CHAPTER VIII

EXTERNAL RELATIONS OF THE
DISTRICT COUNCILS.
The Sixth Schedule to the Constitution of India confers on the District or the Regional Council as the case may be, the status of a body corporate with attributes of perpetual succession and a common seal, with the authority to sue by its name and the corresponding obligation to be sued. It is therefore reasonable to suppose that the District or Regional Council is not a part of the State machinery nor could it be considered to be an adjunct of the same. It is distinct from both the Central and State Governments though in certain respects it is also dependent on them. All its laws, for example, are subject to the approval of the Governor. The Governor may also suspend any of its acts or resolutions in the interests of safety of the country or Public order. He may even supercede or dissolve the Council under certain circumstances. Parliament may by ordinary process of law amend any of the provisions of the Sixth Schedule both prospectively and retrospectively. The Governor shares the constituent power of Parliament in that he may alter or modify the administrative area of any District Council or of its name. He may also institute a new Autonomous District Council. And to this end, he may effect such incidental and consequential changes in the tables as

1. This view is held by Justice Deka in the case, Abdul Meotahah Khan Hills District Council, Tura, A.I.R. 1961, Assam 69.
2. Administrator in the case of Mizoram.
3. The Governor of Assam in exercise of his powers under paragraph 6 of the Sixth Schedule created a new Autonomous district of Jowai by excluding the Jowai Sub-division of the United Khasi and Jaintia Hills District with effect from 1.12.1964, vide Notification No.DCA. 102/64, dated 23.11.1964.

In pursuance of sub-paragraph 3 (ff) of paragraph I of the Sixth Schedule, the Governor of Meghalaya altered the names of the Autonomous District Councils as follows.

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<th>Name of the existing District Council</th>
<th>To be known by the new name of</th>
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<td>1. Jowai Autonomous District Council</td>
<td>Jaintia Hills Autonomous District Council</td>
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<td>2. United Khasi and Jaintia Hills District Council</td>
<td>Khasi Hills Autonomous District Council</td>
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ched to paragraph 20 of the Sixth Schedule as may be necessary. This is a novel provision, normally not found in a written constitution.

Thus the restrictions imposed on the District Council are severe and substantial. And yet the fact remains that the District Council is an institution established by the Constitution itself and it exercises the powers and functions granted to it by the same. To that extent, it differs from a local authority which is created by an ordinary law of the legislature. And what the legislature creates, it may destroy, abridge or control.

What makes the District Council even more unique is the extent of the powers and functions, particularly the legislative and judicial powers entrusted to it by the Sixth Schedule. The District Council may make laws for the administration of land, for the management of unreserved forests, to regulate jhum cultivation and to lay down policy and procedure regarding the appointment or succession of chiefs and other matters bearing on personal and social aspects of tribal life. Although, unlike the position under the Government of India Act, 1935, the jurisdiction of the state legislature now covers the Autonomous Districts, its Acts on the above subjects do not apply to the Autonomous districts; they may be extended there with such exceptions and modifications as are considered necessary by the District Council concerned. Thus the District Council is a self-contained code. It is both permissive and prohibitive. It prescribes the powers and functions of the District Council as well as the limitations imposed on it. This view is held by the Supreme Court in civil Appeal No. 968 of 1963.

4. Proviso (two) of paragraph I of the Sixth Schedule as inserted by Act 81 of 1971.
5. The Sixth Schedule is a self-contained code. It is both permissive and prohibitive. It prescribes the powers and functions of the District Council as well as the limitations imposed on it. This view is held by the Supreme Court in civil Appeal No. 968 of 1963.
Council enjoys almost plenary legislative powers in matters entrusted to it under paragraph 3(1) of the Sixth Schedule. This, however, does not apply to the District Councils in Meghalaya whose Acts are valid only to the extent that they are not repugnant to those of the State Legislature. As regards administration of justice, the District Council may set up various types of courts including appellate courts for the trial of suits between tribals. In the administrative field, it can establish and manage primary schools, dispensaries etc. and prescribe the manner in which primary education may be imparted. It has the power to assess and collect land revenue on the same principles as are followed by the State Government generally and to levy and collect taxes for which it can frame regulations. It is also competent to control trading and money lending by non-tribals. It gets an opportunity to discuss the estimates of revenue and expenditure of the State budget relating to its district before its presentation to the Assembly. Thus the District Council enjoys powers and functions far exceeding those which are normally entrusted to a local authority. The States Reorganisation Commission was, therefore, permitted to remark that the District Councils were more like the 'jurisdictional principalities' than local authorities, pure and simple.

If the District Council is very much more than a local body, it is also very much less than the State Authority. Though it is distinct from the State Government, it does not constitute a parallel government.

6. In Ram Nagina Ram Vs C.E.M., Garo Hills District Council, the High Court of Assam held: "The power to legislate... is defined in several clauses of paragraph 3(1). Legislative power in these matters has the attribute of sovereign power." Civil Rule 70 of 1956.

7. Under paragraph 12-A(a) of the Sixth Schedule as inserted by Act no. of 1971.
with powers co-equal to those of the latter. The Sixth Schedule provides for the administration of the Tribal Areas in Assam, Meghalaya and Mizoram but not of their government. It speaks of the District Council but separately of its executive and judicial wings. There is no provision in the Sixth Schedule comparable to that envisaged either in Art 73 or Art 162 of the constitution list 11 of the Seventh Schedule enumerates the subjects entrusted to the states makes no exception or modification in regard to their application in the States of Assam or Meghalaya. The District Council is, therefore, a special unit of administration with special powers and functions but nonetheless falling within the territorial, legislative and administrative jurisdiction of the State or Union Territory to which it belongs. Within the framework of the Sixth Schedule the State authorities could control or regulate, appreciate or criticize, support or censure the District Council for any of its acts of omission or commission. The District Council is also subject to the control of the Parliament, for the latter has the exclusive right to amend the Sixth Schedule. Since the amendment of the Sixth Schedule does not attract the provisions of Art 368 of the constitution, it becomes easier for Parliament to effect it and to that extent, exert a more powerful influence over the working of the District Council.

A review of the relations of the District Council with state and Central authorities should therefore be in order, for it would bring to light the many facets of the autonomy of the District Council, the major issues raised in the wake of its exercise, suggestions for changes and constitutional amendments and the net impact of the same on the working of the District Council.
THE DISTRICT COUNCIL AND THE STATE LEGISLATURE:

The legislature in relation to lesser authorities falling within its jurisdiction acts as a master as well as a mentor. As a master, it directs, supervises, controls and regulates the activities of all such agencies. In its generosity, it may protect, preserve and promote their interests. As a mentor, it may advise, guide, inspire and enlighten them.

An extreme view is that the legislature has the power of life and death over authorities subordinate to it. This view is ably presented by Judge Dillon. Speaking generally of municipal corporations, he says that they "Owe their origin to and derive their rights wholly from the legislature. It breathes into them the breath of life without which they can not exist. As it creates so it may destroy, it may abridge any control. Unless there is some constitutional limitation...... they legislature might by a single act, if we can suppose it capable of so great a evil and so great a wrong, sweep from existence all the municipal corporations." 8

Legally the legislature has the power to destroy what it can create. But seldom does the legislature exercise such a sweeping authority. On the other hand, as Dillon himself admits, there may be a constitutional safeguard against possible misuse of authority by the legislature. Further, there is the force of public opinion which acts as a powerful brake on any precipitate action. A legislature which runs rough-shod over the sentiments of the people is doomed sooner or later.

In practice, therefore, the legislature is content with laying down primary policy and applying broad checks over the administration of

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authorities subordinate to it. Both of these are formal functions - exercised through formal means. So far as the determination of policy concerned, the legislature does so through formal enactments either of an original or of an amending kind. As to control over the administration generally, one or other of the following methods may be adopted. First, questions may be addressed to the Minister in-charge. By this method, a member may not only elicit answers but also induce the minister to commit himself to a particular course of action. The question hour is described as "a deadly weapon before which even dictators begin to quail." It serves as a search light on administration and yet it may be of limited value as a means of control. The Minister may refuse to give information on a question if a grievance raised by the member. Much depends on the personality of the Minister and the nature of the question. Second, a member may give notice for "calling attention" of the House to matters of urgent public importance. In the alternative, he may move a motion for adjournment on a matter of public importance. Third, the legislature may order an enquiry into the affairs of an agency and raise a discussion on the report of such an enquiry. Fourth, budget debates or similar occasions when some major grants or loans are under consideration provide yet another opportunity to discuss the affairs of all agencies which are subordinate to a financially dependent on the state authority.

Though spacious, legislative control is often ineffective for several reasons. First, the volume of business is so great that the legislature is not in a position to look into every detail except that which become shockingly bad. The legislature as a whole can really monitor any
decide a few main issues. Second, the initiative for legislative action must normally come from the government. If the latter remains indifferent or adamant, there is very little that the legislature can do. Third, the legislature itself is not fitted for the enforcement of the laws it enact. Fourth, the effectiveness of legislative control depends on the extent to which the judges interpret laws. Inspite of these shortcomings, experience suggests that legislative control is both healthy and desirable. It is an effective check against the excesses of administrative control. The judiciary may be said to apply a similar check on administrative control. The courts of law do not move except when disputes are taken to them.

As discussed already, the District Council, being a creature of the constitution, enjoys a status higher than that of a local authority, pure and simple. All its powers and functions are prescribed in the Sixth Schedule. These can not be changed or modified except by Constitutional amendment which Parliament alone can enact. The State Legislature, therefore, no means by which it may enlarge or abridge the powers and functions of the District Council. Nor can the State Legislature control the policy of the District Council. In all matters in which the latter may make laws, the laws of the State Legislature do not apply to an Autonomous district except with the consent of the District Council concerned. Some enactments of the State Legislature apply but with such exceptions and modifications as the Governor may prescribe.

While the State Legislature can not directly control the policy of the District Council, it has certain indirect means of influence.

9. This restriction does not apply to laws enacted by Meghalaya Legislative Assembly.
First, since the District Council falls within the territorial jurisdiction of the State Legislature, nothing prevents the latter from holding a discussion on the affairs of the former generally. The initiative for holding any such discussion may come from the Hill members of the autonomous districts. Second, the Governor may appoint a Commission on any matter concerning the administration of an Autonomous district and in particular on (a) the provision of educational and medical facilities and communications in such a district or region, (b) the need for any new or social legislation in respect of such a district or region and (c) the administration of laws, rules and regulations made by the District or Regional Council. The report of every such Commission together with the recommendations of the Governor thereto and the action proposed to be taken by the State Government thereon shall be laid before the legislature of the State. Under this arrangement the State Assembly gets ample opportunity to discuss and debate on the affairs of an Autonomous district including the working of its District Council. Third, the state budget includes separate provision showing the estimated receipts and expenditure, pertaining to each Autonomous district. Members of the State Legislature thus have an opportunity to make a pointed discussion on the various aspects of financial administration in each Autonomous district. Fourth, the Governor may in the interests of the safety of the country or public order annul or suspend any act or resolution of a District Council. He may do so on these grounds or when he is satisfied that a situation has arisen in which

10. Sub-paragraphs (1) and (2) of Paragraph 14 of the Sixth Schedule.
11. Paragraph 13 of the Sixth Schedule.
the administration of an Autonomous district can not be carried on in accordance with the provisions of the Sixth Schedule order the suspension of the District Council and assume to himself or entrust to any person appointed by him, all or any of the powers and functions vested in the District Council. Every such order shall be placed before the State Legislature for its approval.12 Fifth, the Governor may on the recommendation of a Commission of enquiry dissolve a District Council and assume the administration of the area under its authority directly by himself or entrust it to a suitable agency. Every order made by the Governor in this regard together with the reasons supporting it shall be placed before the State Legislature for its approval. The District Council concerned shall have the right to present its case before the State Assembly. The latter thus becomes a final arbiter.13

At no time was there any act or resolution of any District Council suspended or annulled or the Council itself was superceded or dissolved. There was, therefore, no occasion for the Assam Legislative Assembly to hold an extraordinary debate on the affairs of any District Council.

The affairs of the Autonomous districts in general were discussed but even these debates were few and far between. There were three occasions when the Autonomous districts figured prominently in the debates of the State Assembly. The first of these was a sequel to the report of the States Reorganisation Commission which rejected the demand for the formation of a Hill State. When the report came up for discussion in the State Assembly, several members from the Hill areas criticized it and took

12. Paragraphs 15(1) and 16(2) of the Sixth Schedule read together.
13. Paragraph 16(1)(b) of the Sixth Schedule.
strongly in favour of the proposal for a separate Hill State. A few members belonging to the Hill areas did not support the demand for a Hill State.  

The second important occasion when the affairs of the Assam districts came up for discussion in the State Assembly was in reference to the Governor's address to the Assembly on 24 February, 1956. The Governor said "My Government are considering steps for the suitable amendment of the Sixth Schedule of the Constitution and have invited the views of the various district Councils in regard to this important matter."  

During the budget session which followed, Nichols Roy took the cue to move a resolution to the effect that the State Government should form a committee under the Chairmanship of the Chief Minister to submit proposals to the Centre regarding the amendment of the Sixth Schedule.  

The introduction of the Official Language Bill in 1960 marked the third occasion when the Assam Legislative Assembly took a step which was deemed by an overwhelming majority of Hill leaders to have been against the interests of the Hill people. When permission was sought to introduce the Bill on October 10, 1960, it was opposed by U. Jormanik Siem, Thanglura, Williamson Sangma, Biswanath Upadhyaya and several others. The opposition was indeed tremendous. But the government went ahead. October 18, 1960, Chaliha finally introduced the Language Bill. While the representatives from the Brahmaputra valley had generally welcomed it, those of the Hills had staged a walk out in protest.  

15. Ibid., dated 24-2-1958.  
On the whole, the Assam Legislative Assembly desisted from interfering in the internal affairs of the District Councils. But it remained to ensure confidence in the Hill people that their interests were safe and secure within the framework of the Sixth Schedule. On the other hand, the hurry and feverishness which it displayed in passing the Land Reform Bill made it clear to the Hill people that they had no alternative but to demand a separate Hill State.

THE DISTRICT COUNCIL AND THE UNION PARLIAMENT:

Parliament has the exclusive privilege of amending the Sixth Schedule. Proposals for the amendment of the Sixth Schedule were made both from within the Parliament and outside. The first concrete proposal was made by Mrs. Khongmen, an M.P. from the Hill areas. Mrs. Khongmen gave a notice of her Bill for the amendment of the Sixth Schedule on June 14, 1954. The Government of India forwarded the Bill to the Assam Government for its comment. The Department of Tribal Affairs suggested certain amendments. But the State Government did not agree with most of the suggestions made by the Tribal Affairs Department.

The Lok Sabha took up Mrs. Khongmen's Bill for discussion on August 24, 1956. The Bill suggested a series of changes in the Sixth Schedule. First, the consent of the District Council should be obtained for any modification or alteration of its administrative area. Second, the North Cachar and Mikir Hills District Councils should have an elected Chairman. Third, the Governor should not exercise a veto power over the Bills.

passed by a District Council. If the District Council passed a bill and sent it to him for assent, the Governor might return the bill for the Council’s reconsideration. But if the Council passed the bill for second time with or without a change, the Governor should give assent to it. Fourth, the District Council should have the power to acquire and sell land. Fifth, the financial condition of the District Councils should be strengthened. Sixth, licences and leases for the extraction of mineral resources in the tribal areas should not be granted by the State Government without the consent of the District Council concerned. Seventh, the State Cabinet should include a minister representing the Autonomous districts. Eighth, the jurisdiction of the High Court of Assam should be extended to certain cases decided by the district and village courts. Ninth, Acts of the State Legislature of Parliament should not be extended to an Autonomous district except with the consent of its District Council. Tenth, the Shillong University should be brought under the jurisdiction of the Khasi and Jaintia Hills District Council. Eleventh, the report of the Commission set up under paragraph 14 of the Sixth Schedule to enquire into and report on the working of the District Councils, should be first placed before the Councils concerned and then before the State Assembly. Further, the District Councils should be consulted in the matter of constitution of such Commission.

The Bill was opposed on the ground that it ignored the views and recommendations of the States Reorganisation Commission. 20

20. Ibid.
Prime Minister had, however, assured the mover that the question of amending the Sixth Schedule with a view to enlarging the powers of the District Councils would be taken up with the State Government at the earliest opportunity. He, therefore, requested Mrs. Khongmen to withdraw the Bill and accordingly it was withdrawn. 21

Kongmen's Bill gave rise to a long and protracted correspondence between the Central and the State Governments. In the beginning, the State Government was opposed to the amendment of the Sixth Schedule. Their objections were conveyed in a letter addressed to the Central Government on November 18, 1954. Two years hence, as a sequel to Kongmen's Bill and the observations made by the Prime Minister in the Lok Sabha, the Central Government in a communication to the State Government dated December 1, 1956 urged the latter to reconsider their views on the question of amendment of the Sixth Schedule.

On March 1, 1957, the Government of Assam requested the Chief Commissioners of the Hill districts and the Commissioner of the Tea Division for their views and comments on the working of the Sixth Schedule in their respective areas and on the Bill introduced by Mrs. Khongmen in the Lok Sabha.

In the 1957 elections, the Congress was badly defeated in the Hill districts. This made the state party leadership to do some thoughtful. The Chief Minister realised that the Hill people should be given a greater measure of autonomy. Accordingly, he wrote to the Prime Minister suggesting the appointment of a Commission to report on what further measure of autonomy should be granted to the District Councils.

21. Ibid.
The Prime Minister, while agreeing with the Chief Minister that the District Councils should be accorded with a greater measure of autonomy, did not agree with the means suggested by him, namely the appointment of a Commission. The Prime Minister thought that the Commission would be a cumbersome procedure, attracting too much attention and often leading to agitations and demonstrations. He, therefore, suggested that the Union Home Minister should visit Assam and hold a meeting with the Chief Minister and representatives of the Hill areas.

Almost immediately on receipt of the above communication, the Chief Minister constituted a Cabinet Committee to examine the various proposals for the amendment of the Sixth Schedule and agree on certain concrete recommendations to be made to the Home Minister. The Department of Tribal Affairs had already prepared a draft of the proposals for the amendment of the Sixth Schedule. The draft proposals were sent to the Commissioner, Hills Division for his views and he was also requested to consult the Deputy Commissioners of the Hill districts. Soon a conference of the Deputy Commissioners was held. Here all proposals for the amendment of the Sixth Schedule including those submitted by the Tribal Affairs Department, East India Tribal Union, Nichols Roy etc. were examined. The recommendations were embodied in a memorandum which the Government of Assam submitted to the Home Minister when the latter visited Assam in October 1957.

The memorandum suggested an amendment of the Sixth Schedule with a view to giving the District Councils increased financial and functional

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22. The members of the Committee were Siddhinath Sarma, Debeswar Sarma, Motiram Bora, Chatrasing Teron, and Rupnath Brahma.
autonomy in certain respects. Thus it suggested, in the first place, that the District Councils should be assigned all net collections made by the State Government in the Hill districts from state excise duties, registration, and the reserved forests; a share in the revenues from sales tax, betting, entertainment and amusement taxes and agricultural income tax; a share from the net income from any monopoly State Transport Service along any state or national high way within the Autonomous district; and a development grant equal to their average share in income and rates in three years. Second, the Councils should be given control over minor minerals obtained from unclassified forests. Third, they should have the power to acquire properties needed for public purposes. Fourth, the executive power of the District Councils should be extended to include control over education up to the middle English standard; consequently management of secondary schools; construction and maintenance of rural communications and rural water supply; constituting reserve forests of their own and for the sake of all these, to make suitable regulations. Fifth, as regards administration of justice, the District Council courts should be empowered to try all cases between tribes which could be triable by a first class magistrate.

There were other recommendations which would seem to reduce the autonomy of the District Councils rather than enhance it. Thus it was suggested that the Councils might be entrusted with agency functions. When a District Council performs an agency function, it must act according to the directions given by the government. To that extent, it would be occupying the status of a municipal board. Further, it was suggested...
that the Deputy Commissioner should be associated with the District Council in the preparation of plans and budgets and that he should have appellate authority to hear appeals from the decisions given by the District Council Courts. The Deputy Commissioner would thus become an essential link between the District Council and the State Government. But the fact remains that the more closely a Deputy Commissioner is associated with the administration of the Autonomous district Council, the less autonomous the latter becomes.

Besides the State Government, several political parties in the State demanded the amendment of the Sixth Schedule. It is noteworthy that even as late as 1960 the EITU thought in terms of an amendment of the Sixth Schedule rather than press for a separate Hill State. Williamson Sangma who joined the Chaliha Cabinet did the same. Indeed, he brought into existence the Tribal Affairs Advisory Committee which suggested amendments to the Sixth Schedule. It never suggested the sequestration of the Hill districts from Assam and constituting them into a Hill State.

Thus there was a universal demand for the amendment of the Sixth Schedule. And yet no action was taken except interminable discussion. As a consequence, even mild and moderate Hill leaders like Sangma concluded in the good intentions of the government and became ardent supporters of the Hill State movement. The year 1960 witnessed two important developments which had more or less negatived all prospects of Hills-State. The first was the reported decision of the Central Government to constitute Nagaland into a separate state. On this the feelings of the tribal leaders were reflected in a letter written by Sangma to the Chief Minister...
on August 1, 1966 as: "The recent decision of the Government of India to create a new state for Nagaland is bound to lead to far-reaching discussions in the other hill districts unless the amendment of the Sixth Schedule, as recommended by the advisory Committee can be taken up in a very early date." The other development which strained the relations between the Hills and Plains even more bitterly was the decision of the State Government to make Assamese as the official language. Despite local protests and demonstrations by the Hill people, a Bill to this effect was introduced in the State Assembly on October 10, 1960 and passed in less than a week's time. Almost immediately, the Hill parties joined together and formed the APHLC with the sole purpose of organising and leading a movement for a separate Hill State. Thus the promise and opportunity to find a solution to the problem of the Hill areas within the framework of the Sixth Schedule which held out till as late as August 1960 was more or less lost in October the same year.

The APHLC took to the path of negotiations for the fulfilment of its objective. The first delegation of the APHLC met Prime Minister Nehru on November 24, 1960. The dialogue which ensued was patiently carried up for over four years since then. It culminated finally in the appointment of the Patskar Commission in March 1965. But the controversy was set at rest only when the Centre decided in January 1967 to create an autonomous state within the State of Assam.

The minimum which the APHLC thought would satisfy the Hill people - short of forming a Hill State was that there should be a separate cabinet for the Hill areas as a part of the Cabinet of Assam.
Regional Committee of the M.L.As from the Hill areas functioning as a separate Assembly within the State Assembly with full administrative, financial and law making authority in respect of subjects mentioned in the State and Concurrent Lists of the Seventh Schedule to the Constitution.

The maximum which Prime Minister Nehru promised in respect that the Hill areas could be given ninety-nine per cent autonomy subject to the preservation of the Unity of the State of Assam. The Hill members of the State Assembly could constitute a Regional Committee which could initiate proposals applicable to the Hill areas and whose decision would normally be respected in the State Assembly.

The Prime Minister explained and elaborated his proposals in his replies to questions in Parliament as well as in his talks with the Hill leaders. Replying to the supplementaries in respect of a question raised by G.G. Swell in the Lok Sabha, the Prime Minister said on May 1, 1963:

".......We gave them (the Hill people) the fullest autonomy in that area.......In fact, we gave, if I may say so, 99 per cent of what they wanted. In regard to any legislation applying to them, we are in what is called the Scottish pattern that only if the members of the Hill districts agreed to it in the Assembly then would it be passed. In fact, we went very far."

Replying to further supplementaries in the Rajya Sabha on the question of legislation for the Hill areas, the Prime Minister informed on November 26, 1963.24

"Obviously, the legislation will have to be passed by the Assembly. They (the Regional Committee of M.L.A.s) can only propose, and indeed any Member there can, but certain preference should be shown to anything which the Regional Committee proposes."

Replying to the supplementaries in respect of another question on the same subject addressed by P.C. Borooah and five others, the Minister declared in the Lok Sabha. 25

"It is clear that the first thing was that the unity of Assam should continue. Subject to that greater autonomy should be given to hill districts. Under the present Act they have a little measure of autonomy. That was to be increased greatly, financially, administratively or otherwise. All that was subject to a commission being appointed to consider the whole thing and it has to recommend what should be done."

As regards the appointment of a Commission, the Minister observed. 26

"The proposal to appoint a commission was made by us. We had have appointed it long ago but we thought that appointing a commission before the principles which we had put forward were accepted would serve any useful purpose. We are waiting for the acceptance of these broad principles when the commission would be appointed. I am now ready to appoint it as soon as possible provided these broad lines of principle are accepted."

After hard bargaining and when it was clear that the government was not prepared to make any more concessions than what were outlined by Prime Minister Nehru, the APHLC resolved finally to accept the Prime Minister's offer of what it called "full autonomy" and the appointment of a Commission to work out the details. But it placed a condition that "if the Commission's report falls short of the Prime Minister's offer of full autonomy and his various other assurances, the conference reserves the right to revise its decision." 27

The Pataskar Commission which was constituted in March 1963 submitted its report a year later. The main recommendations of the Commission were based on its thesis that the economic backwardness of the Hill areas was "at the root of the unsatisfactory general relationship between the two regions - the hills and the plains of Assam." 28 Surprisingly enough, the Commission overlooked the political, psychological and other causes of conflict between the Hill people and their Plains neighbors. Significantly, the SRC which examined the same question a decade later than did the Pataskar Commission made a fuller and a more convincing analysis. According to the SRC, the main causes of conflict between the Hillmen and the Plains people which led the former to demand a Hill State were: (1) suspicion and distrust of the people of the plains by the tribal people; (2) the diversity of races and cultures and the different levels of social, educational and political development in the different areas of the region which prevented the tribal people from identifying

27. Resolution of the APHLC, dated 17-4-1964.
to the level of the people in the Plains; (3) lack of communication which made it difficult for the various tribes to come in contact with the rest of India and (4) the economic backwardness of the Hill region.29

The Pataskar Commission went almost entirely by the last of these considerations, ignoring the others. Thus it pleaded for a greater degree of economic cooperation between the Hills and Plains, more liberal grants to the former and augmentation of the financial resources of the District Councils generally. But the main issue — whether the District Councils should be endowed with a greater measure of autonomy, politically, administratively and otherwise was side tracked. Even the assurances of Nehru were not considered fully. For instance, Nehru said that in matters of development the people of the Hill areas should have “full authority and complete control over expenditure.” They could also discuss their development plans with the Planning Commission and even attend the meetings of the National Development Council in Delhi. The Pataskar Commission did not consider this at all.

The APHLC rejected the recommendations of the Pataskar Commission and revived its original demand for a Hill State. On the eve of the 1967 elections, the Central leaders held discussions with the representatives of the APHLC and the APCC and announced the government’s decision to reorganise the State of Assam on the basis of a federal structure.30 After some initial reluctance, the APHLC accepted the federal plan and pressed for its early implementation. Accordingly, the

30. The decision to reorganise Assam came as an award of the Central Government which they announced on January 13, 1967.
of the constitution was amended\(^{31}\) inserting a new provision (Art. 246-A) which enabled Parliament to create an autonomous state from certain of the tribal areas falling within the State of Assam. On December 24, 1969, Parliament created history by adopting the Assam Reorganisation Bill in order to create an "Autonomous State to be known as Meghalaya within the State of Assam" comprising the United Khasi-Jaintia Hills District and the Garo Hills District as defined in the Sixth Schedule. The most important feature of the Meghalaya Act (Act 55 of 1969) was that it created a new tier in India's state structure that of a sub-state within a State of Assam. The sub-state was, however short-lived. In less than two years, Parliament was engaged in another exercise in the reorganisation of North East India and to this end it passed five Acts: the North-Eastern States (Reorganisation) Act 1971, the Constitution (Twenty Seventh Amendment) Act, 1971, the Government of Union Territories (Amendment) Act, 1971, the Manipur Hill Areas Act, 1971 and the North Eastern Council Act, 1971.

Through these historic Acts, Meghalaya, Manipur and Tripura became full-fledged states and Mizoram and Arunachal Pradesh became Union Territories.

From the point of view of the District Councils, the Reorganisation Acts 55 of 1969 and 81 of 1971 are significant. These Acts introduced certain important changes in the Sixth Schedule. The cumulative effect of these changes has been to reduce substantially the extent of autonomy of the District Councils. To illustrate how and in what respect these amending Acts caused a diminution in the authority of the District Councils, it is necessary to examine their provisions in some detail.

\(^{31}\) Constitution (Twenty Second Amendment) Act, 1969.
AUTONOMOUS DISTRICTS:

Under Act 81 of 1971, the Table attached to Paragraph 20 of the Sixth Schedule has been thoroughly recast. Originally, it consisted of two parts - Part A enumerating those tribal areas which were declared as Autonomous districts and Part B consisting of other tribal areas which might in some future date be constituted into Autonomous districts. The latter group never had a District Council. They are now out of the Sixth Schedule altogether. The Table as now stands, deals with the Autonomous districts alone and divides them into three parts, each enumerating the Autonomous districts respectively in Assam, Meghalaya and Mizoram.

To the powers of the Governor that he may create an Autonomous district, define its boundaries, alter the boundaries etc. Act 55 of 1969 adds that the Governor may be order change the name of an Autonomous district.32

Act 81 of 1971 confers on the Governor the power to create an Autonomous district, define its boundaries, alter the boundaries etc. Act 81 of 1971 including the Table attached to it for the purpose of constituting or reconstituting an Autonomous district.33

POWERS OF THE DISTRICT COUNCIL TO MAKE LAWS:

The subjects on which a District Council may make laws are left unchanged except that the subject of marriage has been made to apply to divorce.34 However, a serious limitation has been imposed on the legislative powers of the District Councils in Meghalaya. The latter have

32. Item (ff) of paragraph 1(3) of the Sixth Schedule as inserted by Act 55 of 1969.
33. Second Proviso to paragraph 1(3) of the Sixth Schedule as inserted by Act 81 of 1971.
34. Item(i) of paragraph 3(1) of the Sixth Schedule as substituted by Act 81 of 1971.
been subjected to the overriding legislative jurisdiction of the State Assembly. That is, where a law passed by the District Council is repugnant to any provision of a law made by the legislature of the State of Meghalaya, such a law becomes void to the extent of its repugnancy. Thus in Meghalaya, so in Mizoram, the District Council has been subordinated to the State Union Territory legislature. Thus in both, the District Councils have become more or less local Boards. In contrast, the District Councils within Assam have retained much of their old powers.

POWERS OF THE DISTRICT COUNCILS TO MAKE RULES ETC.:

Under the Sixth Schedule, the District or Regional Councils may make rules relating to the composition of the Councils, allocation of seats therein, delimitation of territorial constituencies for and fixing of the qualifications of the voters and of the candidates in the elections to the Councils, fixing of the term of the members of the Regional Council, determining the procedure and conduct of business and the appointment of officers and staff of the Councils, formation of subordinate Local Boards or Boards along with regulation of their business, and generally matters relating to the transaction of business pertaining to the administration of the Autonomous district or region. Act 55 of 1969inserts provision that all such rules framed by the District or Regional Councils shall be subject to the approval of the Governor. Paragraph 2(7) of the Sixth Schedule as substituted by Act 55 of 1969.

35. Paragraph 12-A (a) of the Sixth Schedule as inserted by Act 55 of 1971.
Before 1969, the District or Regional Councils could make regulations for the purpose of levying and collecting the taxes extractable out of them. Since 1969, all such regulations shall be submitted to the Governor for his assent and until the latter gives assent thereto, shall not come into effect.\textsuperscript{37}

**AGENCY FUNCTIONS:**

Before 1969, the District Councils had no agency functions. Since 1969, the Governor might with the consent of a District Council entrust to it with functions relating to agriculture, animal husbandry, community projects, social welfare or any other matter to which the executive power of the state extends.\textsuperscript{38} Performance of agency functions does not, however, enhance the powers or autonomy of the District Council. On the other hand, it lowers the status of the District Councils for under the guise of agency, the Councils become the agents of the State Government and therefore subordinate to the latter.

**MANAGEMENT OF THE DISTRICT OR REGIONAL FUND:**

Before 1969, the District or Regional Councils might make rules for the management of the District or Regional Fund. Since 1969, the Governor has been given the power to make such rules and not the District or Regional Council.\textsuperscript{39}

\textsuperscript{37} Paragraph 8(4) of the Sixth Schedule as substituted by Act 55 of 1969.

\textsuperscript{38} Sub-paragraph (2) added to paragraph 6 of the Sixth Schedule by Act 55 of 1969.

\textsuperscript{39} Paragraph 7(2) of the Sixth Schedule as substituted by Act 55 of 1969.
ACCOUNTS AND AUDIT:

Act 55 of 1969 requires that the accounts of the District or Regional Councils shall be kept in such form as may be prescribed, with the Comptroller and Auditor General who shall also make an audit of the same. There was no such requirement before 1969. The observations of the Norway Commission suggest that the Councils did not realise their financial responsibilities properly.

POWERS OF THE GOVERNOR TO SUSPEND OR ANNUL THE ACTS OF THE DISTRICT COUNCIL INCLUDING THE SUSPENSION OF THE COUNCIL OR DISSOLVING IT:

Before 1969, the Governor could annul or suspend an act or resolution of the District Council if that would 'endanger the safety of the state'. Since 1969, he could so also if such an act or resolution is 'prejudicial to public order'. The Governor might also declare the need of Constitutional breakdown of a District Council on the basis of which he might dissolve the Council for a period of six months.

Thus, following the latest amendments to the Sixth Schedule, the District Councils in general have suffered a diminution in their autonomy, those in Meghalaya and Mizoram have been virtually reduced to the status of local Boards. In respect of these latter, the Sixth Schedule no longer a charter of autonomy that it was before 1969.

40. Paragraph 7(3) of the Sixth Schedule as inserted by Act 55 of 1969.
42. Paragraph 15(1) of the Sixth Schedule as substituted by Act 55 of 1969.
43. Sub-paragraph (2) of paragraph 16 of the Sixth Schedule, as enacted by Act 55 of 1969.
THE DISTRICT COUNCIL AND THE JUDICIARY:

The purpose of legislative control is in the main to set limits under which the District Councils may exercise their powers. The end sought by judicial control is to ensure the constitutionality and propriety of their acts, especially where they may impinge on the rights of the citizens.

The foundations of judicial control are to be sought in the American doctrine of the Rule of law. Dicey gives a classic expression to it: "No man shall be punishable or can be lawfully made to suffer body or goods, except for a distinct breach of law established in an ordinary legal manner before the ordinary courts of the land.... All is above law but every man is subject to the ordinary tribunals." This rule has been incorporated first in the Specific Relief Act, and now finds a place in the constitution in so far as the state which declares every public authority within its jurisdiction shall not deprive any citizen of his life, liberty or property or any other right conferred by the constitution except for a breach of law and, or in accordance with the procedure established by law. And every such law, procedure and consequent act of the public authority concerned can be contested in the courts. The judiciary thus becomes the protector of the rights of citizens against unlawful trespass.

JUDICIAL CONTROL OF THE DISTRICT COUNCIL:

The doctrine of Rule of law establishes the need for a system of judicial control generally. Judicial control of particular instances...
is determined by law and procedure laid down from time to time. They may themselves set the limits.

For purposes of judicial control, the District Council has the same liability as that of a statutory local authority. Like the latter, the District Council is a body corporate which can sue and be sued. Broadly speaking, an individual may sue a District Council for any acts which may injure his rights and thereby claim damages. If the Injury is established, the damages shall be paid. Viewed in this light, the District Council has the same rights and obligations as those of an individual in relation to another. But this is not always the case. The District Council, like every other public authority occupies a privileged position as compared to individuals. For it is given special power to do certain things which ordinarily involve liability but exempted in the same. This is necessary in order to enable it to perform its necessary functions. If a private individual compels another to part with money even for such a lawful cause as the construction of a school if necessary he will be offending the property rights of the latter and thereby legally liable. On the other hand, the District Council may compel him to pay taxes and tolls and yet it commits no wrong by so doing. While establishing a market or cattle pound in a certain locality, the District Council might fail to consider the nuisance caused to the residents living in the neighbourhood. And yet, it may not be held legally liable. The immunity which a District Council enjoys as a public body is not available to a private individual. But this does not mean that the District Council could exercise its powers in an arbitrary manner. The
point where the warm sunshine of immunity ends and the chill winds of liability blow in is obviously for the courts to determine.

The need for judicial control of the District Councils is for other reasons as well. The Councils are endowed with immense power to decide questions of policy, administration and even adjudication. Their decisions are as conclusive and binding as those of the Courts of law. This may give rise to abuse of authority and opportunities for corruption. Again, the State Government may not be in a position to exercise effective supervision over their activities. Or, the State Government may cover up their wrongs for political reasons. It is, therefore, essential that there should be an independent authority like the judiciary to protect the citizens from petty tyrannies of the District Councils.

BASIC PRINCIPLES OF JUDICIAL CONTROL:

The Courts of law do not enjoy unbridled freedom to interfere in the affairs of the District Councils. They have to observe certain basic principles. Often, the Courts themselves lay down the principles governing their attitude and action. First, as long as a District Council has acted or appears to have acted within the authority given by statute, the Courts should refrain from enquiring whether it has used its discretionary powers soundly. 44

44. Roberts v Hopwood, 1925, A.C. 606-07. Speaking generally of local authorities, Lord Sumner said: "Much was said at the Bar of the wide discretion conferred... on the local authorities. In this, this is true......There are many matters which the Courts are indisposed to question; though they are the ultimate judges of what is lawful and what is unlawful, they often accept the decision of the local authorities because they are themselves ill-equipped to weigh the merits of one solution of a practical question against another...."
Second, where the District Councils entrusted with judicial functions have exercised them bonafide, and not influenced by extraneous or irrelevant considerations, the Courts will not interfere. 45

Third, statutes creating duties usually prescribe the procedure to be followed in the performance of those duties. As long as the authority concerned observes the procedure and acts within its jurisdiction, it is immune from judicial interference.

Fourth, the Courts do not interfere as long as the District Councils do not commit acts of misfeasance. 46

Finally, the Courts ought not to interfere with the decisions of the District Councils on the ground that the reports and records on the basis of which orders were issued, had not been disclosed or that they did not follow the judicial procedure. 47

45. Board of Education Vs. Rice, 1911, A.C. 179. Lord Loreburn expressed the view that to act bonafide in a dispute means to act in good faith and to listen to both sides before deciding anything. If this requirement is not followed, the Courts may interfere. Similarly, Viscount Haldane said that the local authority concerned "must deal with the dispute referred to them without bias and they must give to each of the parties, the opportunity of presenting the case made. The decision must be arrived at with the spirit and with the sense of responsibility of a tribunal whose duty it is to sense of responsibility of a tribunal whose duty it is to mete out justice" (Local Government Board Vs. Arlidge, 1915, A.C. 155).

46. Fox Vs. Nw Castle Upon Tyne, 1951, 2 K.B.121. The facts of the case are that on 26-9-1940, during the blackout days, the plaintiff Mr. Fox ran into an air raid shelter erected by the defendant corporation under authority conferred on it by the Civil Defence Act, 1939. The plaintiff sustained injuries and claimed damages on the ground that the accident occurred on account of neglect of duty and improper precautions being taken by the defendant corporation. The latter denied the charges and contended that they did not neglect any duty. The court upheld the contention of the corporation.

47. In Local Government Board Vs. Arlidge, it was stated that local authorities need not follow the procedure usually followed in the courts of law and that they may follow any procedure they think fit. It was stated further that they need not always disclose the reports and records on which their decisions may be based. To demand such disclosures would be "inconsistent with their efficiency, with practice and with the true theory of complete parliamentary responsibility for departmental action."
MEANS OF JUDICIAL CONTROL:

Judicial remedies available under the system of Rule of law include ordinary and extraordinary remedies. Ordinary remedies are of the nature of Declaration, Injunction and Damages. Extraordinary remedies are usually in the form of writs like Habeas corpus, Mandamus, Certiorari, Prohibition and Quo-warranto.

In India, all or any of the remedies mentioned above may be issued by the Supreme Court and the High Courts. The Supreme Court is specifically empowered "to issue directions or orders or writs, including writs in the nature of Habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the Fundamental Rights of the Indian Citizens."\(^{48}\) The High Court is empowered to issue these writes not only for the enforcement of Fundamental Rights but "for any other purpose."\(^{49}\) Further, these writs may be issued not only against private persons but also against the Government and all public authorities. They can not, however, be issued against a Legislature. They are, again, not available when the right to constitutional remedies is suspended in an emergency.

The above remedies with the exception of Habeas corpus may be sought in relevant cases against the wrongful acts of the District Councils. A brief note on the nature and implications of the various remedies available against the District Councils is, therefore, in order.

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49. Ibid., Art 226.
Section 42 of the Specific Relief Act authorises any person entitled to any legal character or to any right as to any property to file a suit against any person denying or interested in denying his title to such a character or right. The aim of this section is to strengthen and perpetuate the title of the plaintiff so that an adverse attack might not weaken it. The policy of the legislature is not only to secure to an aggrieved party a right taken away from him but also to see that he is allowed to enjoy the right peacefully. Thus when a cloud is cast upon his title or legal character, he is entitled to seek the aid of the Courts to dispel it. The remedy is, therefore, designed to make things clearer and prevent future litigation. It confers no new rights. It simply clears the mist that may gather round the plaintiff's title. When issued it becomes a judicial decree.

An injunction is a judicial process by which one who invades or threatens to invade the rights, property or otherwise, of another is restrained from committing such wrongful acts. An injunction may be temporary or permanent. Temporary injunctions are issued to preserve the property in dispute in status quo until further orders. Perpetual injunctions are issued after considering the merits of the case. Injunction is an effective remedy against proven excesses of executive action.
DAMAGES:

Damages imply compensation in money won by an encounter at law. The damage or injury for which compensation is demanded may be irreparable; it may be so grievous that a pecuniary equivalent is unthinkable. And yet, the device of righting a wrong by payment of compensation is as old as the judicial system itself.

At one time it was held that corporate bodies should not be held responsible for the torts of their servants and hence should not be sued for damages. In other words, an official may be sued for damages only as an individual.

This contention is no longer accepted. At present the Courts hold the view that if the legislature directs or authorises the doing of a particular thing, the doing of that thing can not be wrongful, but if damage results from doing of that thing, it is just and proper that compensation should be made for it. Thus public authorities are not exempted from legal liability for damages.

MANDAMUS:

The Supreme Court or the High Court may direct any person holding a public office, or any public authority or corporation to do a specific act. The petitioner praying for the issue of the writ of mandamus must show that he has a specific legal right but no specific legal remedy for the enforcement of that right; that he has claimed the exercise of that right but has been refused; that a duty towards him has been imposed on the respondent and finally that he is acting with a bona fide intention and not with any ulterior motive.
Ordinarily, the writ of mandamus is not issued when another specific and equally effective remedy is available for enforcing the right in question. But this is not always the case. Sometimes, the writ may be issued even though a remedy equally convenient and effective exists provided public policy requires it; or where a public authority is refusing or neglecting to carry out its duties or acting in deliberate contempt and defiance of the legislature or where the alternative method is not so convenient, this writ may be issued.

Thus the writ of mandamus may be issued more or less on the same general principles which apply to the granting of relief under section 45 of the Specific Relief Act. In other words, all questions of title to a legal character or right may be brought within the purview of the writ of mandamus.

GAUHATI HIGH COURT ON WRIT PETITIONS FOR MANDAMUS AGAINST ACTS OF DISTRICT COUNCILS:

A majority of cases against the District Councils which came up before the Gauhati High Court would seem to involve questions of title to a right or legal character, seeking the writ of Mandamus. Four of them are noteworthy.

In the first, the petitioner, L. Venga alleged that Fathang or rent payable to the Chief by a household in respect of any land used for jhuming within the Chief's Ram or domain is a contractual obligation as between the Chief and the tenant and therefore, the respondent, the District Council, Lushai Hills had no right to interfere with it. The

50. Lathaw Venga Vs Lushai Hills District Council, Civil Rule No.61 of 1954.
respondent, on the other hand, passed the Lushai Hills District (Reduction of Fathang) Act, 1955 purporting to act under Paragraph 3 of the Sixth Schedule. The petitioner challenged the Act on the ground that it did not come under any of the heads for which the District Council is competent to legislate under the Sixth Schedule. He was therefore entitled to the rent originally fixed and the new legislation reducing the rent should be quashed.

Delivering the judgement, Deka J., held "The Act in question relates to Fathang or rent payable for agricultural land brought under jhuming by the householders. This fixing of rent, therefore, relates to the practice of jhuming, and there is no doubt about it....In our opinion, the fixing of rate of rent, minimum or maximum, would come under the head of regulation of the practice of jhuming or other forms of shifting cultivation regarding which the District Council is competent to legislate under Paragraph 3(1)(d) of the Sixth Schedule." The petition was dismissed as no legal right of the petitioner was usurped by the District Council.

In the Second, the petitioner, U.M. Stong alleged that the Doloi of Takhiang upheld his election to the village court as Pator. But the Executive Committee of the District Council, United Khasi and Jaintia Hills set aside his election and confirmed the appointment of the respondent, U Phri Muktieh. The petitioner alleged further that the appointment of the respondent was not confirmed by the District Council as was required under rule 29 of the Assam Autonomous Districts 'consti-

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tution of the District Councils) Rules, 1951. Therefore, the Executive Committee acted without jurisdiction and thus wrongfully deprived him of his legal right to the office of Pator.

Delivering the judgement, Sarjoo Prosad, C.J. held that "in the constitution of the village Courts as mentioned in Rule 4 of the U.K. and J. Hills Autonomous District (Administration of justice) Rules, 1953, we do not find any mention of the Pator, although the Doloi or the Sardar or the Headman of the villages has been recognised as constituting a village court. It appears that this appointment was some sort of a minor appointment......and as such the Executive Committee had ample jurisdiction to deal with the matter.

It is not in every case that the Rules ...... contemplate a reference for approval of a minor appointment by the District Council which is a much larger body, and in the nature of things, the Executive Government of the place would be hampered to some extent if on every minor point the approval of the District Council had to be obtained. We, therefore, hold that Rule 29 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 has no application to the case and the appointment could be confirmed by the Executive Committee." The petition was dismissed as no legal right or title of the petitioner was denied.

In the third, the petitioner Ram Nagina alleged that he got settlement of Baghmara Hat for the year 1951-52 for Rs. 14000/- . He paid some amount. Later he prayed for remission of the toll money before the

52. Rule 29 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 requires "All important appointments" to be confirmed by the District Council.
53. Ram Nagina Ram Vs. C.E.M., Garo Hills District Council, Civil Rule No. 70 of 1956.
Deputy Commissioner, Garo Hills District. The latter ordered for a total remission of Rs. 24721. The respondent, C.E.M., Garo Hills District Council refused to grant remission and attached the petitioner for the amount not paid. The petitioner claimed that the orders of the Secretary, District Council dated 9.12.1955 and of the C.E.M. dated 2.3.1956 were illegal and that he had a right for remission as it was granted to him by the Deputy Commissioner.

Their Lordships Ram Labhaya, J. and Sarjoo Prosad, C.J. held that the authority for remission of toll for 'hats' had been transferred to the District Council following the abolition of the District Fund Committee by Act I of 1952. Therefore, the orders of remission passed by the Deputy Commissioner were incompetent and without jurisdiction. The petition was, therefore, dismissed.

In the fourth, the petitioner Ka D. Synteng Nongdhar alleged that he possessed a licence to run a distillery in the United Khasi and Jaintia Hills District since 1947. He was, in fact, running the distillery on payment of prescribed fee for the renewal of the licence every year. The respondent, the Lyngdoh and his Durbar increased the licence fee for 1957-58 and when protested against the increase, cancelled the licence and made settlement of the distillery with some other person. The petitioner prayed for the writ of mandamus to restore his right to run the distillery and restrain the respondent from giving effect to his orders.

The learned judges of the High Court, Mehrotra, J. and Sarjoo Prosad, C.J. held "(1) that under the provisions of the Sixth Schedule to

54. Ka D. Synteng Nongdhar Vs the Durbar of the Lyngdoh of Mawphlang Lyngdoship and anther, Civil Rule No.91 of 1957."
the Constitution of India, it is the District Council which alone has the power of levying taxes or fees. Also under the rules framed by the District Council, no such power had been delegated by it to the Lyngdoh. The Lyngdoh or his Durbar had, therefore, no power to enhance the licence fee or to direct cancellation of the licence and the make settlement of the distillery with some other party.

II) That the orders of Lyngdoh and his Durbar being under colour of authority, the licensee was entitled to a writ of mandamus restraining them from giving effect to those orders."

Thus in all the four cases mentioned above the High Court judgements went in favour of the District Councils. In the first three, no writ was granted while in the fourth, the writ of mandamus was issued but even this was done in support of the District Council.

CERTIORARI AND PROHIBITION :

Both Certiorari and Prohibition are writs which a superior Court may issue on an inferior Court, tribunal or quasi judicial authority for the purpose of preventing the latter from trying cases and issues beyond their jurisdiction. Explaining the use of these writs, justice Mukherjee said: "Questions may and do arise, where a quasi-judicial body attempts to usurp jurisdiction which it does not possess. It may assume jurisdiction under a mistaken view of law or refuse to exercise jurisdiction properly by adoption of extraneous or irrelevant considerations; or there may be cases where in its proceedings the tribunal violates the principles of natural justice. In all such cases, the most adequate remedy would be
the writ of certiorari or prohibition.* While both these writs may
operate to forbid irregular trial by a Court of improper jurisdiction,
Certiorari may go beyond and get the records and proceedings examined
and determined finally by a Court of proper jurisdiction. Thus certiorari
is both preventive and curative.

In a case 56 before the High Court, the petitioner, a Pator in
a Village Court contended the order of the C.E.M., District Council,
Khasi and Jaintia Hills declaring his participation in the village Court
for the trial of disputes as ultra vires. The petitioner alleged that the
said order of the respondent was erroneous. He, therefore prayed for a
writ of Certiorari to quash the order of the C.E.M., District Council,
Khasi and Jaintia Hills.

The learned judges of the High Court held that the Pator was
not one of the persons who as a matter of right could be a member of the
village Court unless he came in as one of the fixed or elected members
contemplated by sub-clause (b) of Rule 5(2) of the United Khasi and
Jaintia Hills Autonomous District (Administration of justice) Rules,
1953. The petition was, therefore, dismissed.

QUO-WARRANTO:

The purpose of this writ is to enquire into the legality of a
claim which a party asserts to a public office. If the claim be not well
founded, the Usurper is ousted from its enjoyment or the office is

56. U. Debilar Pudem Vs. C.E.M., District Council, K and J. Hills,
Civil Rule No.2 of 1955.
declared to be forfeited and recovered. The writ is issued only in respect of offices which are public, statutory and substantive. Again, the person proceeded against must have been in actual possession or user of office in question. But the person seeking the writ need not be the legal claimant to the office in question.

Judicial control operates not merely through specific remedies as mentioned above but also through judicial interpretation of law and practice applicable to the District Councils. In a few important cases concerning the latter, the Supreme Court and the High Court have generally made a liberal interpretation of the various provisions of the Sixth Schedule and the laws, regulations and rules framed there under and have thus gone a long way to enable the District Councils to make an effective realisation of their responsibilities.

A brief review of important Court judgements under convenient heads should now be in order.

LEGISLATIVE POWERS OF THE DISTRICT COUNCIL:

In a majority of the judgements delivered on the subject, the High Court as well as the Supreme Court held that the District Council has plenary legislative powers in respect of subjects specified in paragraph 3(1) of the Sixth Schedule. The power to enact includes the power to repeal or abrogate what has been enacted either by the District Council or any other competent authority before the constitution of the District Council. Thus in Ram Nagina Vs C.E.M., Garo Hills District Council, 57 the High Court held: "The power to legislate...is defined

57. Civil Rule 70 of 1956.
in several clauses of paragraph 3(1). Legislative power in these matters has the attribute of sovereign power. It follows that legislation falling under authorised heads would be within the competence of the Council even if a law made by competent authority before the District Council was constituted is abrogated and repealed. The Constitution does not forbid repeal by the District Council of existing laws relating to matters within the scope of its legislative authority. In T. Cajee's case, the Supreme Court recognised the District Council as "both an administrative and legislative body." It laid down further that "Para 3(1) is something like a legislative list and enumerates the subjects on which the District Council is competent to make laws." Likewise in E. Bareh's case, Supreme Court expressed the view that Paragraph 3 of the Sixth Schedule confers a kind of legislative power on the District Council. In a more recent judgement, however, the Supreme Court did not permit so wide a construction under paragraph 3(1)(a) regarding allotment etc. of land as to include transfer of land and said that such a wide construction is not permissible because the District Council does not possess "plenary legislative power."

Interpretation of the particular subjects of legislation belonging to the District Councils has also been generally liberal. Thus, for example, the High Court, while validating the Lushai Hills District (Reduction of Fathang) Act 3 of 1953 expressed the view that the "Act in question relates to 'Fathang' or rent payable under jhuming by the householders..... In our opinion, the fixing of rate of rent, minimum or

60. Civil Appeals Nos. 1546 and 1547 of 1968.
maximum, would come under this head of regulation of the practice of jhuming and other forms of shifting cultivation, regarding which the District Council was competent to legislate under paragraph 3(1)(d) of the Sixth Schedule.  Again, while rejecting plea for an appropriate writ against the order of the C.E.M, Garo Hills District Council, attaching the petitioner for non-payment of toll money the High Court held: "The municipal administration within the territories of the District Council was a subject matter on which it could legislate." In the opinion of the Court, such a view emerges from a liberal construction of clauses (a)(e) and (f) of paragraph 3(1) of the Sixth Schedule. In another case, when it was contended that the District Council had no jurisdiction to legislate about market land, the High Court held: "This extreme contention can not find favour with us. It is quite obvious from paragraph 3 itself that the District Council could make laws in regard to land, its use and allotment for any purpose likely to promote the interests of the inhabitants. That purpose would include the holding of a market, etc.... Then again under paragraph 8 the District Council has the power to levy or assess taxes or tolls in respect of these lands. It is, therefore, clear that in the exercise of its legislative functions the District Council had authority to enact the law in regard to management and control of markets."

In one case, however, the High Court did not agree with the contention of the District Council, Khasi and Jaintia Hills that the Council's power

61. Civil Rule No.61 of 1954
62. Civil Rule No.70 of 1956.
64. Civil Appeals Nos. 1546 and 1547 of 1968.
over "allotment, occupation or use or setting apart of land" should include the power to regulate the "transfer of land". The Supreme Court had also concurred with the judgement of the High Court.
EXECUTIVE POWERS OF THE DISTRICT COUNCIL:

In T. Cajee’s case, a majority of the judges in a special bench of the Supreme Court including Chief Justice Sinha, Justice Kapur and Justice Gajendragadkar gave a very wide construction of the executive powers of the District Council. Earlier, the High Court held the view that the appointment and succession of the Siem (Chief) were never intended to be the District Council’s administrative function. The latter could only act in the matter by making law with the assent of the Governor and not by passing orders in exercise of its administrative functions. The Supreme Court, on appeal, reversed the decision of the High Court.

The Supreme Court, on appeal, reversed the decision of the High Court.

Their Lordships of the Supreme Court held:

"The High Court has taken the view that the appointment and succession of the Siem was not an administrative function of the District Council and that the District Council could only act by making a law with the assent of the Governor (under) para 3(1)(g) of the (Sixth) Schedule. The High Court seems to be of the view that until such a law is made there could be no power of appointment of a chief......and in consequence there would be no power of removal either. With respect, it seems to us that the High Court has read far more into para 3(1)(g) than is justified by its language. Para 3(1) is something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under para 3(1)(g) it has power to make laws with respect to the appointment or succession of chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that
effect. The High Court also seems to have thought that as there was no provision in the Sixth Schedule in terms of Articles 73 and 162 of the Constitution, the administrative power of the District Council would not extend to the subjects enumerated in para 3(1). Now para 2(4) provides that the administration of an autonomous district shall vest in the District Council and this in our opinion is comprehensive enough to include all such executive powers as are necessary to be exercised for the purpose of the administration of the district.\textsuperscript{65}

In effect, the Supreme Court held the view that the executive power of the District Council extends to all matters in which it could legislate in the same manner as the executive power of the State government extends to all matters in which the legislature of the state can make laws or the executive power of the Union extends to all matters in which Parliament can legislate.

\textbf{NATURE OF AUTONOMY :}

On the question of autonomy of the District Council, the High Court has been positive. Thus it laid down\textsuperscript{66} that the District Council is a body corporate by virtue of para 2(5) of the Sixth Schedule to the Constitution. "It does not disclose apart from what is stated that it (District Council) forms a part of the state machinery or that it could not be considered to be an adjunct of the same."

On the general question of autonomy of the Autonomous Districts, neither the High Court nor the Supreme Court is prepared to go so far as

\textsuperscript{66} Abdul Motaleb Vs. Garo Hills District Council, A.I.R., 1961, Assam 69.
to concede that it could be such as would go against the Right to Equality guaranteed to all citizens. Thus, for example, the High Court struck down the Trading by Non-Tribals Act passed by the Mizo District Council on the ground that it was violative of the Right to Equality. Again, in 1968, the High Court turned down the main section (section 3) of the United Khasi and Jaintia (Transfer of Land) Act, 1955, that restricted sale of lands to non-tribals. Among other things, the High Court found the Act to be unduly discriminatory between the 'tribal' and the 'non-tribal' and therefore, grossly violative of the Right to Equality. The Supreme Court on appeal upheld the High Court judgement on the ground of incompetence of the District Council, refusing to go into other questions. Viewed in this light, the Sixth Schedule would lose much of its significance as a charter of autonomy to protect the lives and properties and special interests of the tribals in North East India. The question arises: Why did the Bardoloi Sub-Committee recommend a separate and special machinery for the administration of the Hill areas of North East India if it were not to protect the land and meagre wealth of the tribals against exploitation by unscrupulous traders and money-lenders from the Plains?

LIMITATIONS OF JUDICIAL CONTROL:

Though essentially a part of the process of Rule of Law, judicial control is for the same reason ineffective in many respects. It lacks in general the resources to enforce responsiveness which the legislature and more so, the executive government may command. The reasons are
obvious. First, judicial review of administrative actions lies only when the latter may be challenged before the courts in the form of suits or disputes. This happens only in respect of an infinitesimal fraction of administrative actions. For, who can afford the costly and complicated process of judicial action? Not certainly the common man who often finds the judicial remedy worse than the rigours of wrongful administrative action. Second, judicial control can at best curb excesses of executive action; it cannot compel its exercise. In other words, an official may be prevented from perpetrating wrongful acts. But can he be compelled to act in the best or most desirable manner except in the strict legal sense. Third, judicial control is often a post mortem operation. It cannot remedy a wrong which has already been done except in the narrow sense of awarding damages which is but a poor recompense to personal injury or harm done. Fourth, judicial review of administrative decisions which are highly technical in nature is often handicapped by the fact that the judges are lay judges in that sense. Experts have, therefore, to be called in and curiously enough, the Court is called upon to determine which expert is more of an expert or whose expert opinion is more expert like. Fifth, an over jealous judiciary may come in the way of quick and efficient administration in the same manner as a rigid and unsympathetic kind of audit may curb administrative initiative. Finally the legislature may impose restrictions on the power of the courts to deal with certain types of cases. Thus, for example, the application of the Civil and Criminal Procedure Codes has been restricted in regard to the trial of certain types of offences within the Autonomous districts. The jurisdiction of the Gauhati
High Court over cases triable by the District Council Courts is itself a matter to be regulated by the Governor.

In spite of these limitations, judicial control is both healthy and desirable. The fact that it exists is itself a means of ensuring legality and propriety in the actions of administration.
THE DISTRICT COUNCIL AND THE EXECUTIVE GOVERNMENT:

Of the three systems of control—legislative, judicial and executive—the last is, in practice, more important, for it is more direct, more detailed and continuous than either of the first two. In the nature of things, the legislature can not legislate on all matters. Likewise, the judiciary can not deal with all issues arising out of day to day administration. The legislature is handicapped for want of time. The Courts can not move except where specific disputes are taken to them. Thus neither the legislature nor the judiciary is adequately equipped for exercising effective control over administration. In these circumstances, control by the executive government becomes important and indispensable. It does not, of course, replace the power of the legislature and of the Courts but supplements their work and adds elements of constancy and expert skill in supervision which they can not provide.

BASIS OF GOVERNMENT CONTROL:

The Sixth Schedule makes the Governor a strong and inseparable link joining the administration of an Autonomous district with that of the state and even the Centre. The Governor exercises a wide range of control and supervision over the activities of the District Council. Now, since the Governor is a constitutional Governor in every case, control by the Governor means in effect, control by the State Government.

At the political level, the Minister for Hill Areas acts as an important link between the administration of the Autonomous district and the rest of the state administration. The Hill Minister is an important
member of the State Cabinet. His department deals with all matters concerning the District Councils and their working.

At the administrative level, the Deputy Commissioner continues to be responsible for all matters of district administration other than those entrusted to the District Council. It is noteworthy that the administrative area of the Autonomous district is usually the same as that of the revenue district. The Deputy Commissioner has an important part to play not only in the sphere of law and order but also in promoting and coordinating various schemes of development pertaining to the district as a whole.

From the point of view of financial administration, the District Council has links with the State Government in that the state budget makes a separate provision showing the estimated receipts and expenditure pertaining to an Autonomous district. Further, the responsibility for raising the level of administration of the tribal areas to that of the rest of the areas in the state is vested in the State Government and Central grants for the purpose are placed at the disposal of the State Government.

The authority of the Comptroller and Auditor General is now being extended to preparation of accounts and audit of expenditure of the District Councils.

These are the links through which the Government exercises its control and supervision over the activities of the District Councils. The nature and implications of control exercised through each of these links may now be discussed.

67. Grants in aid under Art 275(1) of the Constitution.
THE DISTRICT COUNCIL AND THE GOVERNOR:

As already noted, the Governor has a unique role with regard to the District Councils. He is the buckle which fastens the District Councils with the rest of the administrative machinery of the State, a safety valve in a unique experiment in which the need for preserving the social customs and the traditional mode of life of the tribals is sought to be reconciled with the claims of forging unity and integration with the rest of the country. For this purpose, the Governor is vested with a number of supervisory and controlling powers over the working of the District Councils. The nature and extent of these powers and the practical implications of their exercise should, therefore, be examined.

DETERMINATION OF ADMINISTRATIVE AREAS:

Under the Sixth Schedule, the Governor may increase or diminish the administrative area of an Autonomous district, unite two or more such districts or parts thereof into one, create a new Autonomous district, define its boundaries or alter its name and so on. The only restriction on the exercise of this power lies in the requirement that the Governor shall appoint a Commission and consider its report before deciding to act. He is, however, not bound by the recommendation of the Commission. Further when the Governor merely creates a new Autonomous district as he did in the case of the Jowai Sub-division of the Khasi-Jaintia Hills district, there is no need for the appointment of a Commission. The latest amendment to the Sixth Schedule empowers the Governor to make such incidental and consequential changes in the Table attached to paragraph 20 as may
be necessary to give effect to any of his decisions in regard to the
determination of the administrative areas of the Autonomous districts.

NOMINATED MEMBERS:

The Governor is empowered to nominate up to a maximum of four
members to the District Council. Before 1969 the nominated element was
more pronounced for it was as high as one-fourth of the total membership
of the District Council. The idea behind the provision for nomination of
members is to secure representation to the minorities, social workers,
women etc. which it might not be possible to secure otherwise. Some nomi­
nations made by the Governor raised a bitter controversy. The District
Councils, specially of the Khasi and Jaintia Hills, Garo Hills and North
Cachar Hills demanded that the State Government should make nominations on
their advice. When the government refused to concede this, the District
Council, Khasi and Jaintia Hills resolved not to have any nominated mem­
bers. The North Cachar Hills District Council acted in a slightly diffe­
rent way. But the object was the same. It resolved that the nominated
members shall be appointed by the Governor in consultation with the elec­
ted members of the Council and that the verdict of the majority shall
prevail. The vacancies among nominated members should also be filled in
the same manner. The District Councils were not always to be blamed for
adopting such an attitude. Sometimes, the State Government misused the
privilege of nomination for narrow party gains. In 1953, the C.E.M.,
Garo Hills District Council recommended certain names to the C.E. of
Assam to fill a nominated vacancy. After a great deal of vacillation and
procrastination, the C.M. nominated a Congress man of his choice. As late as 1970, Congress formed the Mizo District Council executive with the help of two nominated members. Thus the State Government did not always act fairly in the matter of nominations.

ASSENT TO BILLS:

All bills passed by the District Council should receive the assent of the Governor before they become laws. Some District Councils complained that Governor's assent to their bills was received after considerable delay. They, therefore, suggested that if the Governor failed to give his assent to a bill within three months, he should return it to the District Council concerned with a message for its reconsideration and if after such reconsideration the Council passed the bill by a two-thirds majority of the members present and voting with or without amendment, the Governor shall not withhold his assent from that bill. This suggestion, if accepted would make the Governor a nominal authority. Whereas under the Sixth Schedule he is expected to provide a positive direction to the District Councils including a corrective intervention in their working whenever they might go astray. Further, it would offend the principle that the Governor should always abide by the advice of the State ministry. To that extent, he could not be bound by the advice of any other body.

The power of the Governor to give or not to give his assent to the bills passed by the District Councils applies also to the regulations made by the latter.
APPROVAL OF RULES:

Rules which the District or Regional Councils may frame with regard to the composition of the Councils, allocation of seats therein, delimitation of territorial constituencies for and fixing of the qualifications of the voters and of the candidates in the elections to the District Council, the fixing of the term of the members of the Regional Council, determining the procedure and conduct of business and the appointment of officers and staff of the District or Regional Councils, the formation of subordinate Local Councils or Boards along with regulation of their business and, generally all matters relating to the transaction of business pertaining to the administration of the district or region must receive the approval of the Governor. Further, rules regarding the administration of the District Fund are to be made by the Governor and not the District Council.

In practice, rules on almost all the subjects mentioned above have been framed by the State Government and the District Councils have adopted them without any complaint or criticism.

APPLICATION OF THE STATE OR CENTRAL LAWS:

It is the responsibility of the Governor to see which of the State or Central laws should apply to the Autonomous districts and with what exceptions and modifications. There is thus a filtering of legislation applicable to the Autonomous districts.
APPOINTMENT OF A COMMISSION:

The Governor may at any time appoint a Commission to enquire into any matter pertaining to the administration of the Autonomous district. Neither the composition of the commission nor its terms of reference could be a matter on which the Governor must seek the advice of the District Councils, much less bound by it. However, it is not clear whether the Governor could appoint a commission to enquire into the affairs of a particular District Council. The Sixth Schedule is silent on this matter.

ADMINISTRATION OF JUSTICE:

The Governor prescribes the means and manner by which appeals from the decisions of the District Council Courts may be preferred to the Gauhati High Court. In other words, the Governor defines the jurisdiction of the latter over offences and suits triable by the former. It is in exercise of this power, the Governor issued the Assam High Court (Jurisdiction over District Council Courts) Order, 1954.68

The Governor may also confer on the District Council or Courts constituted by the latter the power to try offences punishable by death, transportation for life or imprisonment for a term of five years or above and for this purpose extend the application of the Criminal and Civil Procedure Codes to the Autonomous districts.

AGENCY FUNCTIONS:

The Governor may, with the consent of the District Council entrust to it either conditionally or unconditionally functions in rela-
tion to agriculture, animal husbandry, community projects, cooperative societies, social welfare, village planning or any other matter to which the executive power of the state extends. Under this provision, the Governor of Assam has in 1970 entrusted many an agency function to the North Cachar and Mikir Hills District Councils. The latter have thus come under the direct supervision and control of the State Government.

SUSPENSION OF ACTS AND RESOLUTIONS, SUPERSESSION OR DISSOLUTION OF A DISTRICT COUNCIL:

The Governor has sledge hammer type functions to check a delinquent District Council. Thus he may suspend or annul any act or resolution of a District Council which is prejudicial to the safety of the country or Public Order. He may for the same purpose supersede the Council for one year. With the approval of the State Legislature, such supersession may be extended for another year. Further, the Governor may on the recommendation of a Commission of enquiry dissolve a District Council and take over its administration either himself or entrust it to the Commission or body appointed by him for a maximum period of one year. Again, the Sixth Schedule envisages a sort of a constitutional breakdown of a District Council on the basis of which the Governor may dissolve a District Council and take over its administration for a period of six months which may be extended for further periods of six months on each occasion.
The Department of Tribal Affairs is concerned with the development of the Hill areas in general and special schemes of development covered by grants under Art 275 (1) of the constitution. The Hill Minister is an important member of the State Cabinet. He is, therefore, consulted in all matters relating to the District Councils. When Chaliha appointed Sangma as Hill Minister, the latter brought into existence a Tribal Affairs Advisory Committee which suggested suitable amendments to the Sixth Schedule. The control of the Tribal Affairs Department over the development of the Hill areas was not effective. It was not often that the District Councils diverted their development grants to meet with the deficits in their administrative expenditure.

The Deputy Commissioner continues to exercise civil, revenue and magisterial functions in matters other than those entrusted to the District Councils. But the latter have been so jealous of their powers and so apprehensive of external interference that the Deputy Commissioner is unable to perform any positive role in the coordination of the activities of the District Councils or of their development. As early as 1955, the SRC was surprised to find "that no use was being made at present of the district officers by the District Councils and that no provision had been made in the Sixth Schedule for the maintenance of any contact between them." Thus the wisdom and experience of the time honoured ins-
titution of the Deputy Commissioner could not be made use of except in the limited sphere of law and order.

THE DISTRICT COUNCIL AND THE COMPTROLLER AND AUDITOR GENERAL:

In the beginning, there was no statutory provision for the preparation of accounts and audit of expenditure of the District Councils by the comptroller and Auditor general. The only provision made in this regard was that the District Councils might, with the approval of the Governor, frame rules for the administration of the District Fund. Now, except in the case of the Mizo and Mikir Hills District Councils, the District Fund Rules did not provide for the preparation of annual finance accounts, appropriation accounts and audit reports and their submission to the District Councils concerned. Members of the District Councils had, therefore, no means of knowing the state of finances of their own districts. They had also no opportunity to examine the accounts of their own administration. This anomaly was removed in 1969 when the Comptroller and Auditor General was empowered to prescribe the form of accounts as well as conduct an audit of expenditure of the District Councils. But even after that, there has been no real check against infructuous expenditure. The audit reports have not been given the consideration they deserve.

CONCLUSIONS:

Thus the executive government of the State has many formal means of exercising supervision and control over the activities of the District Councils. The Governor is the principal agency of control, and to a lesser
extent, the Hill Minister and the Deputy Commissioner are associated with the control over District Councils. Inspite of all this, the State Government is unable to achieve an effective control over the working of the District Councils. For one thing, certain usual methods of control such as inspection, power to call for periodic reports, control over personnel etc. are not quite available to the State Government.

For another, the latter has practically no means of establishing informal contacts, much less achieving coordination in the activities of the District Councils. For various reasons, the District Councils have assumed the pretensions of mini states and are extremely jealous of their powers and suspicious even of the best intentions of the state government. A healthy system of control and coordination presupposes an atmosphere of mutual trust. This is precisely what is often wanting in the relations between the District Councils and the State Government.