goat for sacrifice) at festivals. Village representatives from different localities were at times summoned to the *Syiem's* headquarters to resolve common issues. Once a verdict is given, it cannot be resolved by any other authority.
- 3) *Ka Dorbar ki Kyntoit* or *Ka Dorbar Pyllun* is a small council a group of villages or localities, with more or less the same

functions as the above, with smaller jurisdiction within *ki kyntoit* (literally, 'units').

- 4) *Ka Dorbar Shnong* (Village or Local Dorbar). Being the smallest council of people at the village level, it met more frequently than the above Dorbar. As the *Hima, Raid and Kyntoit dorbars*, it had administrative, financial and judicial functions. In Bareh's words, it gave "directives for day-to-day administration" and functioned as a "court to dispose of cases and inflict penalties upon all wrongdoers". The *Dorbar Shnong* meet at any time of the day, morning (*Ka Dorbar Step*), day (*Ka Dorbar Sngi*) or night (*Ka Dorbar miet*). The *Dorbar Shnong* were formed and established by all resident villagers. It had the highest authority in all matters related to the village. The power and authority of the *Dorbar Shnong* was derived from the customs of autonomy and traditional practice, which had the force of law. As self-governing bodies, the *Dorbar Shnong* can be compared to ancient Greek city-republics "(P.R. Mawthoh, personal communication).
- 5) *Dorbar Kur* (Clan Council) At the lowest range, the *Kur* (Clan) council nonetheless functioned as an organised political unit. Male members of each *Kur* (Clan), *jait* (sub-clan) and sometimes of each *kpob* (lineage) were sent as representatives. The *Rangbah Kur* (Clan headman) was also the *Kni Rangbah* (head uncle) as he was the eldest member of the clan. He served as the president, executive and judicial head, as well as the clan priest. The council looked after the clan lands (*Ri Kur*) and the welfare of all clan members, especially those who were destitute or unfortunate. It also settled disputes between clan members, disciplined the wayward ones, and generally exercised control over all *Kur* members.

The hierarchy of five different councils at different levels of jurisdiction and operation, points to the fact of grass-root democracy practised by the Khasis since ancient times. All democratic norms like election, majority, consensus, accountability, representation and so on, operated at all levels. The five councils were also linked to each other by representations and common agenda, as well as religious observances. The *Kur* (clan) as

CRITICAL ASSESSMENT ON THE WORKING
OF THE KHASI HILLS AUTONOMOUS
DISTRICT COUNCIL IN MEGHALAYA

Erbanoris Jyrwa

In this paper an attempt has been made to study the working of the KHADC in Meghalaya. The paper directly attempt to focus on the working of the KHADC since its existence. The District Council as we were made to understand was an institution which has come to protect and preserve the traditional rights and institutions of the Khasi people, and not to up-root them from their traditional ways and customs. In this respect, therefore, various issues have been highlighted to assess critically how far the KHADC as a transitional institutions have been successful in its working as per provision of the Sixth Schedule to the Constitution of India.

The KHADC had already been in existence for 43 (forty three) years. If we look at its performance during all these years its achievements are far below expectations. Take the case of primary education. The Management and Control of primary education which had been transferred to the District Councils by the Government of Assam on 1st. April, 1962 was taken back by the Government of Meghalaya on 29 February 1984. The causes of failure of the KHADC to manage primary schools was due to the non-payment of the primary school teachers their salary regularly, mis-use and misappropriation of money granted by the State Government, gross neglect of duty by the inspecting staff; deplorable condition of school building, and failure of the Council to provide furniture and even essential goods like chalks dusters, register, etc., led to public discontentment and agitation

by the teachers. The reasons that led to non-payment of the salaries of primary school teachers was due to the non-receipt of grants from the Government of Meghalaya. The State Government refused to release further grants as the District Council failed to submit Utilisation Certificates in respect of certain grants which the government paid to the Council to pay some arrears of salaries to the primary school teachers. The Government ultimately, agreed to release the grants provided the KHADC gave its consent to the opening of a Second Personal Ledger Account in which the money granted by the Government for primary education would be deposited as that it could not be used for any other purpose by the Council. The KHADC rejected the proposal and hence there was a deadlock and complete disruption in the management of primary education. This controversy over the management of primary education led the Government of Meghalaya to appoint a one-man Commission of Enquiry with Justice S.K. Dutta, Former Chief Justice of the Gauhati High Court on 20 December, 1983, to enquire and report about the dislocation and suggest remedial measures. The Commission in its finding had found that the KHADC had misused the money given by the Government which was meant for primary education. On the basis of its findings, the Commission suggested that primary education should be temporarily taken back by the State Government and re-entrusted to the Council after things were set right. But today, the management and control of primary education was handed over formally to the State Government until such time as the KHADC is in a position to take back the same, or such alternative arrangement can be made by either Central or State Government ensuring no dislocation in funding to the Council for management and control of primary education through adequate mandatory constitutional guarantees.

With regards to the legislative performance of the Council in so far as the legislation enacted by the KHADC, is concerned, it is found that it has covered nearly all the social and personal aspects of tribal life but in implementing the same the performance was not a happy one. The District Council could not effectively implement its various Acts, laws, rules and regulations passed by the KHADC as empowered in the Sixth Schedule. Take the case of the management and control of forest, and

restricting the illegal felling of trees the Council could not properly implemented and wanton destruction of forest continue. However, the KHADC in its implementation of the provision of the Act, met with conflict most of the time. For example, the contractors had, from time to time asked for special permission from the Council to remove the under size timber claiming that the unmatured trees were felled down by the natural impact of the matured trees in the process of the latter being felled. The result was that the removal of under size timbers was carried on as usual. This is possible because the District Council does not have adequate strength of staff for carrying out the various provisions of the marking rules and absence of patrolling staff with adequate facilities for mobility. This practice has led to certain charges of corruption dealings between the contractors and the authorities of the check gates.

As regards the rights of non-tribal traders to carry on trade, it may be pointed out here that right from the inception of the Regulation and over the years, a number of trading licenses have been issued by the District Council, which at time had crossed the 50 marks. From time to time there had been cases where license holders had not approached for renewal of their licenses. Cases are also very much there where license holders have applied late for renewal. Such cases, among many others, have rendered the Council incapable of determining the exact number of existing trading licenses in circulation. Although, the Regulation has been in force since 1954, the KHADC has not strictly followed the letter and spirit of the Regulation and the purpose meant for its adoption. It can be said that there has been a lot of irregularities in the issuing of trading licenses. To cite an example, in Khasi Hills District in 1986-87, 1,452 non-tribal traders were carrying on trade without valid trading licenses from the KHADC and later on, these were detected by the enforcement staff of the Council. There were charges that the existence of shops without valid trading licenses was because of the corrupt practice perpetrated by the KHADC in the issue of trading licenses.

According to the Commission report headed by the retired Chief Justice, Gauhati High Court, S.K. Dutta, on the autonomous districts administration in Meghalaya has said that,

CHAPTER 9

THE KHASI HILLS AUTONOMOUS DISTRICT COUNCIL AND THE 73RD CONSTITUTION AMENDMENT

Pascal Malngiang

The need for the creation of the Autonomous District councils for the Hill areas of the North Eastern Region was found to be necessary by the Constituent Assembly, when the Report of the Sub-Committee on the North East Frontier (Assam) Tribal and Excluded areas was presented. The spirit behind the creation of the District Council was, as pointed out by B.P.Chaliha, "to preserve all the good things in the customary laws" of the hills.¹ However, more than the mere preservation of the tribal genius and customary laws, it was meant to nurture and encourage the spirit of local self-government. It was with this in mind that important subjects which normally fall within the purview of the local self-governing institutions in the plains were placed within the ambit of the Sixth Schedule to the Constitution of India.

Commenting on the term Autonomous District Councils, Justice M. Hidayatullah observed that "the word Autonomous means the power or right of self government".² Therefore, the very name of this institution suggests that it is a unit of self-government. More than being an urban unit of self-government, the District Councils were meant to be more rural oriented. This is reflected in the exclusion of the Shillong Municipality from its jurisdiction.

The Khasi Hills Autonomous District Council which was inaugurated on 27th June 1952 was later on bifurcated on 1st December 1964 when the new autonomous district council called the Jowai District Council and latter on renamed as the Jaintia

Autonomous District Council was created. By 1991, the Khasi Hills Autonomous District Council was spread over 2,187 villages having about 1,63,142 households. However, this statistical account is not accurate since the number of villages and households under the Ranikor Block were not available.³ To represent so many villages, there are thirty members in the KHADC of which one is nominated by the Governor. Therefore, one member represents about 75.4 villages. The KHADC then has become a state in matters of representation.

From time to time, the KHADC along with the Jaintia and Garo Hills Autonomous District Councils have expressed their desire for favouring a Panchayat status for themselves.⁴ However, the main desire and thrust for achieving such a status was motivated not by the principles of devolution of powers to the other grassroot and traditional institutions, but to merit direct funding as applicable to the Panchayats according to the provisions of the 73rd Amendment. It may be recalled here that the States of Nagaland, Meghalaya and Mizoram were left out from the purview of Part IX of the Constitution under article 243(M)(2). To this effect, the Chief Executive Members of all the three District Councils met the Chairman of the Tenth Finance Commission, Mr. K.C. Pant at Shillong seeking direct funding for the Councils. Pant however opined that the issue of providing direct funding to the Autonomous District Councils in the Sixth Scheduled areas have to be considered separately since they do not come within the purview of the 73rd Amendment.⁵ The former Governor of Meghalaya too, Mr. Madhukar Dighe while commenting on this subject was of the opinion that the case of direct funding of the Autonomous District Councils as was being done for the Panchayats was a weak one, since, the administrative set up and the overhead charges in the councils were too high. Most of the money in these Councils would hardly be used for development purposes.⁶ The purpose for seeking an award to the Autonomous District Councils the Panchayat status was then not to implement the spirit as outlined in the 73rd Amendment but to square up their financial stress and strains.

To elaborate this point we find that the Khasi Hills Autonomous District Council in its 53 years of existence have not given any statutory authority to the traditional institutions particularly the *Durbar Shnong* (village durbars) which are the

grassroot level of democracy and which are present in these hills from very ancient times. From 1952, the KHADC has passed a number of Acts which include among others: (1) The United Khasi and Jaintia Hills Autonomous District Transfer of Land Act, 1953 which was struck down by the Supreme Court in the *Sitimon Sawian vrs. the United Khasi and Jaintia Hills Autonomous District Council*.⁷ (2) The United Khasi and Jaintia Hills Autonomous District Management and Control of Markets Act, 1953. (3) The United Khasi and Jaintia Hills District Fisheries Act, 1954. (4) The United Khasi and Jaintia Hills Autonomous District (Christian Marriage), Act 1954. (5) The United Khasi and Jaintia Hills Autonomous District Council (Prevention of Epidemic Diseases), Act 1954. (6) The United Khasi and Jaintia Hills Autonomous District (Election of Wahadadar) Act, 1955. (7) The United Khasi and Jaintia Hills Autonomous District Council Divorce Act, 1955. (8) The United Khasi and Jaintia Hills Autonomous (Elections from the 23 clans of Raid San Shnong, Myllem Syiemship) Act, 1957. (9) The United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958. (10) The United Khasi and Jaintia Hills Autonomous District (Appointment and succession of Chiefs and Headmen) Act, 1959. (11) The United Khasi and Jaintia Hills Autonomous District (Establishment of Town Committees) Act 1960. And (12) The United Khasi and Jaintia Hills Autonomous District (Election of Dwara Nongtyrnem) Act, 1970.⁸ Besides these, there are a number of Regulations, Rules and Amendments passed from time to time.

From the list given above, it can be seen that the KHADC has passed only one Act dealing with providing some kind of a statutory authority to Town committees though actually there are no such committees today within its jurisdiction. Apart from this it has legislated on matters of election and succession of the chiefs and headmen while nothing has been done to establish village councils as envisaged under paragraph 3(1)(e). Commenting on this point, it was observed in the *Meghalaya District Gazeteers Khasi Hills District* that "there are at present no Village Councils as contemplated under para 4(4)(a) of the Sixth Schedule, in the Khasi Hills District Council areas. There have always been, however, the *dorbar shnong* or village durbars which customarily exercise all such functions as would contribute to the general well being of a village".⁹

CHAPTER 11

A CRITICAL ASSESSMENT OF THE ROLE AND FUNCTIONS OF THE JAINTIA HILLS AUTONOMOUS DISTRICT COUNCIL

Dr. L.S. Gassab

Unlike the Khasis, the Jaintias were all grouped together under one single kingdom in the past. The whole of the old Jaintia Kingdom, both hills and plains were therefore administered centrally by its *Syiem*s or *Rajas* who supervised the administration of the land one after the other until 1835 A.D., when the Jaintia Hills administration was taken over by the British on 15th March 1835. The last Jaintia King was granted a pension of Rs. 500 a month by the British and asked to retire to the British district of Sylhet until his death in 1861.

Soon after the British took over the administration of the Jaintia Hills, they immediately abolished the office of the *Syiem*, though at the same time they retained the other traditional institutions, those of the offices of *Doloi*, *Pator* and *Wahab Chnong* or Village Headman. Thus the three-tier (*Syiem-Doloi, Pator-Wahab Chnong*) system of administration which was in existence during the pre-British period was reduced basically to a two-tier (*Doloi/Pator-Wahab Chnong*) system only. Initially, the British did not want to immediately interfere in the local traditional administration of the Jaintia people and thus they adopted a non-interference policy. Subsequently, the British with their far-sightedness, soon realised that such a policy will not help in serving their interests in the area and thus plunged themselves into a forward policy by getting themselves totally involved in the administration of Jaintia Hills.

Under the British administration, the whole of Jaintia Hills along with a few other villages in Khasi Hills were administratively grouped together under one common system of administration by treating them as "British Areas". It must be borne in mind that in Khasi Hills besides the British Areas, there were also the Khasi States, which were given the Semi-independent and dependent status by the British. The British Areas were however administered directly by the British authorities, while the Khasi States were granted internal autonomy subject to general control of the British government.

From the point of view of administrative structure, the Khasi States and the British Areas were treated differently by the British authorities. This different treatment and imposition of administration under two distinct types by the colonial rulers over the people who otherwise have many things in common, had created some sort of disguised or unconscious division of the people into two different groups. We should not lose sight that this conscious division of the people by the colonial rulers helped in sowing the seed of feeling to maintain one's own separate ethnic identity against the background based on administrative framework. Even though the Khasis and Jaintias have many things in common, where sometimes it is difficult to differentiate between the two, the then administrative framework was designed as such that the two are completely separated from one another. The Colonial policy of 'Divide and Rule' could be seen even at this juncture.

After independence, the Khasis and Jaintias were constituted under one common administrative unit when the two areas were administered under one 'united' district, namely, the United Khasi-Jaintia Hills District and also under one 'united' Autonomous District Council. However, the Jaintias as stated earlier had their own Kings and other traditional Chiefs since long and even when their areas were annexed by the British, they had been placed under separate administrative arrangement. Thus the inhabitants of the Jaintia Hills continued under a separate administration and because of this, acquired a certain insularity in relation to the inhabitants of the Khasi States. It is in this context that the "administrative aspect" assumes a special importance and becomes as it were the crux of the whole problem.

A sense of separate identity has always been felt by the smaller ethnic group, the Jaintias, who are the closest cousins of the Khasis. This 'separatist element' would not have been possible had it not been for the fact that political consciousness and political leadership had deeply rooted in the British Areas due to emergence of the political stalwarts to provide frontline leadership both in Khasi and Jaintia Hills. It was these political leaders from the British Areas who first aroused public and political consciousness and carried the torch of the need to maintain identity in order to exploit more gains on the basis of separate administrative adjustment and restructuring of the process of administration.

The movement for the creation of a separate autonomous District Council for the then Jowai Subdivision can be traced as far back as during the time when the Bordoloi Sub-Committee was considering the future administrative set-up of the hill areas. During that time the movement for a separate District Council was led by the late Mr. S. Bareh. However, the leaders of the movement were persuaded by the late Rev. J.J.M. Nichols-Roy, a member of the Bordoloi Sub-Committee, to agree to a single or United District Council for the entire Khasi and Jaintia Hills, assuring them that there would be a uniform administration under the new United District Council.

As a consequence, the U K-J Hills Autonomous District Council was established in 1952. After a few years, the leaders of the Jaintia Hills felt that no progress was being made in the direction of a uniform administration throughout the District by the District Council. Accordingly, a persistent agitation started and continued since 1957 for a separate District Council for the then Jowai Sub-division.

On 1st November, 1957, a memorandum was submitted to the late Shri Gobind Ballabh Pant, the then Union Home Minister, during his visit to Shillong by the representatives of the District Council and others from the Jowai Subdivision on various grounds asking for a separate District Council. They considered that they can better manage their own affairs in all respects if a separate District Council is granted. They also believed that the existing dissensions have hampered the smooth working of the District Council administration. Added to this, the over-all majority of Members of the District Council (MDCs)

from Khasi Hills (then being 18 from Khasi Hills against 6 from the Jowai Subdivision) made it impossible for the Jaintias to protect their own interests. An important issue was also raised that 'failing to create a separate District Council for the Jowai Subdivision, they expressed the desire that this Subdivision be Centrally administered'.

Subsequently another memorandum was submitted to the Prime Minister of India on 30th December 1957, during his visit to Shillong by the same signatories and others and on the same lines taken their memorandum to the Union Home Minister. On 8th July 1961, another petition was submitted by Dr. B.K. Tariang, Secretary of the Jaintia Durbar, on behalf of the Jaintia Durbar, to the Governor of Assam, through the Chief Minister, Shillong, "for immediate creation of a separate District Council for the Jaintia Hills".

In the fitness of things, it is worthwhile to analyse few of the pertinent issues that had been raised and demanded by the movement leaders as they appeared in those different memoranda submitted from time to time by the representatives of the U K-J Hills Autonomous District Council from Jaintia Hills and others as to the need for administrative re-structuring and the creation of a separate District Council for Jaintia Hills in order to help them maintain their ethnic identity as well as safeguard their interests. These various memoranda unfolded many things and speak volumes as to why such a need arose.

In the memoranda submitted in 1957 by the representatives of the District Council and others from Jowai Subdivision to the then Union Home Minister, Pt. G.B. Pant, an issue was raised with regard to the expectation of the people of Jaintia Hills of an equal treatment to both the Shillong and Jowai Subdivisions. But it was found that during the first five years, since 1952, the functions of the U K-J Hills Autonomous District Council made 'no serious attempts to bring about the uniformity of administration in the two Subdivisions'. There were many reasons responsible for this unequal treatment. Those that are of administrative nature were like the differences in the form of administration between the Doloiships and Syiemships in Jaintia Hills and Khasi Hills respectively. The 'United' District Council for Khasi and Jaintia Hills did not maintain any equal or uniform treatment to both. The memorandum made it very clear that

CHAPTER 13

CRITICAL ASSESSMENT OF THE GARO HILLS AUTONOMOUS DISTRICT COUNCIL

Kshirode Marak

BACKGROUND

The Garo Hills Autonomous District Council was born with an eventful history which may be traced to a period covering from the middle of the 18th century to the Republic Day of India, the 26th January, 1950 when the Constitution of India was handed down to the people. The period prior to the enactment of Regulation X of 1822 was marked by the despotic rule of the powerful Zamindars in the submountain areas of Garo Hills. Prominent of those were of the estates of Susang Durgapur and Sherpur of Mymensingh now in Bangladesh and Mechapara, Aurangabad, Kalumalupara, Ghura, Karaibari, Sidli, and Bijni in old Goalpara of Assam. Slowly and steadily they were expanding their estates into the territories inhabited by the Garos, called after their name, "Garo Hills" and exacting revenues, cesses and tributes from them when they came to the hills established by the Zamindars at the foothills and the Duars for the trading. They were harassed and insulted by taking advantage of their ignorance. The Garos lived an independent life in the mountain following their own customs and practices. They were head hunters. The number of heads hunted accounted for the chivalry, honour and prestige for a Garo Warrior. Such being the case, they could hardly tolerate the harassment and insults meted out to them. They refused to pay tributes and cesses. Very often, they swooped down ferociously on the Zamindary

villages for raids and head hunting creating a blood-curling and hair-raising stories of the house-holds in the plains.

The richness of the north eastern region was attracted by the East India Company which wanted to establish a trade connections and also expand the British Rule in the Regions. With this end in view, Robert Clive obtained the grant of "Dewany of Bengal" for the East India Company on the 12th of August, 1765 from the Mughal Emperor, Shah Alam II for "Superintendence of all laws and collection of all revenues" in the Presidency of Bengal extending to the north eastern region. To strengthen the revenue administration, Lord Cornwallis struck a deal with the Zamindars in 1793, called "Accord of Permanent Settlement of Land" which made them more powerful. As the internal feuds among the Zamindars growing and the anarchy arising out of the frequent murderous raids on the plains perpetrated by the Garos, the Governor General-in-Council deputed David Scott, Magistrate of Ranpur to inquire into the happening of unrest in the region and submit report. David Scott after making extensive tour as far as practicable in Garo areas contacting a number of "Nokmas", the Garo Chiefs, submitted his report in August, 1816 recommending for detaching the tracts inhabited by the Garos from the control of Zamindars and introducing a separate set of administration for the Garos. On the basis of his recommendation, a regulation called, "Regulation X of 1822" was enacted by the General-in-Council which removed the control of Zamindars over the Garos and the Garo hills were placed under the Control of Chief Commissionership of North-East Rangpur along with the three thanas of Goalpara, Dhubri and Karaibari where a new system of administration known as Non-Regulated System was introduced as these tracts were exempted from the operation of the General Regulation XLI of 1793. Under the Regulation X of 1822, the administration of Civil and Criminal justice, Police, Collection of all revenues etc. were entrusted to the commissioner who was to adopt a simple procedure according to his personal judgement. David Scott was appointed first commissioner for these tracts. For the convenience of administration, Garo Hills were attached to the Commissionership of Cooch Behar in 1867. For administrative reason, Garo Hills were formed into a district in 1869 by an Act called, "The Garo Hills Act, 1869" which removed Garo Hills from the operation of General

Regulations and Acts, and provided for appointment of officers who were vested with powers to administer civil and criminal justice, settlement of land and realisation of public revenue and all other matters relating to rent within the said district subject to the direct control and guidance of the Lieutenant Governor. The said Act had also empowered the Lieutenant Governor to extend all or any of the provisions of this Act, *mutatis mutandis*, to Jaintia Hills, Naga Hills and the British portion of Khasi Hills. This Act is a very significant instrument as it laid down the foundation stone of the destiny of Garo Hills and also for building up an edifice for a separate system of administration for peace and good government in the hill tracts of the north-eastern region in the later years. The Garo Hills District was transferred to Assam when it was made a province on February 6, 1874 under a Chief Commissioner and at the same time was notified as Scheduled District, along with others under the Scheduled Districts Act, 1874. Subsequently, the term "Scheduled Districts" was replaced by the term "Backward Districts" under section 52(A)(2) of the Government of India Act, 1919. For carrying out an administrative reform, an Act called, "Government of India Act, 1935" was passed by which the term "Backward Districts" was replaced by the term "Excluded and partially Excluded Areas" and the Backward Districts and the tracts were to be identified and placed under the "Excluded Areas" and the "Partially Excluded Areas" as the case might be according to the level of development. The Garo Hills District, along with the Mikir Hills (in Nowgong and Sibsagar district), the British portion of the Khasi Hills and Jaintia Hills Districts other than the Shillong Municipality and Cantonment, was notified as "Partially Excluded Areas" under the Order called, "The Government of India (Excluded and partially Excluded Areas) Order, 1936". Under this Order, the aforesaid districts were to be administered directly by the Governor of Assam according to his discretion. The Central and the State Laws were not made applicable to these areas but the Governor could notify the application on such laws, *mutatis mutandis*, if found necessary for "peace and good government". Though one Minister of the elected Government was made in-charge of these areas yet the Governor could override his advice and administer according to his individual judgement.

It was the express desire of the Indian leaders that a separate system of administration should be introduced in the North-East Frontier (Assam) Tribal and Excluded Areas to meet the aspiration of the hills people after the achievement of Independence. With this end in view, one Sub-Committee under the chairmanship of Shri Gopinath Bordoloi, then premier of Assam, was constituted on February 27, 1947 to study and report on the politico-socio-economic life of the hill tribes of the North-East of India. The members of the Sub-Committee were Rev. J.J.M. Nichols Roy, Shri Rup Nath Brahma, Shri A.V. Thakkar and Shri Mayang Nokcha who was later replaced by Shri Aliba Impti. The Sub-Committee submitted its report to Shri Ballabhai Patel, Chairman of the advisory Committee on Fundamental Rights, Minorities, Tribal and Excluded Areas on July 28, 1947. The report contained the various aspects of the administration of the tribal areas such as, management of land, forest, Courts, jhuming, control of immigration, mines, legislation, representation, services etc. After discussing the report on December 7, 1947 and February 24, 1948, the Chairman, Advisory Committee forwarded the same with recommendation to the President of the Constituent Assembly, Dr. Rajendra Prasad on March 4, 1948. Considering all aspects of the recommendation, Dr. B.R. Ambedkar, President of the Drafting Committee of the Constitution of India finalised the Draft Sixth Schedule which was discussed by the Constituent Assembly on 6th, 7th and 8th September, 1949 and adopted it as part of the constitution of India on November 26, 1949. The people of Garo Hills joined hands with the rest of the country in celebrating the Republic Day of India in January, 26, 1950 in joy and gait with the full hope of getting autonomy under the Sixth Schedule to the Constitution of India in a very short time.

Present Garo Hills

Lying in between 25°9' and 26°1' North and 89°49' and 91°2' East respectively, the composite district of Garo Hills with the Head quarters at Tura occupies the westernmost part of Meghalaya covering an area of 8,160.86 Sq. Km. bounded on the north by the district of Goalpara of Assam, on the west by the district of Dhubri of Assam, on the east by the Khasi Hills and the south

CHAPTER 14

CULTURAL IDENTITY IN THE GLOBAL VILLAGE

D. Bandopadhyay

If you have come to help me
You are wasting your time
But if you have come because your
liberation is bound up with mine,
Then let us work together.

Lilla Watson

An Australian Aboriginal Woman

* **Willing Suspension of Chauvinism for Group Formation**

- Long term economic and political gain
- Avoidance of armed conflict within the group
- Greater bargaining power with others outside the group
- Cultural Identity not threatened
- In EC a Frenchman remains a Frenchman, a German a German and so on
- They all take something from one another and contribute to common European culture
- Enrichment of separate culture through cross fertilisation

* **Globalisation — Universal Phenomenon Now**

- Informatics explosion
- Single dominant economic system
- Inexorable pressure for breaking down all impediments to free flow of finance, capital, finished goods Expansion of market
- Big countries forming regional groups e.g. NAFTA, EC, ASEAN, East Asia-Pacific Rim etc.

— Isolation impossible, it means marginalisation

India: A conglomerate of Various Sub-cultures

India achieved long ago what Europe is trying to do now
Indian culture subsumes all subcultures without submerging
them

Each subculture thrives under the protective ambience of
the Indian culture

Mahatma Gandhi: Free Flow of All Cultures

I do not want my house to be walled on all
sides and my windows to be stuffed.

I want the cultures of all the lands to be
blown about my house as freely as possible.

But I refuse to be blown off my feet by any of them.

73rd Amendment and the States of Nagaland, Meghalaya and Mizoram

*** Article 243M Part IX (73rd Amendment) shall not apply to the States of Nagaland, Meghalaya and Mizoram**

— However, Legislatures of these State may by law, extend
this part to these States excluding the Scheduled areas,
if any.

*** This part (73rd Amendment) will not apply to areas un- der Fifth and Sixth Schedules**

— However, Parliament may by law extend this part to
areas under Fifth & Sixth Schedule with modifications
and exceptions

*** Sixth Schedule: Autonomous District Councils: Positive Points:**

- legislative Powers
- Administration of Justice
- Executive Powers including some regulatory authority
- Right to levy taxes and to share royalties of minerals

*** Sixth Schedule: ADC: Negative Points:**

- Sixth Schedule focuses entirely on the district tier
- No democratic tiers below the district level

- Dissolution of ADC is not accompanied by mandatory reconstitution
- No provision for holding elections within six months after dissolution as in Part IX :
- All receipts/moneys of ADC go to Consolidated Fund of the State
- Total dependence on the State for funds
- Lack of financial autonomy takes away the autonomous character of ADC
- "No real autonomy has been conferred"
Report of the Bhuria Committee (1995)

* **73rd Amendment Part IX**

- Introduces "Institutions of Self Government" (Panchayats) at district, block, village levels
- Provides for regularity of elections
- Ensures fairness of election through State Election Commission
- Gives substantial financial powers
 - ** Right to levy, collect and appropriate taxes, duties, tolls, and fees
 - ** Assignment by the State Government of such taxes, duties, tolls and fee as are levied and collected by the State Government
 - ** Provides for mandatory setting up of State Finance Commission for proper devolution of financial resources
 - ** Ensures additionality to the Consolidated Fund of a State to supplement the resources of Panchayats by the Central Finance Commission (Art. 243-O (3))
 - ** Tribal areas can get additional benefit from transfer of resources from the Consolidated Fund of India under the first provision to Art.275 (1) meant specifically for promotion of welfare and administration of Scheduled area
 - ** Moneys will be credited to Consolidated Funds of Panchayats at different tiers
- Mandates Panchayats to prepare plans for economic development and social justice
- Provides for devolution of 29 subjects to Panchayats.