

POWER TO PEOPLE IN MEGHALAYA



Editors

J. V. Karna • L.S. Gassah
C.J. Thomas

POWER TO PEOPLE IN MEGHALAYA

(Sixth Schedule and the 73rd Amendment)

Edited By

M.N. Karna

L.S. Gassah

C.J. Thomas



Regency Publications

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ISBN 81-86030-64-6

Sv/11/F239/4145

Published by Regency Publications, 20/36-G, Old Market, West Patel Nagar, New Delhi 110 008 for Indian Council of Social Science Research — North-Eastern Regional Centre, Shillong, and printed at Radiant Printers, New Delhi, Telefax: 578 3571; Phones: 5740038, 5712539

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
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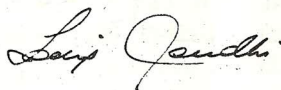
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RAJIV GANDHI FOUNDATION

Sonia Gandhi
Chairperson

MESSAGE

The legislation to amend the Constitution to detail the provisions in respect of Panchayati Raj and Nagarpalikas is an important milestone in bringing to reality my late husband's vision of a new and effective system of local government. He staunchly believed that people had to be empowered to have a greater and more meaningful say in their own affairs at the grassroots level in addition to the national and state levels. Without this there would remain a sense of alienation of the common person from the system of governance. His vision was that of an effective and responsive third-tier of representative government which would be the bedrock of our democracy in practice.

The legislation, important as it is, has to be followed up with much hard work in its effective implementation. The purpose of the workshops being organized under the auspices of the Rajiv Gandhi Foundation is to identify impediments and hinderances to the proper functioning of the Panchayats and institutions of self-governance, and to suggest remedial measures. It is only through widespread discussion and mass involvement that Panchayati Raj Institutions will become true and effective means of self-governance as mandated in the Seventy Third Constitutional Amendment. I wish your endeavours every success.



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 their *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.

THE HISTORY OF THE
NATIONAL ANTI-SLAVERY SOCIETY OF THE UNITED STATES
OF AMERICA
FROM 1833 TO 1844
BY
MRS. J. W. M. MITCHELL.

PART II

CHAPTER 8

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 unmaturred 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 he 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,

“There has already been a sense of frustration among the members of the people we met that the District Councils which were established to provide the tribal people with an opportunity to manage their own affairs according to their own genius have not been acting according to the spirit of their conception and may be considered not only as redundant but also unnecessarily expensive institution with the establishment of a Hill State. The poor performances of the District Councils have themselves contributed a reason for this feeling.”

Further, no conscious measures have been undertaken by the Council to codify any of the social customs. In Khasi Hills, the position of the Chiefs and their functions remained undefined. The District Council which were established to provide the tribal people a kind of autonomy to grow in their own genius have not been acting according to the spirit of the Constitution. Thus, the District Council may be considered not only as redundant but also as expensive institution with the establishment of a Hill State.

In respect of financial matters the overall performance has been particularly unsatisfactory. The autonomous district has good revenue potentialities but the Council does not seem to have exerted itself in developing them. On the expenditure side the most striking feature was the heavy cost incurred by the Council on their staff and establishment. Though, the District Council derived its income from various sources like land revenue, forest, market, trading license, fee etc., but the available resources were not at all adequate to meet the needs of the Council. Further, though the District Councils were constituted according to the provisions of the Sixth Schedule, but they had no funds initially. It was the State Government which had advanced loans to the Council to get them going. In the beginning the State Government realised the taxes on behalf of the Council and credited the receipts to their funds. When the District Councils organized themselves and established their own administrative machineries they took over from the government the task of collecting the taxes allotted to them. The KHADC was responsible for the collection of most of these taxes except the motor vehicle tax and royalties on mines and minerals, which they shared with the State Government.

One of the factors which put the Councils in a very tight financial position was that the KHADC had not been able to devote sufficient funds out of their own resources for welfare and development programmes. Due to financial crunch, the KHADC had been unable to meet its financial commitment on taking up developmental programmes. The development programmes of the KHADC had been possible largely with the help of the grants given by the State Government. The State Government had been extending 50 percent as matching grant for each approved project. Obviously, the State Government felt that the District Council had been diverting the developmental funds for non-productive purposes. In a memorandum submitted to the Dutta Commission in 1984 by the KHADC, it said that there had to be a break-up of the schemes so as to give coverage to a wider area of the district. As a result, the District Council is not in a position to continue the schemes.

In order to cover the expenditure the Councils depends on the Grants-in-aid given by the State Government and the shares of the royalties on mines and minerals as per paragraph 9 of the Sixth Schedule and also from the shares on motor vehicles and professional tax. In this respect the KHADC had to approach the State Government for financial aid to meet their budget deficit. The KHADC wanted that the State Government of Meghalaya should provide sufficient fund to enable the Council to take up suitable development schemes. The State Government, on the other hand, expected the District Council to meet the finances for development, at least partly from their own resources. Although the District Council depends on the shares of royalties collected by the State Government but it may be noted that the payment of shares was always in the form of adhoc-basis and that too, very irregular and not in time. Besides, the Council could hardly know the financial involvement on account of collection cost especially in respect of the scheme apportioned on the net income. The State Government, instead of paying the Council's dues regularly adopted the policy of deducting the Councils shares in order to meet the expenses in connection with the holding of elections, etc. This had put the Council in financial hardship. The delay in releasing the Council's share, has caused an immense problem to the Khasi Hills District Council in managing the affairs of the Council. Over and above

the financial administration of the Council proved the poor performance of the Council and did not show any prospects about the future of the District Council.

For developmental works grants-in-aid was given to the Council by the State Government of Meghalaya from the Central fund in order to help tight up the financial burden of the District Council. But, according to the District Council from 1972 to 1984, the Government of India sanctioned Rs. 226 crores to the State Government of Meghalaya under Article 275 out of this amount, not a single paise was released to the District Councils in Meghalaya. This is evident from the fact as corroborated by the Chief Minister of Meghalaya, Mr. P.A. Sangma, in the floor of the Assembly on 26 April 1988, to the question raised by Mr. H.S. Lyngdoh, the C.E.M. of the KHADC. This shows that the grants-in-aid given by the State Government to the District Council was very much under the control of the State Government. In view of this, there was a strong demand by the Autonomous District Councils in North-East India pressing the Centre for direct funding from the Planning Commission to the District Council.

There were also certain difficulties under which the District Councils are functioning. They have practically no machinery to enforce their laws and order. For example, the Village Court set up by the District Council has no means to compel the attendance of an accused before it. With the existence of the autonomous District Council, the thrust seems to be more on legislation rather than codification. Since the District Council has not codified the customary laws and uniformly interpreted, the introduction of a uniform system of administration of justice seems to be very difficult.

Further, there is no provision in the Sixth Schedule for the regular police to act at the instance of the District Council. As of now, village police in the Khasi and Jaintia Hills District are under the Deputy Commissioners of the respective Districts. As per Clause (f) of paragraph 3 (i) of the Sixth Schedule the District Council is empowered to establish separate village and town police force in the autonomous district under the control of the Council. On 1 March 1985, the KHADC passed the Khasi Hills Autonomous District (Establishment of Village and Town Police Force) Bill, 1985. The purpose of this bill was for the

establishment of a separate village and town police force in the district under the control of the Council. But the bill did not get the approval of the Governor. It was alleged by the Council that in spite of several reminders from the Council, no action had been taken by the Government to attain Governor's assent. It appears that the Government of Meghalaya was not in favour of creating another police force in the district apart from the Meghalaya Police.

Relating to the issue on the State Government-District Council Relationship, it may be stated that there was no cordial and co-ordinate relationship between the two authorities. The only relationship was only in taking necessary action to the bills passed by the Council for Governor's approval. Secondly, to finance the Council by giving grants-in-aid through various schemes. in all other aspects the relationship is not always in the best terms. they are often at loggerheads. Take the case of primary education for example it can be stated that primary education has become a bone of contention between the District Council and the State Government of Meghalaya. The taking over of primary education by the State Government is not because the KHADC cannot run the administration of primary education smoothly. The root cause of a lot of problems that the Councils is facing is the lack of funds. At one time, the State Government was in favour of handing over the primary schools back to the Councils. But the KHADC could not accept the offer because the issue of financial help by the Meghalaya Government had not been finally settled.

With regard to the District budget, as far as the district budget in the district council is concerned, the relationship between the State Government and the KHADC is also not satisfactory. Most of the members of the Council had expressed their inability to discuss the district budget estimate in the Council. The Council members did not get sufficient time during each year to study the yearly district budget estimates of the Khasi Hills District because the State Government of Meghalaya did not send the budget estimate well ahead of the date fixed by the Governor to summon the emergent session of the Council for the purpose. The KHADC members pointed out that discussing the budget estimate in the Council would be meaningless because the State Government of Meghalaya never incorporate

the earlier views and suggestions given by the Council and that the budget estimate already appeared in a final form. This policy of the State Government led the Council members to show no interest in discussing the district budget in the Council. The State Government, however, expressed its views that discussing the budget is in fact the only constitutional requirement and it is not mandatory for the government to accept the Council's views. The matter has not been finally resolved and the relationship between the two authorities is still lacking.

On getting the Governor's approval/assent to the Council's bill, rules and regulations passed by the Council, the relationship between the two authorities was always not in good terms. There was a delay in getting the Governor's assent to the rules, bills and regulations passed by the KHADC.

Another issue to be pointed out here, is regarding the Constitutional provisions relating to the repugnancy of laws framed by the Council in respect of the same subjects falling within the State list as per paragraph 12A of the Sixth Schedule to the Constitution of India. Paragraph 12(A)(a) provides that 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 this schedule or if any provision of any regulation made by a District Council in that State under paragraph 8 or paragraph 10 of the 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, 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 State legislature shall prevail. Then, the autonomy of the Council in Meghalaya had been greatly reduced paving the way for the State Government to encroach upon the domain of the Council.

The point to be noted here, is that the question of repugnancy arises when two competent legislative bodies legislate on the same subject. Under the new paragraph 12A it is assumed that the State Government had been vested with the power to legislate on the subject under paragraph 3, 8 and 10 of the sixth schedule. It has been contended by the KHADC that the insertion of the above paragraphs amount to changing the basic

structure of the Constitution. Moreover the autonomy of the Council would become completely redundant.

However, no instance can be cited in which there has been an actual conflict situation between the laws passed by the KHADC and that of the State Government. Paragraph 12(A) to all intents and purposes, remains a gun behind the door of Council's legislations. The State Government may refuse to advise the Governor to give his assent to any Council bill which may likely to come into conflict with the law of the State Government. To avoid such repugnancy, the State Government, on a number of occasions had turned down the bills passed by the KHADC. For example, the State Government came heavily on the issue of Council transit passed under the United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Rules, 1960, as it has come into conflict with the Meghalaya Forest (Removal of Timber Regulation) Act, 1981. Similarly, the Khasi Hills Autonomous District Council (Inheritance of Self-Acquired Property) Bill, 1980 could not be assented to by the Governor as the State law, the Meghalaya (Khasi-Jaintia Succession to Self-Acquired Property) (Special Provision) Bill, 1984 which had assented to by the President of India on 23 May, 1986, contained more or less similar provisions. It was because of this strained relationship between the State Government and the KHADC in the field of legislation that there was a constant demand for the amendment of paragraph 12(A) of the Sixth Schedule.

The District Council have to arm with the legal weapon because of the clash between the District Council and the State Government. The framers of the sixth schedule did not visualize the political and legal conflict between the District Council on the one hand and the State Government on the other. But because of times and events revealed that the conflict cannot be ruled out. This advantage appears always to be on the side of the District Council. With the coming of the new State, the question arises about the relevance of having District Council in a State which comprised entirely of autonomous District. It may be mentioned here, that in the erstwhile State of Assam most of the area of the State is outside the purview of the autonomous District council. Thus, paragraph 12A does not apply in Meghalaya but in Assam because it is non-autonomous. Thus, the District

Council where the entire State is comprised of autonomous district, the question of the Sixth Schedule is irrelevant.

But the most important issues to be pointed out here is regarding the Appointment and Succession of Chiefs and Headmen as per paragraph 3 (i) (g) of the Sixth Schedule to the Constitution of India. Under the said Clause, the District Council has been given the power to make laws on the appointment or succession of Chief or Headmen. Under clause (j) the Council has also given power to legislate on social customs. By virtue of this power conferred by the Constitution the United Khasi and Jaintia Hills Autonomous District enacted the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of chiefs and Headmen) Act, 1959. The Act lays down the procedure for the election or nomination and appointment of Chiefs and Headmen. Section 4 of the Act lays down the procedure for election of the Chief. Under section 5 of the Act the District Council has to approve the election and to issue an appointment order after the approval. Section 6 provides for the suspension and removal of Chiefs. By the enactment of this Act, the District Council seeks to ignore the rights and responsibilities of the Khasi People to undertake the duties assigned to them by custom ad usages.

It may be worthwhile to mention here that in *Hima Khasi* (Khasi States) the custom of election the *Syiem* (Chief) differs from one *Elaka* to another *Elaka*. Generally speaking, the *Syiem* was elected by a body consisting of an electoral college by the representatives of certain clans which have been in existence by recognized custom. According to customs, the *Syiem* could not perform any important function without first obtaining the approval of his *dorbar*. The *Dorbar* was an Executive Council over which the *Syiem* presided. It had both administrative as well as judicial function. Once a Chief is elected he continues in office until he is otherwise incapable of running the administration of the *Elaka* which render him unfit for holding the post. with regards to the succession of *Syiem*s in Khasi States, the question of succession to the *Syiemship* were regulated according to social customs which vary from *Elaka* to *Elaka*. If the *Syiem* died, immediately his oldest nephew from his sister's side succeeded him. Thus, the Khasi *Syiem*s functioned under customary laws and they continue to do so even after the constitution came into

force. But the Sixth Schedule has made the District Council the competent authority to make laws on various matters which were dealt with by the Chiefs and the power of the Chief have become modified to the extent as provided in the laws made by the Council. However, the implementation of the provision for the appointment of a Chief, the District Council has totally reduce the position of the *Syiems* and other elected Chiefs of the *Elakas* to that of the position of the employee of the District Council. The British deviated this customary law when they provided for ratification of the election and appointment of the Chief in the Sanad. Similarly, the District Council has also modified the said customary law by enacting a law providing for approval of the election and appointment of the Chief.

In the Khasi Hills, the *Syiem*, is not the head of the state but he is a nominal head. He is the symbol of unity and integrity of the State (Hima). It is the *Durbar Hima* which is the paramount power. But, it was during the British rule that paramount power was taken away from the *Durbar Hima*. After the lapse of the British paramouncy, the twenty five Khasi States established its own federation known as the "Federation of Khasi States". Thus, a new relationship was established between the Government of India and the Khasi Chiefs by means of an Instrument of Accession which was accepted by the Governor-General of India on August 17, 1948. By this Instrument, although the Chiefs acceded to the Dominion of India they did not liquidate their separate entity and resolved to maintain their old-age customs and usages regarding the administration of Khasi States, election of Chief or Headmen, power of Durbar etc. This position continued till the Constitution of India came into force on 26th. January 1950. There was no merger as such of the twenty five Khasi States in India before 26 January 1950. But the Constitution by the First Schedule in which the territories of the State of Assam were defined merged the Khasi States into the State of Assam as that State was to consist of territories which immediately before the commencement of the Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas. The position, therefore after coming into force of the Constitution was that the Chiefs lost whatever ruling or administrative powers that had by the merger of these 25

States in Assam and the governance of these States was to be carried out according to the provision of the Sixth Schedule.

In fact, after the lapse of the paramountcy of the British Government, that paramount power should have come back to the *Durbar Hima*, particularly in matters relating to the Appointment and Succession of Chief in the Hima (State) respectively. But the Assam Government instead of helping in codifying the customary laws on subjects relating to Khasi customary law followed the some principle by issuing Sanad to Jormanik Syiem as the *Syiem* of Myllichem in place of U Sati Raja Syiem as practiced by the British Government. Thus, in accordance with such custom. Jormanik Syiem as *Syiem* of Myllichem *Syiemship* was approved by the Assam Government and he was appointed to the office of *Syiem* subject to confirmation by the District Council when that body came into existence. After the District Council came into existence on 27 June 1952, it approved the provisional appointment made by the Assam Government and confirmed it on 9 April 1953, on certain terms and conditions. Later on, these terms were modified by the District Council in August 1955 and Jormanik Syiem continued as Syiem by virtue of the confirmation issued by the District Council on the terms conveyed to him. Thus, it has become a practice for the United Khasi-Jaintia Hills Autonomous District Council to follow the same policy by issuing Sanad to the *Syiem* instead of making good laws relating to the appointment and succession of *Syiem*s in the Khasi State.

Immediately, after the formation of the District Council in June 1952, the *Syiemship* was brought under the control of the District Council and Jormanik Syiem continued to discharge the administrative and judicial functions in the Myllichem *Syiemship*. In 1953 one representative cases is coming up before the Council. The Executive Committee of the KHADC suspended Jormanik Syiem from the office of the *Syiem* for violating the terms and conditions issued to the Syiem by the Executive Committee. The District Council charged the Syiem with 33 charges. It was until 1959 that the Supreme Court gave ruling that the *Syiem* was just an officer of the District Council. But Syiem Jormanik disagreed with this decision because he was elected as the *Syiem* before the District Council came into existence. The *Syiem* disagreed on the ground that it was not the District Council who elect the

Syiem nor paid the salary. thus, in 1960 the District council suspended Jormanik Syiem because he refused to agree to be an administrative officer appointed by the Council.

In this connection, it may be mentioned here, that the constitutionality of the act remains in tact and was not challenge so far in the High Court or Supreme Court of India.

Coming back to the Act 1959, it may be noted that the said Act used the word 'And' in place of 'or' as originally enshrined in the Sixth Schedule, thereby classifying all the Chiefs and Headmen in the same category. The substitution of the word 'and' in place of the word 'or' has contradicted the provisions of the Sixth Schedule, the custom and succession of the Chiefs by their respective electoral college. Generally speaking, in Khasi Hills the *Elakas* are divided into two categories. the *Syiem* (Chief) who signed the Instrument of Accession and the Chief who do not signed the Instrument of accession. As per the Act 1959, Chief means the Chief who do not signed the Instrument of Accession. But the KHADC, treated both the categories of *Elakas* on equal footing and that both the categories of the *Syiem*s are appointed by the KHADC. It is felt necessary that the District Council should only issue the order of recognition for election of the *Syiem*'s rather than issue letter's of approval/appointment. The District Council must framed a separate law for the *Syiem*s, *Lyngdohs*, *Sirdars* of the erstwhile British villages and also a separate law for the headman. The KHADC cannot equate the *Syiem* of the *Hima* and the Chiefs of the *Elaka* and the headmen on equal footing. However, while framing the laws the District council must see that the laws framed should be in accordance with the customary laws to strengthen the traditional institutions. The District Council is expecting to codify the customary laws for protection and safety of the indigenious people as specified in, the Sixth Schedule to the Constitution of India.

On the other hand, Section 11 of the Act 1959, empowers the Executive Committee of the Council to appoint "any person" as an Acting Chief. According to customary law, a Deputy Chief is appointed by the Chief and his Durbar from the Chiefs clan. Whenever, the post of the Chief is vacant the Deputy Chief assumes full charge as Acting Chief and if there is no Deputy Chief, any person of the Chief's ruling clan should take up the post as Acting Chief till a new Chief is elected. Thus, section 11

of the Act which empowers the Executive Committee of the KHADC to appoint any person as Acting Chief is contrary to the old age custom and usages. Although paragraph 3 (i) (g) of the Sixth Schedule empowers the District Council to appoint the Chief of the *Elakas* but in practice, the KHADC has not been able to appoint any Chief without difficulties. The appointment made by the Council was always the appointment of acting *Syiem* and not a regular *Syiem*. The Executive Committee of the KHADC having armed with the provisions contained in the appointment and succession of Chief and Headmen Act, 1959 as amended, appoint many such acting Chief especially *Syiem* in Khasi Hills, either after the death, dismissal or suspension of the regular *Syiem* in the *Elaka*. Such an act of appointment of acting *Syiem* has been criticised as it tantamount to complete deviation from the traditional customary practice of the people. According to Khasi custom, there was never a practice of appointing an acting Chief. The Chief once appointed was Chief for life.

Further, the District Council also creates confusion by enacting certain vague statutes. To cite an example, in Section 2(f) of the Act, the term "Durbar" has been defined to mean "Durbar constituted by the district Council under any law to guide the Chief in running the administration". By this Act, the District council seeks to demolish the customary *Durbar* of villages, group of villages and the *Durbar Hima* by defining the term *Durbar* which according to the Council *Durbar* is a new creation of the district Council with a view to discard the fundamental rights of the people. The Act, as such violates the rights of the Khasi people, to grow on their own roots and to preserve their own identity.

Moreover, section 2(k) of the Act defined the Headmen as subordinate to the Chief of the *Elaka* concerned. Section 3 of the Act states that election of Headmen should be according to custom prevailing in the *Elaka* and section 7 of the Act further provides that the election is to be conducted by the Chief and his *Durbar*. If any dispute arises regarding election of the Chief and his *durbar* the *Durbar* is to be decided. The provisions provided so far are in concurrence with the prevailing custom since the headmen are the local heads under the control of the Chief and are subordinate for all purposes to the authority and power of the Chief. Contrary to this, the KHADC amended the

Act by adding sub-section (iii) in the amendment Act, 1980 to section 7 of the Principal act. The amendment act empowers the Executive Committee on its own initiative to conduct the nomination and election of Headmen and issue appointment letter if the Chief and his *Durbar* fails to do so. By amending this act, the powers vested on the Chief and his *Durbar* has been violated thereby affecting the custom of the *Elaka*. With the amendment of this Act, the headmen so directly appointed by the KHADC, the Chief and his durbar will be highly affected if the authority and rights are taken away by the Council without obtaining the consent before taking any action.

From the various issues highlighted above, it may be stated here, that the picture presented by the KHADC in Meghalaya are functioning is not a happy one. The way the Council work proved its poor performance and did not show any prospect about the future of the Council. The main reasons for the failure of the administration of the KHADC was that the Councils have no qualified persons and that too they depend too much on government grants-in-aid for development works. Thus, the fault lies with the District Council in that the members of the Council have failed to perform their role as expected. In fact, the provisions contained in the Sixth Schedule are for protecting the tribal interests but the Council as an institution is not fully responsible for safeguarding the tribal customs and traditions. This may be due to the fact that the District Council during the last forty years was given an important part to play for development. It was on these grounds therefore, that the District Council appears to concentrate itself more to the development aspects rather than performing its primary function of protecting the rights and interest of the indigenous tribal population of Meghalaya by enactment of laws for the protection of land and codification. However, the Council members do not appear to have realised that with the formation of Meghalaya, the status of the District Council had been reduced more or less to that of an advisory council by the insertion of paragraph 12A in the Sixth Schedule. Thus, the working of the Sixth Schedule is very defective and has failed to satisfy the aspirations of the tribal people.

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POWER TO PEOPLE IN MEGHALAYA

Editors: M.N. Karna, L.S. Gassah and C.J. Thomas

The Panchayati Raj system has been acclaimed as an essential element of Indian democracy. 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 instrument of self-government. Now it is in a position to involve itself in active process of decentralised planning.

This book *Power to People in Meghalaya: Sixth Schedule and the 73rd Amendment*, contains a collection of research papers contributed by various scholars and activists drawn from different disciplines of Social Sciences which were presented in a Sub-Regional Workshop sponsored by the Rajiv Gandhi Foundation, New Delhi, during October 1995.

The book offers detail information about the Sixth Schedule and the 73rd Amendment, critical assessment of the working of Khasi, Jaintia and Garo Hills, Autonomous District Councils in Meghalaya and also on Women in Meghalaya.

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ISBN 81-86030-64-6

Rs. 325

Regency Publications

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Telefax: 578 3571; Phones: 571 2539, 574 0038