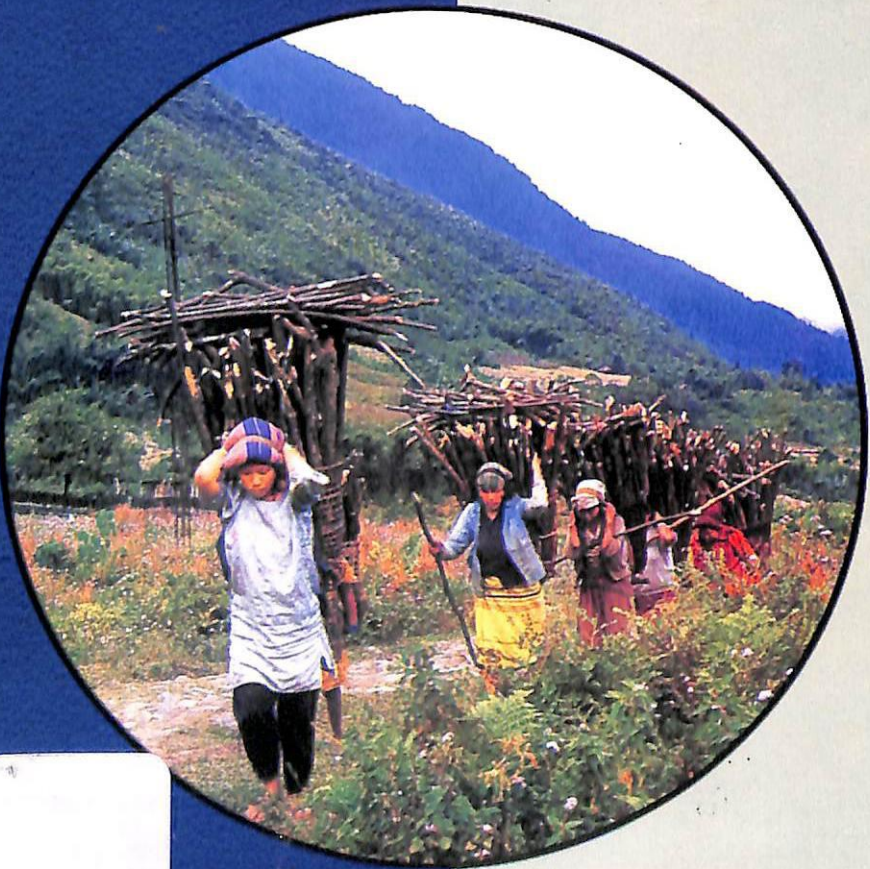


FUNCTIONING OF AUTONOMOUS DISTRICT COUNCILS IN MEGHALAYA



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Sujit Kumar Dutta

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Preface

Functioning of Autonomous District Council in Meghalaya is the burning question of the day. However, any person who wants to understand the problem by asking the functionaries of District Councils of Meghalaya about its status may get a very rosy picture. From the available detailed-recorded account of the functioning of District Councils one might have an idea that District Council has been functioning as well as any other existing local government in the country. But this seems to me paradoxical as the empirical findings show that the existing District Council in Meghalaya is not at all fulfilling the local needs; rather it seems to have been created to fulfil the interest of a few affluent people and not for the welfare or benefit of the mass as pointed out by a good number of traditional Khasi Chiefs. In fact it is an institution which has created more factional conflicts and cleavages within the Khasi Society today. Hence, the creation of District Council is a controversial issue in Meghalaya. Much analysis is done and presented in the text. The study presents numerous recommendations and suggestions to make District Council a true representative local government by resolving the disputes and conflicts with the grass root level institutions and discontentment of the true functionaries at the grass root level.

The author is indebted to those chiefs who gave the true information and unveiled the truth. He is also indebted to Dr. B.K. Thapliyal, Director, NIRD-NERC for his

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Last but not the least the author is grateful to Mr. I.K. Bania, who took the trouble to check the entire write-up, Mr B.S. Dobal who helped me in sketching the map of the Khasi States and Non - States and Mr A.Rahman for taking pains in typing the often difficult manuscripts.

NIRD-NERC, Guwahati

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Dy. Director

1

Introduction

Survival of the traditional institutions of Khasi Hills of Meghalaya is the question of the day. The struggle is more to prove the strength through fraudulent method on one hand while on the other a section of Khasi elites are desperately trying to crucify the traditional institutions in the name of so called reforms and progress. This is the general remark of most of the Khasi States Chiefs. However, it has become imperative to understand the discontentment of these Chiefs first rather than to understand the local government's functional role. The District Council today stands on a plank with the support of the Sixth Schedule of the Constitution. The drafting committee of the Constitution also comprised persons like Rev. Nicholas Roy, Rup Nath Brahma, Kuladhar Chaliha and Rohini Kumar Choudhury who were also closely associated with the Bordoloi Committee. The master of making the draft of the Sixth Schedule was late G.N. Bordoloi. Bordoloi Committee's recommendations however, did not say anything about the future status and position of 25 Khasis States except advocating the Sixth Schedule. Hence, the Chiefs of the Khasi States felt ignored. In fact immediately after the independence, the necessity of enlarging the content of the accession of the Khasi States was more acutely felt by the Ministry of States. The then Governor of Assam and the Agent to the Dominion of India including his assistant had to utilise all their diplomatic resources to convince the standing committee of the Federation of Khasi States¹ to enlarge the scope of the Instrument of

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Accession. The rulers of the Khasi states ultimately agreed to sign a new Instrument of Accession along with the Annexed Agreement. It was on December 15, 1947, that nineteen² out of the twenty-five rulers signed the Instrument of Accession. The other six states, however, expressed their inability to sign the same without the consent of their state *Darbars*. The main reason for not signing the merger agreement initially was that the rulers of the Khasi states were not Zamindars as they were not owners of the land. They were merely elected heads but cannot claim any right of control over the land (Lyngdoh, 1996:25). It is interesting to note that both the Khasi hills and the Jaintia hills land never belong to the Chiefs, *Syiem* or *Rajas*. Naturally the Jaintia *Raja* could not impose any tax on the land of the *pnars*, and the *Syiems* or other heads can not levy taxes on the Khasi people for the use of the land (Pugh, n.d :32). These six states ultimately could not escape but had to sign the Instrument of Accession due to the persistent negotiation from the Dominion Agent and his party.

By this instrument, the Chiefs acceded to India. Accordingly all existing administrative arrangements were made. The position continued till the institution came into force; the Chiefs lost whatever administrative power they had by the merger of these 25 states in Assam and the governance of these states began to be carried on henceforth according to the provisions of the Sixth Schedule.(Cajee, 1960) Naturally, the Khasi States did not get a place in the purview of the Sixth Schedule. Even the drafting committee did not consult Dr. G.S. Guha who was the representative of the Khasi in the Constituent Assembly. As a result the Khasi States with long persuasions with the Ministry of States came with an agreement that the future position of the Khasi States should be decided by the Khasi States themselves in close association with the Dominion Agent. The Dominion Agent demanded a constitution-making *Darbar* of the Khasi States consisting of all the heads of the Khasi States and other members elected by the people. *Darbar*

was also to have power to nominate some members. The Dominion Agent framed rules for the election.

The first election to the constitution-making *Darbar* of the Khasi States was held during December 1948. This *Darbar* consisted of 89 members – 25 heads of the States, 56 elected and 8 nominated members. It was inaugurated by the then Governor of Assam who thanked the rulers of the Khasi States for having signed the Instrument of Accession and Standstill Agreement. He also indicated the possibility of including the Khasi States within the purview of the Sixth Schedule of the Draft Constitution.

The second session of the *Darbar* was held on May 16, 1949, where Dr. H. Lyngdoh and Prof. R.R. Thomas were elected as Chairman and Vice-Chairman of the *Darbar*. Jor Manik Syiem, the Secretary of the Federation of the Khasi States was elected secretary of this *Darbar*.

Meanwhile A. Alley, member of The Draft Constitution Committee of The Sixth Schedule initially intended to move the resolution before the Assam Government to allot at least 5 seats for the District of Khasi and Jaintia Hills including the Khasi States and one more seat for the Town of Shillong in the Assam Legislative Assembly and also to take steps to prepare electoral rolls for the people in the Khasi States. A Alley ultimately did not move the resolution as he felt that the resolution prepared by Rev. Nichols Roy was according to him, a better one.

The main issue that came up for discussion in the 3rd session of the Khasi States Constitution-Making *Darbar* was to introduce a united administration for the State and non-State Areas of Khasi and Jaintia Hills as advocated by Nichols Roy in view of the fact that the people of the district belonged to the same Khasi race.

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In fact they wanted to establish a separate status quo on one hand and to bind the society together with traditional values on the other. Properties were undivided and maintained by the community or individual, and the traditional heads such as *Syiem, Lyngdoh, Sirdar or Wahadadar* were the custodian of these lands and property of those people who live under this jurisdiction. These bodies are apolitical, but for survival they formed Federation of Khasi States and the non-states, which was established in 1933.

Now the question arises whether this plank (based on Sixth Schedule) is a sufficient condition to sustain those traditional institutions or not? Thinkers, administrators, scholars have diverse opinions regarding the provision of Autonomous District Councils in the Constitution. Some of their views are:

Kuladhar Chaliha, Rajeswar Prasad and Rohini Kumar Choudhury gave opinion against the formation of Autonomous District Councils. Mr. Chaliha feels that "we still have British Mentality – a separatist tendency to keep them (the tribals) away. In future it will be a Tribalstan, just like Pakistan". Rajeswar Prasad opined that they would lead to the establishment of another Pakistan in this country. He is a staunch believer of Unitary State. But Rohini Kumar Choudhury is a staunch protagonist of the policy of assimilation. Hence, he advocates the assimilation of Tribal and Non-Tribal (Constitution Assembly Debate, n.d:1008).

However, Nichols Ray, Gopinath Bordoloi, Lakshminarayan Sahu, A.V. Thakkar and Jaipal Singh supported the formation of District Councils and therefore supported the spirit of the Sixth Schedule. The only argument these people have is that the hill people will not only be safeguarded by this Sixth Schedule, but it will satisfy hill people in many ways and they will be able to come closer to the rest of the country.

In fact those who are in favour of the of assimilation want to assimilate the tribal people by force. Naturally they hold an imperialist attitude and suffer from superiority complex. They failed to see the distinction between integration and assimilation. In fact assimilation involves total loss of cultural identity of the group as a result of its complete absorption into the dominant group. Instead of assimilation, integration must be encouraged.

However, the arguments advanced by Dr. B.R. Ambedkar were so realistic that the Constituent Assembly understood the full justification for the creation of the District Councils (*Ibid*).

The age-old rivalry between the traditional institutions (Khasi States and non-states) and the Autonomous District Council created under the Sixth Schedule is well known. Even today it is eluding a solution. At times distrust attitudes among them lead to conflict. In such circumstances the autonomy of the tribal institutions is jeopardised and the struggle sustained. This is the turmoil within the Khasi society and their institutions today. Most of the Chiefs feel that they are now under the control of District Councils. By enquiry it has been found that all the Chiefs are now under the jurisdiction of District Councils. The District Councils under the Act of 1959 wholly regulate the succession and appointment of Chiefs and headmen (Appointment of Succession of Chief Act). The Supreme Court of India observed in 1960 that *Syiem* was a functionary under the District Council. All the Chiefs were now presiding officers of the Additional Subordinate District Council Courts. But their decisions are subject to appellate jurisdiction of the Subordinate District Council Court at Shillong. As regards financial matters, the Chiefs pay one-eighth of the total income to the District Council. The Council has also certain control over the budget of the Chiefs. Overall it has been found that the Chiefs are today under hard pressure in many ways; even their status has become subordinate. In such a situation

many of them have become aggressive and are preparing for a revolt.

Forty-seven years have passed since the time when the autonomous district councils were established under the framework of the Sixth Schedule of the Constitution, but no sincere attempts have so far been made to have a full-ranged in-depth study of the traditional institutions. Many legislations have been enacted, but instead of improving them, these legislations seem to have come into direct confrontation with the well-established customary laws and practices which are attached to the existing traditional institutions. At present these institutions are in need of a positive dynamic leadership which possesses a sense of balance and proportion coupled with a sense of direction. It is easy to destroy whatever they have in their possession rather than to preserve the best and to make progressive improvement upon them; it is just impossible to re-build and reconstruct any good thing, which they have destroyed. The need of the hour, they feel, is wisdom and political sagacity to pave the way for the future generations. This is what some very aggrieved chiefs of the Khasi States have felt.

In spite of all these the traditional Khasi political structure still prevails in Meghalaya, though with the advent of the British rule and the promulgation of the Constitution of India later it has undergone modification to a certain extent. But District Councils have weakened the function of tribal courts in Meghalaya so much so that the Khasi states have virtually come under the domination of the state officials as well as the District Councils. Naturally the Khasi states have come to occupy the subordinate position.

The basic differences between the British administration and the Independent India in dealing with the Khasis are:

- i. While dealing with the Khasis the British administration did not interfere in the tribal customs and laws. The

judicial powers of the *Syiem* and traditional political authority were curtailed only to a limited extent. As against this the establishment of District Council court after independence has eroded the Chief's judicial powers to a considerable extent.

- ii. The overall impact of the British rule was that although the *Syiem* and his *Myntries* and other officials remained in their offices, they were divested of their real power which was then vested in the Deputy Commissioner. At present the authority structure is organised at the level of District Council, Deputy Commissioner (only in certain Khasi area of the city) and finally the High Court.

However, the *Syiem* as the chief of the tribe, is always respected. He still receives different forms of tributes from his people. Despite the erosion of his powers and rights, he still plays a vital role in the administrative affairs of the tribe. He supervises the conduct of his subordinate authorities at the *raid* and village level. If a village headman or a commune headman is found incompetent and charged with abusing his powers, the *Syiem* can order fresh elections in order to replace him. He still protects the rights of the people, administers justice and punishes the culprits. After the formation of District Councils all *Syiem*s have been given the powers of Additional Magistrates in their respective *Syiemships*. Accordingly they are empowered to try civil and criminal cases except murder case.

The present study focuses mainly on this aspect as stated. The approach taken to study the different institutions existing within these communities is very systematic and new. The study would find out the reasons behind their problems of existence and non-sustenance as an institution of self-government. Finally it will try to know why these institutions are not taken into confidence so as to involve them in the development work of the state, which is a debatable and controversial issue of the day.

2

The Existence and Functioning of ADC in Meghalaya

The existence of Autonomous District Council was obviously not the choice of Khasi people in Meghalaya. In fact it was at the cabinet mission's advice that the Constituent Assembly of India set up an advisory committee on January 24, 1947 regarding the formation of Autonomous District Councils. The committee later on constituted two sub-committees on February 27, 1947, namely the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee; and the other is known as the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee. Sri Gopinath Bordoloi was the Chairman of the North - East Frontier (Assam) Tribal and Excluded Areas Sub-Committee; so it is known as Bordoloi Committee. This Committee studied the administrative set-up carefully in the hill areas including Khasi hills with a view to building up an autonomous body in the administration of the hills so that the tribal people could continue to follow their traditional life. The Bordoloi Committee recommended the setting up of the administration of tribal areas, based on the concept of regional autonomy in all matters affecting their customs, laws of inheritance as well as administration of justice, land, forest etc. The sub-committee's report was submitted on July 28, 1947.

The Constituent Assembly accepted the recommendations of Bordoloi Committee and incorporated them in the Sixth

Schedule (Dutta, 1998:58). By the Act 1935, the Tribal Areas in Assam were kept as 'Excluded Areas' in the Constitution of India, 1950, and provision was made for the constitution of Autonomous District councils⁴. This was done in such a way that the tribal people could be in a position to enjoy some rights of self-government for socio-economic development and preservation of ethnic identities. This arrangement did not come in the way of formation of separate states. The relevance of district councils to social development of the tribals was not ignored as it is evident from the fact that even within the tribal State of Meghalaya and the Union Territory of Mizoram district councils have been functioning. There are of course differences of opinion about the need for retaining the district councils in these states (Ganguly, 1988). However, six Tribal Districts of Assam were included under the Autonomous Districts under the Sixth Schedule. The controversies/differences of opinion regarding the retention of district council in Meghalaya are yet to be clarified. But the remark of Baljied *Syiem* is worth mentioning. In his opinion JJM Nichols Roy did not go out to protect the rights of the Khasi people. Ultimately there came out the Sixth Schedule, which was actually imposed without taking the public opinion or existing local institutions in to consideration. District Council is a political institution which, though meant to be the protector of traditions and customs of the Khasis, has actually been so much politicised that it only serves the interests of some elected members. Actually, people do not look to the council so much for protection of the traditions of the society as for some measly grants which ultimately end up in a few pockets. It is the political leaders both from the district councils and the state government who have not really been sincere in their duties towards their community. He felt that most of the problems could be solved if district council was scrapped. It is the duty of the state government to see that a new legislation comes out to ensure that the traditional institutions are left unhindered to co-exist healthily. For him the traditional institutions have some limitations in modern society Even they are open to changes, but they

should have the right to choose the changes required. They are in need of a healthy tradition and good political leaders who are not selfish and who really work for the benefit and development of modern society (Syiem, 1988).

The Sixth Schedule was designed to confer a considerable amount of autonomy on the tribal people by giving them protection to retain their identity according to their own genius politically, socially and economically through their elected representatives and nominated members. The Sixth Schedule provides a type of local governmental arrangement, which aims to better the life of the tribal people, keeping in view the ample opportunity to grow in their own roots (Jyrwa, n.d).

In reality, the spirit of the Sixth Schedule is to provide complete safeguards to the tribal communities in respect of land, forest, and system of justice and social customs. It was felt that the state and central government would help them in securing the benefits of a democratic, progressive and liberal administration. In order to achieve these aims the constitution has given the power to make laws on various subjects applicable to the tribal people as enshrined in the Sixth Schedule (Bose, 1979:182 - 184).

Against this backdrop, the District Councils/Autonomous Local Government came into being in Tribal Areas of the North-Eastern Region especially to introduce internal autonomy in tribal compact areas for protecting the social, economic and cultural interests of the tribal population. It has been felt that the Autonomous District Councils should be set up in terms of the Fifth Schedule of the Constitution. Accordingly the Tribal Areas Autonomous District Council Bill/Act was passed by the Legislative Assemblies of the respective states. There are instances of the Sixth Schedule being introduced by the Central Government but with the concurrence of the state governments thereby restricting the

outsiders to enter those states freely until and unless they possess inner-line permits.

As regards the composition of District Councils, it varied from time to time. In 1952, the District Council consisted of 24 members, 18 elected and six nominated. When the government nominated non-tribals, the Khasi protested and the nomination element was completely abolished. But the Jaintia Hills Council continues to have the system of nomination. In 1971 when the Sixth Schedule was amended, the strength of the District Council was fixed at 30 including four nominated members. At present the Khasi Hills Autonomous District Council is divided into 29 constituencies, the Jaintia Hills into 16 constituencies. The number of nominated members is one in the Khasi Hills and three in the Jaintia Hills. The total strength of the Jaintia Hills is 19.

All the activities to be undertaken by the Khasi Hills Autonomous District Council (KHADC) are outlined in the sixth scheduled of the Indian Constitution. The major activities are:

- i. Activities based on forest which are mostly managed by the ADC.
- ii. The ADC looks after matters pertaining to primary education (lower primary) which involves looking after the activities of the primary schools, their administration, day to day activities, payments of teachers etc.
- iii. Taxation, i.e., professional taxes are to be paid by all professionals including businessmen and government employees to the ADC.
- iv. The council looks after activities involving fisheries.
- v. Another major activity of the council is public works. This involves building of roads, bridges, pavements, footpaths, digging of ponds etc.

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- vi. Elaka administration which involves an overall charge of the traditional Khasi organisations.
- vii. Trade and Commerce.
- viii. Market regulation.
- ix. Transport.
 - x. Control of grazing grounds.
 - xi. Control over land resources.

Basic Functions of the KHADC:

There are three basic functions of the ADC:

i. Legislative:

The district council, as per the provisions of the Sixth Schedule to the constitution, has to enact laws and regulations as well as frame rules for implementing them. Such laws and regulations have to be placed before the council's session in the form of bills for consideration. After the Council passes the bills they are sent to the government for concurrence. The existing list of subjects on which the District Council can legislate covers all the important social and personal aspects of tribal life.

ii. Executive:

The executive functions of the District Council are vested in the executive committee. Each member of the Executive Committee is entrusted with specific subjects and the Chief Executive Member (CEM) makes the allocation of the subjects to the members. The Council can discharge some functions in exercise of its executive powers even before the relevant laws are passed provided these are within the purview of the Sixth Schedule. At the highest level, all executive functions of the District Council are vested in the Executive Committee headed by the CEM who is elected by the

members of the council from among themselves. The executive committee disposes of all matters of administration of the district except those that involve any important change in the administrative system of the autonomous district.

The Executive Committee is collectively responsible to the council for all executive orders, policy matters and their exception. It frames the policies, prepares the budget, executes them and mostly initiates legislation in the council. The Executive Committee has a secretary who controls and supervises the various branches of the council and is in the immediate charge of the day-to-day administration. Thus, it has separate branches for general administration, land revenue, forests, civil works, education, rural development, transport, taxation, and relief and rehabilitation, besides the legislative and judicial branches.

iii. Judiciary:

Paragraph 4 of the Sixth Schedule empowers the District Council to constitute village courts for the trial of suits and cases in which both parties are members of the Schedule Tribes. It may appoint suitable persons as members of such village councils or presiding officers of such courts as may be necessary for the execution of laws made by the District Council. According to the amendments of the Sixth Schedule under the Act, the Governor is authorised to make rules for regulating the constitution of the village councils and courts and the power to be exercised by them.

All the three ADCs have constituted their courts of appeals. Each has a judge and a magistrate. The traditional courts of the chiefs have always been functioning as additional subordinate courts of the District Council with the traditional chiefs as presiding officers.

Entrusted Functions:

Apart from the basic functions as already mentioned, the ADCs have some entrusted functions. However, the state Government is not authorised to entrust any of its powers to the District Council. In order to retain both the Mikir and the N.C. Hills, the Government of Assam made several costly promises like transfer of more functions and powers together with necessary finance and personnel. Hence, paragraph 6 of the Sixth Schedule was amended whereby it is provided that the Governor may entrust either conditionally or unconditionally some functions to the District Councils. The functions enumerated are agriculture, animal husbandry, community projects, cooperative societies, social welfare, village planning or any other matter which the executive power of the State extends. But the Governor of Meghalaya has entrusted none of these subjects to any of the District Councils.

Source of Funds of ADC:

There are some major sources of funds of the ADC, which are listed below:

- i. Land, which abounds in major minerals (coal, silimonites, lime stone etc.) and minor minerals (sand, pebbles etc.). The ADC gets its share of income from these resources from the state government.
- ii. Income of the ADC from the taxes collected at the toll gates.
- iii. Share of income from trade and commerce.
- iv. Income from professional taxes.
- v. Revenue from forests.

Constraint of the District Councils Today:

The Autonomous District Councils in Meghalaya are facing the following constraints:

- (i) There is resource (Financial) crunch. Moreover, the resources provided under the Sixth Schedule such as the power to collect taxes on land and building, and tolls on person resident in the District could not be made use of an account of the tradition and customs prevailing in the District.
- ii. ADC has been given powers to collect taxes but not for the collection of royalties and fees on subjects within its legislative and administrative competence (paragraph 3 as per Supreme Court judgement in Civil appeal Nos. 2069 -70 of 1972). The revenue resources of the council will be augmented if these powers are given to the ADCs.
- (iii) The share of royalty in respect of any area within the District Council between District Council and the State Government as agreed upon was 60:40 ratio (e.g. , share of royalty on coal). A dispute arose later on and the case was referred to the Governor whose determined the share as 25:75 between the District Council and the State Government.
- (iv) Assent or approval of the Governor to the Bills passed by the ADC is often accorded after a considerable period of time, say two years or even more. This defeats the very purpose of the Bills and the Council is not in a position to implement its intention to promote good administration on different subjects.
- (v) Paragraph 14 empowers the Governor to appoint a commission to enquire into the administration of a District council or any particular matters specified by him relating to the administration of the Autonomous District in the State. The Central Government had been given any power to the ADC to implement their schemes directly.
- (vi) Shares on royalty on major and minor minerals, taxes on vehicles collected by the State Government constitute one of the major resources of the council. The State

Government instead of paying the share in full and in time adopted a policy to release the share in the form of advance, and sometimes to deduct from such share Election expenses and other charges incurred by it from time to time without consent of the council. Above all no account pertaining to the actual collection and the share due to the council was ever made available to the council.

- (vii) Fund for carrying out developmental activities as provided according to the present system are found to be inadequate as well as unworkable. To meet the basic need of the people sufficient funds have also to be released from the Council's own fund. During 1997-98 Rs.90 lakhs was provided for this purpose from the account of JHADC, whereas the state released only Rs. 57,40,510 for the purpose of Council's own plan, building and rural communication including implementation of forest schemes, strengthening of staff and salary to the deputed staff. Hence, it has been observed that the funds released as grants-in-aid are far from being sufficient to meet the actual requirement of the council. Allocation of funds needs to be enhanced substantially.
- (viii) There is no provision in the Sixth Schedule for the State Police to act at the instant of District Council and therefore enforcement of the council orders etc. has become a major handicap in the council's day to day administration. The council has been given the power to constitute village or town police under clause (f) of sub-paragraph (I) of paragraph 3 of the Schedule. However, in view of the meager resources of the council, it is not possible to create such a force. It is also obligatory on the part of the ADC to organise and strengthen the traditional Institution, but for paucity of fund no significant improvement could be made so far on this behalf.

- (ix) When Meghalaya was created, the councils in Meghalaya were subjected to great financial constraints. This is due to the fact that funds provided earlier under article 275 are no longer available, with the result that the Management of Primary Education – as the first casualty – had to be taken over temporarily by the state government and it is continuing till date even after about 10 years.
- (x) By the 73rd/74th amendment to the constitution in 1993, substantial administrative and financial powers have been delegated to local bodies constituted all over the country (where PR system is existing), but the Sixth Schedule does not provide for devolution of development powers to ADCs/Autonomous councils. As a result financial and administrative autonomy of local bodies in other parts of the country has become much greater than that in schedule areas.

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