

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

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## **INTRODUCTION**

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

The effects of this rampant destruction of forests is visible in almost all the areas of the North-East e.g. in Meghalaya – the abode of clouds – a new problem of drinking water has arisen, and one come across the paradoxical expression, “the wet desert of Cherrapunji”<sup>2</sup>. Mizoram and Tripura offers examples of what the future holds for the remaining “sisters” – they have virtually no forest left !. According to the Sixth Plan document for Tripura, “the 2000 odd Sq.km. recorded as protected forests, do not contain any forest worth the name, except – scattered trees and lower types of vegetation”.

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

In fact a paradoxical situation exists in the North-Eastern region since the Forest Department of the Government controls only small patches of Reserve Forests<sup>3</sup> and protected areas for wildlife, and possess no land of their own either for afforestation or for extending its activities. The bulk of the forests are under communal control, either through the District Council as in the case of Meghalaya,

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<sup>1</sup> After the Supreme Court order in the *T.N Godavarman* (1996) case, no trees can be exported from the North Eastern states to the rest of the country. The only exception is those harvested by the Forest Department according to the working Plan.

<sup>2</sup> Cherrapunji has the highest recorded rainfall in the world.

<sup>3</sup> Reserve Forests are a category of Managed forests under the control of the Government. The Reserve forests are administered under the provisions of the Indian Forest act, 1927. The primary purpose of a reserve forest is to meet the timber requirements.

Mizoram, Tripura and the Karbi – Anglong district of Assam or within the control of the clan, village or tribe as in the case of Nagaland or Arunachal Pradesh.

Thus while in the rest of the country environmentalist, human right activist, social workers alike, are demanding that forests be given back (at least partially) to the tribals and local communities from the Forest Department, as they were in the pre-colonial days. However, in the North-East this much acknowledged panacea of communal control over the forest resources against the State control appears to have completely failed to safeguard the forests. The question that is being raised is whether the communal control over the forests is in itself a guarantee to a reasonable ecological security? How come the tribals who have traditionally co-existed in harmony with the forests developed such antagonistic approach to the forests?

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

## **THE CONSTITUTION AND TRIBAL AREAS**

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

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

## **THE CONSTITUENT ASSEMBLY AND TRIBAL AREAS**

The Constituent Assembly set up a committee on the rights of citizens, minorities and tribals on January 24 1947. It was laid down that the Advisory committee should appoint a sub-committee to

prepare schemes for the administration of the tribal areas of the North East and the Excluded and Partially Excluded Areas.

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

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

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

### **Recommendation of the sub-committee**

The major recommendation of the sub-committee are:-

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

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

Thus the fundamental reason why the District Councils were set up was to protect the tribes from more advanced members of the non-tribal communities and also to preserve the “way of life” of the tribals. Autonomous District areas are constitutionally recognized as areas that needed special protection and an administration responsive to the needs and levels of development of tribal people. For the promotion of their welfare, for the preservation of their traditions and customs, they are allowed an administration to suit their own genius. The Autonomous District Councils are thus meant to implement their basic policy guidelines.

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

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

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

## **LEGISLATIVE POWERS OF THE DISTRICT COUNCIL**

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

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

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

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

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

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

## **INTRODUCTION TO MEGHALAYA**

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

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

### **Forest**

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

### **Classification of forests**

<b><u>CATEGORY</u></b>	<b><u>AREA</u> (in Sq. Kms.)</b>
Reserved Forests (including national parks, biosphere reserves and sanctuary)	993

Unclassed Forests	7145.5
Private Forests	384
Village Forests	29.9
Raid Forests	768

#### **Status of forest cover of Meghalaya**

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

#### **Forest type and density**

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

##### **Tropical Forests**

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

##### **Tropical evergreen forests**

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

##### **Tropical semi-evergreen forests**

This category of forests occupies the north-eastern and northern slopes of the state, typically upto elevations of 1200m, where annual rainfall is 150-200cm with a comparatively cooler winter. The numbers of species here are fewer than the evergreen zone. There are also a few species in these forests which are deciduous in nature, such as *Careya arborea*, *Dillenia pentagyna* and *Callicarpa arborea*. Again there is a clear stratification of the trees in these forests.

##### **Tropical moist and dry deciduous forests**

This type of forests occurs where annual rainfall is below 150cm and at comparatively low elevations. Typical natural deciduous forests do not occur anywhere in Meghalaya but are only **subclimax** or man-made forests. These forests are characterised by seasonal leaf shedding and profuse flowering of the trees. Recurrent forest fires are a common phenomenon here. Deciduous forests are much more extensive in their distribution in the State and include a host of economically

important trees like *Shorea robusta*, *Tectona grandis*, *Terminalia myriocarpa*, *Sterculia villosa*, *Logerstroemia flos-reginae*, *L. Porviflora*, *Morus laevigatus*, *Artocarpus chaplasha*, and *Gmelina arborea* both as natural and as plantations. *Schima wallichii*, *Artocarpus gameziana*, *Tetrameles nudiflora*, *Lannea coromandelica*, *Salmalia malabarica* *Erythrina stricta*, *Premna milliflora*, *Vitex peduncularis*, *Albizia lebbekii*. *Lucida*, *Terminalia bellirica* etc is also in abundance. These trees of the deciduous canopy are always lofty and straight bole and with spreading crown.

### **Grass and Savannas**

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

### **Temperate Forests**

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

## **THE APPLICATION OF THE SIXTH SCHEDULE IN MEGHALAYA**

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

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

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

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

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

## **FOREST REGULATION IN MEGHALAYA**

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

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

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

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

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

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

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

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

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

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

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

Even after the enactment of the Act of 1878, the local communities were not totally deprived from benefiting from the produce of a Reserve Forests. B. Ribbentrop, the third Inspector General of Forests stated that “the Constitution (of a forest) as a reserve merely determines the rights of the Government and private persons over the forests, and in no way aims at prescribing the agency by which the forests may be managed. Thus a Reserved Forest is not necessarily, the object as it is frequently believed, of producing large timber for export or public work: but more often that of supplying the local demands of small timber, fuel, grass or any other forest produce“. Ribbentrop further stated that *“a forest may be said to fulfill its highest function when it produces, in a permanent fashion the greatest possible quantities of material which is most useful to the general public, and at the same time yields the best possible return the proprietor”*.

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

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

### **GARO DEMAND FOR FOREST DERESERVATION**

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

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

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

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

The Government appointed J.C. Arbuthnott, Commissioner Surma Valley and Hill District, Government of East Bengal to hold an enquiry into the alleged Garo grievances. The enquiry was held in the Garo Hills where a large number of persons presented themselves besides the legal advisers and leaders of the Garos.

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

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

However a major gain of the movement started by Sonaram Sangma was that the Government recognised the fact that the reservation of forests carried hardships to the local people, in the sense

that they are deprived of their traditional customary right over forest and forest produce. It was in recognition of this fact that the Government stopped all further forest reservation in this region and in fact adopted a more or less similar policy towards the whole of the tribal areas of North East. In fact even after independence, a similar policy was adopted by the Government towards forests in this region.

## **CONTINUITY AND CHANGE: ANALYSIS OF THE FOREST LAWS**

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

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

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

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

1. The United Khasi-Jaintia hills Autonomous District (Management and Control of Forests) Act, 1958.

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

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

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

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

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

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

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

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

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

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

## 1. PRIVATE FORESTS

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

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

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

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

The importance of a working plan need not be over emphasized. Development of forests largely depends upon the quality of working plan and the various prescriptions that are to be undertaken in the particular forest division. The forests are important not only for their productive functions but also for environmental and protective function. It is therefore essential that the harvesting of timber be done in a planned and scientific manner so as to cause minimum harm to the environment and to ensure regeneration of cleared forests.

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

## 2. RAID FOREST (COMMUNITY FORESTS)

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

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

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

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

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

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

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

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

### **3. SACRED GROVES**

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

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

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

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

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

#### **GENERAL COMMENTS ON SACRED GROVES**

The Sacred groves of Meghalaya, may not, at the first glance appear to be of much importance in terms of biodiversity, since the bulk of them are quite limited in their extent. Besides the sacred groves are far too scattered to be regarded as one viable unit from the conservation point of view. A large number of sacred groves are also in a degraded state. Studies have concluded that only 1 % of the total area of sacred groves is undisturbed. The bulk of the sacred groves are subjected to various degrees of disturbance.

However, despite such bleak scenario, the sacred groves are among the last treasure house of biodiversity in the region. The sacred groves most often represent the relict vegetation of a region. The very weak network of Protected areas in the state as also of Reserved and Protected forest means that the sacred groves are the only patches where many endangered species find refuge. The sacred groves are also spread over a wide range of bio-geographical areas and hence have a high

rate of species diversity. The special Constitutional provisions applicable to this region also means that addition of more PA network will not be an easy task.

There can be no debate on the subject of the ecological importance of the sacred groves. What however can be debated is the strategy that needs to be undertaken to conserve the unique institution of sacred groves. As we have seen, sacred groves in Meghalaya owe their origin to religious beliefs and sentiments and not to any idea of natural resource conservation. The multiple social processes of modernisation, urbanisation, rationalisation together with changes in the belief system have in varying degrees contributed to the decrease in the "sacredness" attached to these groves. Since it is purely religious sentiments that have protected these groves, a strategy to revive the religious sentiments, beliefs and myths in the modern world is neither possible nor desirable. What may hold the key would be to reeducate the people about the values of the sacred groves. The "value" could be explained in terms of its botanical wealth *viz.*, medicinal plants wealth, the rare and endangered species etc. The other important functions of sacred groves in terms of serving as a safety reserve in cases of emergency and its soil conservation functions also needs to be emphasised.

It has been suggested that the sacred grove be brought under the protected area (PA) network. However it is pertinent to remember some of the pitfalls of bringing the sacred groves under a PA network. It has to be emphasised that it is the "sacredness" that is the most distinguishing feature of a sacred grove. The entire grove is believed to be under the control of the guardian spirit. It is this spirit that reigns over the sacred grove. Nothing is to be done without the permission of the head priest and that too for specified purposes. The establishment of protected area network would mean the substitution of the traditional authority of the priest/village chief etc. by a rational - legal authority represented by the forest department of the government. A possible consequence would be the decrease in whatever sanctity is left in the sacred groves. A scenario, which could be suicidal since only a fragment of the total area of the sacred groves in Meghalaya, is undisturbed.

A strategy for conservation should be adopted which takes into account the following conditions:

- Unique condition prevailing in a particular sacred grove.
- The beliefs and practices prevailing among the people and whether the religious rituals related to the sacred groves are being practiced or not.
- The status of forests and vegetation around the sacred groves - This is an important factor, for there is bound to be pressure on the sacred grove if people are to depend on the sacred grove for meeting their biomass requirement.
- The religion followed by the people in the vicinity of the sacred grove - However, this is quite a complicated issue and depends on a multiplicity of factors. As we have seen in areas where the people have converted to Christianity, the belief in the sacredness is on the decline. However, there are many instances where the even the Christians subscribe to the beliefs, myths and legends associated with the sacred groves. Besides there are groves which are well preserved even when the bulk of the people around the sacred grove are Christians, since the Chief of the village still adhere to their traditional religion.

The sacred groves may have lost their importance in terms of their religious significance, however the high rate of deforestation in the state has only increased their value in terms of harboring the last remnant biodiversity in the region. The traditional patterns of beliefs of the people served the

latent function of protecting the forests. The recognition of this latent function as opposed to the manifest function of the sacred grove is what holds the key to the survival of the sacred groves in Meghalaya.

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

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

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

In fact a confusing situation prevails with regard to the forests in the Jaintia Hills. This is on account of the fact that more than 75% of the forests in the Jaintia Hills are so-called private forests. The word “so-called” has been used because the private forests which exist in the Jaintia Hills do not come under the definition of “private forests” as given in the Management and Control of Forest Act 1958. In this Act private forests are classified as *Ri Kynti* i.e. those belonging to the individual clan or joint clan and (b) *Law Ri Sumar* i.e. those belonging to individual clan or joint clan, which are grown and inherited by him in a village or common raj land. In the Jaintia Hills however there are no ‘Ri Kynti’ land nor there are any ‘Law Ri Sumar’ as defined above. Hence “Private Forests” in the Jaintia Hills goes undefined in the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*marketable trees from the forest forests under the control of the Garo Hills District Council”.*

## CONCLUSIONS

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

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

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

- (2) Even though the District Councils have been constitutionally given the power to manage all forests other than Government Reserved Forests, in actuality it has only a notional control over most of the forests. This is most acute in the Khasi and Jaintia Hills. Thus the District Council has failed to assert its authority as the sole manager of forests, and as such a large percentage of forests are managed in accordance with the customary laws.
- (3) There has been a gross mismanagement of forest by the District Council, and one reason for this mismanagement is the absence of a working plan. The mismanagement of forests due to the absence of a working plan, results not only in the rapid depletion of forests, but also generates less revenue for the owners. **Thus, even though the forests under the control of the District Councils have been ruthlessly exploited as compared to those under the control of the State Forest Department, yet the Commission of Inquiry in 1984 found out that whereas, the State Forest Department has control over only 10% of the total forest area in the State, it earns about a crore of rupees, whereas the three District Council with over 90% of the total forests earn much less.**
- (4) Most of the laws enacted by the District Councils for the management of forests are not comprehensive and adequate to deal with the unique circumstances prevailing in a particular Autonomous District. Thus, the Jaintia Hill District Council has applied the Forest Acts of the Khasi Hills *mutatis-mutandis*, whereas the Garo Hills District Council has applied various provisions of the *Assam Forest (Regulation) Act, 1891 mutatis-mutandis*.
- (5) The District Council has modified some customary laws on forests so that more revenue can be generated in total disregard to its consequence on the forests. Thus, whereas previously

in the Garo Hills, A 'Wil fees was applicable to only those who cultivated in a land which belongs to another clan, the District Council of Garo Hills has made the levy of A'Wil fees applicable to the removal of timber and other forest produce and this levy of A'Wil fees has contributed in a major way to the depletion of forests. The reason being that since forest products used locally by the people cannot be taxed, the District Council makes no effort to stop the indiscriminate felling of trees and their transportation to outside markets since that alone constitutes the largest source of revenue for the District Council.

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

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

*Secondly*, whereas various provisions of the Forest Acts of the District Councils are penal in nature. However the District Councils have no machinery to enforce these laws e.g. the village courts set up by the District Council has no means to compel the attendance of the accused before it. As such the village courts generally makes a request to the police to get the accused arrested, however the police treats the requests as a F.I.R. and gets the accused arrested, but produces them in the District Magistrates Courts and not the Village Courts. Hence the village courts are unable to do their duty of administering justice.

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

## **WILDLIFE IN DISTRICT COUNCIL CONTROLLED FORESTS**

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

Nature has been extremely benevolent to Meghalaya as also to the other North-Eastern states, as it has been endowed with diverse species of flora and fauna. The forests in the North-East have

however not been fully explored, and chances are that future scientific exploration may result in the discovery of species that are new to science.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

is under the control of the State Forest Department and has overlooked the unique circumstance prevailing in the North Eastern region.

Thus wildlife in Meghalaya is being systematically decimated since there exists no law to protect the habitat of the wild animals. The wildlife wing of the Forest Department can at best prohibit the poaching and trade in wild animals as well as flora listed under Schedule VI of the Wildlife (Protection) Act, 1972, but can practically do nothing to protect the *habitat* of the wildlife, since they have no control over the habitat of the wildlife which are under the control of the District Council and other local land tenure systems.

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

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

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

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

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

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

A pertinent question then is ; to what extent can the District Council be held responsible for the depletion of forests in Meghalaya? To put the blame for the depletion of forests in Meghalaya on the District Council simply on the ground that it is they who manages them and makes laws on it is to grossly oversimplify the whole situation the reason for this are: -

- (1) Even though the District Council had a more or less supreme authority to make laws on the subjects allotted to it. However, after the formation of the state of Meghalaya the status of District Council has been reduced more or less to that of 'Municipal Board' by the insertion of Paragraph 12A in the Sixth Schedule. Now the State Legislature in Meghalaya can make laws, if it so desires, on subjects allotted to the District Council, and if there is any conflict between the state law and the District Council law, the state law will prevail. Thus if there was any positive intention by the State Government to protect the forests and wildlife in the state, it could have done so by passing a legislation to this effect, which would be binding on the District Council. However no such legislation has so far been passed. The *Meghalaya Tree (Preservation) Act, 1976* for example is limited only to the state capital of Shillong and to the cantonment areas.
- (2) Although, the District Councils have enacted laws for the management of all forests (other than Government controlled forests) in actuality the managerial authority of the District Council is very much limited. In case of the Khasi Hills, the bulk of the forests are governed by customary laws, in Jaintia Hills most of the forests are privately owned and outside the purview of the District Council, whereas in the Garo Hills it is the 'Nokma' who determines the management of forests. Thus it is evident that to a large extent the laws enacted by the District Councils have little meaning for the tribals, since what governs work at the ground level is a network of customary laws and they take precedence over all statutory laws enacted by the District Council.
- (3) The inability of the District Council to exercise its management authority over all the forests under its jurisdiction is to a large extent a result of its lack of infrastructure, in terms of expertise, administrative organisation and finance the address itself to such a task, although theoretically, it is supposed to have its own organisation to look after the forests and to see that the laws are implemented. This in fact is a major reason why there is a demand by environmental and other groups that the District Council forests be handed over to the Forest Department, which alone has the expertise and administrative organisation to manage these forests.
- (4) The lack of an adequate administrative machinery is however not the sole reason for the non-implementation of the laws, since even with its limited administrative machinery the District Council has to face heavy odds. As has been mentioned earlier, the village courts set up by the District Council has practically no means to compel the attendance of the accused before it. Thus the entire purpose of setting up village court is undermined if they do not have the power to bring the accused before it. It is therefore essential that suitable amendments be done in the District Council Acts to cover this deficiency. One possible solution is to incorporate a provision that exists in the *Assam Panchayati Raj Act*, where there is a provisions, viz., Section 97(2) under which a Panchayati Adalat (court) may write to the nearest magistrate when an accused fails to appear before it, and the magistrate may issue a warrant for the arrest of the accused and when arrested may forwarded him for trial to the said Adalat.
- (5) For the decimation of wildlife also the District Council cannot be held solely responsible. Since they have not been given the power to make laws with regard to the protection of

wildlife and as such they cannot set up any protected areas such as National Parks and Sanctuaries for the protection of wildlife. The Wildlife (Protection) Act, 1972 has endowed only the State Government within the right to constitute an area as a National Park and Sanctuary.

## THE WAY AHEAD

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

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

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

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

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

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

The emphasis on peoples participation in the management of forests is essential since the present forest laws of both the District Council as well as the Government, are based on the basic jurisprudential theory what may be called, the “*policing the society theory*”, in which the legislators and administrators assume that their task is to act as vigilant policeman who detects crime and bring the culprit to court. This jurisprudence presupposes a society in which there is always conflict and hence the major task of the executive is to resolve the conflict in favour of a particular interest amongst competing class interest, by using force or through economic compulsion. However, this ‘conflict’ model of society is nothing but a requirement of a colonial society where the rulers are in actual conflict situation. In a democracy on the other hand, the society is based on a ‘consensus’ or co-operative model, under which there is always consensus in the society with regard to certain aims and objective. As such the task of the executive becomes one of finding alternatives through which various agencies of the society can co-operate with each other to attain a common goal.

The study of the forest management in Meghalaya shows that it is essential that the laws and institutions be so designed to allow for genuine people's participation. In the absence of which non-governmental control of forests is not going to benefit either biodiversity nor will it lead to equitable access to biodiversity resources. Even though the Meghalaya example shows that in reality the community has very little control over the forest resources, yet it has to be pointed out that even complete community control can in the end defeat the goal it attempts to achieve, namely, the sustainability of the tribal autonomy or way of life and the freedom of economic options of livelihood. There are at least three clear indicators of why this will happen (Singh 2000:44)

- i) The creation of community rights make such rights purchasable. Without internal and external legal safeguards the community is unable to hold on to its rights, or out of ignorance or different perceptions of development sells or barter away such rights. This has happened in the eastern part of the country where groups have themselves sold away their resources and depleted the area. They have, evidently weighed, the importance of conserving natural resources differently.
- ii) In areas where tribal non alienability laws are applicable, the local people have not been able to resist the exploitation by external forces. The land has been sold away in what is known as "*benami transaction*" whereby the no legal transaction takes place but for all practical purposes the land is under the control of a non local.
- iii) There are examples where village woodlots and other forests have been handed over to the local self governing institutions. Hardly any of them have survived the onslaught of external or internal market interests

All such experiences make it evident that mere establishment or recognition of community rights, despite the fact that local people have been living in the area since centuries, does not guarantee that in the modern context the rights of the people will be protected or biodiversity conserved. A paradigm shift in legal thought is required if the interests of biodiversity conservation and of the local people are to be protected. Further absolute rights to local communities that are located in close proximity is not only detrimental to biodiversity but is also inimical to biodiversity conservation.

The major ideological rationale for exclusive state control over natural resources has been that alleged irresponsibility of local communities in their access to biodiversity. It is suggested that unless these communities are kept in tight rein, all restraints will be thrown to the wind, and short term acquisitiveness, greed and striving for accumulation would predominate biodiversity use. However it is now a acknowledged truth that if local communities are empowered, they can act collectively as responsible custodians of biodiversity. However, it has also been observed that such responsible community behaviour in relation to biodiversity is neither uniform nor universal. (Singh, et al, 2000).

Comparative studies on the management of biodiversity (Singh et al, 2000) has revealed that if local communities are entrusted with the protection of biodiversity, in an appropriate facilitating environment and with the fulfillment of certain conditions the results are likely to be favourable. However as has been stated before, it cannot be stated that the goals of biodiversity conservation

would be best met, if local communities were entrusted with absolute, unmediated, entirely unregulated control over biodiversity.

Keeping the above limitation into account, what may hold the key is the idea of “negotiated and contractual management of biodiversity”. This would imply in the Indian context that the communities and the state together with other non - state actors enter to negotiations so as to specify the rights and responsibilities of each of the participants. This approach is in fact evident in the neighbouring State of Arunachal Pradesh.

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

Important features of the agreement were:

- The forests were to be declared as village forests under the Assam Forest Regulation Act, 1891.
- 25% of the net revenue after deduction of all expenses would be retained by the Government and the balance 75% would be payable to the owner.
- Developmental committees were constituted under the rules which would have peoples representatives from various Government departments.
- The forests were to be managed scientifically by the Forest department as per working plans.

The success story in partnership forest management in Namsang Borduria Forests prompted the Government to initiate similar arrangement in all un classed State Forests (USFs) wherein traditional rights of individuals and communities are respected and recognised. Later the Arunachal Forest reserve ( Constitution and Maintenance) Act, 1975 was enacted. The Act provided for sharing of net revenue between the Government and Anchal samities on a 50:50 ration. The partnership in the management of forests has made it possible for the Forest Department to manage the forests in a scientific manner without denying the tribals the right to benefit from the forest.

## GLOSSARY

Adalat	Court
Adong	Protected
Akhing	Land of the Nokmas
Dollois	Head of the elaka administration in Jaintia Hills
Dorbar	Council
Elaka	Jurisdiction of traditional chiefs
Jhum	Slash and burn cultivation
Khlaw	Forest
Kur	Clan
Kyngtang	Sacred
Law	Forest or grove

Law Adong	Protected forest
Law Lyngdoh	Forest belonging to priest
Law Raij	Community Forest
Law Shnong	Village forest reserved by the villagers themselves for the purpos of conserving water
Lyngdoh	Priest
Nokma	Chief or clan
Raid	An area under the jurisdiction of a traditional authority
Raid Land	Public land
Ri	land
Syiem	Chief of the Khasi

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