Chapter XIV

The working of the District Councils

Let us now examine the working of the District Councils during the last twenty four years.

First of all, it must be admitted that general elections to the District Councils were not held at regular intervals of five years. It is not understood, how the life of the District Councils could be extended from time to time when elections to the House of the People and to the State Assembly were held regularly. In one case, the election to the District Council was held after nine years instead of five years. In fact, the life of the district council should have been extended only under extraordinary circumstances, but on some pretext or the other, the life of each district council was extended. Nevertheless, elections to the District councils were fair and free. There was no gerrymandering nor manipulation of the electoral roll nor the manipulation of the result. There was also no impersonation which could affect the result of the election. The election machinery devised by the Deputy Commissioners was also effective.

Secondly, there were a number of regional parties which fought the elections, but many of them existed for a short time. There were parties which fought the elections but after sometime they disappeared or became merged with bigger parties such as the Khasi-Jaintia Durbar, the Jaintia Durbar, the Khasi-Jaintia Federated States Conference,
the Highlanders' Union and the like. But the most important political parties were the Géro National Council, the Eastern India Tribal Union, the All Party Hills Leaders' Conference, the lately the Hill State Peoples' Democratic Party. The only national party which has fought the elections is the Congress. But it is curious to note that the number of independent candidates was always greater, though the number of elected independent candidates was small. A good number of them lost their security deposit.

Thirdly, except during the period 1958 to 1967 in the United Khasi-Jaintia Hills Autonomous District, each District Council has nominated members who usually support the party in power. It is also true that many important leaders have held double membership. This is to say, they have been elected both to their respective District Councils and to the State Assembly.

Lastly, at first, the Sixth Schedule did not prescribe the term of office of the District Council. But in 1969, the Sixth Schedule was amended wherein it is provided that the term of office of the District Council shall be for five years. It is further provided that the elected members shall hold office for a full term whereas nominated members shall hold office at the pleasure of the Governor. But while proclamation of emergency is in operation or if circumstances exist which in the opinion of the Governor, render the holding of elections impracticable, the life of the District Council may be extended for a period not exceeding one year at a time, or after six months after the proclamation has ceased to operate.

Let us now examine the various powers and functions of the District Councils. It must be borne in mind that the District Councils were entrusted with legislative, executive, judicial,
delegated and transferred functions. First of all, let us examine how the District Councils have made laws on subjects assigned to them by the Sixth Schedule.

The District Councils have power to make laws on the allotment occupation or use, or setting a part of land. In 1953, the United Khasi-Jaintia Hills Autonomous District Council enacted the Transfer of Land Act which provided that no land shall be sold, mortgaged, leased, bartered, gifted or otherwise transferred by a tribal to a non-tribal or by a non-tribal to another non-tribal without the permission of the District Council. But the sanction of the District Council is not necessary in the case of lease of a building on rent. If a non-tribal is in illegal possession of any land, the Executive Committee may require a person concerned to vacate the land within a period of three months from the date of service of notice or till the crops grown in such land are ripe for harvest. The Jaintia Hills Autonomous District Council also adopted this Act. But this Act was struck down by the Honourable Supreme Court on 25th August 1971 when it disposed of the Civil Appeals Nos. 1546 and 1547 of 1968.¹ The Honourable Supreme Court observed thus: "the subject of transfer is clearly beyond the scope of the law-making power conferred on the District Council by the constitution and to that extent, therefore, the impugned Act........... is void being beyond the jurisdiction of the District Council". In the Garo Hills, a ceiling is placed on land, 30 bighas as the minimum and 50 bighas as the maximum for each family of six members. But the transfer of land by a non-tribal to another non-tribal is not prohibited. Nevertheless,

¹. Appeal filed by Sitimon Sawian and others against the United Khasi-Jaintia Hills Autonomous District Council.
transfer of land is not within the scope of the District Councils.

The District Councils have power to make laws on land and land revenue. All the three District Councils have enacted laws on land and land revenue. In these laws, it is clearly stated that any person who held land for a period of ten years continuously and paid revenue due to the State Government or acquired any land under lease granted by the State Government for a period of ten years, automatically became a land holder in respect of the land in question. But this law did not apply to the Khasi Hills because all lands are private lands. The three District Councils have not made any law regarding agriculture land, though they have power to do so.

All the three District Councils have enacted legislation on fisheries. Under these laws, any person who seeks to destroy fish either by poisoning or dynamite is liable to punishment. In fact, the District Councils merely adopted the Act on the subject in force in Assam.

Neither the District Council of Khasi Hills nor of the Jaintia Hills has made any legislation on grazing. But the Garo Hills District Council has adopted the regulations relating to this subject in force in Assam.

The three District Councils in Meghalaya have enacted laws for the Management and Control of Markets. Under these laws, all markets shall be under the control of the District Councils. It is also provided that no person shall establish a market without the previous permission of the District Council concerned. The Executive Committee is empowered to close any market at any time on public interest.

Regulations have also been made by all the District Council on
trading by non-tribals. According to these regulations, no non-tribal shall be allowed to carry on whole-sale or retail trade without a valid licence from the Executive Committee of the District Council. But license should not be denied to a person who had been carrying on his trade before the commencement of these regulations. It is surprising that none of the three District Councils has made any law to regulate money lending by non-tribals.

It may be noted that social customs play a vital role in any tribal life. Since these customs are complex, it appears that there is an absolute necessity for their codification. But, there has been no serious attempt on the part of the District Councils to codify them. In the Garo Hills, there was a partial attempt by which some of the customs had been abolished. In the Khasi and Jaintia Hills there were attempts to introduce many Bills relating to social customs such as the Inheritance of property Bill and the like, but they could not be carried through. There is a force of public opinion that there is a need for the appointment of a Commission to go into the roots of all the social customs before any enactment is done. In fact, in 1967, the APHLC Branch in the Khasi Hills was in favour of the appointment of such a commission. But when it was referred to the Parliamentary Party, it decided to appoint the Market Commission, the report of which is still in the dark. Recently, the Khasi Children Lineage Bill was introduced by L.G. Shullai and the District Council has granted leave for publishing the said Bill in the Gazette for eliciting public opinion.

All the three District Councils have either framed regulations or enacted laws determining the salary and allowances of the political officers of the District Councils. It is pleasing to note that the salaries and allowances of these officers are more or less uniform in all the three District Councils.
The three District Councils in Meghalaya have enacted laws on Christian marriage by adopting the Indian Christian (Marriage and Divorce Causes) Act, 1872. But none of them has made any attempt to enact any legislation on other marriages.

Both the Khasi Hills District Council and the Jaintia Hills District Council have not made any legislation for the introduction of self-government in the villages. It is felt that there is no need for such legislation since the traditional village, commune or elaka councils have all along been democratic. But the Garo Hills District Council has enacted a law on this subject. But this law merely codifies the existing customs of village councils. Apart from that, the Garo Hills District Council has enacted a law for constituting a town committee for Tura. The Garo Hills District Council has also adopted the Assam Embankment and Drainage Act.

All the three Autonomous District Councils in Meghalaya have enacted legislation regarding the administration of Justice. They have set up courts at three levels; the village courts, the subordinate District Council Courts and the District Council Courts. However, there has been a strong feeling that there is no need for the establishment of a separate District Council Courts for many reasons. First, except the Court of the Khasi Hills District Council, there is not enough work in the other District Council Courts. Secondly all the District Council Courts have adopted the same procedure as any other courts. Thirdly, neither the post of a judge or the post of a makistrate seems to be attractive. For so long, there was only one case where an experienced session judge was appointed as a judge of the District Council. Otherwise, mostly unsuccessful lawyers were appointed to the posts. But in the Garo Hills, officers from the State Civil Service were appointed as
Judge or Magistrate. Lastly, in view of all these difficulties, there were problems of conferment of powers on the part of the Government because the majority of them have not been trained in judicial service.

The Sixth Schedule empowers the District Councils to make laws regulating the practice of Jhuming. This practice does not pose a serious problem any longer in the Khasi and Jaintia Hills. Hence, the two District Councils have not enacted any law to regulate this practice. But the Garo Hills District Council has enacted a legislation to reduce this practice to a minimum.

The three District Councils have also made laws for regulating and controlling forest administration. The Khasi Hills District Council has also framed rules for the regulation of private forests.

The District Councils have also enacted legislation and have framed rules on the constitution of the District Councils. These rules have been frequently amended.

The District Councils have power to make laws on "the appointment or succession of Chiefs and Headmen". But all the three District Councils have enacted laws on "the appointment and succession of Chiefs and Headmen". These laws concern with the election and appointment of Chiefs and Headmen. But they have not made any law regarding succession. The Khasi Hills District Council has passed a number of laws on the subject.

Although the District Councils are empowered to make laws regulating the use of canal and water courses for the purpose of agriculture, yet none of them has passed any law on the subject. They have not made any law regarding the inheritance of property.

When we study the power of taxation as has been exercised
by the District Councils, the record is not uniformly good. All the three District Councils have not utilised all the taxation power. Of course, all the three District Councils levy a tax on professions, trades, calling and employment. Only the Garo Hills District Council levies taxes on cart, boat and cycle. No District Council levies a tax for the maintenance of schools, roads, dispensaries, on passengers and goods carried in ferries. Thus, the District Councils have not made full use of their powers of taxation.

In the Khasi Hills, the Syiemis, Lyngdohs, Sirdars and Wahadadars still have the right to realise revenues from markets, fines, and certain cesses and tolls levied for specific purposes. They still receive fifty percent of the royalty realised from exploitation of the natural resources. Again, the people in the Khasi Hills do not pay land revenue or house tax. In 1954, there was a proposal to impose house tax in the Khasi Hills in order to bring uniformity in the whole of United Khasi-Jaintia Hills District. The decision was not implemented due to vehement opposition by the people in the Khasi Hills. Hence, in 1961, it was decided that house tax should be abolished in the Jowai Sub-division and in the former British villages. However, this was the main cause for the creation of a separate District Council for the Jowai Sub-division.

It is stipulated that the District Council should get fifty percent from markets and that the Chiefs should contribute one-eighth of the income of their elakas to the District Council. This scheme has not been implemented. But the Jaintia Hills District Council and the Garo Hills District Council derive substantial amount from markets. The same thing is the case with fisheries.

The main income of the District Councils, therefore, is from forest. But the Garo Hills District Council gets substantial
amount both from market and land revenue. Thus, the District Councils have to ask Government for more grants whenever their budgets become deficit.

On the expenditure side, it is discovered that there have been excessive expenditures on staff and on the political executive in all the three District Councils. The amount spent by members of the Executive Committee and the other political officers on travelling Allowance, especially on petrol and lubricants are excessive.

The whole difficulty with the District Councils is the absence of a proper financial procedure. The financial Rules framed by the District Councils are insufficient. Let us now examine some of the most pertinent anomalies. Originally, the Sixth Schedule was silent whether the District Council should have their District funds or not. The Rules framed by them provided that they should have their District fund. In order to remove this anomaly, the Sixth Schedule was amended in 1969, which authorises the Governor to make rules for the management of the District fund.

Secondly, despite the fact that the District Councils have no consolidated fund, despite the fact that they have no power to get the permission of the Reserved Bank of India to overdraw the money, yet all District Councils have always presented a deficit Budget, which, technically speaking, they have no power to do so. The Budget is always presented as a mere statement of expected income and expenditure. There is no voting on Demands for Grants. There was no Appropriation Bill. The method by which the Budget is presented resembles to the method by which a private limited company or a football Association adopts.

Thirdly, the District Councils do not possess any privilege as a state legislature or parliament. Therefore, the Budget is
usually distributed to the members before it is actually presented by a member in charge of finance. On two occasions, there were interesting debates in the Meghalaya Legislative Assembly whether paragraph 13 of the Sixth Schedule violates Article 194 of the Constitution or not. Paragraph 13 of the Sixth Schedule provides that "the estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the consolidated fund of the State shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the legislature of a State under Article 202".

The State Government had always been following this procedure. But one of the members of the Meghalaya Legislative Assembly charged the Finance Minister that he had committed a breach of privilege of the House because he had disclosed a part of the Budget outside the House before it was presented to the House. Since the explanation of the Finance Minister could not convince the members, the honourable Speaker assured the House that he would summon the Advocate General to give his expert opinion. On 1st April 1975, the Advocate General explained that whatever is done under the provision of the Constitution does not tantamount to a breach of privilege. However, in order to avoid any misunderstanding, he suggested that the Rules may be suitably amended so that the District Council may discuss in camera the proposals of the Government. All that should be done at the proposal stage and not at the final stage.²

Lastly, neither the Sixth Schedule nor the Rules framed thereunder made provision for auditing the accounts of the District Council by the Comptroller and Auditor General of India. No provision was made in the rules framed by Governor for auditing the accounts of the District Councils. The audited accounts were not placed before the District Council even though the State Government advised them to do so. These accounts were not examined by the Public Accounts Committee in the State Legislature. The local Examiner of Accounts was not empowered to audit the District Councils' Accounts. Recently, there has been an understanding that the Examiner of Accounts should audit the expenditures incurred by the District Councils out of the grants given by the State Government. It was in 1969 that the Sixth Schedule was amended for auditing the accounts of the District Councils. The Comptroller and Auditor General of India is held responsible for auditing the accounts of the District Council who must submit the report to the Governor who shall cause it to be placed before the District Council concerned. The next problems are: The absence of a provision for surcharging infructuous expenditures and the follow-up actions. There is no provision regarding the fact whether the Public Accounts Committee of the State Legislature should take a follow-up action especially on expenditures incurred out of Government grants. There is no provision also regarding the fact whether each district council will have its own Public Accounts Committee. These problems are yet to be solved.

It is really curious to notice that there is no provision for the co-ordination of the activities of the District Councils on the one hand and the State Government in the other. The State Government is not in a position to review and assess the working of
the District Councils. The States Reorganisation Commission observed: "An important step in the direction of providing better liaison, in our opinion, will be the appointment of a Commissioner to be in charge of the administration and development of all the Hill District. We envisage that the Commissioner would act as the Governor's agent for the various purposes laid down in the Sixth Schedule and that he with the help of district officers would help the district councils in their various day to day problems so as to remove difficulties speedily". So far, nothing has been done in this direction. As a matter of fact, the only relationship between the State Government and the District Councils is the approval of their legislation by the Governor, sanctioning of grants and loans to meet the normal cost of their administration, or for certain development works. Thus, the District Councils are functioning, more or less, independently of the State Government and the Union Government, extremely jealous of their powers given to them by the Sixth Schedule. In case there is a deadlock in the District Council, there is no specific provision by which such a deadlock can be avoided. The provisions of Paragraphs 14 and 16 are delaying because a Commission must be appointed to judge the various acts of the District Council and on the basis of the report of the Commission, action must be taken by the Governor. This entails a long procedure. Hence the District Councils have been functioning in their own way.

The Sixth Schedule empowers the Governor to annul or suspend any act or resolution of the District Council which are likely to endanger the safety of the country or prejudicial to public order and to take such steps as he may consider necessary. He may also supersede the District Council and assume to himself
all or some of the powers of the District Council for a period of six months. But he has no power to dissolve the Council unless recommended by a Commission appointed by him. But, at no time has the Governor ever exercised such powers.

It is provided that each District Council may make a law prescribing the language to be used in primary schools. But all the three District Councils in Meghalaya do not think it necessary to enact such a legislation because over the years school children have been taught in their own mother tongues.

So far as political stability is concerned, the Garo Hills is the most stable. But in the Khasi Hills there have been frequent changes in the leadership of the Executive. Rarely, a person held office of the Chief Executive Member for more than one term. But in the Jaintia Hills the Political Executive is more stable than in the Khasi Hills. At least one C.E.M. has held office for two terms consecutively. In the Khasi Hills there have been frequent changes even in the posts of Chairman and Vice-Chairman, but that is not the case in the Garo Hills and in the Jaintia Hills, where practically there were no contests.

A careful study of the working of the District Councils clearly reveals that due to political reasons, the State Government have not exercised effective control over them. Hence the District Council is jealous of its powers as a husband is jealous of his beautiful wife. As a result, the District Councils never surrender the unspent grants to the State Government. They reappropriate the amount from one major head to another without proper sanction, and they do not respect their own financial Rules.
Finally, by and large, the proceedings of the District Councils are conducted with decorum and sobriety. There are plenty of humours. There has been no acrimony, and the relations between the party in power and the opposition has all along been cordial.