

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 wether 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 inflamatory 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 ADCsof 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 Eleyenth 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 debarring 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.