

CHAPTER-4

73RD AMENDMENT ACT AND ITS IMPLICATIONS IN SIXTH SCHEDULE AREAS

The present Chapter-4, deals with the provisions of and benefits extended by the 73rd Amendment of the Constitution for rural development sector and its non-applicability in Meghalaya. 73rd and 74th Constitutional Amendments were passed by Parliament in December, 1992. Through these amendments local self-governance was introduced in rural and urban India. The Acts came into force as the Constitution (73rd Amendment) Act, 1992 on April 24, 1993 and the Constitution (74th Amendment) Act, 1992 on June 1, 1993. These amendments added two new parts to the Constitution, namely, 73rd Amendment added Part IX titled “The Panchayats” and 74th Amendment added Part IXA titled “The Municipalities”. The Local bodies—‘Panchayats’ and ‘Municipalities’ came under Part IX and IXA of the Constitution after 43 years of India becoming a public.⁴⁹

4.1 Statement of Objects and Reasons

Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersession, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

⁴⁹The Constitution Seventy Third Amendment Act 1992. Part IX. December, 1992.

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.⁵⁰

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of super session of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic developments and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections

⁵⁰Ibid. op cite.

to Panchayats under the superintendence, direction and control of the chief electoral officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.⁵¹

4. The Bill seeks to achieve the aforesaid objectives.

4.2 Salient Features of the 73rd and 74th Constitution Amendment Acts

Panchayats and Municipalities will be “institutions of self-government”.

1. Basic units of democratic system-Gram Sabhas (*villages*) and Ward Committees (*Municipalities*) comprising all the adult members registered as voters.
2. Three-tier system of panchayats at village, intermediate block/taluk/mandal and district levels except in States with population is below 20 lakhs (*Article243B*).
3. Seats at all levels to be filled by direct elections[*Article243C(2)*].
4. Seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) and chairpersons of the Panchayats at all levels also shall be reserved for SCs and STs in proportion to their population.
5. One-third of the total number of seats to be reserved for women. One- third of the seats reserved for SCs and STs also reserved for women. One-third offices of chairpersons at all levels reserved for women (*Article243D*).

⁵¹Ibid. op cite.

6. Uniform five year term and elections to constitute new bodies to be completed before the expiry of the term. In the event of dissolution, elections compulsorily within six months(*Article 243E*).
7. Independent Election Commission in each State for superintendence, direction and control of the electoral rolls(*Article243K*).
8. Panchayats to prepare plans for economic development and social justice in respect of subjects as devolved by law to the various levels of Panchayats including the subjects as illustrated in Eleventh Schedule (*Article243G*).
9. 74th Amendment provides for a District Planning Committee to consolidate the plans prepared by Panchayats and Municipalities (*Article243ZD*).
10. Funds: Budgetary allocation from State Governments, share of revenue of certain taxes, collection and retention of the revenue it raises, Central Government programmes and grants, Union Finance Commission grants (*Article243H*).
11. Establish a Finance Commission in each State to determine the principles on the basis of which adequate financial resources would be ensured for panchayats and municipalities (*Article243I*).

4.3 Other Important Provisions of Part IX of the Constitutions

Part IX contains **Article 243** and **Articles 243A to 243-O**.

- a. Article 243 relating to definitions has defined various terms as follows:

“District” means a district in a State; “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level; “Intermediate level” means a level between the village and district specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part; “Panchayat” means an institution of self-government constituted under article 243B for the rural areas; “Panchayat Area” means the territorial area of a Panchayat; “Population” means the population as ascertained at the last preceding census of which the relevant figures have been published; “Village” means a village specified by the Governor by a public notification to be a village for the purposes of this Part and includes a group of villages so specified.

- b. Under Article 243A, a Gram Sabha is empowered to exercise such powers and perform such functions at the village level as provided by law.

- c. As per Article 243C, the Legislature of a State is empowered to make provisions with regard to composition of Panchayats. The Panchayat area shall be divided into territorial constituencies. The State is empowered to provide for the representation of the chairpersons of the Gram Panchayats, at the village level, the intermediate level or, in the Panchayats at the district level; and MPs of LS / RS, and MLAs/MLCs at a level other than the village level in such Panchayat; where they are registered as electors in Panchayat at the intermediate level and in Panchayat at the district level.

- d. The chairperson of a Gram Panchayat shall be elected in such manner as provided by law, and of a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members.

- c. Under article 243J, the Legislature of a State is empowered to make provisions with respect to the maintenance and auditing of accounts of the Panchayats.
- e. Article 243L provides that the provisions of the Part IX shall apply to the Union territories.
- f. Under article 243O, the Courts are barred from interfering in electoral matters such as the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies. No election to any Panchayat can be called in question except by an election petition as provided under any law made by the Legislature of a State.

4.4 Specific Provisions for Tribal and Scheduled Areas

- a. Article 243M (1) provides that this Part shall apply to the Scheduled Areas as referred to in clause (1) and the tribal areas referred to in clause (2) of article 244.
- b. (2) This Part shall apply to (a) the States of Nagaland, Meghalaya and Mizoram; (b) the hill areas in the State of Manipur for which District Councils exist under any law for the time being in force.
- c. (3) Nothing in this Part
 - (i) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;
 - (ii) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.
- o (3A) Nothing in article 243D, relating to reservation of seats for the Scheduled Castes, shall apply to the State of Arunachal Pradesh (*83rd Amendment, September 08, 2000*).

- d. (4) However, the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;
- e. Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

As required under Part IX of the Constitution, all the States and UTs have enacted/amended their Panchayati Raj Acts incorporating the provisions of Part IX.

4.5 The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996

Enactment of “The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996” (PESA) was a step taken by the GOI to provide for the extension of the provisions of the Part-IX of the Constitution relating to the Panchayats to the Fifth Schedule Areas with certain modifications as provided under Article 243M(4)(b) of the Constitution. This legislation has not only extended the development, planning and audit functions to the GS in the Fifth Schedule Areas but has also endowed it with the management and control of natural resources and adjudication of justice in accordance with traditions and customs.

4.6 Efforts Made towards Democratization in Non-Part IX States

The MoPR was established primarily to oversee the implementation of Part IX of the Constitution, the PESA Act and Article 243ZD of Part IX-A relating to the District Planning Committees. Although the Panchayats have historically been an integral part of rural life in India, these Acts have institutionalized the PRIs at the village, intermediate, and district levels as the third tier of government. The aim of MoPR has been to combine social justice with effective local governance, with an emphasis on reservation of seats for the deprived classes of population, including of the leadership positions.

Tribal areas generally mean areas having preponderance of tribal population. However, the Constitution of India refers tribal areas within the States of Assam, Meghalaya, Tripura and Mizoram, as those areas specified in Parts I, II, IIA & III of the table appended to paragraph 20 of the Sixth Schedule. In other words, areas where provisions of Sixth Schedule are applicable are known as Tribal Areas.

PART I

1. The North Cachar Hills District
2. The Karbi Anglong District
3. The Bodoland Territorial Area District

PART II

1. Khasi Hills District
2. Jaintia Hills District
3. The Garo Hills District

PART IIA

Tripura Tribal Areas District

Part III

1. The Chakma District
2. The Mara District
3. The Lai District

Though Panchayats have not been constituted in some of the areas (meaning Panchayats don't exist), in accordance with the provisions of Part IX, the Ministry, nonetheless, took action for deepening of decentralized governance in these areas to foster efficiency, transparency and accountability of the local/traditional bodies/institutions.⁵²

MoPR initiated a detailed process of consultations with different States and concerned Ministries of the GOI. A meeting of representatives of concerned Ministries and State Governments was also held on November 16, 2010, at New Delhi, wherein it was decided that instead of resorting to a constitutional amendment, it would be appropriate to bring in necessary amendments in laws relating to Autonomous District Councils and Village Councils as initial steps to deepen the process of democratic functioning. The legal frameworks of local self-government in north eastern region vary from State to State and these needed to be reviewed in the context of representation of women, direct elections, etc. In other words, the draft amendments were prepared for States where elected Village Councils exist but they lack basic features of democratic functioning like conduct of regular elections, universal suffrage, reservation for women, etc.⁵³

⁵²Ibid.op cite.

⁵³Ibid.op cite.

An Inter-Ministerial Team (IMT), of the representatives of the Ministries of Panchayati Raj, Home Affairs, Tribal Affairs, Development of North Eastern Region and Urban Development, visited North Eastern Regions over a period of three years and held consultations with individual States. The IMT prepared draft Bills and forwarded suggestions to the State Governments for undertaking amendments to State laws. The IMT had proposed the following:

- (i) In Assam and Meghalaya, new Village Councils were proposed through State Laws.
- (ii) In Nagaland and Manipur, elected Village Councils instead of the traditional Village Councils were recommended.

The Bills drafted by MoPR incorporate the objectives of deepening decentralized governance through provisions like:-

- a) Make Village Council answerable to Gram Sabha (GS), recognize GS under the law and specify their powers and functions
 - b) Rationalize the powers of State Government and the District Councils in the matters of extension and supersession of Councils, thereby making the process transparent and to hold elections within six months after such a supersession
 - c) Provide for reservation of women
 - d) Mandatory and regular election of the Village Council through the State Election Commission
 - e) Make women members' participation part of the quorum in GS and Council meetings
 - f) Constitute State Finance Commission where not existing
 - g) Vesting of both developmental and some judicial powers on the Village Councils, and vest more powers to Village councils and Gram Sabha.
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4.7 Gram Panchayat Development Plan (GPDP)

Devolution of powers i.e. funds, functions and functionaries (3 Fs) to the PRIs and revision of CSS guidelines for providing roles and responsibilities to the PRIs for planning, monitoring and implementation are the important aspects of Decentralised planning. Article 243G of the Indian Constitution mandates preparation of plans for economic development and social justice by Panchayats and through this process Panchayats are expected to evolve into institutions of local self-governance. For optimum utilisation of resources for the benefit of their citizens, preparation of integrated development plans by GPs has become a necessity.⁵⁴

GP development plans should ideally match peoples' needs and priorities with available resources and additionally mobilise local resources through a fair, inclusive, transparent and participatory process. The focus should be on local development issues, local perception of need and priority, local analysis of problems and solutions, local resources management all within a collective local vision. A typical GPDP consists of following steps— Identification of Resources (Financial and Human) in the GP, Generation of Environment for Participatory Planning through Mass Media/local interactions etc., Situational Analysis by assessing infrastructure, civic amenities, human, economic and social development, natural resources and Participatory Planning, Projectisation by prioritizing activities and assigning the appropriate persons, timeline, performance indicators and expected outcome, Finalisation of Development Plan of GP for both annual and five years, Technical and Administrative approval Institutional Support including MIS, Capacity Building for Participatory Planning.⁵⁵

⁵⁴Ibid.op cite.

⁵⁵ Ibid.op cite.

4.8 The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996” (PESA)

Ministry of Panchayati Raj (MoPR) oversees the implementation of Part IX of the Constitution, the provision regarding District Planning Committee as per Article 243ZD in Part IXA and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) in the Fifth Schedule Areas. The Constitution (Seventy-Third Amendment) Act, 1992, which came into force w.e.f. 24th April, 1993, inserted Part IX in the Constitution of India and accorded Panchayats a Constitutional status as institutions of local self-governance for rural India.

Article 243M (1) of the Constitution exempts Scheduled Areas and tribal areas referred to in Clause (1) and (2) of article 244 from application of the provisions of Part IX of the Constitution. However, article 243M (4) (b) empowers the Parliament to legislate and extend the provisions of Part IX to Scheduled Areas and tribal areas referred to in clause (1), subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment of the Constitution for the purpose of article 368.⁵⁶

4.9 Fifth Schedule Areas

The Fifth Schedule of the Constitution deals with the administration and control of Scheduled Areas as well as of Scheduled Tribes residing in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. “The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996” (PESA), extends Part IX of the Constitution with certain modifications and exceptions, to the Fifth Schedule Areas notified under article 244(1) of the Constitution. At present, Fifth Schedule Areas exist in

⁵⁶Ibid. op cite.

10 States viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

4.10 Definition of Village and Gram Sabha

Under the PESA Act, {section4(b)}, a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with tradition and customs. Under the PESA Act, {section4(c)}, every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.

PESA exclusively empowers Gram Sabha to

- (i) safeguard and preserve the (a) traditions and customs of the people, and their cultural identity, (b) community resources, and (c) customary mode of dispute resolution
- (ii) carry out executive functions to
 - (a) approve plans, programmes and projects for social and economic development;
 - (b) identify persons as beneficiaries under the poverty alleviation and other programmes
 - (c) issue a certificate of utilisation of funds by the Panchayat for the plans; programmes and projects

PESA empowers Gram Sabha/Panchayat at appropriate level with right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons, panchayat at an appropriate level is entrusted with planning and management of minor water bodies, mandatory recommendations by Gram Sabha or Panchayat at appropriate level for prospective licenses/lease for mines and concession for the exploitation of minor minerals, regulate sale/consumption of intoxicants, ownership of minor forest produce, prevent land alienation and

restore alienated land, manage village markets, control over money lending to STs, control over institutions and functionaries in social sector, local plans including Tribal sub plans and resources.⁵⁷

4.11 Importance of PESA

Effective implementation of PESA will not only bring development but will also deepen democracy in Fifth Schedule Areas. There are many benefits of PESA. It will enhance people's participation in decision making. PESA will reduce alienation in tribal areas as they will have better control over the utilisation of public resources. PESA will reduce poverty and out-migration among tribal population as they will have control and management of natural resources will improve their livelihoods and incomes. PESA will minimise exploitation of tribal population as they will be able to control and manage money lending, consumption and sale of liquor and also village markets. Effective implementation of PESA will check illegal land alienation and also restore unlawfully alienated tribal land. And most importantly PESA will promote cultural heritage through preservation of traditions, customs and cultural identity of tribal population.⁵⁸

4.12 State Vs. Sixth Schedule

There have been academic discussions over the existence of the District Councils after the Statehood was granted to the people. It was felt that after the creation of the State, District Council may serve the people as local self-government in true sense of the term. It was supposed to have grass root level contact. Conversely, carrying out of the functions of the State Government and the District Councils in parallel does not give much benefit to the people. Studies have shown overlapping of powers of the two. Indeed, the ADCs are given a fairly good amount of matters on

⁵⁷ Ibid. op cite.

⁵⁸ Ibid. op cite.

which they can make laws. However, many of these matters are also included or correlated with subjects mentioned in the State List. Therefore, because of this overlapping of jurisdiction on such matters unnecessary confusions and conflicts arose. The most important concern of the State-ADCs relationship is the issue of autonomy of the later. Its autonomy has been affected in almost all fields: political, economic and social but mainly the financial independence. They have to depend on their respective state governments in matters of financial allotments and assistance. It is alleged that because of the obstructive attitude of the state in release of the funds, undesirable practices are adopted so as to raise funds in order to discharge their constitutional obligations like running of primary schools, dispensaries and even to meet the salaries of the employees. This led the ADCs to demand direct funding from the central government. This will avoid state's control over their finance. Even with regard to 'development function', ADCs cannot execute the toil thanks to paragraph 12 A in the Sixth Schedule.⁵⁹

The Report on Commission of Inquiry on the Autonomous District Administration in Meghalaya clearly suggests that the status of the ADCs has been reduced more or less to that of a Municipal Board by the insertion of Paragraph 12 A in the Sixth Schedule. The District Council, therefore, can function only if it maintains harmonious relationship with the state government (Government of Meghalaya 1983). Lacking in statutory support, the ADCs had to depend on the changing political relations with the state leadership. Its activities 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, otherwise a number of obstacles and hurdles may be created by the party in power at the state level to jeopardise the plan of action framed by the District Council. For example, primary education, which needs a very sensitive and prudent management by the District Council authorities becomes badly politicised that now it has become a

⁵⁹The Garo Hills District Council Acts, Rules, etc.,.

total failure.⁹ Public and teacher's resentment grow high. Of late, the Government in Meghalaya, have decided in principle to take over the primary schools, and placed them under its control. Thus, one of the arguments against the ADCs is that in a tiny state like Meghalaya the duplicity of rules is irrelevant. For more than forty years, the Rethinking Constitutional Measures for Managing Diversity²⁶ condition of development has been lacking, slow, degenerating and does not keep pace with onward march of progress elsewhere. 'The state government of our own can provide all the necessary safeguards and protections to our rights and interests. One simple reason, that we share the same benefit in the same state, suffices to justify the irrelevance of these ADCs.'⁶⁰

4.13 Sixth Schedule Vs. Traditional Institutions

Another aspect of institutional arrangement in Meghalaya is the relationship between the traditional institutions (like the Syiemships, Doloiships, Nokmaship and the Durbars) and the ADCs. Under the Sixth Schedule, the office of the Syiem, Doloi and Nokma in Khasi, Jaintia and Garo Hills respectively are treated as subordinate officials of the ADCs. That means 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 ADCs can even 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, further empowered executive committee of the District Councils to remove and suspend them if in its opinion these incumbents violated the terms and conditions of their appointment. Taking the opportunity, on one pretext or another, the chiefs and headmen face suspension or even dismissal by the district Council on charges like insubordination and mal-practices.⁶¹

⁶⁰The Provision of the Panchayat (Extention to the Scheduled Areas) Act, 1996.

⁶¹Ibid.

The same Act went even to the extent of debarring the Chiefs, Deputy Chiefs and Acting Chiefs in taking any part in politics and elections to the parliament, or State or District Council elections. The important point here is the affect it has on the traditional institutional process and customary laws of the land. It is therefore obvious that such actions taken by the District Councils created much resentment among the supporters of traditional institutions as they find it as sheer negligence of the traditional institutions. In the case of the Village Durbars (councils), the Census report of 1961 (united Khasi-Jaintia Hills) remarked 'the present powers of the Durbars under the district Councils has greatly been reduced in comparison with its powers under the chiefs' (Gassah1997; 211). If the District Councils could interfere in the village affairs, it was more so in the case of the Durbar Raids. The same Census report was again very clear on this point when it added that the part of the Durbar Raid is played by the District Councils. Precisely, thus, the traditional institutions are under the control of District Councils which is against the interests of the traditional institutes. Therefore, they also demand direct funding from the state.¹⁰ Even a delegation comprising the Federation of Khasi States, the Council of Dolois, and Sardars submitted a memorandum to the centre seeking its intervention to address, what it claims, the 'Constitutional Anomaly' and the annexation agreement signed between the federation of Khasi States, and the accepted by the government of India on August 17, 1948. ⁶²

The anomaly, according to the delegation, has created 'confusion and conflicts' among the Nameirakpam Bijen Meetei²⁷ condition of development has been lacking, slow, degenerating and does not keep pace with onward march of progress elsewhere. 'The state government of our own can provide all the necessary safeguards and protections to our rights and interests. One simple reason, that we share the same benefit in the same state, suffices to justify the irrelevance of these ADCs' (Tariang 1997:80). Sixth Schedule Vs. Traditional Institutions. Another aspect of institutional

⁶²Ibid.

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The United Khasi-Jaintia hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, further empowered executive committee of the District Councils to remove and suspend them if in its opinion these incumbents violated the terms and conditions of their appointment. Taking the opportunity, on one pretext or another, the chiefs and headmen face suspension or even dismiss by the district Council on charges like insubordination and mal-practices. The same Act went even to the extent of debarring the Chiefs, Deputy Chiefs and Acting Chiefs in taking any part in politics and elections to the parliament, or State or District Council elections. The important point here is the affect it has on the traditional institutional process and customary laws of the land. It is therefore obvious that such actions taken by the District Councils created much resentment among the supporters of traditional institutions as they find it as sheer negligence of the traditional institutions.⁶⁴

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⁶⁴Appointment and Succession of Chiefs and Headmen Act, 1959.

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The supreme Court in 1960 in the case of disputes between T. Cajee, Chief Executive Member, United Khasi-Jaintia Hills Autonomous District Council Vs U Jormanik Syiem of Myllem observed the position, ‘after the coming into force of the Constitution was that the Chiefs lost whatever ruling or administrative powers they had with the merger of these twenty-five (25) States of Assam and the Governance of these States was to be carried on according to the provisions of the Sixth Schedule’ (The Sentinel 1 Aug 2004). Paradoxically, this new development is a threat to the traditional institutions and whatever may be the democratic practices of the people.

4.14 Sixth Schedule and Tribal Autonomy: The Idea

The Sixth Schedule, therefore, is a mechanism for the necessary protection and safeguard of the tribal way of life and at the same time allowing them to participate in political life of the country along with others. It will be affected through the

recognition and promotion of the traditional tribal self-governing institutions, which functioned democratically and resolved their disputes in accordance with their own customs and traditions. It is the product of 'The Sub-Committee (which) 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'(Gassah 1997:4). Nameirakpam Bijen Meetei existence is achieved. It is hope that this sort of measures will enables certain groups or communities to organise and protect their own social practices. However, there are many unanswered questions concerning the working of the Sixth Schedule.⁶⁵

When provisions (to safeguard the tribal communities) are provided in the Constitution and implemented in reality, why claims and counter claims on the insecurity of the ethnic communities keep surfacing in public domain? Is this existing political system unable to hit upon the target? After all, the continued existence of the socio-political unrests ensued by ethno-centric struggles for recognition illustrates the need for relooking at these provisions. This thesis, thus, is an attempt to study how institutional provisions provided in the Constitution are being endured by taking up the case of Block Development Officers in Meghalaya. Constitutional Assembly Debates and Uniqueness of India's North-East since time immemorial the Northeast region of India (which was during the British rule called 'Backward Track') had remained administratively, culturally and geographically separated from the mainland India. One of the most important questions in the Constituent Assembly Debate concerning this area and the people living herein was whether for the purpose of integration of these people into the Indian union, 'method of force, Assam Rifles and the military forces, should be used, or a method should be used in which the willing cooperation of these people can be obtained for the purpose of governing these areas' (Hansaria 2005:11). Then, it was found that there were certain institutions, among the hill tribals, which

⁶⁵The Provision of the Panchayat (Extention to the Scheduled Areas) Act, 1996.

were so good that it would have been wrong to destroy them. Thus, instead of raising a spirit of enmity and hatred by application of force, they should be brought up under the broad principles of government by good will and love. Thus the idea of Sixth Schedule came to the members. It was, as Shri Nicholas Roy assumed, a measure of 'self government' that Sixth Schedule aimed to offer to the tribals.⁶⁶

According to Dr. Ambedkar, the tribal people in the region differed from tribals of other parts of India, their laws of inheritance, their laws of marriage, custom, etc. were quite different from that of Hindus. And thus Dr. Ambedkar agreed that the Regional and the District Councils should be created to enable them a form of self-rule (Ibid:12). Sixth Schedule and Tribal Autonomy: The Idea of The Sixth Schedule, therefore, is a mechanism for the necessary protection and safeguard of the tribal way of life and at the same time allowing them to participate in political life of the country along with others. It will be affected through the recognition and promotion of the traditional tribal self-governing institutions, which functioned democratically and resolved their disputes in accordance with their own customs and traditions. It is the product of 'The Sub-Committee (which) 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'(Gassah 1997:4). The ADCs (as per the requirements of Sixth Schedule) were first established in 1952 in certain Hill Districts of the then composite state of Assam, and in 1953 regional councils (now District Councils) were launched in the then Lushai Hills District (now Mizoram).¹ The significance of the timing of its establishment lies in the fact that within the larger state of Assam there were some major tribes who were demanding a separate space of their own, first, to protect themselves from the exploitation by the non-tribals economically as well as politically, and second, to be able to preserve their ethnic identity and customs (Meetei 2007).

⁶⁶Ibid.

In this sense the report of Bordoloi Sub-Committee is very important.²Consequently, this institution was aimed at providing positive value to cultural diversity by empowering the tribal communities to run their own system of customary laws and traditional institutions on the one hand and to provide certain level of political and administrative autonomy that enables them to make their own course of development unhindered by larger community/communities. In this sense Sixth Schedule was supposed to be a remedy for minority discrimination ethnically diverse state like Assam. Again, this sort of arrangement had the potential to diminish the likelihood of inter-ethnic conflicts (Gurr 1993, 2000).³However, the demand for a separate hill state in Northeast India was made right from the year 1953.⁶⁷

Part of the reason for demanding a separate state is the provisions of Sixth Schedule itself. This is especially true in regard to the Khasi Kingdoms. Many knew that the District Council would take away the major functions of the Federation of the Khasi States. Some even said that as a result of the formation of the District Council the federation of the Khasi States suffered an eclipse. Some groups like the Nagas even refused to recognise the local autonomy envisaged in the Schedule. But, in spite of the opposition, J.J. Nicholas Roy, the veteran Khasi leader, persuaded other Hill peoples and managed to get majority in a vote to come under the administrative control of Assam for their greater economic improvement.⁶⁸

⁶⁷The Provision of the Panchayat (Extention to the Scheduled Areas) Act, 1996.

⁶⁸Ibid.