

CHAPTER-VI

Extension of Benefits of the Constitution 73rd Amendment Act, to the Non-Panchayat Areas

Scope of Extension of the Constitution (73rd Amendment) Act, 1992 into Garo Hills:

With the dawn of India's independence, District Councils came into being as per provisions laid down under Sixth Schedule of the Constitution of India. These District Councils are still in existence till today with much hardships being faced by almost all the District Councils in the domain of finance besides its functioning being put to bitter criticisms from various quarters. In addition to the Autonomous District Councils created just after the commencement of the Constitution of India in different States of the North East India, including West Bengal, a new upgraded version of the then existing Bodoland Autonomous Council (BAC) by an amendment of the Sixth Schedule provisions of the Constitution of India (Act 44 of 2003), which is later named Bodoland Territorial Administrative District (BTAD), comprising the districts of Kokrajhar, Chirang, Udalguri and Baksha has been created in 2003. The autonomy granted to the Bodos is now officially called The Bodoland Territorial Council (BTC).¹

The Autonomous Self-Governing body created for the Bodos living in the plain districts of Assam, had its brief historical background dating back to the year 1993 when the Bodo Accord was signed on 20th February, 1993 with representatives of the All Bodo Students' People's Action Committee (ABSPC), with the objective to provide maximum autonomy to the Bodos within the framework of the Constitution of India, for their social, economic, educational and cultural advancement. In pursuance to the Bodo Accord, an Interim Bodoland Autonomous Council (BAC) was constituted by the Government of

¹ The Gazette of India, Part II, Section 1, dated September 2003, pp 1-4, No. 48.

Assam by enacting a State Legislation. Bodo groups were of the view that Bodo Accord had become unworkable due to non-implementation of the Accord in letter and spirit. Based on the tripartite talks, a Memorandum of Settlement (MoS) has been signed by the Central Government, the Government of Assam and Bodo Liberation Tigers (BLT) on 10th February 2003 for a durable solution to the Bodo issues.² The outcome of this historic signing of the MoS has been the present Bodoland Territorial Council (BTC), which is indeed the fruit of their indomitable spirit and of relentless effort in their fight for justice and development. This also has been a step nearing their long term goal of achieving statehood in the near future to yoke off themselves from Assamese chauvinism and dominance over the tribal populace of the State. This newly created Territorial Council now, has been a part of the Sixth Schedule of the Indian Constitution, though the region lies in the plain belt of Assam. The BTC has been the newly created Council under the State of Assam by an Amendment Act in the Union Parliament in addition to the existing Autonomous District Councils with certain distinct features of its own along with scope for devolution of more powers. One important feature of this newly created and upgraded version of the so called Bodoland Territorial Council (BTC) or the BTAD is the constitutionally innovative design of the system for receiving fund and resources directly from the Union Government of India without State Government's interference. As a result of this innovative system, the BTC has been on the path of progress and development at a rapid pace. Thus, the Bodos under their armed and political outfit of Bodo Liberation Tigers (BLT) had been able to rock the Union Parliament of India with their innovative demand for an autonomy and influenced its members for passing a legislation that suited them and which could solve their socio-economic problems and a long cherished political goal.

As already mentioned in the preceding chapter that the term *Non-Panchayat Areas* refer to these District Councils or Regional Councils or the Tribal inhabited areas where

² Copy of Memorandum of Settlement dated 10th February 2003.

Sixth Schedule provisions are being in force and where the people and their territories are brought under the administrative provisions enshrined under the Sixth Schedule of the Constitution of India.

In the preceding chapters, an inquiry into the style and of the manner of functioning of the ADCs especially, the GHADC has revealed that it failed to address and redress many problems and issues of the people. It has not been in a position to protect, preserve and promote the interests of the tribal people inhabiting within the jurisdiction of the GHADC and deliver goods to the people. The functioning of the existing three Autonomous District Councils i.e the Khasi Hills Autonomous District Council (KHADC), the Garo Hills Autonomous District Council and the Jaintia Hills Autonomous District Council in Meghalaya and other existing Autonomous District Councils in other States of North East India, is also not satisfactory. These Autonomous Councils argued that lack of development is due to fund crunch and the prevailing system of funding through State Government. They pleaded their cases for direct funding by the Central Government when they met the Hon'ble Prime Minister of India in August 1994.³ They even expressed their desire for favouring a *Panchayati Raj* status for themselves.⁴ Therefore, there is no denying the fact that the Districts Councils in general and the Garo Hills Autonomous District Council (GHADC) in particular have failed on all fronts. Very often, reports of financial mismanagement, irregularities and the manner how its resources are utilized by the ADCs are being often highlighted and criticized in the media. There are complaints from the Autonomous District Council staffs and employees for not being able to received their monthly salaries for over six to nine months every year because of which they are found resorting to such democratic programmes as Pen Down Strike, Sit in demonstrations, Non-Cooperation etc. It is known that the powers of the District Councils in the Sixth Schedule of the Constitution have been now to a large extent curved due to the insertion of Para 12 A. As a result of which, its Legislative and

³ M.N.Karna, L.S.Gassah and C.J.Thomas (ed): *Power to People in Meghalaya*, p 113.

⁴ *Ibid*, p 102.

Executive powers are being declared *ultra vires* if any of the Legislations or Executive orders concerning developmental issues contradict with any of the existing legislations or new legislation passed by the State Government. Under such circumstances, in reality, the District Council is no longer autonomous. Its own generated revenue from various sources, can hardly meet up the costs of administration and therefore, it has to solely depends on the State Government for necessary fund.

As the Councils have been persistently experiencing financial stresses and strains, the possible solution is perhaps the insertion of Para IX by the 73rd Constitutional Amendment. The Schedule Areas, the Tribal Areas etc. should take the opportunity of this good empowering scheme of self rule by way of modifying some of the clauses to suit their customs and traditions and the age old system and controlling of land holding rights of the indigenous tribes living in the state.

Though Paragraph 243M (1) of the Constitution 73rd Amendment Act, 1992 clearly mentions that this very amendment Act shall not be applicable to the areas covered and being administered under the provisions of the Sixth Schedule of the Indian Constitution, there is a relevant clause too, that provides for extension of the provisions of the Act. The said paragraph says that i) “The act shall not apply to the Scheduled Areas referred to in clause (1) and the Tribal Areas referred to in clause (2) of the Article 244; ii) That it shall not 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.

Further it is said that in no case, the said act shall not be applied 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;

The Constitution, 73rd Amendment Act, however clearly mentioned that 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. The act further empowers the Union Parliament of India to extend the provisions of act 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 purpose of Article 368.⁵

As is seen from the above that sub para 4 of the Paragraph 243M (1), empowered the State Legislature to extend the *Panchayati Raj* to the Schedule Areas by a resolution to this effect. It is the responsibility of the concerned State Government to bring legislation in this regard and to move ahead with taking the benefits of development being extended by the Union Government through implementation of the *Panchayati Act*. States and the people very often murmur as to the amount of allocation of funds to each State Governments. Very often there have been complaints and strong objections saying that the Central Government's fund allocation for certain states is meager which can in no way, meet the State's annual expenditure and as a result, development hardly takes place. State Government and its people must welcome the developmental programmes and the various schemes being sponsored and implemented by the Central Government. State's development and progress can be achieved when there is an active and larger participation of people in the various activities of development being carried out by the government. People themselves must be a part of the development process and shoulder greater responsibility to it. People themselves should be involved in the process of policy generation and implementation of varied schemes for the good of the people themselves.

⁵ Copy of the Constitution, 73rd Amendment Act, 1992.

Seeing the effectiveness of the *Panchayati Raj* Institution as a tool of administrative machinery at the grassroot level, and after fully knowing that the status and position of the rural folk could be enhanced to a certain extent in the field of administrative power sharing, economy, social life, education etc. the Social Scientists, the Social Reformers, the Public Representatives, the top level policy makers in the country, the top level Government Officers etc. felt the need of extending the benefits of the *Panchayati Raj* to the Non *Panchayat* Areas.

In accordance with the provision stated in sub-para (b) of Para 4 of the Constitution 73rd Amendment Act, 1992, and after having been fully considered that the Schedule Areas too, must reap the benefit of the *Panchayati Raj* and that the change and development must take its root from the lowermost village level administrative unit, the Parliament of India came forward with a bold step of passing a legislation popularly called the *Panchayati Raj* (Extension to the Scheduled Areas) Act, (PESA) 1996 (Act No. 40 of 1996) on December 24th 1996. In paragraph 4, this Act clearly laid down provision that prohibits legislature of a State to make any law under that Part which would be inconsistent with the customary law, social and religious practices and traditional management practices of community resources. Under this act, every village shall have a *Gram Sabha* with persons whose names are included in the electoral rolls for the *Panchayat* at the village level. Under the provision of the Act, it is provided that

- a) Every *Gram Sabha* be empowered to protect and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;
- b) Every *Gram Sabha* shall:
 - i) Approve the various developmental plans, programmes and projects for social upliftment and economic development.
 - ii) Be responsible for the identification of beneficiaries under the scheme of poverty alleviation and other social welfare programmes;

- c) It is to be ensured that every Village *Panchayat* shall have to obtain from the *Gram Sabha* a fund utilization certificate for the plans, programmes and projects;
- d) The reservation of seats in the Scheduled Areas at every *Panchayat* shall be in proportion to the population of the communities in the *Panchayat* for whom reservation is sought to be given under Part IX of the Constitution;
Provided that the reservation for the Scheduled Tribes shall not be less than one half of the total number of seats;
Provided further that all seats of Chairpersons of *Panchayats* at all level shall be reserved for the Scheduled Tribes;
- e) The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the *Panchayat* at the intermediate level or the *Panchayat* at the district level;
Provided that such nomination shall not exceed one tenth of the total members to be elected in that *Panchayat*;
- f) The *Gram Sabha* or the *Panchayats* at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resetting or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be co-ordinated at the State level;
- g) Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to *Panchayats* at the appropriate level;

Paragraph 5 of the same Amendment Act contains provisions for continuance of existing laws till the expiration of their duration unless sooner dissolved by a resolution taken by the Legislative Assembly of that particular State. ⁶

⁶ Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Act No. 40 of 1996) passed on December 24th 1996.

Through passing of this act, now the provisions of the Constitution (73rd Amendment) Act, 1992 have been extended to the Scheduled Areas enabling the people especially the backward Tribal Communities to reap the benefit of Central Government's noble initiative of self-governance and rural development through empowering people.

Therefore, it depends upon the concerned State Governments having Tribal Areas, Scheduled Areas and the Areas being governed or administered under the Sixth Schedule, either to take the benefit of this Constitutional provisions and have speedy growth and development or to simply leave it aside and remain in the shadow of darkness. For a community having vision and wisdom and those, who believe in progressive cycle of change, perhaps such a grand scheme and opportunity will never be sidelined. A glimpse of the list of subjects as found mentioned in the Eleventh Schedule (Article 243G), altogether 29 different subjects have been assigned to the *Panchayati Raj*. The basic idea behind allocating these subjects under the newly enacted legislation is to bring development within the jurisdiction of the *Panchayat* by providing opportunity to its people to take part in the process of administration and governance and be a responsible part of the process of development and in nation building activities. The Autonomous District Councils on the other hand are basically meant for the protection, preservation, regulation and promotion of the rights on land, customs and traditions of the Tribal people inhabiting in the areas covered under the Sixth Schedule.

We can in no way, deny the fact that we should protect our heritages of whatever we have, be it resources, material culture or non-material culture; preserve and promote it in the best possible way. In this regard it, the intentions of the founding fathers of the Constitution of India in bringing the Sixth Schedule provision as part of our Constitution, were good and deserved high appreciation. But the way our elected representatives and the people who man and manage the office, and exercise its powers, is misleading and unacceptable. We notice a complete deviation in the activities of the responsible and elected representatives of the Autonomous District Council who took it as means of

accumulating wealth for himself and his or her own family and indulge in the life of luxuries and comfort. Once elected, their relations with his or her own people in the constituency in particular and the people of his or her State in general, start slackening. His or her preferred destinations are often somewhere in the distant places and his mind is directed towards grasping all those opportunities of promoting one's own business.

In the backdrop of strong dissatisfactions among the majority of the indigenous tribes inhabiting the region, for whom the ADC had been created and for reasons of failing administrative inefficiencies of the staff and of the elected representatives for which a change of the system of functioning is in need, perhaps the moribund ADC might best be replaced with the introduction of the *Panchayati Raj* system in the areas and the regions which are presently under the Sixth Schedule provision. Once the system works well, and change and development could be seen, then the system itself would be sure enough to convince its effectiveness as tool of change and development for the land and its people. Then, that will be the time when the people would readily accept the *Panchayati Raj* without a doubt.

The Constitution (73rd Amendment) Act, 1992 Vis-à-vis the Tribal Interest:

The 73rd Constitutional Amendment Act, 1992 has created the statutory *Panchayat* organizations all over the country. Para 243G of this Act confer on the State Legislature the power to endow *Panchayati Raj institutions* and *Municipal Corporations* with powers and authority enabling them to function as self-governing institutions for preparation and implementation of plans for economic development and social justice. The already operating position under the 6th Schedule of the Constitution in the North Eastern Region of India, has created further confusion regarding ownership of land, forest, natural resources including minerals and communication systems in the areas. The statutory *Panchayats* mostly being entrusted with wide ranging development responsibilities, there is a strong need to differentiate between developmental role and

functions *vis-à-vis* the traditional ownership, access and social justice role and functions of the traditional bodies. Another constant irritant is the sources of fund available to the lower and middle tiers of such structures. There has to be a clear cut policy and role demarcation in these tribal infrastructures in order to create a better representations, and to ensure more and active participation in the system from among the tribal people living in the Scheduled Areas. In this regard, it may be suggested for consideration that customary laws, traditional practices, community management system and the concept of community ownership of Land, Forest, Natural Resources, Mineral Resources etc. are very strong and positive parts of traditional tribal culture. Hence the statutory *Panchayat* structures should be blended into the above areas and formulate and effective politico-legal-administrative structure in Scheduled Areas and Tribal Areas. There should be clear demarcation of power, authority sharing, in order to strengthen the participation of tribal people and possible prevention of exploitation of tribal interest by Non-Tribals.

The Constitution (73rd Amendment) Act, 1992 and Women:

Active involvement and participation of women in the *Panchayati Raj* Institutions is indeed very essential, as their overall growth and development lies in their participation in the democratic process and to liberate them from the shackles of social and economic problems. The Constitution (73rd Amendment) Act provides 33% reservation for women in the *Panchayati Raj* Institution. This Constitutional innovation, is indeed a significant step in empowering womenfolk by giving them the opportunity, a voice in the decision making process and to lead them to a new, enlightened and changed social order.

Article 243D (1) of the Constitution 73rd Amendment Act provides that seats shall be reserved for the Scheduled Castes and the Schedule Tribes. Further there is mentioned that no less than one third of the total number of seats be reserved for women belonging to the Scheduled Castes and the Scheduled Tribes. The Offices of the Chairpersons in the *Panchayats* at the village or any other level shall be reserved for the Scheduled Caste,

Scheduled Tribes and women. The 30% reserved seats for women is based on social justice as guaranteed under the Constitutional rights of women.⁷

Going through the past records of the GHADC one is convinced that though the Garos follow matrilineal system of inheritance in which descend is traced from her mother and the parent's property passes on to woman; and though high respect is given to women and the status and position of women in the society is never discriminated, the women in Garo Hills had been very poorly represented in the GHADC body. This clearly indicates that women in Garo Hills are not politically conscious which might be due to illiteracy, lack of concern and motivation, and of opportunity and awareness. During the constitution of the first GHADC general body, the lone Garo woman Smt. Surjomoti Ch. Momin was elected during election that was held for the first time, and another lady Smt. Roneswari Marak got nominated by the Government to the 24 Member Council (1952-1957). In the second term of the Council (1957-1964), no women had been represented. In 1962, election was not held due to Chinese Aggression. In the election held in 1964, there was only one female member Mrs Ewinel Marak, who joined the election fray but was defeated.⁸ In the third GHADC general body term (1964-1972), Smt. Bisadini Sangma was nominated;⁹ two women were nominated during the 4th GHADC general body (1972-1978), as the only woman independent candidate Mrs Evangeline Shira, who contested the election was also defeated.¹⁰ The two nominated women were Smt. Alleswary Momin and Smt. Janje Ch. Marak. During 1978-1983 (5th term), none of the women was found elected or nominated and therefore, women representation is nil during that term. Smt. Enilla D. Shira and Smt. Reboti Barman were the two elected women representatives during the 6th GHADC term (1989-1994). Smt. Bety Davis Ch. Momin

⁷ Copy of the Constitution 73rd Amendment Act, 1992; Also see M.N.Karna, L.S.Gassah and C.J.Thomas (ed) *Power to People in Meghalaya*, p 58.

⁸ M.N.Karna, L.S.Gassah and C.J.Thomas, *op. cit*, p 64.

⁹ List of GHADC Member published on the GHADC Golden Jubilee Souvenir (1952-2002), pp 80-88.

¹⁰ M.N.Karna, L.S.Gassah and C.J.Thomas, *op. cit*, p 64.

was nominated to the GHADC during the 8th term (1994-1999) while Smt. Clarish K. Sangma was the nominated member of the GHADC during the 9th term.¹¹ Recently, we see in the GHADC general body few women viz; Mrs Dikanchi D. Shira, Mrs. Sadhiarani M. Sangma and others.

Educationally the tribals anywhere in the country, are still backward. The tribal women are more illiterate than their male counterparts and their participation in the politics is quite negligible. The Garos too, are no exception to this problem. Despite one third seats reservation provided for the women in the *Panchayati Raj*, there is possibility that in some *Panchayat* constituencies, not even a single woman might come forward to take part in the elections. To overcome such problem, there must be provision to fill up the post either by nomination or by making the seats dereserved.

There was no reservation of seats separately for the women in the GHADC general body. In chapter I of Part II of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951 it states that the Garo Hills Autonomous District Council shall consist of thirty members. Out of these, twenty nine shall be elected based on adult suffrage. One member is to be nominated by the Governor on the advice of the Executive Body of the District Council.¹² This same provision is being continued even today for the election to the GHADC and as a result, women in Garo Hills are not being well represented and their grievances too, have not yet been properly addressed. A legislation in this regard may be passed in the Executive Council for reservation of seats for women to ensure their proper representation.

¹¹ List of GHADC member published on the GHADC Golden Jubilee Souvenir (1952-2002), pp 80-88.

¹² The Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951, Relevant Rules as Required For Holding Election to Garo Hills District Council, p ii.

Comparison between the Autonomous District Council (ADC) and the Constitution 73rd (Amendment) Act, 1992:

Comparative study and analysis of the powers, scope, functions and the financial support that the 73rd Amendment Act provides for the *Panchayats*, with the powers available to the District Councils in general, we see that the Autonomous District Councils have a mere regulatory powers subject to the State's control. The *Panchayat* bodies on the other hand, have advantageous position in respect of developmental functions. If the *Panchayati Raj* is not implemented in the areas covered under Sixth Schedule, then these areas will enjoy less powers in the development aspects.

When we look at the system of land holding rights of the Tribal people in their respective District Councils of Meghalaya, the land belong to those Tribal Clans and are looked after and managed by their respective Tribal Chiefs known as *Syiem*, *Doloi* and the *Nokma*. Under the Autonomous District Council, most of their traditional powers have been considerably curtailed, reduced or taken away by the Constitutional Amendments, Court Orders, Government Regulations and Notifications issued from time to time. Under the Constitution (73rd Amendment Act), 1992, the Act is completely silent about the system of land holding rights to individuals, the clans etc. while these rights are being exercised by the Tribal Chiefs and regulated by the Land Regulation and Land Transfer Acts of the concerned and respective States. In developmental aspects, of course we have more powers to be exercised of and more Central Fund to be received for carrying out schemes for rural development. The people's participation in the *Gaon* or *Gram Panchayat* is heterogenous in character while that in the Village Council under the Autonomous District Councils (ADCs), it is confined to only recognized Tribal Communities, the Tribal Chiefs and the Clan members of a particular tribe or community. The three tier *Panchayat* system is meant for the people in general while the District Council is exclusively meant for the tribal people. The District Autonomous Councils have been designed to enable the tribal communities to live a life in tune with their

culture, traditions and customs and also to enable them to follow their own self-management paradigms within well demarcated spheres. Yet, the Autonomous District Councils are not free from shortcomings. On examination one can find that it has the following disadvantages:

- 1] The Sixth Schedule focuses itself entirely on the district tier and does not concern itself with tiers underpinning it. The result is that in some Sixth Schedule areas of the North East, no democratic or even sometimes traditional institutionalized tiers are found below it i.e at the Sub-District level.
- 2] As per para 16 (2) of the Sixth Schedule, the power of dissolution of an Autonomous District Council has not been accompanied by a mandate for reconstitution and hence, is liable to misuse.
- 3] There is no express provision that election has to be held within six months of the date of the dissolution of an Autonomous District Council as provided for in the two Amendment Acts.
- 4] According to para 13 of the Sixth Schedule, the estimated receipts and expenditure pertaining to an Autonomous District Council are first to be placed before the District Council for discussion and thereafter be shown separately in the Annual Financial Statement of the State to be laid before the Legislature of State under Article 202. It has been reported that the discussion in an Autonomous District Council is treated by State Authorities as a mere formality leading to the complaint that no real autonomy has been conferred.¹³

¹³ Report of the Committee of Members of Parliament and Experts constituted to make recommendations on law concerning extension of provisions of the Constitution (Seventy Third Amendment) Act, 1992 to Scheduled Areas. Ministry of Rural Development, Government of India, January 1995, p 7.

Some Views in favour of extension of provision of Constitution (73rd Amendment) Act, 1992:

The workshop on Traditional Self Governing Institutions among the Hill Tribal Population Groups of North East India, held in August 1994 at Guwahati, was of the opinion that the new Part IX of the 73rd Constitution Amendment relating to the *Panchayat* System would not be in conflict with the traditional self-governing institutions of the Hill Tribes provided that suitable modifications are made to suit the local aspirations and conditions of the people of the areas concerned.¹⁴

The aforesaid workshop was of the opinion that the existing traditional institutions should be accommodated wherever possible including adoption of suitable nomenclature and terminologies with which the respective tribes are familiar. In fact, under Article 243(D) of the 73rd Amendment Act, there is a mention which is very clearly stated “*Panchayat*” means an institution for local self-government by whatever name it may be called.¹⁵

Following the passing of the 73rd Constitution (Amendment) Act 1992, region based prominent NGOs organized seminars and workshops, invited experts on the subjects and discussed about the ways by which the new provisions could be implemented to achieve its desired objectives. One such National Workshop was organized by the Delhi based NGO Jigyansu Tribal Research Centre under the title “Role of 73rd and 74th Constitutional Amendments in the Schedule Areas” at International Centre, New Delhi on the 25th and 26th of March 1998 in collaboration with the Tribal Development Division of the Ministry of Welfare, Govt. of India. In this very workshop, many prominent persons and the top level Government officers too participated. They were unanimous in their views and expressed on the necessity of implementation of State *Panchayat* Acts at the grassroot level and the importance of power sharing at the *Gram Sabha* Level. A

¹⁴ M.N.Karna, L.S.Gassah and C.J.Thomas, *op. cit.*, p 113.

¹⁵ *Ibid*, p 114.

committee comprising of Dr. Bhupinder Singh, Dr. Neeti Mahanti, Dr. Ramdayal Munda and Mr. P.P.Srivastava formulated a set of appropriate recommendations to be presented to the Planning Commission, Ministries of Welfare, Rural Development, Urban Affairs and Employment and Human Resources Development etc. of Government of India for future action. It was also decided for a Public Interest Litigation (PIL) for proper implementation of the *Panchayat* Act and ensuing devolution of power to the grassroots level. A Task Force was formulated with the following eminent personalities in order to create a Pressure Group which will jointly and individually lobby with the Union Government of India and the various State Governments as well. The members of the Task Force were:

1. Mr. Purno A'gitok Sangma
2. Mr. Mani Shankar Aiyar
3. Mr. Dileep Singh Bhuria
4. Mrs. Margaret Alva
5. Dr. Ramdayal Munda
6. Dr. Bhupinder Singh
7. Dr. Neeti Mahanti
8. Dr. Rajammal P. Devdas
9. Mr. P.P. Srivastava
10. Mrs. Alaka Madhok¹⁶

However, the said Task Force could not do much for the advancement and achieving of its targeted objectives other than giving written suggestions and recommendations for further actions for devolution of powers to the *Panchayati Raj* Institutions.

¹⁶ Role of Democratic Decentralisation (Panchayati Raj) in TSP Areas Edited by Bhupinder Singh & Neeti Mahanti: Inter India Publications, New Delhi; p 10.

Report of the Committee of Members of Parliament and Experts Constituted to Make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy Third Amendment) Act, 1992 to Scheduled Areas, 1995 popularly known as Bhuria Committee. Recommendations necessary to be considered:

The State Government of Meghalaya, while framing its own laws for extension of *Panchayats* in the areas presently being governed under the provisions of the Sixth Schedule may take into account the recommendations of the Bhuria Committee, 1995 to suit the needs of the tribal people inhabiting in the State. In para 2 of the Summary of Recommendations of the “Report of the Committee of Members of Parliament and Experts Constituted to Make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy Third Amendment) Act, 1992 to Scheduled Areas” it was pointed out by the Committee and recommended that certain provisions of “The Constitution Seventy Third Amendment Act, 1992 on the *Panchayats* were wholesome and should be incorporated in the law to be passed by the Parliament under Article 243M (4) (b), certain unique characteristics of Tribal societies and Tribal areas need to be kept in view. It was pointed out that many Tribal societies have their own customary laws, traditional practices, community ethos, political and administrative systems etc. In considering the matter to be legislated, their mode of living, organization, cultural mores etc. and their present day predicament of exploitation, deprivation, marginalization etc. would have to be kept in focus. Since many Tribal communities have been living autonomously cut off from the rest of the society, they have exercised control and had access to natural resources moulding their institutions. Their *Grams Sabhas* and Village Councils have been vibrant institutions in the administrative, religious, political, economic, justice etc. fields. The Committee felt that while shaping the new *Panchayati Raj* structure in tribal areas, it is desirable to blend the traditional with modern by treating the traditional institutions as the foundation on which the modern suprastructure should

be built.¹⁷ These recommendations of the Bhuria Committee should not be the guiding principles not only to the Parliament of India; but the same may also be taken as basic framework and the main principles of legislation to be enacted for the people of State.

The Committee in their Statement of Objects and Reasons for such recommendations said that “Most of the Tribal societies in India have been practicing democracy, having been characterised by egalitarian spirit. Cognizance has to be taken of their indigenous institutions and ethos while considering democratic decentralization in the Tribal areas. Secondly, time honoured customary usages and arrangements in tribal areas should be respected and allowed to be continued. Traditional Tribal conventions and laws should continue to hold valid. Harmonisation with the modern systems should be consistent therewith. Thirdly, *Panchayati Raj* bodies in Tribal Areas should be made more effective and more participative in the context of the foregoing. More than in the past they have to function as institutions of self-governance and development. They have to work for socio-economic goals for removal of poverty, illiteracy, ill health etc. among the people. Fourthly, for attainment of the aforesaid goals, flow of adequate funds has to be ensured. Such funds should be utilized for purpose they are set apart and should not be diverted. Suitable financial mechanisms should be created for proper utilization of funds.

It is further observed by the Committee that many of the existing administrative boundaries had been defined during colonial rule and it continued till date with little adjustments. Reorganisation of boundaries based on geographic, ethnic and demographic considerations may be considered and finalized within a couple of years. The tribal societies are characterized by a communitarian and co-operative spirit, visible in many undertakings like shifting cultivation, house construction. It was observed that the potential of this ingrained attribute has not been taken advantage of so far. Co-operative

¹⁷ Report of the Committee of Members of Parliament and Experts Constituted to Make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy Third Amendment) Act, 1992 to Scheduled Areas, pp 15-16.

organizations among Tribals should be constituted suitable to their oral traditions and milieu.

It has further been observed that in Tribal and Schedule Areas, the Government's administrative functionaries like that of Police, Forest, Revenue and Excise, instead of protecting the interest of the tribals, are often reported to have been acting against their interests. These administrative machineries turned out to be so repressive and exploitative. Therefore, they should be assigned minimum powers under the supervision of concerned *Panchayats*.¹⁸

In Para 11 of its report, the Committee was of the view that the concept of a *Panchayat* at village level may fit in well for non-tribal areas, since villages there are generally large. But in Tribal Areas, with mostly hilly topography, the villages are usually scattered and population-wise small. These small villages or hamlets are known as *Tolas* in some areas. But a small village or group of hamlets or habitations may have its own *Gram Sabha*. The *Gram Sabhas* should be allowed to exercise their customary traditional role unhindered. Further, a *Gram Sabha* may have a traditional Village Council which performs varied functions – religious, political, economic, judicial etc. on its behalf. The *Gram Sabha* may nominate its Executive Council or Village Council, which may be a traditional body and may delegate to a functions like execution of development works. A number of hamlets aggregated may constitute a Village *Panchayat*, called variously a *Gram Panchayat* or *Anchal* or *Patha* or *Pargana Panchayat*. This tier corresponds to the lowest tier envisaged in the 1992 Act. Its members may be elected. Constituencies may be delegated for election of members to the Intermediate and District tier *Panchayats*. The District level *Panchayat* may be called Autonomous District Council (ADC).

¹⁸ Report of the Committee of Members of Parliament and Experts Constituted to Make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy Third Amendment) Act, 1992 to Scheduled Areas, pp 16-17.

In certain district, Scheduled Tribe population may be less than 50% of a District's total population, but it may be concentrated in a part or parts of the district, say in some Blocks or a Sub-Division or Sub-Divisions. We have recommended that Sub-District Councils may be constituted for such areas and designated as Autonomous Sub-District Council (ASDCs). ASDCs should be at par with ADCs. However, this may be regarded as an interim arrangement pending reorganization of administrative boundaries which we have recommended elsewhere.

Regarding the organizational structure of an ADC, the Committee recommended for an adoption of the broad frame-design of Autonomous District Council contained in the Sixth Schedule of the Constitution in force in the States of Assam, Meghalaya, Mizoram and Tripura. In para 16 of its report, the Committee recommended for association of the Lok Sabha MPs belonging to ST community at the Intermediate (Block) and the District Level *Panchayats*. The MLAs representing their Constituencies either partly or wholly to be associated with and involved in the two tier *Panchayats*.

The Sixth Schedule confers powers of legislation and administration of justice on the District Councils apart from the executive, developmental and financial responsibilities. It was recommended for adoption for districts in Scheduled Areas the Sixth Schedule format, but expand it to include subjects that are indicated in the Eleventh Schedule of the Constitution.¹⁹

In so far as administration of justice is concerned, the Committee has been emphatic that a traditional jury-based legal system by Tribal societies should be recognized and should be enabled to continue to function. There should be no police interference in cases not involving heinous offences. Such cases should be under the domain of the *Gram Sabha*. All government servants and functionaries of institutions

¹⁹ Report of the Committee of Members of Parliament and Experts Constituted to Make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy Third Amendment) Act, 1992 to Scheduled Areas, p 17.

concerned with the functions of a *Panchayat* in a Scheduled Area and located within its jurisdiction will be under its control.²⁰

Conclusion: There has been so much of apprehension from among the tribal leaders of Garo Hills in particular and Meghalaya in general that the adoption of *Panchayati Raj* in the State will ultimately do away with the existing practices of their age old self-governing institution such as *Syiemship*, *Doloiship* and the *Nokmaship*. They think that the new system of governance will definitely help to eclipse their traditional system of village governance and administration. The system might give an opportunity for the Non-Tribal and Non-indigenous people to take the place and thereby manipulate in their rural administration, customary and traditional practices. Therefore, in their opinion, the Constitution 73rd Amendment Act shall not be practicable in their Areas.

They have been bringing Tripura's situation as the case in point to justify their stand. When Tripura was a Union Territory, the then Tripura Government had adopted the Uttar Pradesh *Panchayati Raj* Act of 1947, very soon, the age old self-governing institution of the Tribal people inhabiting in Tripura started disappearing from the scene and the once good practices of the tribal people were given a good bye.²¹

The Garo Students' Union (GSU), the most powerful youth organization in the Garo Hills, is of the opinion that the proposed extension of some of the provisions of the Constitution (73rd Amendment) Act, 1992 would threaten the protective provisions of the Sixth Schedule. The Garo Students' Union (GSU) is of the view that it would require omitting of some of the provisions of the 6th Schedule by the *Panchayats* and the Municipalities. The implementation of the provision, would open the way for the illegal

²⁰ Report of the Committee of Members of Parliament and Experts Constituted to Make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy Third Amendment) Act, 1992 to Scheduled Areas, p 18.

²¹ Atul Goswami: *Traditional Self Governing Institutions among the Hill Tribes of North East India*, p 78.

Bangladeshi migrants who would have by then power to stamp their identity legally because EPIC cards are easily available and they would be the members of the Village Council and thus they would dilute the powers of the *Nokma* and their rights over their own land.²²

In North East India, Arunachal Pradesh had been the first to adopt and follow the *Panchayati Raj* System before the *Panchayati Raj* get its Constitutional status in 1993. Arunachal Pradesh is a State of India where there are many ethnic tribes living since time immemorial. These tribes are the Monpas, the Adis, the Akas, the Mishmis, the Sherdukpens, the Nishis, the Apatanis, the Khamptis, the Noctes, the Wanchos, the Singphos, the Tangsas, the Zhakrings, the Bugun etc. Each of these tribes have their self-governing institutions called by their respective names. The Village chief of the Monpas was known as *Tsorgen*, and the General Assembly of the Village belonging to the Monpas was called *Tso-Tsangzon*.²³

Amidst age old and distinct socio-political institutions that each of these tribes has, without disturbing these institutions and customary practices, the *Panchayati Raj* had been introduced in the State of Arunachal Pradesh. In the beginning, the authorities get little problem with regards to the implementation of the system and institutional frameworks due to such problems as illiteracy of the people, communication, difficulty in making the people know and convince about the new concept of village governance and administration etc. Despite, many hurdles, the system worked well and could bring large scale changes in the socio-economic life of the people of the State.

Through *Panchayati Raj*, the State of Arunachal Pradesh has received far reaching political reforms without violence of any sort. From the rudimentary beginnings of an

²² Interview with Shri Tengsak G. Momin, President, GSU, CEC, Tura dated 13th April 2019; Also copy of GSU, CEC's recommendation to the Cabinet Sub-Committee on Sixth Schedule to the Constitution (Amendment) Bill, 2012.

²³ Sanjay Dubey: *Dynamics of Tribal Local Polity and Panchayat Raj in Arunachal Pradesh*, p 2.4.

Agency Council and Pradesh Council under *Panchayat Raj* Regulation, 1967, the State marched ahead towards becoming attaining the full fledged Statehood with better rural infrastructures and livelihood projects. It is also a fact that the very health of nascent democracy of Arunachal Pradesh largely depends on the sound working of its *Panchayati Raj* bodies.²⁴

The success story of the *Panchayati Raj* in Kerala, Assam and in Uttar Pradesh is also worthy to be mentioned here. In UP, there is consistent development of *Panchayati Raj* system during the last 23 years after the Amendment Act. Recently in November 2015, for the fourth time, *Panchayat* elections were held. Significant increase in the representation of marginalized people of society like Schedule Castes (SC), Schedule Tribes (STs) and Other Backward Classes (OBCs) and women were seen. It has improved the overall infrastructure of the villages. It strengthens the Primary Education, take care of the children of the poor, ambulances were provided in remote villages for medical treatment. *Sulabh* toilets were made and thousands are under construction in these areas. Cleaning of the villages is done regularly and drainage system has also been made sound in several villages. *Anganbari*, PD system, preparation of AADHAR and ration cards, electrification, link road with the main road etc. are some of the works which are worthy to be mentioned of.²⁵

The Constitution (73rd Amendment) Act is now passed and is being implemented in majority of States of India. The 3 tier *Panchayati Raj*, as envisaged by this Act, is being exercised in 16 different States of India, while in other States, where the system has been at work, a two tier system is in operation. The success of the *Panchayati Raj* will largely depend on the sincerity and good intention of the State Government as to whether they want to make the *Panchayati Raj* Institutions succeed or not. It is pertinent to

²⁴ Sanjay Dubey, *op. cit.* p 9.3.

²⁵ Internet Source: <https://Papers.ssrn.com>: *The success story of Panchayati Raj in UP, India* by Radheshyam Prasad, University of Petroleum and Energy Studies Law School, Dehradun, Uttarakhand; Written March 31, 2016 and posted on 2nd April 2016.

mention here that besides many other factor, the role of the State Government on two issues will be very crucial.

- i) For the success of the *Panchayati Raj* Institutions (PRIs) and to make it really effective, it is of utmost important that the *Panchayati Raj* Institutions (PRIs) must be financed by the State Government. One lacuna that may be highlighted here is that, there is no provision in the Act for ensuring that the State Government transfers or contributes necessary fund to the *Panchayats* within a stipulated time frame. The matter is left to be fixed by the State Finance Commission.
- ii) The nature of relationship between the *Panchayati Raj* Institutions and the local level bureaucracy should be well defined as the larger number of the elected *Panchayati* members are either illiterates or not much educated. In the absence of well defined rules, the local level bureaucracies might encroach upon or usurp the powers given for the elected representatives or might take advantage of their innocence and illiteracy to their own benefit.