CHAPTER VI

POWERS AND FUNCTIONS.
The Sixth Schedule and the Rules made thereunder entrust the District Councils with a wide variety of powers and functions. The powers and functions of the District Councils may be classified broadly into legislative, executive, judicial and financial powers and functions.

LEGISLATIVE POWERS AND FUNCTIONS:

The District and the Regional Councils have the power to make laws with respect to:

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

b. management of unclassed state forests;

c. the use of any canal, or water course for the purpose of agriculture;

d. the regulation of the practice of jhum or other forms of shifting cultivation;

e. the establishment of village or town committees or councils and determination of their powers;

f. any other matter relating to town or village administration including town or village police, and public health and sanitation;

g. the appointment or succession of chiefs or headmen;

h. the inheritance of property;

The Regional Councils have been conceived in the same manner as the District Councils and exercise more or less the same powers and functions as the latter except in certain administrative and financial matters.
i. marriage and divorce, and
j. social customs.

The District Councils have also the power to make regulations with regard to:

a. regulation and control of trade and money-lending by non-tribal within limits of their respective administrative areas;
b. regulation and control of primary education, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways within their jurisdiction;
c. for the levy and collection of any of the taxes entrusted to them.

The legislative powers of the District Councils assume added importance by the fact that in respect of subjects specifically entrusted to the District Councils, no Act of the State Legislature shall apply to the Autonomous districts unless otherwise directed by the District Councils concerned and with such exceptions and modifications as the latter may determine. This privilege is, however, denied to the District Councils in Meghalaya where the laws passed by the State Legislature have a precedence over laws passed by the District Councils thereof. That is to say that if any Act of the District Council or Council's

2. Divorce as a subject of legislation has been added by Act 55 of 1969 on the recommendations of the Pataskar Commission on the Hill Areas of Assam, 1965-66.
3. Paragraph 3 of the Sixth Schedule.
4. Regulations under this head shall be passed by a majority of not less than three-fourths of the members of the District Council (vide, proviso to sub-paragraph(2) of paragraph 10 of the Sixth Schedule.
5. Sub-paragraph(1) of paragraph(6) of the Sixth Schedule as amended by Act 55 of 1969.
6. Sub-paragraph(4) of paragraph 8 of the Sixth Schedule.
7. Sub-paragraph(1)(a) of paragraph 12 of the Sixth Schedule.
in Meghalaya is repugnant to any law passed by the legislature of the State of Meghalaya, such an Act is void to the extent of its repugnancy. There is also a general safeguard against the application of undesirable laws whether passed by Parliament or the State Legislatures concerned among the Autonomous districts. The Governor of Assam may direct that an Act of Parliament or of the State Legislature shall not apply to the Autonomous districts within the State of Assam or shall apply thereof with such exceptions and modifications as he may determine. In respect of Meghalaya, the President may direct that any law passed by the Parliament shall not apply to the Autonomous districts concerned or shall apply with such exceptions and modifications as he may determine. In regard to Mizoram, the President may with respect to any Act of Parliament and the Administrator may with respect to any other Act, direct that it shall not apply to an Autonomous district or region or shall apply with such exceptions and modifications as he may determine.

Thus the District Councils have more or less independent powers of legislation in respect of all important matters affecting the social, economic and personal life and activity of the tribals. The question arises: Are these powers adequate? Do they require to be further amplified? Or should they be abridged in certain respects?

8. Clause (a) of paragraph 12-A of the Sixth Schedule as inserted by Act 81 of 1971.
9. Clause (b) of sub-paragraph (1) of paragraph 12 of the Sixth Schedule.
10. Clause (b) of Paragraph 12-A of the Sixth Schedule as inserted by Act 81 of 1971.
Opinion is not quite unanimous on this question. The general demand for greater autonomy for the Hill Areas included a demand for an amplification of the legislative powers of the District Councils. This was the position adopted by such representative tribal organisations as the APHILC. On the other hand, some of the indigenous tribal councils and institutions urged that the powers which were customarily enjoyed by them should not be taken away from them and conferred on the District Councils whose authority was based after all on the new found ballot-box democracy.

Land was one of the sensitive areas of controversy. On behalf of the District Councils, it was urged that their legislative authority as regards the management of land should include among other things, "transfer, alienation, acquisition of land and fixation of ceiling on land holdings including agricultural holdings."\(^{12}\)

Since the object in transferring legislation on the use, occupation etc. of land to the District Councils is to see that the best interests of the tribal people are secured in the most vital aspect of their life and activity, there is no reason why the District councils should not bring about comprehensive legislation on land including aspects of its transfer, alienation and fixation of holdings for agricultural and non-agricultural purposes. This means inevitably the deprivation of the rights in or over land customarily enjoyed by the old tribal organisations led by chiefs or headmen. However, it must be realised that the District Councils could be the only viable basis for achieving sound policy or for effecting reforms in land legislation. Diffusion of autonomy.

\(^{12}\) Quoted in the report of the Pataskar Commission, paragraph 175, p. 69.
rity over land legislation would defeat the very purpose for which such legislation has been transferred to the care of the Autonomous districts. There is, therefore, no valid ground for the curtailment of the legislative authority of the District Councils in regard to management of land.

At the same time, legislative authority in respect of "acquisition of land" which is now vested in the State Legislature should not be conferred on the District Council. For, as the Pataskar Commission has rightly put it. "It would not be desirable to allow legislation of an expropriatory character at the district level as such legislation must conform to certain well established principles of wider application. Broadly speaking, there is a common law on land acquisition for the whole country and in our view there is no need for separate laws on the subject in the hill districts. The difficulties sometimes felt by a district council in acquiring land for its local works are essentially an administrative problem which we believe could be dealt with satisfactorily."

The demand for the addition of a few new subjects of legislation to those already conferred on the District Councils may now be examined. The subjects proposed to be added are registration of documents; fixation of rates in respect of court fees and stamps; betting and gambling; manufacture and sale of liquor, settlement of liquor shops, grant of licences, regulation and prescription of fees; management, construction and establishment of primary schools, markets, streets,

13. Ibid., paragraph 174, p.70.
fisheries, cattle ponds, fairs, grazing, cattle trespass; and burial grounds, cremation and cremation grounds.

None of these subjects except the preparation and consumption of non-distilled alcoholic liquor is concerned with the traditional tribal way of life. As to the use of non-distilled alcoholic liquor which is associated with the social and religious practices among the tribes, there is already a provision in the Sixth Schedule under which no law made by the State Legislature in that regard shall apply to the Autonomous districts except as may be directed by the District Councils concerned.14 As regards other subjects, it is desirable to have uniformity in legislation throughout the state. There are already such laws on registration, court fees, stamps, betting and gambling etc. and their application in the Hill Areas wherever necessary has not in any way dislocated the tribal ways of life. No useful purpose is, therefore, served by the conferment of any of these powers on the District Councils.

All laws passed by a District Council are required to be submitted to the Governor and "until assented to by him, shall have no effect."15 Some of the District Councils had complained to the Presser Commission that the Governor's assent to the bills passed by the District Councils 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

14. Sub-paragraph (1)(a) of paragraph 12 of the Sixth Schedule.
15. Sub-paragraph (3) of paragraph 3 of the Sixth Schedule.
District Council passed the bill by a two-thirds majority vote of the members present and voting with or without amendment, the Governor shall not withhold his assent from that bill. This brings the legislation by District Councils more or less on par with legislation by the State Legislature for under the first proviso to Article 200 of the Constitution the Governor could send a bill for the reconsideration of the State Legislature with a message and if passed again by the latter with or without amendment, the Governor shall not withhold his assent from it. The only difference in the procedure is that the State Legislature does not require a special majority to pass a bill sent for its reconsideration. The delay caused in giving assent to the bills passed by the District Councils should be avoided. But a statutory provision to counteract any such delay in the manner suggested above is neither desirable nor strictly in accord with the letter and spirit of the Sixth Schedule. Under the latter, the Governor, that is to say, the State Government is not conceived merely as a nominal authority but as one which is in a position to provide a positive direction to the District Councils including a corrective intervention in their working, whenever they might go astray. No change is, therefore, suggested in the procedure for the Governor to give his assent to the bills passed by the District Councils. Administrative measures to expedite the scrutiny of the bills etc. should, however, be stepped up.

EXECUTIVE POWERS AND FUNCTIONS:

It is normal to expect that the District Councils have their executive and administrative powers relating to matters on which they are empowered to make laws. But nowhere in the Sixth Schedule is there a specific reference to this effect. As a matter of fact, there is no provision in the Sixth Schedule analogous to that made in Articles 73 and 162 of the Constitution defining the executive powers of the Union and the States respectively. Does this mean that while the District Councils can make laws in certain matters, the executive power to enforce these laws is vested in the State Government concerned. This is the position apparently. But a liberal construction of a few other provisions in the Sixth Schedule lends support to the view that the District Councils have the power to administer the laws which they can make. Thus, for example, there is the provision that the District Councils may appoint "such officers as may be necessary for the administration of the laws made under Paragraph 3 of this Schedule."\(^{17}\) There is also the general provision that the District and Regional Councils may make rules, subject to the approval of the Governor, on all matters "relating to the transaction of business pertaining to the administration of the district or region, as the case may be."\(^{18}\) The combined effect of these two provisions is clearly to confer on the District Councils so much of executive authority as may be necessary for the administration of laws which they are empowered to make under the Constitution.

\(^{17}\) Sub-paragraph (1) of Paragraph 4 of the Sixth Schedule.
\(^{18}\) Sub-paragraph (7) of Paragraph 2 of the Sixth Schedule.
The general responsibility for the enforcement of laws and the administration of Autonomous districts apart, the District Councils have been given specific executive charge for establishing and managing "primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district" and also for prescribing "the language and the manner in which primary education shall be imparted in the primary schools in the district."\(^{19}\)

The Pataskar Commission which reviewed the working of the District Councils in 1965-66 felt that the executive powers of the District Councils needed a thorough revision. As it was, the District Councils had practically no role to play in the field of development of administration. They were not being associated with the schemes of national extension service and rural development. The Hill people were not wanting in the spirit of self-reliance and community service. Panchayatiraj institutions which existed elsewhere in the country could profitably be extended to the Hill districts. The Sixth Schedule had itself envisaged the establishment of subordinate local councils or Boards among the Autonomous districts. To enable the District Councils and the subordinate councils at the village and other levels to function effectively, it was necessary to transfer to them, subject of course, to the general control and supervision of the State Government, certain powers and responsibilities of a developmental nature. The Pataskar Commission, therefore, recommended the extension of the executive powers and functions of the District Councils in the following matters.

\(^{19}\) Sub-paragraph (1) of Paragraph 6 of the Sixth Schedule.
a. land and revenue administration.

b. establishment, construction, management and administration of primary schools, and educational institutions up to the higher secondary stage, and in particular the prescription of the language and the manner in which education in the primary middle English and middle language schools is to be imparted.

c. establishment, construction, management and administration of roads and waterways within the Autonomous district.

d. Community projects, national extension service and tribal development blocks.

e. agriculture and minor irrigation.

f. animal husbandry, veterinary services and dairy farming.

g. Cooperatives

h. fisheries

i. small scale and rural industries, sericulture and weaving.

j. rural water supply.

k. public health.

l. works programmes for rural manpower utilization.

m. social welfare.

n. village planning and rural housing.

o. publicity and information.

p. any commercial business or other enterprises, including means of transport and industries authorised by the Governor.\(^20\)

---

\(^{20}\) Report of the Pataskar Commission, paragraphs 185 and 186, pp. 74-75.
The question of a suitable administrative machinery to cope with the vastly increased executive powers proposed to be made over to the District Councils was also discussed by the Pataskar Commission. The Commission suggested that the District Councils might recruit their own clerical and subordinate staff but the higher posts should invariably be filled by officers on deputation from the State Government. The technical advice of the senior officers of the development departments of the State Government should also be made available to the officials of the District Councils whenever necessary.

The need for a close liaison with the State Government for purposes of arriving at sound policy decisions on development schemes to be undertaken by the District Councils was also stressed by the Pataskar Commission. After the schemes were implemented, a constant review of the same should also be undertaken. To achieve these objectives, the Commission suggested the setting up of a District Development Board in each of the Hill districts. The Board should be constituted as follows.

Chairman - Deputy Commissioner of the District Concerned.
Vice-Chairman - Chief Executive member.
Members -

a. all M.Ps and M.L.As of the district

b. all Executive members of the District Council

c. all Chairmen of the subordinate councils to be set up.

d. Executive Engineer or any other officer of the P.W.D., posted in the district.

Secretary - Secretary of the District Council.

21. Ibid., paragraph 190, pp. 76-77.
22. Ibid., paragraph 194, pp. 77-78.
The officers of the various development departments, whether serving under the government or a District Council might also be invited to attend the meetings of the Board as and when necessary.\(^{23}\)

The recommendations made by the Pataskar Commission as regards the extension in the executive powers of the District Councils had been given a qualified approval by the State Government concerned and also the Central Government. Accordingly, provision was made to the effect that "the Governor may, with the consent of the District Council entrust either conditionally or unconditionally to that Council or to its officers functions relating to agriculture, animal husbandry, community projects, Co-operative societies, Social Welfare, Village Planning or any other matter to which the executive power of the state extends."\(^{24}\) Under this provision the Governor might entrust not delegate any of the developmental functions vested in the State Government to a District Council. The discretion of the Governor, that is to say the State Government to entrust the aforesaid functions to a District Council includes the power to lay down conditions for the discharge of the functions entrusted. While performing these functions, the District Council could only act as an agent of the State Government. An agent is not free to act as he likes. The conditions imposed indicate the subordinate position occupied by the District Council. The District Council for its part might or might not accept the functions sought to be entrusted to it. No functions could be made over to it without its consent. Thus, in

\(^{23}\) Ibid., paragraphs 199 and 200, pp. 79-80.
\(^{24}\) Sub-paragraph (2) of paragraph 6 of the Sixth Schedule as incorporated by Act 55 of 1969.
short, executive powers and functions other than those specifically conferred on the District Councils by the constitution could be discharged by them at the instance of the State Government and with their own willing cooperation.

POWERS OF TAXATION:

The District Councils have powers to levy and collect the following taxes:

1. land revenue;
2. taxes on land and buildings;
3. tolls on persons;
4. taxes on professions, trades, callings and employment;
5. taxes on animals, vehicles and boats;
6. taxes on the entry of goods into a market for sale therein;
7. taxes for the maintenance of schools, dispensaries or roads.\(^25\)

The District Councils are also entitled to a share in the royalties on mines and minerals.\(^26\)

Since the management of the unclassed state forests is vested in the District Councils, the latter are naturally entitled to the revenues from the same.

The District Councils could also obtain fees in respect of the following:

\(^{25}\) Paragraph 8 of the Sixth Schedule.
\(^{26}\) Paragraph 9 of the Sixth Schedule.
1. fees from the administration of land laws like granting of permission for transfer lease etc;
2. fees accruable from the distribution of jhum lands;
3. fees or rents accruable from the distribution of water for the use of any canals, or water-course for the purpose of agriculture;
4. fees accruable in connection with the administration of the laws of inheritance of property;
5. fees accruable from the administration of laws of marriage and divorce.
6. fees or fines accruable in the course of administration of justice; and
7. fees accruable from the regulations for the control of money lending and trading by non-tribals.

The taxes allocated to the District Councils were in the beginning collected by the State Government and made over to the District Councils concerned. Gradually when the District Councils organised themselves and established their own administrative machineries they took over from the government the task of assessment and collection of their own taxes. The Councils themselves are now responsible for the collection of all the taxes allocated to them except the motor vehicles tax and royalties on mines and minerals which they share with the State Government.
JUDICIAL POWERS:

The District Councils have the power to constitute certain courts and also hear appeals from the decisions of the latter. The Governor may confer on the District Councils or other Courts constituted by them powers exercisable under the Codes of Civil and Criminal procedure. Further, the President may by notification extend or limit the powers conferred on the District Councils or other Courts constituted by them for the trial of offences or suits or for the hearing of appeals.

A District Council may establish within its jurisdiction village councils or Courts for trial of suits or disputes between tribals. Such Courts shall not, however, try offences punishable by death or transportation for life or imprisonment for a term exceeding five years. The Codes of Civil and Criminal procedure shall not ordinarily apply to the trial of suits and offences within the jurisdiction of the Autonomous districts. However, the Governor may confer on the District Council or other courts established by it powers exercisable under the Codes of Civil and Criminal procedure. The Governor may also modify or withdraw from the District Council powers exercisable under the said Codes.

While constituting the Village Courts, the District Council may, with the previous approval of the Governor, make rules regulating the powers to be exercised and also the procedure to be followed in them. The Council has also the power to appoint judges or President officers among the Courts established by them.

Appeals from the District Councils or other Courts established by them shall be heard only by the High Court of the State or Supreme Court of India.
POWER TO MAKE RULES:

Besides the power to enact laws and issue regulations, the District Councils have the power to make rules on a variety of matters.

First, the District Councils may make rules in respect of their own constitution and composition including such important matters as:

a. the delimitation of territorial constituencies for the purpose of elections to the District and Regional Councils;

b. the qualifications for voting at such elections and the preparation of the electoral roles for the purpose.

c. the qualifications for being elected at such elections as members of such councils;

d. the term of office of members of Regional Councils;

e. any other matter relating to or connected with elections or nominations to such councils;

f. the procedure and conduct of business and

g. the appointment of officers and staff of the District and Regional Councils. 27

Second, the District Councils may also make rules regulating:

a. the formation of subordinate councils or Board and their procedure and conduct of their business; and

b. generally all matters relating to the transaction of business pertaining to the administration of the district or region. 28

27. Sub-paragraphs (6) and (7) of Paragraph 2 of the Sixth Schedule.
28. Sub-paragraph (7) of Paragraph 2 of the Sixth Schedule.
Finally, the District Councils may make rules regulating:

a. the constitution of the village councils and courts including the powers to be exercised and the procedure to be followed by them;
b. the procedure to be followed by any court of appeal established by the District Council or the District Council itself acting as Court of appeal; and
c. the enforcement of orders of the Councils and Courts mentioned above.  

All rules made by the District Councils shall be subject to the approval of the Governor and unless approved by the latter shall have no effect. In the beginning the District Councils were free to make rules (under the first and second categories mentioned above) independently as these did not require the approval of the Governor. This meant that the District Councils could determine their own constitution and composition including the procedure of election, term of office of the members and so on. But by Act 55 of 1969, the term of the District Council has been fixed at 5 years and the rules made by the District Councils in regard to all matters mentioned above have to be submitted to the Governor for approval.

POWER TO APPOINT COMMITTEES:

The District Councils have adopted more or less the same rules of business as are framed by the modern legislatures. Like the latter, they have the power to appoint committees and determine their character, composition, powers and functions.

29. Sub-paragraph (4) of Paragraph 4 of the Sixth Schedule.
The District Councils in general did not make an effective use of the Committee system. The District Council, North Cachar Hills did not even try the experiment. The Garo Hills District Council constituted a committee for the Codification of customary law. But it did not function effectively. In the Khasi and Jaintia Hills, some ad hoc committees were appointed but they had hardly ever functioned.

The Mikir Hills District Council was the only one of its kind to have made a sincere attempt to profit by the committee system. It constituted three standing committees, namely the Land Settlement Advisory Board, the Construction Settlement Committee and the Karbi Text Book Committee.

The Land Settlement Advisory Board consists of 12 members, including the C.E.M. and 4 other members of the Executive Committee, 6 members of the District Council, and the Secretary in charge of the Revenue Department who is appointed the ex-officio Secretary of the Board. The C.E.M. acts as the Chairman of the Board. The Board is expected to determine the revenue policy in relation to settlement of land. It also advises the Executive Committee in the matter of settlement of land.

The Construction Settlement Committee consists of 9 members, including 4 members of the Executive Committee, 3 members of the District Council, the Executive Engineer, and the Principal Secretary who acts as the ex-officio Secretary of the Committee. The Committee is empowered to dispose of all contracts whose value exceeds Rs. 10,000/-.
The Karbi Text Book Committee is the third standing constituted by the Mikir Hills District Council. It consists of eight members. It deals with the task of producing text books in Karbi language. The C.E.M. acts as the Chairman of the Committee. Other members include the Secretary of the Mikir Hills Primary Education Board, the Principal Secretary, the Inspector of Schools, the Deputy Inspector of Schools and two non-officials. The Assistant Sub-Inspector of Schools acts as the Secretary of the Committee.

POWERS AND FUNCTIONS OF THE REGIONAL COUNCILS:

The Sixth Schedule makes special arrangements for protecting the interests of the smaller tribes. Where an Autonomous district has a number of scheduled tribes inhabiting it, the Governor may constitute an Autonomous region in respect of one or more of such tribes and entrust the administration of every such Autonomous region to a Regional Council.

The Regional Councils have been conceived more or less in the same spirit as the District Councils. In the more important matters of legislation, administration of justice, assessment and collection of land revenue and certain taxes, the Regional Councils have the same powers as the District Councils.

However, in respect of certain details as to their composition, term of office of the members, executive responsibilities and financial resources, the Regional Councils differ from the District Councils.

The maximum strength of the District Council including one-third of its nominated members has been prescribed in the Sixth Schedule.

30. Sub-paragraph (1) of Paragraph 2 of the Sixth Schedule.
There is no such provision as regards the Regional Council. The matter is obviously left to be determined by Rules to be framed under the Schedule.

Whereas the term of office of the members of the District Council has been fixed at five years, the term of office of the members of the Regional Council has been left to be determined by Rules.

The District Council may exercise powers delegated to it by the Regional Council but not vice versa.

While the District Council has the power to make regulations for the regulation and control of money-lending and trading by non-tribals, no such power has been conferred on the Regional Council.

The executive powers of the District Council extends to the establishment, construction or management of primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district. The District Council may also make regulations for the management and control of the aforesaid subjects. In particular, it may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district. No such powers have been conferred on the Regional Council.

The Governor may also entrust to the District Council with its consent any of the developmental subjects to which the executive power of the State Government extends. There is no provision in the

31. Clause (e) of Sub-paragraph (6) of Paragraph 2 of the Sixth Schedule compared to sub-paragraph (6-A).
32. Sub-paragraph (5) of Paragraph 2 of the Sixth Schedule.
33. Paragraph 1C of the Sixth Schedule.
34. Sub-paragraph (1) of Paragraph 6 of the Sixth Schedule.
35. Sub-paragraph (2) of Paragraph 6 of the Sixth Schedule.
Sixth Schedule authorising the Governor to make a similar delegation of developmental functions to the Regional Council.

Certain taxes may be levied exclusively by the District Council. These are a) taxes on professions, trades, callings and employment; b) taxes on animals, vehicles and boats; c) taxes on the entry of goods into the market for sale therein and tolls on passengers and goods carried in ferries; and d) taxes for the maintenance of schools, dispensaries or roads. The Regional Council has not been given the benefit of these taxes. Nor could the Regional Council claim a share in the royalties accruing from licences or leases for the purpose of prospecting for extraction of minerals granted by the State Government concerned. The royalties are shared exclusively between the State Government and the District Council concerned.

In all other matters, the Regional councils have the same powers and functions and the same limitations as would apply to the District Councils.

36. Sub-paragraph (5) of Paragraph 8 of the Sixth Schedule.
37. Sub-paragraph (1) of Paragraph 9 of the Sixth Schedule.