

**Community Managed Forests:  
Law, Problems and Alternatives**

*(A Case Study of Meghalaya)*

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**Ritwick Dutta**

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**OCCASSIONAL PAPER SERIES**

**COMMUNITY MANAGED FOREST I  
LAW, PROBLEMS AND ALTERNATIVES  
*[A CASE STUDY OF MEGHALAYA]***

**Ritwick Dutta**

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Ritwick Dutta  
October, 2001  
New Delhi





## INTRODUCTION

The North-Eastern region of the country, which comprises the States of Assam, Meghalaya, Manipur, Mizoram, Nagaland, Tripura and Arunachal Pradesh has about 7% of India's dense forest cover. (Forest Survey of India, 1995). However, more than 60% of India's wood products (plywood, sawnlogs, planks, matchsticks etc.) used to come from this region prior to 1997<sup>1</sup>. This huge supply of wood products in itself is a terrible burden for a region that accounts for only 7.7% of India's total land area.

The effects of this rampant destruction of forests is visible in almost all the areas of the North-East e.g. in Meghalaya – the abode of clouds – a new problem of drinking water has arisen, and one come across the paradoxical expression, “the wet desert of Cherrapunji”. Mizoram and Tripura offers examples of what the future holds for the remaining “sisters” – they have virtually no forest left !. According to the Sixth Plan document for Tripura, “the 2000 odd Sq.km. recorded as protected forests, do not contain any forest worth the name, except – scattered trees and lower types of vegetation”.

The fundamental question that would therefore arise is that what makes the destruction of forests so easy in the North-East compared to the rest of the country? Are the laws being violated or are they insufficient to deal with the problem?

In fact a paradoxical situation exists in the North-Eastern states since the Forest Department controls only small patches of Reserve Forests and protected areas for wildlife, and possess no land of their own either for afforestation or for extending its activities. The bulk of the forests are under communal control, either through the District Council as in the case of Meghalaya, Mizoram, Tripura and the Karbi – Anglong district of Assam or within the control of the clan, village or tribe as in the case of Nagaland or Arunachal Pradesh.

Thus while in the rest of the country environmentalist, human right activist, social workers alike, are demanding that forests be given back (in different degrees) to the tribals and local

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<sup>1</sup> After the Supreme Court order in the *T.N Godavarman* case, no trees can be exported from the North Eastern states to the rest of the country. The only exception is those harvested by the Forest Department according to the Working Plan.

communities from the Forest Department, as they were in the pre-colonial days. However, in the North-East this much acknowledged panacea of communal control over the forest resources against the State control appears to have completely failed to safeguard the forests. The question that is being raised is whether the communal control over the forests is in itself a guarantee to a reasonable ecological security? How come the tribals who have traditionally co-existed in harmony with the forests developed such antagonistic approach to the forests?

It is therefore imperative to understand the reasons behind the large-scale destruction of forests, and also understand the functioning of tribal institutions such as the District Council that manage and control a major portion of forests in the North-East. The present study aims to critically examine the functioning of the Autonomous District Councils in Meghalaya, specifically the way the forests have and are being managed by them, the legal rules applicable to the forests under State control. A crucial question which the current study raises is: What kind of institutions are necessary for preserving the biodiversity of the region? Once a thorough analysis has been made of existing systems the study goes on to address the following question: Should the forests be under the control of the State Government as in the rest of the country, or is any alternative scheme possible. In the entire analysis care has been taken to also incorporate a multiplicity of factors, historical, social, economic and political that influence the present state of biodiversity of Meghalaya.



## THE CONSTITUTION AND TRIBAL AREAS

Keeping in view the wide contrast between the life and outlook of the tribal people of the North East from the people of the rest of the country, the Constitution of India recognizes the need for a distinct political and administrative structure for tribal people. Relevant provisions of the Constitution are primarily to be found in Art. 244 and Art. 244A and the 6<sup>th</sup> Schedule.

However, even before the commencement of the Constitution, the necessity of protecting the tribal people against exploitation and exposure to laws not suitable to them was kept in view, as such, the administrative status contemplated by the government set-up was different from the rest of the country. The Government of India Act, 1935, had made special provision for these areas, in particular the Governor had been given a special responsibility with respect to their areas. In these areas, which were known as "Excluded Areas" or Partially Excluded Area", no Act of the Federal Legislature or Provincial Legislature applied unless the Governor so directed. In the exercise of his functions in relation to these areas, the Governor was to act according to his discretion.

### THE CONSTITUENT ASSEMBLY AND TRIBAL AREAS

The Constituent Assembly set up a committee on the rights of citizens, minorities and tribals on January 24 1947. It was laid down that the Advisory committee should appoint a sub-committee to prepare schemes for the administration of the tribal areas of the North East and the Excluded and Partially Excluded Areas.

The sub-committee consisted of J.J.M. Nichols Roy, Rup Nath Brahma and A.V. Thakkar as member with Gopinath Bordoloi as chairman. The sub-committee toured extensively the province of Assam and submitted its report on July 28, 1947.

The sub-committee held that the following factors justified giving special treatment to the tribal areas:-

1. The distinct social customs and tribal organisation of the people, as well as their religions beliefs.

2. The fear of exploitation by the people of the plains, on account of their superior organisation and experience in business.
3. The necessity to make suitable financial provisions for these areas for unless suitable provisions were not made or power conferred upon the local councils themselves, the provincial Government may not, due to the pressure of the plains people, set apart funds for the development of tribal areas.

## RECOMMENDATION OF THE SUB-COMMITTEE

The major recommendation of the sub-committee are:-

1. The local customary laws should be interfered with as little as possible.
2. There should be local councils with powers of legislation and administration over land, agriculture, forests (except Government reserve forests) and village and town management, in addition to the administration of tribal and local laws and primary education.
3. In the management of Reserved Forests, by the provincial Government, the susceptibilities of the hill people and their legitimate desires and needs should be taken into account. In view of the disastrous effects of *jhum* cultivation it should be discouraged and stopped wherever possible, but the initiative for this should come from the tribes themselves and the control of *jhum* cultivation should be left to the local council.
4. Certain taxes and financial powers should be allocated to the council. They should have the power to impose house tax, land revenue and levies arising out of the powers of management of village forests.
5. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspect of administration.

The Sixth Schedule of the Draft Constitution was discussed by the Constituent Assembly from the 5<sup>th</sup> of September to the 7<sup>th</sup> of September 1949 and was adopted and stands a part of the Constitution. This Schedule is applicable to the States of Assam, Meghalaya, Tripura and Mizoram.

Thus the fundamental reason why the District Councils were set up was to protect the tribes from more advanced members of the non-tribal communities and also to preserve

the "way of life" of the tribals. Autonomous District areas are constitutionally recognized as areas that needed special protection and an administration responsive to the needs and levels of development of tribal people. For the promotion of their welfare, for the preservation of their traditions and customs, they are allowed an administration to suit their own genius. The Autonomous District Councils are thus meant to implement their basic policy guidelines.

The Autonomous District Council can be regarded safely as the existing model of the much-talked about Panchyati Raj. Its administration is three tiered with:

1. Traditional village administration at the grass root.
2. The 'Elka' administration at the middle level.
3. Constitutional District Council at the apex

All these are democratically elected institutions. Section 2(1) of the Sixth Schedule States that a District Council is to consist of not more than thirty members out of which not more than four shall be nominated by the Governor and the rest to be elected on the basis of adult suffrage. The term of the elected members of the District-Council is five years, while the term of the nominated members is at the pleasure of the Governor.

## LEGISLATIVE POWERS OF THE DISTRICT COUNCIL

Sec 3(1) of the Sixth Schedule deals with the power of the District-Council to make laws with respect to:

- (a) *the allotment, occupation or use, or setting apart, of land, other than any kind which is a reserved forest for the purpose of agriculture or grazing as for residential or other non agricultural purposes or for any other purposes likely to promote the interest of the inhabitants of any village or town:*

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purpose in accordance with the law for the time being in force authorising such acquisition;

- (b) the management of any forest not being a reserved forest;
- (c) the use of canal or water course for the purpose of agriculture;
- (d) the regulation of the practice of jhum or other forms of shifting cultivation;
- (e) the establishment of village or town committees or councils and their powers;

- (f) any other matter relating to village or town administration including village or town police and public health and sanitation;
- (g) the appointment of succession of Chiefs or Headmen;
- (h) the inheritance of property;
- (i) marriage and divorce;
- (j) social customs.

However, the laws made the District Council shall however have no effect unless assented to by the Governor [Sec 3(3)]. It is important to note that the President of India may direct that any Act of Parliament shall not apply to an autonomous district.



## INTRODUCTION TO MEGHALAYA

Meghalaya or the "abode of clouds" became a full fledged State on January 21, 1972 through the North East Reorganisation Act, 1971. The State is bounded on the North by Goalpara, Kamrup, Nagaon and Karbi Anglong District at Assam, on the East by the District of Cachar, the North Cachar Hills of Assam on the South and on the West lies Bangladesh.

The total area of the State 22,429 sq. kms. with a population of 17,74,778 (1991 census). The State is divided into seven administrative districts. They are (1) Jaintia Hills District (2) East Garo Hills (3) West Garo Hills District (4) East Khasi Hills District (5) West Khasi Hills District (6) Ri-Bhoi District (7) South Garo Hills District.

### THE PEOPLE

Meghalaya has three broad tribal groupings: the Garo to the hills in the west and the Khasi and Jaintia tribes to the centre and east respectively. The Garos are a Indo-Tibetan complex of people who immigrated from areas north and west of Brahmaputra. The Khasis and Jaintias are a isolated group of Austric Mon-Khmer speakers of close affinity to people in Myanmar to Laos region. Their date of occupation of the Meghalaya hills are still obscure.

Despite very different ethnic origins, the Garos and the Khasis-Pnars had considerable similarity in religion. Today most people are Christians. The traditional Khasi religion is animist, but to some extent monotheistic with a paramount "God the Creator" (U Blei Nongthew).

### POPULATION

As per 1991 census, the total population of the state was 1,774,778. The population density is 79.13 per sq.km. The sex ratio of the state was 947 females to 1000 males The literacy rate is 39.16% according to 1991 census.

## CLIMATE

The climate of Meghalaya, in general, is monsoonic with an average annual rainfall of 2200 mm. Around 85% of the total annual rainfall occurs during mid May to September.

## FOREST

The total estimated forest area of the State is 8,514 sq. kms. of which only 993 sq. kms. are directly under the control of the State Forest Department. The remaining areas are managed by the respective District Councils of Khasi Hills, Jaintia Hills and Garo Hills as per provisions of the Sixth Schedule to the Constitution of India. Except the reserved forest areas and protected forests in and around Shillong (being managed by the department in arrangement with the District Councils), the rest of the forest areas are subjected to the traditional agricultural practice of shifting cultivation or 'slash and burn' method especially in Garo Hills. However, there are few pockets of undisturbed natural forests still in existence, comprising about 1000 sq. kms. protected by the tribals which are known as 'Sacred Groves'. Essentially they are located in strategic watershed areas and till today play an important role.

## CLASSIFICATION OF FORESTS

CATEGORY	AREA (in Sq. Kms.)
Reserved Forests (including national parks, biosphere reserves and sanctuary)	993
Unclassed Forests	7145.5
Private Forests	384
Village Forests	29.9
Raid Forests	768



## STATUS OF FOREST COVER OF MEGHALAYA

District	Area	Forest
East Khasi Hills	2748 sq. km	35.34%
West Khasi Hills	5247 sq. km	53.52%
Jaintia Hills	3819 sq. km	46.13%
West Garo Hills	3714 sq. km	54.45%
South Garo Hills	1850 sq. km	64.11%
East Garo Hills	2603 sq. km	58.38%
Ri Bhoi	2448 sq. km	50.24%

### FOREST TYPE AND DENSITY

The forests of Meghalaya can broadly be grouped under the tropical and temperate type, based mainly on the altitude, rainfall and dominant species composition.

### TROPICAL FORESTS

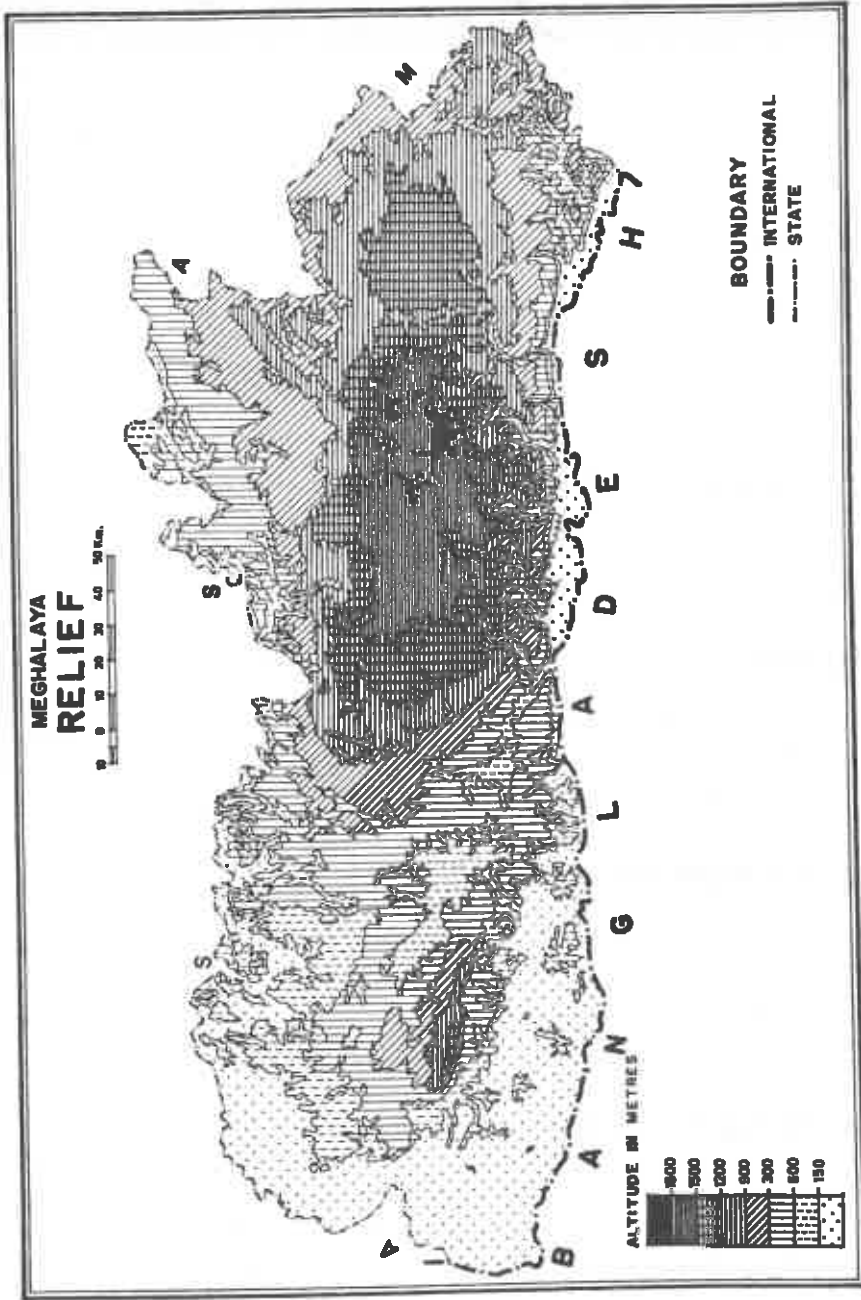
These forests are found in areas upto an elevation of 1200m and with an average rainfall of about 100-250cm. There are numerous subtypes within this category such as evergreen, semi-evergreen, moist and dry deciduous forest, etc.

### TROPICAL EVERGREEN FORESTS

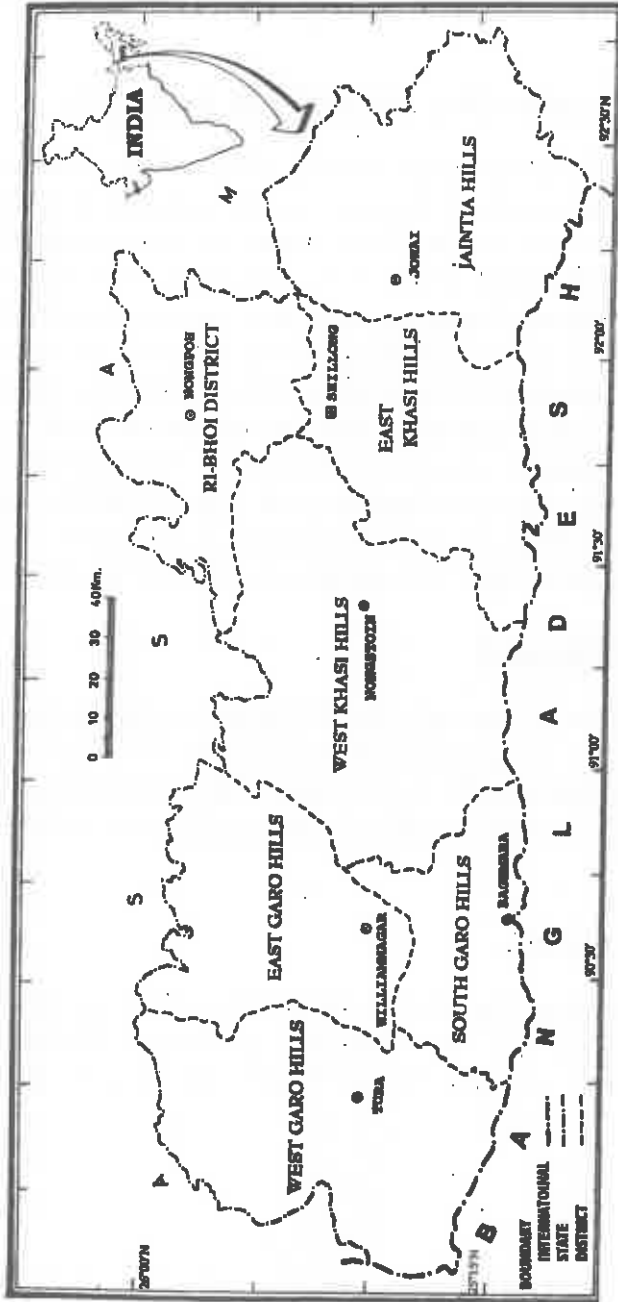
These forests usually occur in high rainfall areas as well as near catchment areas. They seldom form continuous belts due to various exogenous factors. But still, they harbour very rich species diversity, where nature is at its extravaganza forming a closed evergreen canopy. The trees exhibit clear zones with dense and impenetrable herbaceous undergrowth.

### TROPICAL SEMI-EVERGREEN FORESTS

This category of forests occupies the north-eastern and northern slopes of the state, typically upto elevations of 1200m, where annual rainfall is 150-200cm with a comparatively cooler winter. The numbers of species here are fewer than the evergreen zone. There are



Relief map of Meghalaya.



Map of Meghalaya

also a few species in these forests which are deciduous in nature, such as *Careya arborea*, *Dillenia pentagyna* and *Callicarpa arborea*. Again there is a clear stratification of the trees in these forests.

## TROPICAL MOIST AND DRY DECIDUOUS FORESTS

This type of forests occurs where annual rainfall is below 150cm and at comparatively low elevations. Typical natural deciduous forests do not occur anywhere in Meghalaya but are only subclimax or man-made forests. These forests are characterised by seasonal leaf shedding and profuse flowering of the trees. Recurrent forest fires are a common phenomenon here. Deciduous forests are much more extensive in their distribution in the State and include a host of economically important trees like *Shorea robusta*, *Tectona grandis*, *Terminalia myriocarpa*, *Sterculia villosa*, *Logerstroemia flos-reginae*, *L. Porviflora*, *Morus laevigatus*, *Artocarpus chaplasha*, and *Gmelina arborea* both as natural and as plantations. *Schima wallichii*, *Artocarpus gameziana*, *Tetrameles nudiflora*, *Lannea coromandelica*, *Salmalia malabarica*, *Erythrina stricta*, *Premna milliflora*, *Vitex peduncularis*, *Albizia lebbek*. *Lucida*, *Terminalia bellirica* etc is also in abundance. These trees of the deciduous canopy are always lofty and straight bole and with spreading crown.

## GRASS AND SAVANNAS

Grasslands of Meghalaya are also not a climax type but are only as a result of removal of original forest cover. The rolling grasslands covering large areas can be seen throughout the Shillong plateau, around Riango, Ranikor, Weiloi, Mawphlang, Mawsynram, Cherrapunji, Shillong, Jowai, Jarain, and Sutnga in Khasi and Jaintia Hills and major parts of west Garo Hills.

## TEMPERATE FORESTS

The temperate forests occupy the higher elevations about 1000m, mostly along the southern slope of Khasi and Jaintia Hills. The rainfall here is very high 200-500cm with a severe winter during November to March. Ground frost is also common during December to January.



## THE APPLICATION OF THE SIXTH SCHEDULE IN MEGHALAYA

The Sixth Schedule of the Constitution of India is very elaborate and it has undergone many changes since it was first enacted. These changes were brought from time to time through Constitutional Amendments, parliamentary legislation, presidential orders and Central Government notification.

At the commencement of the Constitution, the united Khasi-Jaintia Hills Districts and Garo Hills District were two tribal areas within Assam which were Autonomous Districts under Paragraph 1 read with Paragraph 20 of the Sixth Schedule. The District Council in these areas were constituted in 1952. Later through the Constitution (22<sup>nd</sup> Amendment) Act, 1969, a new Article 244A was inserted to enable the Parliament to form, by law, within the State of Assam, an Autonomous State comprising (wholly or in part) all or any of the tribal areas within its territory and create therefore a body, whether elected or partly nominated and partly elected, to function as a legislature for the Autonomous State with council of Ministers. As a consequence, the Assam Reorganisation (Meghalaya) Act 1969 was enacted by Parliament to provide for the formation within the State of Assam an Autonomous State known as: Meghalaya. It consisted of the Garo Hills District and the United Khasi – Jaintia Hills District as it existed originally excluding some areas transferred to Mikir Hills. This Autonomous State became a new State in India by virtue of the *North East Areas (Reorganisation) Act, 1971* with effect from 21<sup>st</sup> January, 1972.

Meghalaya today consists of three Autonomous Districts viz. Khasi Hills, Jaintia Hills and Garo Hills. Initially however there were two District Councils, the Khasi and Jaintia Hills were one Autonomous District called the "United Khasi-Jaintia Hills District Councils" and Garo Hills was another Autonomous District. They started functioning from Shillong and Tura respectively from one year 1952. In 1967, the Governor of Assam created the Jaintia Hills Autonomous District Council by splitting the United Khasi Hills and Jaintia Hills Autonomous District Council and it started functioning from Jowai.

It is important to note that before the enactment of the Constitution, the Khasi Hills were a conglomeration of petty states, semi independent in character and were governed by local tribal chieftains, viz. the Syiems, Lyngdohs, Wahadars and Sirdars. The chief used to be elected by different methods in the different States. He had administrative as well as judicial powers. However, the chiefs could not be autocratic. According to the customary laws he could perform no act of any importance without first consulting and obtaining the approval of his Durbar.

However with the coming into force of the Constitution, the situation changed. Sub-paragraph (4) of paragraph 2 of the Sixth Schedule has vested the administration of an autonomous district in the District Council. The position of the administration of Meghalaya generally and of the chiefs (Syiems, Lyngdohs, Dollois, Sirdars, Wahadadars and their respective elakas) after the Constitution came into force, was analysed clearly by the Supreme Court in *T. Cajee Vs. U. Jormanik Syiem* (AIR 1961 SC 276). It was held that the governance of the former Khasi States was to be carried according to the provisions of the Sixth Schedule.



## FOREST REGULATION IN MEGHALAYA

The fact that in Meghalaya (as also in other parts of the North-East), the forest department of the State Government has control over only a meager portion of the total forest lands in the State, is in fact an outcome of a unique policy of the British towards the forests in this region. This can be understood by tracing the history of forest regulation in this region of North-East and its impact both on forests as well as on tribes dependent on forests for their livelihood.

The first Annual Progress Report on the forests of Assam was filed by Gustav Mann, as Assistant Conservator of Forests for the year 1874-75. The total forest area was estimated to be 8000 sq. miles which were untouched by axe. Mann submitted a memorandum of a proposed forest operation to the commissioner of the province and later given to Dr. W. Schlich, the Inspector General of Forests, who suggested that a total area of 700 Sq. miles be designated as Reserved Forests (RF), and the rest of the forest be kept open for the time being except sal and rubber trees.

It is important to note that only those areas were designated as Reserve Forests which had a good proportion of teak (*Tectona grandis*) and sal (*Shorea robusta*) i.e. commercially important timber.

The forests of Garo Hills were inspected in 1876 and were found to contain only a small proportion of sal and other valuable timber. Since the area under sal, teak and other commercially valuable timber was negligible in the Khasi and Jaintia Hills, most of the forest regulations were applied to the Garo Hills only. Hence it is imperative that one concentrates on the nature of forest policy of the British to the Garo Hills.

### **HISTORY OF FOREST REGULATIONS IN GARO HILLS**

In the Garo Hills, there was no extensive forests of a particular type of tree and hence the revenue from such forests was irregular, uncertain and totally disorganised (Hunter 1982). Moreover the Garos, a matrilineal community had a techno-economic organisation heavily dependent on forests and forest product, they believed that the forests were in exhaustible

which would be burnt, chopped and grazed in an uncontrolled way. As per the customary law they were used to the control of the "Nokma" who could regulate extensive use of forest lands for jhumming.

It was in July 1866 that the Government of India decided to constitute the Garo Hills into a separate administration unit under a first class Assistant Commissioner stationed at Tura. With a view of protecting the forest from exploitation by the non-tribals it was resolved that no elephant catchers, woodcutters, hunters and collectors of rubber and ivory would be permitted to enter the district without securing licence. This policy was adopted since the inner line regulations were not applicable to the Garo Hills.

It was in the year 1879 that the Government of Assam first considered the question of forest reservation in the Garo Hills. Fishers, who was the ACF was deputed in 1881 as a special officer to report on the forests which could be reserved in the Garo Hills. He extensively toured the area and his report formed the basis of forest reservation, in fact all the forest area designated on Reserved Forests was based on his recommendation. In all 18 Reserved Forests were created in the district on the recommendation of Fishers.

Out of the 18 Forest Reserves as many as 14 were reserved in 1883 at a total compensation of Rs. 1,235 and that to in the case of four villages and 14 villages lost land without any compensation. This in fact is an outcome of the British tenurial concept, which held forest lands to be crown lands. Hence the Government took the stand that there was ample valueless waste land available around, to which the evicted villagers could move and therefore they would not be given compensation for the jhum lands alienated from them.

However, the designation of a forest as a Reserved Forest did not initially lead to a complete alienation of the tribals from it. The Indian Forest Act, 1865 clearly stated that the law should not abridge or affect any existing rights of individuals or communities to forest land. However the Forest Act of 1878 was harsher on the forest communities since it limited private property only to "continuously cultivated lands".

Even after the enactment of the Act of 1878, the local communities were not totally deprived from benefiting from the produce of a Reserve Forests. B. Ribbentrop, the third Inspector General of Forests, stated that "the Constitution (of a forest) as a reserve merely determines the rights of the Government and private persons over the forests, and in no way aims at prescribing the agency by which the forests may be managed. Thus a Reserved Forest is not necessarily, the object as it is frequently believed, of producing large timber for export or public work: but more often that of supplying the local demands of small timber, fuel, grass or any other forest produce". Ribbentrop further stated that "a forest



*may be said to fulfill its highest function when it produces, in a permanent fashion the greatest possible quantities of material which is most useful to the general public, and at the same time yields the best possible return the proprietor".*

With the passage of time however, the "rights" of forest access and products entitled to communities were eroded. Further a Departmental Resolution passed in 1890 stated that the privileges given to local communities over forests is a "favour" or "concessions" and not a "right" which the Government can discontinue at any time.

The process of acquisition of forests also alienated the tribals. The forest communities were given three months to contest the reservation once the Forest Settlement Officer had declared the states intention to nationalize the lands, on failure of which the rights were permanently revoked. The illiterate villages and tribals were often unaware that a survey and demarcation process was in progress, further the tribals had little experience with legal procedures.

## **GARO DEMAND FOR FOREST DERESERVATION**

It was a result of the mass alienation of Garos from the forests, on which their entire livelihood depended, that a movement was started by Sonaram Sangma, a Garo leader, demanding the dereservation of forests in the year 1905-1906.

On the 9<sup>th</sup> of February, 1906, Sonaram Sangma and about one lakh Garos addressed a memorial to Lord Minto; the then Viceroy and Governor General of India. They petitioned that from time immemorial, they and their ancestors have enjoyed the privilege of being allowed to enter and live in the forests and also to make use of it, either to sell the same for their own benefit or right to cultivate in it. However, with the passing of the Indian Forest Act XII of 1878, and other enactment, they have been deprived of the age old privileges without any return, compensation, remuneration or reward whatever. The memorialist further stated that not only have the forest officers prevented them from using the forest produce, but they have actually been forbidden by the officers to enter and reside within the forests.

The memorialist therefore prayed that some of the Reserved Forest might be given back to them and for others they must be compensated in lieu of the loss sustained by them.

## **THE ARBUTHNOTT COMMISSION ON FOREST RESERVATION**

The Government appointed J.C. Arbuthnott, Commissioner Surma Valley and Hill District, Government of East Bengal to hold an enquiry into the alleged Garo grievances. The

enquiry was held in the Garo Hills where a large number of persons presented themselves besides the legal advisers and leaders of the Garos.

The Commission submitted its report on May 30, 1907, after which a conference was held. The conference noted that the Garos could not comprehend the need for forest reserves. Since they were in the habit of seeing them as inexhaustible. However, it was felt that the Garos had real grievances, and the procedure of forest reservation did create hardship to the villagers. It was therefore proposed that the existing Reserved Forest should be carefully examined with a view of excluding and giving back to the villagers all the areas manifestly unfit for the purpose.

Some minor problems, which the Garos had with regard to forests were addressed by the Government in the 1920s. However, the two major demands viz. dereservation of forests and secondly the compensation for the land alienated from them were not met.

However a major gain of the movement started by Sonaram Sangma was that the Government recognised the fact that the reservation of forests carried hardships to the local people, in the sense that they are deprived of their traditional customary right over forest and forest produce. It was in recognition of this fact that the Government stopped all further forest reservation in this region and in fact adopted a more or less similar policy towards the whole of the tribal areas of North East. In fact even after independence, a similar policy was adopted by the Government towards forests in this region.



## CONTINUITY AND CHANGE: ANALYSIS OF THE FOREST LAWS

Before the enactment of the Constitution of India, the forests in Meghalaya (except Government Reserved Forest) were managed totally in accordance with the customary laws. In the Khasi Hills for example various categories of forests existed which were managed according to the customs of the Khasis. The customary pattern of management of forests was determined by the nature of ownership over the forest resources. The following main categories of forest existed:

1. **LAW KYNTANG, LAW LYNGDOH, LAW NIAM (SACRED GROVES)** – These forests are set apart for religious purposes and are believed to be inhabited by dieties. Nothing in this category of forests can be touched or destroyed by anyone whatever be his personal religion.
2. **LAW RIKYNTI, LAW RI SUMAR (PRIVATE FORESTS)** – These forests are owned by an individual or family. The owner is free to manage and use the forests as he or she desires.
3. **LAW ADONG AND LAW SHNONG (VILLAGE FORESTS)** – These forests are reserved by the villages as a whole and are used by all the members of a village concerned the use of timber and other forest produce was however restricted only to domestic consumption and no commercial transaction was allowed. These forests were managed by the 'Sirdars' or headman with the help of the village 'Durbar' (the Durbar are bodies which enforce customary legislation and deals with administrative matters).
4. **LAW KUR (CLAN FORESTS)** – In this category the forest and the land are owned by one clan or more.
5. **LAW RAID (COMMUNITY FORESTS)** – These forests are under the management and control of the Sylems but every member of the particular area has the right to use the forest products.

With the creation of the District Council a new situation arose. By the constitutional power vested in the District Council, all forests other than Government Reserved Forest are within its jurisdiction and under its exclusive management. According to Clause (b) of sub-paragraph (1) of paragraph 3 of the Sixth Schedule, the District Council may make laws with regard to the management of any forests not being a Reserved Forest.

The Khasi Hills District Council has made the following laws under Clause (b).

1. The United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958.
2. The United Khasi-Jaintia Hills Autonomous District Council (Management and Control of Forests – Rates and Royalty) Rules, 1959.
3. The United Khasi Hills Autonomous District (Management and Control of Forests) (Amendment) Act, 1960.
4. The United Khasi Hills Autonomous District (Management and Control of Forests) Rules, 1966.
5. The Khasi Hills Autonomous District (Management and Control of Forests) (Third Amendment) Act, 1979.

The Acts for the management and control of forests were further amended in 1979 and 1980.

The Garo Hills District Council has for the management of forests enacted the Garo Hills District (Forest) Act, 1958.

The Jaintia Hills District Council has adopted the Forest Acts of the Khasi Hills District Council *mutatis mutandis*.

## **ANALYSIS OF THE FOREST ACTS OF THE DISTRICT COUNCIL**

A critical analysis of the Forest Acts of the District Council together with the manner in which the laws are implemented will make it clear to a very large extent why there has been a gross mismanagement of forests under the control of the District Council resulting in its alarming depletion.

## **THE FOREST ACTS OF THE KHASI HILLS DISTRICT COUNCIL**

The enactment of the laws for the control and management of forests by the District

Council of Khasi Hills did not however result in the end of the customary pattern of management of forests. The *United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act 1958*, has given formal recognition to the various customary categories of forests and entrusted on them statutory obligations and have also endowed the managers of them with statutory powers.

The *United Khasi Hills-Jaintia Hills Autonomous District Council (Management and Control of Forest) Act, 1958* has specific laws for each category of forests. The various categories of forests to which the Forest Act apply are; Private Forests, Village Forests, Raid Forests, Protected Forests, Green Block, District Council Reserved Forest, Sacred Forests and Unclassed Forests.

The study of the laws applicable to the Private, Sacred and Community Forest together with its implementation will give a broad idea of the way the forests are being managed.

## 1. PRIVATE FORESTS

In the District Council Forest Act of 1958, "Private Forests" have been classified as:

- (a) Ri Kynti – These are forests belonging to an individual, clan or joint clan.
- (b) Law Ri Sumar – These forests belong to individual clan, joint clan that are grown or inherited by him in a village.

Clause (a) of Section 4 of the Act, states that the Private Forests shall be looked after by the owner, subject to the rules that may be framed by the Executive Committee from time to time.

A major shortcoming of the said Act is that the manner in which these forests are to be "looked after" has not been mentioned in the Act of 1958. Though, clause (a) of Section 4 of the *United Khasi Hills-Jaintia Hills Autonomous District (Management and Control of Forests) Rules, 1960*, has various rules for the management of forests. However, a critical look at the rules reveal that actually there are not rules for the management of forests but rather deal with the various formalities that the private owner has to fulfill before making commercial transaction of timber and other forest produce. What is absent in the rules is a "working plan" for the management of forests.

The importance of a working plan need not be overemphasied. Development of forests largely depends upon the quality of working plan and the various prescriptions that are to be undertaken in the particular forest division. The forests are important not only for their productive functions but also for environmental and protective function. It is therefore

essential that the harvesting of timber be done in a planned and scientific manner so as to cause minimum harm to the environment and to ensure regeneration of cleared forests.

The absence of a working plan for the private forests can be regarded as one of the major reasons for its depletion. This is evident from a note that was prepared by the State Forest Department and submitted to the "*Commission of Inquiry on Autonomous District Administration in Meghalaya*" in 1984. It stated that the District Council has only a national right over the management of such (Private) forests. The owners exploit the forests as they like and pay royalty to the District Council on timber taken out for trade. The private forests in the Khasi Hills, it is said, has come under unplanned excessive exploitation during the past decade or so the owners of private forests often lease out their forests to timber contractors who exploit the forests to their maximum benefit without caring for the future. Some unscrupulous timber traders buy out forest operation rights from the owners of private forests in anticipation of construction of roads to such areas and when the roads are constructed they carry out wanton felling of trees in the forests.

## **2. RAID FOREST (COMMUNITY FORESTS)**

The fact that at times, the enactment of a statutory law overpowering the customary law of the tribals can lead to confusion as well on conflict is best exemplified by the manner in which the 'Raid Forests' are being managed by the Sylems.

The institution of Syiemship is in fact one of the most important element that held in Khasi society together, since they were the traditional rulers of the Khasi Hills. The Sylems however lost their political importance to the British but retained their position as an administrative entity with a focus on perpetuating cultural and customary practices of the Khasis.

With the enactment of the Constitution of India the position of the Sylems has changed and their status has been reduced to that of officials and functionaries of the District Council. Thus, as per the law, the Sylems are treated as administrative officers by the District Council. However, in practice, they continue to function as if their status has not changed and this illusion is also presented to the common man by the manner in which they manage the Raid Forests in complete violation of the laws of the District Council.

Under customary laws, the Sylems managed the 'Raid Forests' and collected royalties on timber. However once the District Council has made laws for the management of such forests, as authorised by the Sixth Schedule of the Constitution, the customary law under which the Sylems managed the Raid Forests became abrogated. So, the Sylems derived their right of management from the law made by the District Council.

The District Council has made laws with regard to Raid Forests. Clause VI of Section 3 of the *United Khasi Hills Autonomous District (Management and Control of Forest) Act, 1958*, defines Raid Forests as: "These are forests looked after by the head of the Raid and under the management of the local administrative head." The District Council has made rules under which the Syiems should remit a portion of the royalties collected by them to the Council.

In reality, the Syiems ignore all the rules made by the Council, they in fact have their own Forest Department which deals with the issuing of permits, settlement of disputes and control of forests. The District Council has not converted or treated the Syiemship as administrative units nor entrusted them with specific function. Yet the Syiems continue to function according to customs and traditions.

Just as the manner in which the "Private Forests" are to be looked after" has not been provided in the Act similarly there is no provision either in the Act of 1958 or in the rules made thereunder, as to how the Raid Forests are to be "looked after". That is, there are no proper and scientific working plans, to be made by the administrative head. The *Commission of Inquiry on Autonomous District Administration, 1984*, noted that the general practice has been that the Syiems sell timbers from the Raid Forests appropriating the money and there is no supervision by the District Council, whose authority is not recognised by the Syiems. The Commission noted that the Syiems have become the de-facto owners of the Raid Forests, as a result of which they have become depleted. The Commission therefore suggested that there should be rules for supervision of Raid Forests by the District Council and these must be some plans for afforestation of these forests so that they may not be depleted. However these recommendations of the Commission were ignored and the Syiems continue to manage the forests as before.

One of the most important facts highlighted by the Commission was that contrary to what is believed, the Syiems have never been the owners of the Raid Forests which in reality belong to the people. Any assertion of ownership right by any Syiem over a Raid forest therefore, cannot be sustained.

### **3. SACRED GROVES**

The sacred groves are a unique feature of the Khasi and Jaintia Hills. These are scattered at different places and generally found below the hill brows. These forests are a relict of the original forests and are a storehouse of a variety of plant genetic resources.

The sacred groves cover an estimated area of 1000 sq.km. (accounting for about five percent of the state).

The District Council has entrusted the management of sacred groves i.e. *Law Lyngdoh*, *Law Kyntang* and *Law Niam* to the Lyngdohs and other such religious priests. The sacred groves however are also getting destroyed and mismanaged, similar to that of private forests and Raid Forests. The reason for the destruction and mismanagement of sacred groves is however different from that of Raid and private forests. Since the major reasons for its destruction is the loss of 'sanctity'.

In the past the sanctity of the groves were honoured and nothing in this category of forests was removed except for religious purposes. Anyone guilty of sacrilege is believed to fall under the curse of the deity and faces dire consequences such as premature death, sickness, poverty etc.

In the present times however the situation has changed and sacred forests are losing their status on account of a growing population and a more materialistic younger generation together combined with the fact that those tribals who converted to Christianity do not subscribe to such beliefs. The idea of sanctity is thus, increasingly failing to save the sacred forests. Consequently, many groves have been totally destroyed whereas in others the frequency of cutting down trees and tendency to violate the customs are on the rise.

Another reason why the destruction of sacred forests are taking place is the fact that neither the Forest Act of 1958 or any rules made thereunder has any provision for those violating these customs. Clause (b) of Section 4 of the *Management and Control of Forest Rules 1960*, which deals with the management of sacred groves simply deals with the procedure through which timber can be removed from such forests for religious purposes, and there exists no penal sanction, either in the form of imprisonment or fines for those violating the rules.

## **THE FOREST ACTS OF THE JAINTIA HILLS DISTRICT COUNCIL**

The Jaintia Hills District Council has adopted the *United Khasi Hills-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958* as amended and the rules made thereunder in toto without adaptation.

The Forest Acts of 1958, and the Rules that were enacted by the Khasi Hills were however made for the management and control of forests in Khasi Hills only and as such is *area specific* and does not fit the requirement of management and control of forests in the Jaintia Hills.

In fact a confusing situation prevails with regard to the forests in the Jaintia Hills. This is on account of the fact that more than 75% of the forests in the Jaintia Hills are so-called



private forests. The word "so-called" has been used because the private forests which exist in the Jaintia Hills do not come under the definition of "private forests" as given in the Management and Control of Forest Act 1958. In this Act private forests are classified as *Ri Kynti* i.e. those belonging to the individual clan or joint clan and (b) *Law Ri Sumar* i.e. those belonging to individual clan or joint clan, which are grown and inherited by him in a village or common raj land. In the Jaintia Hills however there are no 'Ri Kynti' land nor there are any 'Law Ri Sumar' as defined above. Hence "Private Forests" in the Jaintia Hills goes undefined in the Act.

The question that would therefore arise is how can there be any private forests, within the meaning of the Act, if there is no Ri Kynti and Law Ri Sumar?

The answer to it lies in the fact that the private forests in Jaintia Hills are those which are on lands classified as "wastelands". To understand why the private forests exists on wastelands it is imperative to focus on a particular aspect of the customary laws of the Jaintias that explains the above situation.

In the Jaintia Hills when any person plants pine trees on a plot of wasteland, thereby converting it to a pine forest, he acquires a heritable and transferable right over it by custom. This practice is also legitimised by the District Council, since it issues a certificate of land holding in respect of any plot of land to a person who brings it under permanent cultivation whether it is through planting of Pine trees or for orchard or betelnut plantation. It is stated in one certificate that the plot of land in question belongs to the person and he will have a inheritable and transferable right over it by custom.

This grant of property right to any person who brings any wasteland under cultivation is among the major reasons for the depletion of natural forest cover in the region. The very fact that what exactly is 'wasteland' has not been defined results mostly in good forest land with a wide varieties of trees and plants cleared for plantation of pine monoculture or for raising orchard.

Since the private forests of Jaintia Hills do not come under the definition of "Private Forests" as stated in the Forest Act of 1958, the District Council has no control over it. The owners are free to manage and exploit the forests in any manner as they like and do not need to pay any royalty.

It is a result of all the above factors that the forests in Jaintia Hills have been subjected to excessive and unplanned exploitation. The owners of private forests are fully utilising the vagueness of the law in total disregard to its effect on the environment

## FOREST ACTS OF THE GARO HILLS DISTRICT COUNCIL

The District Council of Garo Hills has for the management of forests other than Government controlled forests enacted the *Garo Hills District (Forests) Act, 1958*. This Act differs from the Forest Acts of the Khasi Hills since it is shaped according to the Assam Forest Regulation Act, 1891.

An important provision in the *Garo Hills District (Forests) Act, 1958* is the setting up of a Council Reserved Forests (S.3). The procedure for constituting a Council Reserved Forests is similar to the procedure for setting up a Government Reserve Forests as given in the Assam Forests Regulation Act, 1891 (which in turn was structured in accordance with the Indian Forest Act, 1878). The only difference being that instead of a Government appointed Forest Settlement Officer there is a Council Settlement Officer for the settlement of rights etc.

However no forest has been designated as Council Reserved Forest, and a possible answer to it could be the past experience of the Garos with Reserve Forests.

Just as the Jaintia Hills District Council has adopted in toto the Forest Act of the Khasi Hills District Council, similarly the Garo Hills District Council has adopted many provisions of the *Assam Forest Regulation Act, 1891*, mutatis mutandis for the Garo Hills. Thus Section 20 of the *Garo Hills (Forests) Act, 1958* applies chapter IV, VI, VII, VIII, IX, X and XI of the Assam Forest Regulations, mutatis mutandis for the management of District Council Forests and levy and collection of forests revenue. Thus the District Council of Garo Hills has not made any effort to bring out legislation keeping in view the specific requirements of Garo Hills.

The confusion that arises because of the simultaneous operation of the customary laws of the tribal and the statutory laws of the District Council is also evident in the Garo Hills, similar to what prevails in the Khasi and Jaintia Hills. In the plain areas of the Garo Hills district which comprise roughly 5.75% of the total area the Assam Land and Revenue Regulation Act 1866 is applicable, whereas in the hilly lands the customary laws govern the system of land tenure.

Most of the land in the hilly portion of Garo Hills (where also the bulk of forests exists) belongs to one clan, or the other, and is known as a "A' Khing land". The A khing land belongs to the clan but is under the control of the head of the clan known as "Nokma". Even though theoretically a female is a "Nokma", but in actuality the Akhing land is managed and controlled by her husband on her behalf.

As Akhing land is clan- land any member of the clan can cultivate a portion of it without payment of any fees to the *Nokma*. However if a member of another clan wants land, then the *Nokma* can give him land if available and also realizes a small amount of fees which is called "A wil". The District Council has however passed the *Garó Hills District (A Wil Fees) Act, 1960*, for the regulations, collection of "A' Wil" fee in the District. In this Act "A'Wil" fee is described not only as fees paid by any outsiders who is allowed to Jhum in a particular *A'Khing*, but also as fees assessed on timbers or other forest produce extracted from the *A'Khing*. Under Section 5 of the *Garó Hills District (A'Wil Fees), Act, 1960*, the *Nokma* of the *A'Khing* gets 25% of it, and 75% goes to the District Council.

The A'wil fees, which has been made applicable to timber and other forest produce, is a major factor contributing to the depletion of forests in the Garó Hills. This is because both the District Council and the *Nokma*, derive monetary benefit if trees and other forest produce are exploited by people who are not members of a particular class to which the land belongs.

Under customary law, A' Wil fees was levied only on the tribals who were not clan members and that to for cultivation. The District Council has, by making A'wil fees applicable to any person, other than those to whom the *A'Khing* land belongs, in fact has legitimised the exploitation of forests by tribals, who have turned into professional timber contractor and traders.

Another major reasons for the mismanagement of forests in the Garó Hills is the confusion that arises because of the overlapping authority of the *Nokmas* and the District Council.

As has been said earlier, most of the land in Garó Hills belong to one clan or the other (under the control of the *Nokma*) in accordance with the customary law. However, under the Sixth Schedule of the Constitution, all forests other than Government Reserved Forests, are to be managed by the District Council. Since the bulk of the forests are in the hilly region of the district where the customary law on land is applicable this has led to confusion, as it is difficult for the District Council to effectively manage the forests, if the land on which the trees exists are not under its control.

The District Council has sought to end this confusion through a Rule, according to which, even though the *Nokma* has the right to grant permission for felling of trees, however until the District Council approves it, the permission given by the *Nokma* has no validity.

But in actuality the District Council has no proper mechanism to see whether the number of trees felled are in accordance with the permit granted. This is borne out by a note prepared by the State Forest Department and submitted to the Commission of Inquiry on Autonomous District Administration - 1984. It was stated in the note that :-

*"In the Garo Hills the timber traders obtain permission from the Nokmas for extraction of timber from the clan forests under its custody. The contractors then obtain timber operation permits from the District Council on the strength of the Nokmas consent letters. Because of the lack of adequate field supervision the contractors operate many more trees than are authorised by the permits. The District Council has to remain satisfied in the collection of revenue at forest depots. This practice has resulted in systematic and ruthless removal of all marketable trees from the forest forests under the control of the Garo Hills District Council".*

## **CONCLUSIONS**

The above analysis of the District Council laws on the management and control of forests brings us to the following important conclusions: -

- (1) All the laws together with the subsequent Rules with regard to forests have been made keeping in view the requirements of trade and commerce and looks at forests as a source for generating revenue for District Councils. This is exemplified by the fact that in the *United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Rules, 1960*, "Forests" have been defined as -

*"An area shall be deemed to be a forest if there are a reasonable numbers of trees, say not less than 25 trees per acre or any forest produce growing in such area, which are capable of being exploited for the purpose of business and trade".*

- (2) Even though the District Councils have been constitutionally given the power to manage all forests other than Government Reserved Forests, in actuality it has only a notional control over most of the forests. This is most acute in the Khasi and Jaintia Hills. Thus the District Council has failed to assert its authority as the sole manager of forests, and as such a large percentage of forests are managed in accordance with the customary laws.
- (3) There has been a gross mismanagement of forest by the District Council, and one reason for this mismanagement is the absence of a working plan. The mismanagement of forests due to the absence of a working plan, results not only in the rapid depletion of forests, but also generates less revenue for the owners. Thus, even though the forests under the control of the District Councils have been ruthlessly exploited as compared to those under the control of the State Forest Department, yet the Commission of Inquiry in 1984 found out that whereas, the State Forest Department has control over only 10% of the total

forest area in the State, it earns about a crore of rupees, whereas the three District Council with over 90% of the total forests earn much less.

- (4) Most of the laws enacted by the District Councils for the management of forests are not comprehensive and adequate to deal with the unique circumstances prevailing in a particular Autonomous District. Thus, the Jaintia Hill District Council has applied the Forest Acts of the Khasi Hills *mutatis-mutandis*, whereas the Garo Hills District Council has applied various provisions of the *Assam Forest (Regulation) Act, 1891 mutatis-mutandis*.
- (5) The District Council has modified some customary laws on forests so that more revenue can be generated in total disregard to its consequence on the forests. Thus, whereas previously in the Garo Hills, A'Wil fees was applicable to only those who cultivated in a land which belongs to another clan, the District Council of Garo Hills has made the levy of A'Wil fees applicable to the removal of timber and other forest produce and this levy of A'Wil fees has contributed in a major way to the depletion of forests. The reason being that since forest products used locally by the people cannot be taxed, the District Council makes no effort to stop the indiscriminate felling of trees and their transportation to outside markets since that alone constitutes the largest source of revenue for the District Council.

There exist certain other factors, which have contributed to the depletion of forests under the control of the District Council, which are to a large extent common to all the three District Councils.

*Firstly*, in spite of the constitutional status of the District Council, there is no mandatory financial provision to cater to their administrative needs, either through plan or non-plan. If financial assistance is made available from the State Government, it is mostly in the form of grant-in-aid and for limited purposes. Thus for example the Khasi Hills District Council is left to fend for itself for financing its whole administrative set-up with whatever resources it has. Hence the contention of the District Councils is that it has no choice but to depend heavily on revenue from forest resources. Of the entire receipt of the Khasi Hills District Council in 1990, revenue from timber exports alone accounts for 70%. This amount is used to finance the entire District Council administration comprising of the executive, the legislature and the judiciary and no allocation could be made for afforestation.

*Secondly*, whereas various provisions of the Forest Acts of the District Councils are penal in nature. However the District Councils have no machinery to enforce these laws e.g. the village courts set up by the District Council has no means to compel the attendance of the accused before it. As such the village courts generally makes a request to the police to get

the accused arrested, however the police treats the requests as a F.I.R. and gets the accused arrested, but produces them in the District Magistrates Courts and not the Village Courts. Hence the village courts are unable to do their duty of administering justice.

*Finally*, the entire administrative structure with regard to forest structure the District Council is highly "bureaucratic" in nature and not much different from the State Forest Department. Thus an elaborate hierarchy of posts exists such as Chief Forest Officer, Assistance Forest Officer, Forest Ranger, Deputy Forest Ranger, Forest Guard etc. Thus whereas the Constitution makers had given the District Council the right to make laws and manage forests in the manner best suited for the tribals, the District Council have created an administrative structure which was alien to the tribals and similar to the administrative structure of the Government.



## WILDLIFE IN DISTRICT COUNCIL CONTROLLED FORESTS

Any study on the effects of a particular management system on forests would be inadequate unless the effect of that management pattern on the 'denizens' of the forests i.e. wildlife is not taken into account.

Nature has been extremely benevolent to Meghalaya as also to the other North-Eastern states, as it has been endowed with diverse species of flora and fauna. The forests in the North-East have however not been fully explored, and chances are that future scientific exploration may result in the discovery of species that are new to science.

Meghalaya has always been famous for its floral wealth. The famous botanist Dalton Hooker on a visit in 1850, collected 200 specimen of flowering plants and 150 varieties of fern within 10 miles of Cherrapunji. He also found 250 kinds of Orchids, 150 varieties of grass and 15 species of bamboos. However at present only a precious little is left of the one huge variety of flora in the region.

Wild fauna in Meghalaya comprises of the Hoolock gibbon (*Hylobates hoolock*), (the only ape in the country) Clouded leopard (*Neofelis nebulosa*), Capped langur (*Presbytis pileatus*), Pigmy hog (*Sus salvanius*), Gaur (*Bos gaurus*) besides species common to most part of the country such as Tiger, (*Panthera tigris*) Leopard (*Panthera pardus*), Barking deer (*Muntiacus muntjak*), Sambar (*Cervus unicolor*) etc.

The forest have scattered population of Wild buffalo (*Bubalus bubalis*) and the Malayan sun bear (*Helcarctos malayanus*).

However what really dominates the wild fauna scene in this region is the Elephant (*Elephas maximus*). Meghalaya has one of the largest elephant populations in the North East. According to Project Elephant estimates in 1994, there are a minimum of 2500 and a maximum of 3000 elephants in roughly 8,000 sq. km. of elephant habitat.

This large elephant population has however resulted in severe man animal conflict, and this has become particularly acute in the Garo Hills, which holds most of the states elephant population.

A proper management of elephant population is essential not only to minimise the damage caused to life and property but also because of the fact that man-animal conflict is a sure indicator of the fact that the forests are not in good health. The management of elephant population does not imply culling or trapping of these elephants but rather management of their habitat and protecting their migratory routes.

The fact that depredation caused by elephants are on the increase necessitates that the cause for this ever increasing man-animal conflict be located.

The Bombay Natural History Society (B.N.H.S.) did a survey of the affected areas from 1985 to 1987, to assess the extent of damage caused by elephants, and also to suggest solutions to the problem.

The B.N.H.S. study found out that the large elephant population is highly fragmented and the shifting nature of agriculture and timber extraction has led to large scale man-elephant conflict. As agriculture is scattered throughout the elephant range, the elephants come across agriculture fields frequently and raid crops. Since elephants are migratory animals, when they move from one forest to another they are forced to trample or cross agricultural land and this results in crop loss.

The jhum cycle has been reduced. Earlier the jhum cycle was between 30 to 50 years, this allowed for good regeneration of forests in the jhum areas. Today the jhum cycle has come down to 3 to 5 years. The oldest forest available to the elephant in many jhum areas is only 3 to 5 years old. This is unsuitable for elephants and results in greater crop raiding.

The presence of very few Protected Area Networks has also been responsible for the man-animal conflict. Except the Balpakram National Park with an area of 220 sq km, there exists no other viable protected area suitable for long term conservation of elephants. What exists are ridiculously small to be regarded as elephant sanctuary e.g. the Siju Wildlife Sanctuary is only 5 Sq km and Nongkhylllem Wildlife Sanctuary is of 29 sq km.

The B.N.H.S. report pointed out that the single most important cause for the man-animal conflict is because most of the forest in Meghalaya is under the control of the District Council. The Forest Department has little or no control over what happens in these forests. Large scale uncontrolled jhumming and timber extraction has depleted most of the forests. There also exists problems in creating a Protected Area Network, mainly because most of the land belongs to the District Council or are privately owned, so the land has to be acquired either through legislation or by paying compensation (which would be very expensive).



The report suggested that the only way to remove the elephant problem is by the Forest Department taking over all the forest area in Garo Hills and managing it in a scientific way. This will allow the elephants to use the forests without conflict with man.

Another study which was done before on the elephant problem was by D.K. Lahiri Chaudhury for the I.U.C.N. in 1980. Whereas its findings were similar to the B.N.H.S. study, it gave no recommendation on how to control the elephant menace on the ground that it will have no value unless the forests of Meghalaya are brought under one unified scientific management and control, if necessary by legislative measure. In fact, it noted that the problem was not peculiar to Meghalaya, but something common to all the tribal states where forests are owned by the communities.

The above studies even though may not hold a 'viable' solution to the man-elephant conflict; however what they do point out is the fact that wildlife management in Meghalaya and also in the other states of the North Eastern region where forest are owned by community has been rather poor resulting in the local extinction of many species and a rise in man-animal conflict.

The prime reason for this is that even though most of the wildlife in the state of Meghalaya is found outside Government controlled forests i.e. Reserved Forest, National Parks, Sanctuaries and Biosphere Reserve, there exists no statutory provisions for the protection and management of wildlife by the District Council.

The District Council has not enacted any laws to protect wildlife since they have been constitutionally given the power to make laws with regard to forests only.

This non-entrustment of the power to make laws by the District Council for the protection of wildlife in the Sixth Schedule by the Constitution makers can be explained by the fact that when the Constitution was enacted there was hardly any knowledge or awareness about the 'value' of wildlife. However what is unfortunate is that even after the enactment of the Wildlife (Protection) Act, 1972, no amendment has been done to allow the District Council to make laws with regard to the protection of wildlife. Also the various Government policies, projects and legislation with regard to wildlife have simply assumed that most the forest lands and wildlife habitat in the country is under the control of the State Forest Department and has over looked the unique circumstance prevailing in the North Eastern region.

Thus wildlife in Meghalaya is being systematically decimated since there exists no law to protect the habitat of the wild animals. The wildlife wing of the Forest Department can at best prohibit the poaching and trade in wild animals as well as flora listed under Schedule

VI of the Wildlife (Protection) Act, 1972, but can practically do nothing to protect the *habitat* of the wildlife, since they have no control over the habitat of the wildlife which are under the control of the District Council and other local land tenure systems.

This also brings to light a major shortcoming of the Wildlife (Protection) Act, 1972, in that it merely protects the wildlife but not their habitat (except those within Protected Areas) without habitat protection no wild flora or fauna can survive for long.





## **CONCLUSION :**

### **NEED FOR PARTNERSHIP AND PARTICIPATORY MODE OF MANAGEMENT**

The analysis of laws made by the District Council for the management of forests under its control to a large extent explains the reason for the destruction of forests. All the laws enacted by the District Council, view forests as means for earning revenue. The forest laws of the District Council like the Indian Forest Act 1927, does not lay down any specific duty on the District Council to conserve the forest or use it equitably.

The Constitution makers had given the District Councils the right to make laws with regard to forest, since it was felt that they alone (being representatives of the tribals) could best understand the needs and requirement of a tribal society. Unfortunately in all the forest laws enacted by the three District Councils in Meghalaya there is a total absence of any statement regarding the "social objectives" which such legislation aims to achieve.

The analysis of the laws also brings to light the fact that none of them are in tune with the National Forest Policy both 1952 and 1988. Thus whereas the Garo Hills District (Forests) Act was enacted in 1958, it completely ignored the National Forest Policy 1952, and was based on the Assam Forest (Regulation) Act, 1891, with the forest policy embodied therein.

Even though the National Forest Policy is not legally enforceable, however it is supposed to form the basis of future legislation on forestry. Yet in reality the National Forest Policy is ignored not only by the District Council, but also by the very Government that makes these policy statements. Thus even at the national level no major law reform has taken place either on account of the 1952 or 1988 Forest Policy and the use of forest resources continues to be governed by the 1927 Act and the Forest Policy embodied therein.

A pertinent question then is: To what extent can the District Council be held responsible for the depletion of forests in Meghalaya? To put the blame for the depletion of forests in Meghalaya on the District Council simply on the ground that it is they who manages

them and makes laws on it is to grossly oversimplify the whole situation the reason for this are: -

- (1) Even though the District Council had a more or less supreme authority to make laws on the subjects allotted to it. However, after the formation of the state of Meghalaya the status of District Council has been reduced more or less to that of 'Municipal Board' by the insertion of Paragraph 12A in the Sixth Schedule. Now the State Legislature in Meghalaya can make laws, if it so desires, on subjects allotted to the District Council, and if there is any conflict between the state law and the District Council law, the state law will prevail. Thus if there was any positive intention by the State Government to protect the forests and wildlife in the state, it could have done so by passing a legislation to this effect, which would be binding on the District Council. However no such legislation has so far been passed. The *Meghalaya Tree (Preservation) Act, 1976* for example is limited only to the state capital of Shillong and to the cantonment areas.
- (2) Although, the District Councils have enacted laws for the management of all forests (other than Government controlled forests) in actuality the managerial authority of the District Council is very much limited. In case of the Khasi Hills, the bulk of the forests are governed by customary laws, in Jaintia Hills most of the forests are privately owned and outside the purview of the District Council, whereas in the Garo Hills it is the '*Nokma*' who determines the management of forests. Thus it is evident that to a large extent the laws enacted by the District Councils have little meaning for the tribals, since what governs work at the ground level is a network of customary laws and they take precedence over all statutory laws enacted by the District Council.
- (3) The inability of the District Council to exercise its management authority over all the forests under its jurisdiction is to a large extent a result of its lack of infrastructure, in terms of expertise, administrative organisation and finance the address itself to such a task, although theoretically, it is supposed to have its own organisation to look after the forests and to see that the laws are implemented. This in fact is a major reason why there is a demand by environmental and other groups that the District Council forests be handed over to the Forest Department, which alone has the expertise and administrative organisation to manage these forests.
- (4) The lack of an adequate administrative machinery is however not the sole reason for the non-implementation of the laws, since even with its limited administrative machinery the District Council has to face heavy odds. As has been mentioned

earlier, the village courts set up by the District Council has practically no means to compel the attendance of the accused before it. Thus the entire purpose of setting up village court is undermined if they do not have the power to bring the accused before it. It is therefore essential that suitable amendments be done in the District Council Acts to cover this deficiency. One possible solution is to incorporate a provision that exists in the *Assam Panchayati Raj Act*, where there is a provisions, viz., Section 97(2) under which a Panchayati Adalat may write to the nearest magistrate when an accused fails to appear before it, and the magistrate may issue a warrant for the arrest of the accused and when arrested may forwarded him for trial to the said Adalat.

- (5) For the decimation of wildlife also the District Council cannot be held solely responsible. Since they have not been given the power to make laws with regard to the protection of wildlife and as such they cannot set up any protected areas such as National Parks and Sanctuaries for the protection of wildlife. The Wildlife (Protection) Act, 1972 has endowed only the State Government within the right to constitute an area as a National Park and Sanctuary.

## THE WAY AHEAD

Where is the way out of the present scenario? Do the forests in the North East have a future? And the most important question, should the forests be handed over to the Forest Department and will such transfer guarantee the preservation of forests? If not, where does the solution to the problem lie.

The answer to the above questions are however neither too difficult nor the easy to locate. Even though the District Council has mismanaged the forests, they cannot be blamed solely for it since the State Government has remained mute spectators to the entire destruction of biodiversity. Also throughout the country the Forest Departments have failed to preserve the forests and have also denied to a large extent to the local people the right of access to forests thereby alienating them. The State Forest Department also has problems similar to that of District Councils, such as problem of finance, lack of equipment and staff.

Thus handing over the forests to the Government cannot be a solution to the degradation of forests in Meghalaya. On the other hand the District Councils are simply unable to manage the huge forest areas because of problems mentioned earlier.

Any possible solution to the problem must fulfill the following basic condition:-

*Firstly*, it should not “totally” deprive the right of the District Councils to manage forests, since they along can best understand the needs and aspiration of the tribal people.

*Secondly*, all the District Council laws on forests are in dire need of updating with emphasis on conservation. The new laws on management of forests should allow for greater participation of tribals in the management of forests. It should aim at creating a forest administration that is less bureaucratic in nature.

The management of the Forests in Meghalaya needs a cooperative approach. The Joint Forest Management (JFM) Resolution of 1990 was a step to encourage this co-operative approach and it encouraged NGO's, Forest Departments and community groups to collaborate in managing State Forest land.

However, in case of the District Council controlled forests, the situation is different. What is needed in this case is not only 'participation' of tribals in the management of forests but also a kind of 'partnership' between the District Council and the State Forest since the District Council lacks adequate administrative machinery as well as the scientific knowhow to manage their forests.

In Arunachal Pradesh such a partnership in forest management was conceived, developed and practiced long before the JFM concept as per “Arabari model” was advocated and the 1st June 1990 circular of Government of India on Participatory Forest Management was issued.

In Arunachal Pradesh, the bulk of the forests are under the control of the clan. However the chiefs of the clan were unable to manage these forests due to lack of skill and requisite resources and hence approached the Government to manage the forests on a partnership basis and accordingly a agreement was signed between the Government and the chief of the Borduria and Namsang (who belonged to the Nocte tribe) in 1948. Important features of the agreement were:

- (1) The forests were to be declared as village forest under the Assam Forest Regulation Act, 1891.
- (2) 25% of the net revenue after the deduction of all expenses would be retained by the Government and the balance 75% would be payable to the owner.
- (3) Developmental committees were constituted under the rules which would have peoples representatives as well as representatives from various Government Departments.

- (4) The forests were to be managed scientifically by the Forest Department as per working plans.

The success story in partnership forest management in Namsang Borduria Forests prompted the Government to initiate similar arrangement in all Unclassed State Forests (U.S.Fs.) wherein traditional rights of individuals and communities are respected and recognised. The existence of Panchayati Raj Institutions at village and district level further encouraged the enactment of the Arunachal Forest Reserve (Constitution and Maintenance) Act in 1975. The Act provided for sharing of net revenue between the Government and Anchal Samaties on a 50:50 ratio. This partnership in the management of forests has made it possible for the Forest Department to manage the forests in a scientific manner without denying the tribals the right to benefit from the forest.

In the case of Meghalaya such a 'partnership' is required between the State Forest Department and the District Council as well as 'participation' of the people in the management of forests.

The partnership will ensure that the forests are managed scientifically. In accordance to the working plan, the working plan should clearly spell out the objectives of management. Such objectives should be in tune with the present forest policy that emphasizes on conservation.

The District Council should also be entrusted the duty to protect wildlife and joint projects be undertaken for its protection.

Meghalaya, being a signatory to the J.F.M. Resolution has to take steps towards ensuring peoples participation in management of forests with dual objectives of conservation of forests and yielding economic benefit for the local people.

Thus this 'partnership' and participatory mode of forest management is what may hold a possible solution to the problem of forest management not only for Meghalaya but also for other North Eastern States.

The emphasis on peoples participation in the management of forests is essential since the present forest laws of both the District Council as well as the Government, are based on the basic jurisprudential theory what may be called, the "*policing the society theory*", in which the legislators and administrators assume that their task is to act as vigilant policeman who detects crime and bring the culprit to court. This jurisprudence presupposes a society in which there is always conflict and hence the major task of the executive is to resolve the conflict in favour of a particular interest amongst competing class interest, by using force or through economic compulsion. However, this 'conflict' model of society is nothing

but a requirement of a colonial society where the rulers are in actual conflict situation. In a democracy on the other hand, the society is based on a 'consensus' or co-operative model, under which there is always consensus in the society with regard to certain aims and objective. As such the task of the executive becomes one of finding alternatives through which various agencies of the society can co-operate with each other to attain a common goal.





## GLOSSARY

Adong	Protected
Akhing	Land of the Nokmas
Dollois	Head of the Elaka administration in Jaintia hills
Dorbar	Council
Elaka	Jurisdiction of traditional chiefs viz., Dollois/ Syiems/ Lyngdoh
Khlaw	Forest
Kur	Clan
Kyntang	Sacred
Law	Forest or grove
Law Adong	Protected forest
Law Lyngdoh	Forest belonging to priest
Law Raij	Community forest
Law Shnong	Village forest reserved by the villagers themselves for the purpose of conserving water
Lyngdoh	Priest
Nokma	Chief of the Clan
Raid	An area under the jurisdiction of a traditional authority
Raid land	Public land
Ri	land
Syiem	Chief of the Khasi
U Ryngkew U Basa	Guardian spirit



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CONSTITUTION OF INDIA  
SIXTH SCHEDULE\*

The Sixth Schedule in its Application to Assam has been modified by Act 42 of 1995.

[Articles 244(2) and 275 (1)]

PROVISIONS AS TO THE ADMINISTRATION OF TRIBAL AREAS IN  
THE STATES OF ASSAM, [MEGHALAYA, TRIPURA]

[Articles 244(2) and 275 (1)]

PROVISIONS AS TO THE ADMINISTRATION OF TRIBAL AREAS IN THE  
STATES OF ASSAM, [MEGHALAYA, TRIPURA]<sup>1</sup> AND MIZORAM<sup>2</sup>

1. Autonomous districts and autonomous regions.- (1) Subject to the provisions of this paragraph, the tribal areas in each item of <sup>3</sup>[<sup>4</sup> [ parts I, II and IIA ]and in Part III ] of the Table appended to Paragraph 20 of this Schedule shall be an Autonomous District.
- (2) If there are different Scheduled Tribes in an Autonomous District, Governor may, by public notification, divide the area or areas inhabited by them into Autonomous Regions.
- (3) The Governor may, by public notification –
  - (a) include any area in<sup>5</sup> [any of the parts] of the said Table,
  - (b) exclude any area from <sup>6</sup> [any of the parts] of the said Table,
  - (c) create a new Autonomous District,
  - (d) increase the area of any Autonomous District,
  - (e) diminish the area of any Autonomous District,
  - (f) unite two or more Autonomous Districts or parts thereof so as to form one Autonomous District,
  - (g) alter the name of any Autonomous District<sup>7</sup>

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\*The Sixth Schedule in its Application to Assam has been modified by Act 42 of 1995.

<sup>1</sup>Sub. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4, for "and Meghalaya"

<sup>2</sup>Changes made by the North-Eastern Areas (Reorganisation) Act, 1971, and the Union Territory of Mizoram has been elevated to the status of a State by the State of Mizoram Act, 1986.

<sup>3</sup>Sub. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4, for "Part I and II"

<sup>4</sup>Substituted by the North-Eastern Areas (Reorganisation) Act, 1971

<sup>5</sup>Substituted by the North-Eastern Areas (Reorganisation) Act, 1971

<sup>6</sup>Substituted by the North-Eastern Areas (Reorganisation) Act, 1971

<sup>7</sup>Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Forth Sch.

(6) The Governor shall make rules for the first Constitution of District Councils and Regional Councils in consultation with the existing Tribal Councils or other representative tribal organisations within the Autonomous Districts or Regions concerned, and such rules shall provide for –

- (a) the composition of the District Councils and Regional Councils and the allocation of seats therein;
- (b) the delimitation of territorial constituencies for the purpose of election of those Councils;
- (c) the qualifications for voting at such elections and the preparation of electoral rolls therefor;
- (d) the qualification for being elected at such elections as members of such Councils;
- (e) the term of office of members of <sup>11</sup>[Regional Councils];
- (f) any other matter relating to or connected with election or nominations to such Councils;
- (g) the procedure and the conduct of business <sup>12</sup>[including the power to act notwithstanding any vacancy] in the District and Regional Councils;
- (h) the appointment of officers and staff of the District or the Regional Councils;

<sup>13</sup>[ (6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist, which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

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<sup>11</sup>Sub. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969),sec. 74 and Forth Sch. for "such Councils".

<sup>12</sup>Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969),sec. 74 and Forth Sch .

<sup>13</sup>Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969),sec. 74 and Forth Sch.

(h) define the boundaries of any Autonomous District:

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under Sub-paragraph (1) of paragraph 14 of this Schedule:

<sup>8</sup>[Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the Parts of the said table) as appear to the Governor to be necessary for giving effect to the provisions of the order.]

- <sup>9</sup>2. Constitution of District Councils and Regional Councils.- <sup>10</sup>[(1) There shall be a District Council for each Autonomous District consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.]
- (2) There shall be a separate Regional Council for each area constituted an Autonomous Region under sub-paragraph (2) of paragraph 1 of this Schedule.
- (3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (*name of district*)" and "the Regional Council of (*name of region*)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.
- (4) Subject to the provisions of this Schedule, the administration of an Autonomous District shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an Autonomous Region shall be vested in the Regional Council for such region.
- (5) In an Autonomous District with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

<sup>8</sup>The second Proviso was added by the North Eastern Area (Reorganisation) Act, 1971

<sup>9</sup>Paragraph 2 has been amended in its application to the state of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), sec. 2, as under:

"Provided that the District Council constituted for the North Cachar Hills District shall be called as North Cachar Hills Autonomous Council and the District Council constituted for the Karbi Anglong District shall be called as the Karbi Anglong Autonomous Council."

<sup>10</sup>Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Forth Sch.

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes <sup>17</sup>[by the Government of the State concerned] in accordance with the law for the time being in force authorizing such acquisition;

- (b) the management of any forest not being a reserved forest;
  - (c) the use of any canal or water-course for the purpose of agriculture;
  - (d) the regulation of the practice of *jhum* or other forms of shifting cultivation;
  - (e) the establishment of Village or Town Committees or Councils and their powers;
  - (f) any other matter relating to village or town administration, including village or town police and public health and sanitation;
  - (g) the appointment or succession of Chiefs or Headmen;
  - (h) the inheritance of property;
  - (i) <sup>18</sup>[marriage and divorce;]
  - (j) social customs.
- (2) In this paragraph a "reserved forest" means any area which in a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.
- (3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect<sup>19</sup>.
4. Administration of justice in autonomous districts and autonomous regions.- (1) The Regional Council for an Autonomous Region in respect of areas within such region and the District Council for an autonomous district in respect of area within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute Village Councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint

<sup>17</sup>Substituted by the North-Eastern Areas (Reorganisation) Act, 1971.

<sup>18</sup>Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Forth Sch.

<sup>19</sup>After paragraph 3, paragraph 3A has been inserted in its application to the state of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), sec-2



Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.]

(7) The District or the Regional Council may after its first constitution make rules<sup>14</sup> [with the approval of the Governor] with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make *rules with like approval* regulating -

- (a) the formation of Subordinate Local Councils or Boards and their procedure and the conduct of their business; and
- (b) generally all matters relating to the transaction of business pertaining to the administration of the District or Region, as the case may be:

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council.

<sup>15</sup>[\* \* \*]

3. <sup>16</sup>Powers of the District Councils and Regional Councils to make laws.-(1) The Regional Council for an Autonomous Region in respect of all areas within such region and the District Council for an Autonomous District in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to -

- (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest, for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests for the inhabitants of any village or town:

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<sup>14</sup>Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and The words 'of Assam' omitted by the North-Eastern Areas (Reorganisation) Act, 1971.

Forth Sch.

<sup>15</sup>The second proviso has been omitted by the Assam Reorganisation (Meghalaya) Act, 1969.

<sup>16</sup>Paragraph 3 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), sec. 2 as under:

For sub-paragraph (3) the following sub-paragraph shall be substituted, namely:-

"(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3A, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

have effect in relation to such autonomous district or region as may be specified in the notification, as if -

(i) in sub-paragraph (1), for the words "between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply", the words "not being suits and cases of the nature referred to in sub-paragraph (1) of paragraph 5 of this Schedule, which the Governor may specify in this behalf", had been substituted;

(ii) sub-paragraph (2) and (3) had been omitted;

(iii) in sub-paragraph (4) -

(a) for the words "A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating," the words "The Governor may make rules regulating" had been substituted; and

(b) for clause (a), the following clause had been substituted, namely: -  
"(a) the constitution of village councils and courts, the powers to be exercised by them under this paragraph and the courts to which appeals from the decisions of village councils and courts shall lie."

(c) for clause (c), the following clause had been substituted, namely: -  
"(c) the transfer of appeals and other proceedings pending before the Regional or District Council or any court constituted by such Council immediately before the date appointed by the President under sub-paragraph (5)"; and

(d) in clause (e), for the words, brackets and figures "sub-paragraphs (1) and (2)", the word, brackets and figure "sub-paragraph (1)" had been substituted.]

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898,<sup>23</sup> on the Regional and District Councils and on certain courts and officers for the trials of certain suits, cases and offences.- (1) The Governor may, for the trial of suits or cases arising out of any law in force in any Autonomous District or Region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on

<sup>23</sup>See now the Code of Criminal Procedure, 1973.

suitable persons to be members of such village councils or Presiding Officers of such courts; and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

- (2) Notwithstanding anything in this Constitution, the Regional Council for an Autonomous Region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.
- (3) The High Court <sup>20</sup> [\*\*\*] shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.
- (4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor makes rules regulating –
  - (a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;
  - (b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
  - (c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;
  - (d) the enforcement of decisions and orders of such councils and courts;
  - (e) all other ancillary matter for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

<sup>21</sup> [ (5) On and from such date as the President may, <sup>22</sup> [after consulting the Government of the State concerned, by notification appoint in this behalf, this paragraph shall

<sup>20</sup>The words 'of Assam' omitted by the North-Eastern Areas (Reorganisation) Act, 1971.

<sup>21</sup>Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Forth Sch.

<sup>22</sup>Substituted by the North-Eastern Areas (Reorganisation) Act, 1971.

7. District and Regional Funds.- (1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this constitution.
- (2) <sup>28</sup>[The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund, and for the procedure to be followed in respect of payment of money into the said fund, the withdrawal of moneys therefrom, the custody of moneys therein and any matter connected with or ancillary to the matters aforesaid.
- (3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor General of India may, with the approval of the President, prescribe.
- (4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think fit, and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.]
8. Power to assess and collect land revenue and to impose taxes.- (1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed <sup>29</sup>[by the Government of the State in assessing lands for the purpose of land revenue in the State generally.]
- (2) The Regional Council for the autonomous region in respect of areas within such region and the District Council for autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons, resident within such areas.

<sup>28</sup>Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Forth Sch.

<sup>29</sup>Changes made by the North-Eastern Areas (reorganisation) Act, 1971.

courts constituted by such District council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or as the case may be, the Code of Criminal Procedure, 1898,<sup>14</sup> as he deems appropriate and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, Court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898,<sup>14</sup> shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

<sup>24</sup>[(4) On and from the date appointed by the President under sub-paragraph (5) of paragraph 4 in relation to any autonomous district or autonomous region, nothing contained in this paragraph shall, in its application to that district or region, be deemed to authorise the Governor to confer on the District Council or Regional Council or on courts constituted by the District Council any of the powers referred to in sub-paragraph (1) of this paragraph.]

6. <sup>25</sup>[Powers of the District Council to establish primary schools, etc.- (1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets,<sup>26</sup> [cattle pounds,] ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

(2) The Governor may, with the consent of any District Council entrust either conditionally or unconditionally to that Council or its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State<sup>27</sup> [\*\*\*] extends. ]

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<sup>24</sup>Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Forth Sch

<sup>25</sup>Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Forth Sch

<sup>26</sup>Substituted by the Repealing and Amending Act, 1974 for "cattle pounds".

<sup>27</sup>The Words 'of Assam ¼ may be' omitted by the North-Eastern Areas (Reorganisation) Act, 1971.

may make regulations for the regulation and control of money-lending or trading within the district by persons Scheduled Tribes resident in the district.

- (2) In particular and without prejudice to the generality of the foregoing power, such regulation may –
- (a) prescribe that no one except that the holder of a license issued in that behalf shall carry on the business of money-lending.
  - (b) prescribe the maximum rate of interest, which may be charged or be recovered by a money-lender.
  - (c) provide for the maintenance of accounts by money-lender and for the inspection of such accounts by officers appointed in that behalf by the District council;
  - (d) prescribe that no person who is not the member of the Schedule Tribes resident in the district shall carry on any trade, whether wholesale or retail, except under a licence issued in that behalf by the District Council.

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

- (3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

11. Publication of laws, rules and regulations made under the schedule.- All laws, rules and regulations made under this Schedule by the District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

<sup>34</sup> 12-<sup>35</sup> [Application of Acts of Parliament and of the Legislature of State of Assam to autonomous districts and autonomous regions in the state of Assam.]-

- (1) Notwithstanding anything in this Constitution –

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<sup>34</sup>Paragraph 12 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995.

<sup>35</sup>Subs. By Northern -Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 and Eighth Sch., for the heading

- (3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say,
- (a) Taxes on professions, trades, callings and employments;
  - (b) Taxes on animals, vehicles and boats;
  - (c) Taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and
  - (d) Taxes for the maintenance of schools, dispensaries or roads.
- (4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph <sup>30</sup>[and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.]

<sup>31</sup>9. Licences or leases for the purposes of prospecting for, or extraction of, minerals.-

(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by 32 [ the Government the State] in respect of any area within an Autonomous District as may be agreed upon between the Government of the State and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

<sup>33</sup>10. Power of District Councils to make regulations for the control of money-lending and trading by non tribals.- (1) This district council of an autonomous district

<sup>30</sup>Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969),sec. 74 and Forth Sch

<sup>31</sup>Paragraph 9 has been amended in its application to the States of Telpura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988) sec. 2,

<sup>32</sup>Sub. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 (i) and Eighth Sch., for "the Government of Assam"

<sup>33</sup>Paragraph 10 has been amended in its application to the States of Tripura and Mizoram. By the Sixth Schedule. to the Constitution (Amendment) Act,1988 (67 of 1988), .sec. 2

(a) in the heading ,,"the words non-tribals" shall be omitted;

(b) in sub paragraph (1) the words "other then Scheduled Tribes" shall be omitted;

(c) in sub paragraph (2), for clause (d), the following clause shall be substituted, namely:-

"(d) prescribe that no person resident in the district shall carry on trade, weather wholesale or retail, except under a licence issued in that behalf by the district council."

Schedule, is repugnant to any provision of a law made by the legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council, whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;

- (b) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

<sup>42</sup>[12AA. Application of Acts of Parliament and of the legislature of the State of Tripura to the autonomous district and autonomous region in the State of Tripura.- Notwithstanding anything in this Constitution, -

- (a) no Act of the Legislature of the State of Tripura in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Tripura prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to the autonomous district or an autonomous region in that state unless, in either case, the District Council for that district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall, in its application to that district or such region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;
- (b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Tripura to which the provisions of clause (a) of the sub paragraph do not apply, shall not apply to the autonomous district or an autonomous region in that State, or shall apply to that district or such region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;
- (c) the President may with respect to any Act of Parliament, by notification, direct that it shall not apply to the autonomous district or an autonomous region in the State of Tripura, or shall apply to such district or region or any part thereof, subject to

<sup>42</sup>This paragraph was first inserted by the Constitution (49th Amendment) Act, 1984, and then substituted by the 6th Sch. to the Constitution (Amendment) Act 67 of 1988, sec. 2, for paragraphs 12AA and 12B.



- (a) no act of the <sup>36</sup>[Legislature of the State of Assam] in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no act of the <sup>37</sup>[Legislature of the State of Assam] prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region <sup>38</sup>[in that State] unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;
- (b) The Governor may, by public notification, direct that any Act of Parliament or of the <sup>39</sup>[Legislature of the State of Assam] to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to an autonomous district or any autonomous region <sup>40</sup>[in that State] or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the Notification.
- (2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

<sup>41</sup> 12A. Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya.- Notwithstanding anything in this Constitution, -

- (a) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this

<sup>36</sup>Sub. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 (i) and Eighth Sch., for "Legislature of the State"

<sup>37</sup>Sub. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 (i) and Eighth Sch., for "Legislature of the State"

<sup>38</sup>Ins. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 (i) and Eighth Sch.,

<sup>39</sup>Sub. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 (i) and Eighth Sch., for "Legislature of the State"

<sup>40</sup>Ins. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 (i) and Eighth Sch.,

<sup>41</sup>Sub. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 and Eighth Sch., for paragraph 12A

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 the State under article 202.

14. <sup>47</sup>Appointment of commission to inquire into and report on the administration of autonomous districts and autonomous regions.- (1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the state, including matters specified in clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous district and autonomous regions in the State generally and in particular on -

- (a) the provision of educational and medical facilities and communications in such districts and regions;
- (b) the need for any new or special legislation in respect of such districts and regions; and
- (c) the administration of the laws, rules and regulations made by the District and Regional Councils; and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendation of the Governor with respect thereto shall be laid before the Legislature of the state by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the <sup>48</sup>[Government of the State.]

(3) the welfare of the autonomous districts and autonomous regions in the State. In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of

<sup>49</sup> 15. Annulment or suspension of acts and resolutions of District and Regional Councils.- (1) If at any time the Governor is satisfied that an act or resolution

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<sup>47</sup>Paragraph 14 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), sec. 2 as under:

In paragraph 14, in sub paragraph (2), the words "with the recommendation of the Governor with respect thereto" shall be omitted.

<sup>48</sup>Sub. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71 and Eighth Sch., for "the Government of Assam"

<sup>49</sup>Paragraph 15 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988, s. 2, as under:

(a) in the opening paragraph, for the words "by the Legislature of the State", the words "by him" shall be substituted;

(b) the Proviso shall be omitted

such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.]

<sup>43</sup>[12B. Application of the Acts of Parliament and of the Legislature of the <sup>44</sup>[State] of Mizoram to autonomous districts and autonomous regions in the <sup>45</sup>[State] of Mizoram.-

Notwithstanding anything in this Constitution.-

- (a) no Act of the Legislature of the State of Mizoram in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Mizoram prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless, in either case, the District Council for such district or having jurisdiction over such region, by public notification, so directs, and the District Council, in giving such direction with respect to any Act, may direct that the Act shall, in its application to such district or region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;
- (b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Mizoram to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to an autonomous district or an autonomous region in that state, or shall apply to such district or region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;
- (c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Mizoram, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.]

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement.- 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 <sup>46</sup>[\*\*\*] shall be first placed before the District

<sup>43</sup>Substituted by the Government of Union Territories (Amendment) Act, 1971, (83 of 1971), sec. 13, for paragraph 12B

<sup>44</sup>Sub. by Mizoram Act, 1986(34 of 1986), sec. 39 for "Union Territory"

<sup>45</sup>Sub. by Mizoram Act, 1986(34 of 1986), sec. 39 for "Union Territory"

<sup>46</sup>The words "of Assam" omitted by the by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 and Eighth Sch..

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislation of the State.

<sup>53</sup>[(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification, assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefor shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the orders unless, before the expiry of that period it has been approved by the State Legislature.]

17. Exclusion of areas from autonomous districts in forming constituencies in such districts.-(1) For the purposes of elections to <sup>54</sup>the Legislative Assembly of Assam or Meghalaya <sup>55</sup>[or Tripura, <sup>56</sup>[or Mizoram]], the Governor may by order declare that any area within an autonomous district <sup>57</sup>[in the State of Assam or Meghalaya <sup>58</sup>[or Tripura] <sup>59</sup>[or Mizoram] as the case may be, shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but

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<sup>53</sup>Sub-paragraphs (2) and (3) were added by the Assam Reorganisation (Meghalaya) Act, 1969

<sup>54</sup>Changes made by the North-Eastern Areas (Reorganisation) Act, 1971

<sup>55</sup>Inserted by the Constitution (49th Amendment) Act, 1984.

<sup>56</sup>Ins. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 and Eighth Sch

<sup>57</sup>Ins. by Mizoram Act, 1986(34 of 1986), sec. 39.

<sup>58</sup>Inserted by the Constitution (49th Amendment) Act, 1984.

<sup>59</sup>Ins. by the North-Eastern Areas (Reorganisation) Act, 1971(81 of 1971), sec. 71 and Eighth Sch.

of a District or a Regional Council is likely to endanger the safety of India <sup>50</sup> [or is likely to be prejudicial to public order], he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the Commission or continuance of such act, or the giving of effect to such resolution.

- (2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by him<sup>51</sup> continue in force for a period of twelve months from the date on which it was so made.

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

<sup>51</sup>16. Dissolution of a District or a Regional Council.- <sup>52</sup>[(1)] The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by Public Notification order the dissolution of a District or Regional Council, and -

- (a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or
- (b) \* \* \* assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:

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<sup>50</sup>Inserted by the Assam Reorganisation (Meghalaya) Act, 1969

<sup>51</sup>Paragraph 16 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), Sec. 2, as under:

(a) in sub paragraph (1), the words "subject to the previous approval of the Legislature of the State" occurring in clause (b), and the second proviso shall be omitted;

(b) for sub paragraph (3), the following sub paragraph shall be substituted, namely:- "(1) Every order made under sub paragraph (1) or sub paragraph (2) of this paragraph, along with the reasons therefor shall be laid before the Legislature of the State."

<sup>52</sup>Paragraph 16 has been renumbered as sub-paragraph (1) thereof by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec 74 and Fourth Schedule.

## PART II

- <sup>68</sup>[1. Khasi Hills District.
2. Jaintia Hills District.]
3. The Garo Hills District.

## <sup>69</sup>[PART II A

Tripura Tribal Areas District]

## PART III

<sup>70</sup>[\*\*\*\*].

<sup>71</sup>[1. The Chakma District.

<sup>72</sup>[2. The Mara District.

3. The Lal District.]]

<sup>73</sup>[20A. Dissolution of the Mizo-District Council- (1) Notwithstanding anything in this Schedule, the District Council of the Mizo District existing immediately before the prescribed date (hereinafter referred to as the Mizo District Council) shall stand dissolved and cease to exist.

(2) The Administrator of the Union Territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely : -

- (a) the transfer, in whole or in part, of the assets, rights and liabilities of the Mizo District Council (including the rights and liabilities under any contract by it) to the Union or to any other authority;

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<sup>68</sup>Substituted by the Government of Meghalaya Notification No. DCA 31/72/11, dated 14-6-1973.

<sup>69</sup>Inserted by the Constitution (49th Amendment) Act, 1984.

<sup>70</sup>The words 'Mizo District' which were inserted in Part III by the North-Eastern Areas (Reorganisation) Act, 1971, have been omitted by s. 13 (ii) of the Government of Union Territories (Amendment) Act, 1971.

<sup>71</sup>Inserted by the Mizoram District Councils (Miscellaneous Provisions) Order, 1972, dated 5-5-1972 (w.e.f. 29-4-1972).

<sup>72</sup>Subs. By the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), sec. 2, for serial numbers 2 and 3 and entire relating thereto.

<sup>73</sup>Subs. By the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), sec. 13, for paragraph 20A .

shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

18. Omitted by the North-Eastern Areas (Reorganisation) Act, 1971.

19. Not reprinted as it contains transitional provisions.

<sup>60</sup> 20. Tribal areas.- (1) The areas specified in Parts I, II, 61 [IIA] and III of the Table below shall be the Tribal Areas within the State of Assam, the State of Meghalaya, <sup>62</sup>[the State of Tripura] and the <sup>63</sup>[State] of Mizoram.

(2) <sup>64</sup>[ Any reference in Part I, Part II, or Part III of the Table below] to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (b) of section 2 of the North-Eastern Areas (Reorganisation) Act, 1971:

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4, and paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the <sup>65</sup>[Khasi Hills District.]

<sup>66</sup>[(3) The reference in Part IIA in the Table below to the "Tripura Tribal Areas District" shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Autonomous District Council Act, 1979]

## TABLE

### PART I

1. The North Cachar Hills District.

2. <sup>67</sup>[The Karbi Anglong District.]

<sup>60</sup>Ins. by Mizoram Act, 1986(34 of 1986), sec. 39.

<sup>61</sup>Inserted by the Constitution (49th Amendment) Act, 1984.

<sup>62</sup>Inserted by the Constitution (49th Amendment) Act, 1984.

<sup>63</sup>Subs. by Mizoram Act, 1986(34 of 1986), sec. 39., for "Union Territory"

<sup>64</sup>Subs. by the Constitution (49th Amendment) Act, 1984.

<sup>65</sup>Substituted by the Government of Meghalaya Notification No. DCA 31/72/11, dated 14-6-1973.

<sup>66</sup>Inserted by the Constitution (49th Amendment) Act, 1984.

<sup>67</sup>Substituted by the Govt. of Assam Notification No. TAD/R/115/74/47, dated 14-10-1976, for "The Milkir Hills District".

III of the Table appended to that paragraph) and thereupon the said paragraph and the said Part III shall be deemed to have been amended accordingly.

- (b) every Regional Council of an autonomous region in the Union territory of Mizoram existing immediately before the prescribed date hereafter referred to as the existing Regional Council) shall, on and from that date and until a District Council is duly constituted for the corresponding new district, be deemed to be the District Council of that district (hereafter referred to as the corresponding new District Council).
- (2) Every member whether elected or nominated of an existing Regional Council shall be deemed to have been elected or, as the case may be, nominated to the corresponding new District Council and shall hold office until a District is duly constituted for the corresponding new district under this Schedule.
- (3) Until rules are made under sub-paragraph (7) of paragraph 2 and sub-paragraph (4) of paragraph 4 of this schedule by the corresponding new District Council, the rules made under the said provisions by the existing Regional Council and in force immediately before the prescribed date shall have effect in relation to the corresponding new District Council subject to such adaptations and modifications as may be made therein by the Administrator of the Union territory of Mizoram.
- (4) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely: -
- (a) the transfer in whole or in part of the assets, rights and liabilities of the existing Regional Council (including the rights and liabilities under any contract made by it) to the corresponding new District Council;
  - (b) the substitution of the corresponding new District Council or the existing Regional Council as a party to the legal proceedings to which the existing Regional Council is a party;
  - (c) the transfer or re-employment of any employees of the existing Regional Council to or by the corresponding New District Council, the terms and conditions of service applicable to such employees after such transfer or re-employment;
  - (d) the continuance of any laws made by the existing Regional Council and in force immediately before the prescribed date, subject to such adaptations and modifications, whether by way of repeal or amendments, as the Administrator



- (b) the substitution of the Union or any other authority for the Mizo District Council, or the addition of the Union or any other authority, as a party to any legal proceedings to which the Mizo District Council is a party;
- (c) the transfer or re-employment of any employees of the Mizo District Council to or by the Union or any other authority, the terms and conditions of service applicable to such employees after such transfer or re-employment;
- (d) the continuance of any laws, made by the Mizo District Council and in force immediately before its dissolution, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf, until such laws are altered, repealed or amended by a competent Legislature or other competent authority;
- (e) such incidental, consequential and supplementary matters as the Administrator considers necessary.

Explanation. In this paragraph and in paragraph 20B of this Schedule, the expression 'prescribed date' means the date on which the Legislative Assembly of the Union territory of Mizoram is duly constituted under and in accordance with the provisions of the Government of Union Territories Act, 1963.]

<sup>74</sup>20B. Autonomous regions in the Union territory of Mizoram to be autonomous districts and transitory provisions consequent thereto. - (1) Notwithstanding anything in this Schedule, -

- (a) every autonomous region existing immediately before the prescribed date in the Union territory of Mizoram shall, on and from that date, be an autonomous district in the Union territory (hereafter referred to as the corresponding new district) and the Administrator thereof may, by one or more orders, direct that such consequential amendments as are necessary to give effect to the provisions of this clause shall be made in paragraph 20 of this Schedule (including Part

<sup>74</sup>After paragraph 20B, the following paragraph has been inserted in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), sec. 2 namely:-

"20BB. Exercise of discretionary powers by the Governor in the discharge of his functions:-

The Governor, in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1) and (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub-paragraph (3) of paragraph 9, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers, and if thinks it necessary, the District Council or the Regional Council concerned, take such action as he considers necessary in his discretion.

may make in this behalf until such laws are altered, repealed or amended by a competent Legislature or other competent authority;

- (e) such incidental, consequential and supplementary matters as the Administrator considers necessary.

20C. Interpretation. Subject to any provision made in this behalf, the provisions of this Schedule shall, in their application to the State of Mizoram, have effect –

- (i) as if references to the Governor and Government of the State were references to the Administrator of the Union territory appointed under article 239, references to State (except in the expression "Government of the State") were references to the <sup>27</sup>Union territory of Mizoram and references to the State Legislature were references to the Legislative Assembly of the <sup>27</sup>Union territory of Mizoram;

(2) as if –

- (a) in sub-paragraph (5) of paragraph 4, the provision for consultation with the Government of the State concerned had been omitted;
- (b) in sub-paragraph (2) of paragraph 6, for the words "to which the executive been power of the State extends", "the words with respect to which the Legislative Assembly of the <sup>27</sup>Union territory of Mizoram has power to make laws" had substituted;
- (c) in paragraph 13, the words and figures "under article 202" had been omitted.

21. Amendment of the Schedule.- (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such schedule as so amended.

- (2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

## THE GARO HILLS DISTRICT (FOREST) ACT, 1958

(Act No. 11 of 1958)

*[Received the assent of the Governor of Assam on the 18<sup>th</sup> December, 1953]*

An Act to provide for the management of any forest not being a reserved forest in the Autonomous District of Garo Hills and for the levy and collection of forest revenue.

**Preamble.** Whereas it is expedient to regulate the management of any forest not being a reserved forest in the Autonomous District of Garo Hills and also to provide by way of the levy and collection of forest revenue:

It is hereby enacted in the Ninth Year of the Republic of India as follows:

### NOTES

*Preamble.* This Act has been enacted to provide for the management of any forest not being a reserved forest in the Autonomous District of Garo Hills and for the levy and collection of forest revenue and it extends to the whole Garo Hills autonomous district except the areas constituted into reserved forest as provided under the provisions of the Assam Forest Regulations, 1891. The provision of the Chapters IV, VI, VII, VIII, IX, X and XI and the rules made thereunder shall apply in respect of the management of Council Forest and levy and collection of forest revenue.

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### CHAPTER I

1. Short title, extent and commencement. (1) This Act may be called the Garo Hills District (Forest) Act, 1958.
  - (2) It extends to the whole of the Garo Hills Autonomous District except the area constituted into reserved forests under the provisions of the Assam Forest Regulation, 1891 (Regulation VII of 1891).
  - (3) It shall come into force at once.

any law for the time being in force and shall include Council Reserved Forests and forest constituted under this Act;

(12-A) "Forest Produce" means anything excluding stones, boulders, shingle, gravel, limestone, kanker and all other materials which are defined as minor minerals under R. 3 (iii) of the Mineral Concession Rules, 1949, when found in, or brought from any forest under the jurisdiction of the District Council and shall include —

- (a) Trees, leaves and fruits and all other parts and produce of trees;
- (b) Plants not being trees, including grass, creepers, seeds, moss, orchids and all parts and produce of such plants;
- (c) Skins, tusks, horns, bones, silk-cocoons, honey and wax and all other parts or produce of animals.

(12-B) "Forest Produce" shall also include the following whether found in, or brought from, any forest under the jurisdiction of the District Council or not, but excluding those brought from a Government reserved forest; timber, charcoal, wood, oil, resin, natural varnish, bark, lac, myrabalams.

3. Power of the District Council to manage forest. The management of any forest other than Government reserved forest within the Garo Hills Autonomous District is vested in the District Council of the Garo Hills Autonomous District.
4. Power to constitute reserve forest. The District Council may constitute any forest land at the disposal of the District Council a reserved forest in the manner hereinafter provided.
5. Inspection of the area proposed to be constituted a reserved forest by the Chief Executive Member and notification of such proposal. Whenever it is proposed to constitute any reserved forest, the area shall be first inspected by the Chief Executive Member and when he is satisfied that the constitution of such reserve is justified he shall publish a notification in the Assam Gazette and also in the district in such manner as he may deem fit appropriate —
  - (a) specifying as nearly as possible, the situation and limits of such land;

2. **Definitions.** In this Act and in all rules made thereunder, unless there is anything repugnant in the subject or context –

- (1) **“Chief Executive Member”** means the Chief Executive Member of the Executive Committee of the District Council of the Garo Hills District;
- (2) **“Council Reserved Forest”** means any area constituted as such by, or under the order of, the Garo Hills District Council;
- (3) **“Council Forest Officer”** means any person appointed as such by name or as holding an office by or under the orders of the District Council and shall include Forest Guards, Assistant Foresters, Foresters, Forest Rangers, Chief Forest Officer and any other person appointed to discharge the duties and functions of a Council Forest Officer under this Act, or any rules thereunder;
- (4) **“Council Forest Offence”** means any offence punishable under this Act or any rules made thereunder;
- (5) **“Cattle”** includes also elephants other than wild elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;
- (6) **“Council Forest Board”** means Forest Board constituted by the District Council;
- (7) **“District”** means Garo Hills Autonomous District;
- (8) **“District Council”** means Garo Hills District Council;
- (9) **“District Forest Tribunal”** means the District Forest Tribunal appointed by the Executive Committee under the provisions of this Act and for the purpose specified therein;
- (10) **“Executive Committee”** means the Executive Committee of the Garo Hills District Council;
- (11) **“Forest Land at the disposal of the Garo Hills District Council”** means any land at the disposal of the Garo Hills District Council, in respect of which no person has acquired a permanent heritable and transferable right of use and occupancy under

recommendations of the Council Forest Settlement Officer, a preliminary notification shall be published by the Board in the Assam Gazette and also in any other manner that it may deem expedient specifying the limit of the forest which it is intended to be reserved and detailing the extent and nature of rights proposed to be recognized therein.

10. Appeal by aggrieved person. Any person aggrieved by an order of the Council Forest Board passed under sub-S. (1) of S. 8, relating to the creation of a reserve, continuance or discontinuance of any right therein, may within a period of thirty days from the date of such notification prefer an appeal to the District Forest Tribunal appointed in that behalf by the Executive Committee. Every order in appeal passed by the District Forest Tribunal under this section shall be final.
11. Final notification constituting forest reserve. (1) After disposal of all appeals by the District Forest Tribunal the District Forest Board may modify the preliminary notification issued under S. 9 incorporating therein necessary changes, if any, ordered by the District Forest Tribunal as a result of such appeals and shall publish a final notification in the Assam Gazette specifying the limits of the forest with the extent and nature of rights recognized therein and declaring the same to be reserved from the date fixed for by such notification.
  - (2) From the date so fixed such forest shall be deemed to be the Council Reserve Forest.
  - (3) Thereafter no persons other than those, if any, referred to under sub-S. (1) shall acquire any right over such forest unless specially permitted by the Executive Committee.
12. Penalties for trespass or damage in reserved forest. Any person who in a Council Reserved Forest –
  - (a) trespasses, or pastures cattle, or permits cattle to trespass, or
  - (b) causes any damage by negligence in felling any tree or cutting or dragging any timber, shall be punished with fine which may extend to fifty rupees, or when the damage resulting from his offence amounts to more than twenty-five rupees to double the amount of such damage.

(b) declaring that it is proposed to constitute such land a reserved forest;

(c) inviting claims of right and objections

6. Appointment of the Council Forest Officer, survey and demarcation of the area proposed to constitute a reserved forest and inquiry into existing rights. (1) After the issue of a notification under S. 5, an officer (hereinafter called the Council Forest Settlement Officer) shall be appointed by the Chief Executive Member for survey and demarcation of the areas and also for the inquiry into any existing rights of any person in the said areas.

(2) The Council Forest Settlement Officer shall ordinarily be a person other than a Council Forest Officer, but a Council Forest Officer may be appointed to assist the Council Forest Settlement Officer in the discharge of his duty specified in this section.

7. Recommendation by the Council Forest Settlement Officer. The Council Forest Settlement Officer shall, after survey and demarcation of the area and inquiry into any existing right or rights of any person, recommend to the Council Forest Board for issue of necessary notifications, compensation, if any, to be given and also continuance of any right.

8. Council Forest Board to dispose of claims and objection. (1) All claims of right or rights on the land proposed to be constituted into a reserve and any objection against the proposal for the creation of the reserve shall be preferred to the Council Forest Board within ninety days of the date of publication of the notification under S. 5 of this Act. The said Board shall be competent to such claims and objections, subject to appeal against the orders of such disposal to the District Tribunal as provided for in S. 10.

(2) For the purpose of sub-S. (1) the Council Forest Board shall, subject to the provisions of paragraph 4 (1) of the Sixth Schedule to the Constitution, have the powers of a Civil Court in the trial of suits, and its decision shall be binding subject to the revision on appeal to the District Forest Tribunal appointed under S. 10.

9. Preliminary notification constituting reserved forest. After the proposal for the constitution of a reserve has been approved by the Council Forest Board on

16. De-reservation of forest. Any area constituted as Council Reserved Forest will be de-reserved only by or under the order of the Executive Committee.

## CHAPTER II

17. Constitution of village forests. (1) The Executive Committee may, by notification in the Assam Gazette and also in the District in such manner as it may deem appropriate, constitute any land at the disposal of the District Council a village forest for the collective benefit of any village community or group of village communities, and may in like manner vary or cancel any such notification.

(2) Every such notification shall specify the limits of such village forests.

18. Power to make rules for village forests. (1) The Executive Committee may make rules for regulating the management of village forests, prescribing the conditions under which the community or group of communities, for collective benefit of which any such forest is constituted, may be provided with forest produce or with pasture, and their duties in respect of the protection and improvement of such forests.

(2) The District Council may, by rules, declare any of the provisions of Chapter I of this Act to be applicable to village forests.

19. Inquiry into and settlement of rights. All claims to any rights other than the right of the village community or group of village communities for the collective benefit of which such village forest is constituted shall be inquired into and disposed of in the manner prescribed by Chapter I of this Act.

## CHAPTER III

20. Application of Chapters IV, VI, VII, VIII, IX, X and XI of the Assam Forest Regulation, 1891. (1) The provisions of the following Chapters of the Assam Forest Regulation, 1891 (regulation No. VII of 1891), namely, Chapters IV, VI, VII, VIII, IX, X and XI and the rules made thereunder as may be amended from time to time shall, *mutatis mutandis* apply in respect of the management of Council Forests and levy collection of forest revenues.



13. Acts prohibited in such forests. Any person who -

- (a) sets fire to a Council Reserved Forest, or in contravention of any rules made by the Executive Committee, kindles any fire, leaves any fire burning, in such a manner as to endanger such a forest, or who in any such forest;
- (b) kindles, keeps or carries any fire except at such seasons and in such manner as Forest Officer specially empowered in this behalf may from time to time notify; or
- (c) fells, cuts, girdles, marks, lops, taps or injures by fire or otherwise any tree; or
- (d) quarries stone, burns lime, or charcoal, or collects subject to any manufacturing process, or removes any forest produce; or
- (e) clears or breaks up any land for cultivation or any other purpose; or
- (f) poisons water or in contravention of any rule made by the Executive Committee, fishes or sets traps or snares; shall be punished with imprisonment for a term which may extend to six months or with fine, which may extend to five hundred rupees or with both.

12. Acts excepted from Ss. 12 and 13. Nothing in S. 12 or S. 13 shall be deemed to prohibit -

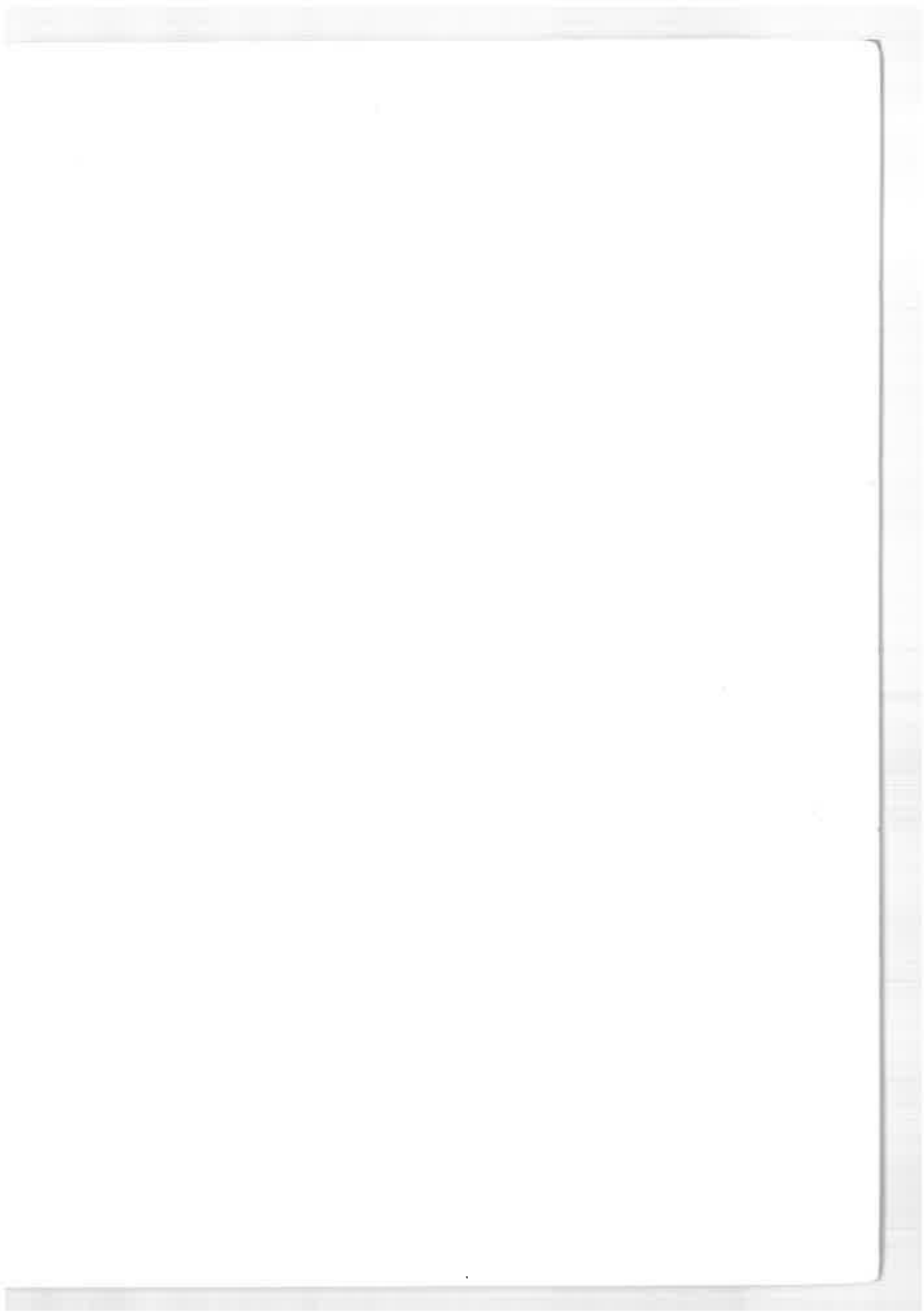
- (a) any practice of jhum cultivation permitted by law; or
- (b) any act done with the permission in writing of a Council Forest Officer specially empowered to grant such permission.

15. Penalty for offences committed by persons having rights in reserved forests. Whenever fire is caused willfully or by gross negligence in a Council Reserved Forest by any person having rights in such forest or permission to practice jhum cultivation therein, or by any person, in his employment, the Executive Committee may, notwithstanding the infliction of any punishment under this Act, direct that in such forest, or any specified portion thereof, the exercise of all or any of the rights of pasture or to forest produce shall be extinguished or for such period as it thinks fit be suspended, and with respect to the practice of jhum cultivation, may take such action under the law, if any, relating to the practice of jhum as may seem to it to be proper.

(2) The provisions of all rules made under the Assam Forest Regulation, 1891 (Regulation No. VII of 1891), having the force of law, and the provisions of the Garo Hills Regulation, 1882 (Regulation No. 1 of 1882), and the rules and orders issued thereunder relating to the forests and forms and registers as were in force immediately before the commencement of this Act shall *mutatis mutandis* apply in respect of the management of the Council Forests and such cognate matters:

Provided that all references in the Assam Forest Regulation, 1891 (No. VII of 1891), the Garo Hills Regulation, 1882 (Regulation No. 1 of 1882), the rules, orders and forms and registers to the State Government shall be deemed to refer to the District Council; those to the Conservator of Forest and Deputy Commissioner to the Chief Executive Member; those to the Divisional Forest Officer or Assistant Conservator of Forest to the Chief Forest Officer of the District Council; and those to other Forest Officers to officers of corresponding or next higher rank of the District Council.

21. Power to make rules. The Executive Committee with the previous approval of the Governor may make rules for carrying out the purposes of the Act.





## **EHRLI**

**ENVIRONMENT AND HUMAN RIGHTS LAW INITIATIVE**

Environment and Human Rights Law Initiative (EHRLI), is a joint programme of the India Centre for Human Rights and Law-Mumbai and the Human Rights Law Network-Delhi.

The focus area of **EHRLI** is environmental law having implication on human rights. Our prime objective is to make judicial intervention in environmental protection more sensitive to the human rights without compromising on environmental protection and conservation strategies.

Besides, we believe that effective enforcement of environmental law lies in proper training of communities, activists and voluntary groups on selected aspects of environmental law. The purpose is also to make them better equipped to take part in environmental decision making.