

CHAPTER – V

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Significance of the Constitutional and Institutional Position of Sikkim in both Pre and Post-Merger Period

Importance of Article 371 F

A number of treaties, agreements, notifications, proclamations, resolutions and amendments to the Constitution of India are quite significant to understand the Constitutional position of Sikkim. Some of them are the Treaty of Titalia 1817; Treaty of Tumlong 1861 (British Protectorate); Gangtok Treaty 1950, Press Note of External Affairs Ministry (Government of India), 20th March 1950. The Proclamation of 1953 and the State Council; The Revolutions which took place in Sikkim in the year 1951 and May 8, 1973 Agreement.¹ The Constitution (Thirty Fifth Amendment) Act, 1974² and the Constitution (Thirty-Sixth Amendment) Act, 1975.³

The May 8, 1973 Agreement was a prelude to the process of Sikkim heading to a democratic Political set up. It was an agreement made between Political Parties of Sikkim, the *Chogyal* of Sikkim and the Government of India.

The Constitutional Amendment Act, 1974 had granted 'Associate Status' to Sikkim by the Government of India. The Constitution (Thirty-Sixth Amendment) Act, 1975 was passed by both Houses of the Union Parliament of India and with the consent of the President of India made Sikkim a part of the Indian Union and that was the Political integration.

In the first Schedule to the Constitution of India, under the heading 1, the States after entry 21, the following entry was inserted *i.e.* –

22. SIKKIM : The territories which immediately before the commencement of the Constitution (Thirty-Sixth Amendment) Act, 1975 were comprised in Sikkim.⁴

The (Thirty-Sixth Amendment) Act, 1975 is responsible to introduce Article 371F of the Constitution and it runs as follows :

Article 371F of the Constitution of India :

371F ⁵ special provisions with respect to the State of Sikkim-
Notwithstanding anything in the Constitution,

- (a) The Legislative Assembly of the State of Sikkim shall consist of not less than thirty members;
- (b) as from the date of commencement of the Constitution (Thirty-Sixth Amendment) Act, 1975 (hereafter in the article referred to as the appointed day) –
 - (i) the Assembly for Sikkim formed as a result of the elections held in Sikkim in April, 1974 with thirty-two members elected in the said elections (hereinafter referred to as the sitting members) shall be deemed to be the Legislative Assembly of the State of Sikkim duly constituted under this Constitution;
 - (ii) the sitting members shall be deemed to be the members of the Legislative Assembly of the State of Sikkim duly elected under this Constitution; and
 - (iii) the said Legislative Assembly of the State of Sikkim shall exercise the powers and perform the functions of the Legislative Assembly of a State under this Constitution.
- (c) in the case of the Assembly deemed to be the Legislative Assembly of the State of Sikkim under clause (b), the references to the period of ⁶ (five years) in clause (1) of article 172 shall be construed as references to a period of [four years] and the said period of ⁷ [four years] shall be deemed to commence from the appointed day;

- (d) until other provisions are made by Parliament by law, there shall be allotted to the State of Sikkim one seat in the House of People and the State of Sikkim shall form one Parliamentary constituency to be called the Parliamentary Constituency for Sikkim;
- (e) the representative of the State of Sikkim in the House of the people in existence on the appointed day shall be elected by the members of the Legislative Assembly of the State of Sikkim;
- (f) Parliament may, for the purpose of protecting the rights and interests of the different sections of the Population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by the candidates belonging to such sections and for the delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim;
- (g) the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the Population of Sikkim and in the discharge of his special responsibility under this clause, the Governor of Sikkim shall, subject to such directions as the President may, from time to time, deem fit to issue, act in his direction;
- (h) all property and assets (whether within or outside the territories comprised in the State of Sikkim) which immediately before the appointed day were vested in the Government of Sikkim or in any other authority or in any person for the purposes of the Government of Sikkim shall, as from the appointed day, vest in the Government of the State of Sikkim;
- (i) the High Court functioning as such immediately before the appointed day in the territories comprised in the State of Sikkim shall, on and from the appointed day, be deemed to be the High Court for the State of Sikkim;

- (j) all courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State of Sikkim shall continue on and from the appointed day to exercise their respective functions subject to the provision of this Constitution;
- (k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority;
- (l) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law;
- (m) neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any Treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day and to which the Government of India or any of its predecessor Governments was a Party, but nothing in this clause shall be construed to derogate from the provisions of article 143;
- (n) the President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of the notification;

- (o) if any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may, by order,⁸ do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing the difficulty :

Provided that no such order shall be made after the expiry of two years from the appointed day;

- (p) all things done and all actions taken in or in relation to the State of Sikkim or the territories comprised therein during the period commencing on the appointed day and ending immediately before the date on which the Constitution (Thirty-Sixth Amendment) Act, 1975, receives the assent of the President shall, in so far as they are in conformity with the provisions of this Constitution as amended by the Constitution (Thirty-Sixth Amendment) Act, 1975, be deemed for all purposes to have been validly done or taken under this Constitution as so amended.⁹

Article 371F of the Constitution of India relating to Sikkim contains sixteen sub-sections or provisions i.e., 371F a to p. These provisions deal with the special status granted to the State of Sikkim. Each of these provisions is important and they safeguard the Political institutions in the State, the rights, interests and identity of the people of Sikkim. It also indicates the date of commencement of the Constitution i.e., 26th April, 1975. The essence of this Article is to focus on the vision of socio-economic developments and Political upliftment of the masses in pace with country's development. Besides, it protects the rights and interests of the people of Sikkim.

For better understanding, the characteristic features of Article 371F can be summarised as under :

That, the Sikkim Legislative Assembly shall be filled by candidates belonging to such sections and for the delimitation of the Assembly Constituencies from which candidates belonging to such sections alone may

stand for Election to the Legislative Assembly of the State of Sikkim (371 F). There are 32 seats in the Sikkim Legislative Assembly before and after merger and is continued even now. But, according to Article 170 (1) the Legislative Assembly of each State shall consist of not less than 60 members and not more than five hundred. Therefore, Sikkim is an exception to keep the strength of the Assembly of 32 members. Article 333 of the Constitution of India is not applicable because there is no Anglo-Indian community living in Sikkim.

Sub-sections (k), (l), (n) of Article 371F are also important to deal with old laws and their protection, administration etc., of the State of Sikkim. The Government and people of Sikkim are committed to Article 371F and strictly adhere to it in both spirit and letter.

The elected members of the Sikkim Legislative Assembly, 1974 were allowed to continue after merger. One each member of Lok Sabha and Rajya Sabha of the Union Parliament of India were elected by the Assembly to represent Sikkim is another feature and the said election is first of its kind to India.

Yet, another feature is that all property and assets of the State of Sikkim are vested with the Government of Sikkim.

Another feature is that the Governor of Sikkim under the provision 371F (g) shall have special responsibility for promoting peace and also for equitable and economic development of all sections of the People in the State.

The High Court functioning before the appointed day shall be the High Court along with other Courts of Civil, Criminal and Revenue to continue with the officers of the Judiciary.

The Executive and Ministerial staffs were also allowed to continue to function in the respective capacities. B.B. Lal took over as the first Governor of post-merger Sikkim. A popular Ministry headed by Kazi Lhendup

Dorjee Khangsarpa assumed the office of the first Chief Minister of Sikkim on May 16, 1975 and every year this date is observed as *State Day* of Sikkim.

Article 371F relating to Sikkim is a great document and unique though not it commands to status as Jammu and Kashmir under Article 370, 371 and 371 A, B, C, D, E, G, H, I dealing with other States of India.

Further, Sikkim is a member of North Eastern Council (NEC) which is a new beginning for Sikkim's greater participation in the policy making process at the national level and to improve infrastructural facility and economic developments. Sikkim becoming part of NEC will not affect the sanctity of Article 371F.

The legal and Constitutional position of Article 371F relating to Sikkim is such that it supersedes all the acts and agreements made prior to the annexation of Sikkim. But, Article 371F does not affect the extension of Indian Acts, Laws, Indian Penal Code and other Legislations to be extended upon Sikkim. In the extension of such laws, there are some exceptions in implementing such laws, *e.g.*, the extension of Indian Income Tax Act, 1961 is extended in the State of Sikkim is deferred till date. Since, the successive Popular Governments and People of Sikkim are opposed to its implementation. However, the State of Sikkim follows Sikkim Income Tax Act, 1948 passed by the erstwhile regime of Sikkim *Maharaja*, Sir Tashi Namgyal.

Further, it is a great boon for the three ethnic communities of Sikkim viz., the Lepchas, the Bhutia and the Nepalis for having been exempted from the Indian income Tax, 1961 and Sikkim Mannual Tax, 1948 w.e.f. June 16, 2008. That is tday, "NO PEOPLE OF SIKKIMORIGIN HAS TO PAY INCOME TAX". This exemption has enhanced the sttus of Sikkim Subjects. It is one of the significant achievements of the SDF Government under the leadership of Pawan Chamling.

5.2 Sikkim: The Pre and Post Institutional Framework

1. The Role and Functions of Executive in Sikkim

Under the erstwhile *Maharajas* of Sikkim, the British supremacy on Sikkim was established on the basis of the 1890 Convention between Great Britain and China relating to Sikkim and Tibet. The internal administration and foreign relations of the State came under direct and exclusive control of the British Government. The Ruler or any official of the State had no relation, formal or informal with any other State.¹⁰ John Claude White was appointed the Political Officer, who usurped the authority of the monarch Thutob Namgyal and brought the administration of the State under complete control and became the virtual Ruler and administrator of Sikkim.¹¹

For nearly thirty years following the Convention of 1890 the British Resident in Sikkim, called the Political Officer, directly administered even the internal affairs of Sikkim.¹² An Advisory Council was also established. It was composed of members nominated from the influential *Kazis* generally favourable to the British Government. Under White's authority an attempt was made to set up an administration in Sikkim on modern lines as a departure from the traditional feudalism. In 1894, the British Government came to know about the wrong treatment meted out to the *Maharaja* and about the usurpation of the authority of the Sikkim *Raja* by the Political Officer. By 1895, after Thutob's return from confinement, he was given back the charge of Judiciary only. In 1905, the Political Officer handed over the Council and a part of the administration to the *Maharaja* of Sikkim, but retained the power to review any transaction.¹³

Thutob Namgyal's son Sidekong Tulku was trained and educated in Oxford. Soon after his return to Sikkim in 1908, he was appointed the Vice-President of the State Council and Advisory Body, and was placed in charge of Education and Forest Departments in addition to Ecclesiastical Affairs.¹⁴ In the reign of Sir Tashi Namgyal, Departments of Excise, Income Tax, Police and Jail were transferred to the *Maharaja* by April, 1916, in addition to

Education, Forest and monasteries upon which he exercised independent control.¹⁵ In the year 1917, the authority of the *Maharaja* was further increased by the grant of the Departments of Revenue, Stamps, Printing Press, Cooperative Societies, etc. K.P. Dewan was appointed Assistant to His Highness, He was the Chief Executive Officer, who controlled all the departments under the guidance of the *Maharaja*.¹⁶

An investiture *Darbar* was held on the 5th April, 1918, in the Palace in which Charles Bell, the then Political Officer handed over the *Kharita of Investiture* from the Viceroy and Governor-General of India conferring full powers of administration of Sikkim on the *Maharaja* Tashi Namgyal.¹⁷ The Sikkimese were jubilant on the occasion owing to the *Darbar* having received back its former privileges from the British Raj. K.P. Dewan, assistant to the *Maharaja*, was recruited to his substantive post under the Government of India on the 3rd March, 1919.¹⁸

II. Sikkim Maharaja : the Head of the Executive

Powers and Position :

The Ruler in Sikkim was the source of all authority within a few years, so far as internal administration of the State was concerned. The Government was directly under the control of the *Maharaja*, who was assisted by an organized Secretariat. The entire administration was carried on through specific departments. The recommendations of the Departmental Officers were carefully considered in the Secretariat and the decisions of the *Darbar* were issued by a Secretary to the Government, in the form of Orders, Proceedings or Letters etc.¹⁹ The administration of Sikkim under the direct rule of the *Maharaja* had been steadily adapting itself to modern style of Government. The system was based on good old patriarchal monarchy of ancient days of oriental civilization where subjects stood as children of the Ruler and with simple hill people, unaffected by the evils of democracy and elections and system worked successfully.²⁰ The State Council, constituted of the members nominated by the *Maharaja*, was there to aid and advise him in the Government of the theocratic kingdom.

Further, the annual budget went through this Council for the final sanction of the ruler. The Ruler also enjoyed prerogative power to pass any order independent of the Council.²¹ All the appointments were made by the *Maharaja* and the incumbents served in their posts till the pleasure of the *Maharaja*. But, these powers were, to certain extent, all apparent. The *Maharaja* consulted the Political Officer on all important matters, and no decision could be taken without taking the latter in confidence.²² However, a system was developed with regard to the decision making if the Council members and the Political Officer agreed on any matter, the *Maharaja* had to accept that and if the *Maharaja* and the Council members agreed on any matter, the Political Officer used to accept and execute.²³ Even if the powers were given to the *Maharaja*, the ultimate authority was retained by the Political Officer of Sikkim.²⁴

The Role and Powers of the Landlords in Sikkim :

During Thutob Namgyal's detention, Claude White liquidated the 'Private Estates', of the Royal House and the lands of loyalist elements and distributed them mainly among the pro-British elements. A number of lessee landlords were created.²⁵ The country was divided into several 'elakhas' (estates) and they were placed under the *Elakhadars* (Area holders). These *Elakhadars* were invested with certain administrative as well as judicial powers, which they enjoyed till the abolition of the lessee system in 1949. The landlords were to take care of law and order within their own *elakhas* and as such, they functioned as police officers within their respective jurisdiction.²⁶ The *Elakhadars* were authorized by the *Darbar* to arrest or detain in custody the *bastiwallas* (villagers), whom they had reason to believe, were actually leaving the jurisdiction of their *Elakhas* without paying their rent and taxes. They could detain such *Bastiwallas* for a maximum period of twenty four hours; but no *Bastiwalla*, paying land rent of Rs. 25 and above, could be detained by them.²⁷ All the *Elakhadars* and Managers of *Elakhas* of Sikkim were permitted to sell or attach movable properties of the defaulting *Bastiwallas* to the extent of *Khazanas* (revenue) due from them. However,

they should not sell or attach properties of those *Bastiwallas* whose outstanding *khazana* was less than Rs. 10 after payment of greater portion of their *khazana* or revenue to be realised.²⁸

Therefore, the *Elakhadars* were *ipso facto* subordinate Forest Officers of their estate. They maintained menial forest establishment at their own expenses and were paid in the shape of half of the royalty on timbers and other minor forest produce, sold from the reserved forest in their *elakhas* and a portion of the royalty accruing from sale of timber etc., in the *khasmahal* (Govt. forest area strictly meant for the public as per rules) areas.²⁹

Administration : The Process of Modernization :

The Ruler enjoyed his powers and position till 1950. Since, the demands for democratic Government and economic reforms, raised by the Political Parties, led to an agitation that compelled the *Maharaja* to introduce a new (cabinet) responsible system of Government in 1949. It was simply an experimental measure and also a measure to appease the agitated public. The powers and position of the Ministry was not well defined. Soon the Ministry, headed by Tashi Tsering as the Chief Minister, came in conflict with the *Darbar*. The *Maharaja* dissolved the interim Ministry appointed under the notification of the 9th May, 1949 and "having in mind the interest of peace and welfare of His Highness' people.

His Highness had agreed that the Government of India should nominate a Dewan to administer the State in His Highness's name and that the Political Officer in Sikkim should take charge of the administration in the meanwhile".³⁰ J.S. Lall, ICS, was appointed *Dewan* of Sikkim State with effect from the 11th August, 1949.³¹ In the press note, issued by the Ministry of External Affairs on the 20th March, 1950, it was Stated : "As regards the status of Sikkim, it has been agreed that Sikkim will continue to be a Protectorate of India. The Government of India will be responsible for its External relations, defence and communication and as regards internal Government, the State will continue to enjoy autonomy subject to the ultimate

responsibility of the Government of India for the maintenance of good administration and law and order. Then an officer of the Government of India was assigned to continue to be *Dewan* of the State. But, the Government of India's policy reflected as one of the progressive associations of the people of the State with its Government.³² Hence, the *Maharaja* agreed to this policy immediately after this Treaty was signed between the Government of India and Sikkim in December 1950, which granted autonomy to Sikkim relating to its internal affairs of administration, defence, protection, its territorial integrity, trade and commerce, etc.

The Executive Council of Sikkim

A Constitutional Proclamation was issued by the *Maharaja* in 1953 postulating the powers and functions of the State Council and the Executive Council. According to its system "Diarchy" was established in Sikkim by which the *Maharaja* retained some important spheres of Government exclusively with him and transferred some other spheres to the Executive Councillors who were chosen from among the elected members of the State Council. The Proclamation envisaged that "there shall be an Executive Council for the State, the members of which shall hold office during the *Maharaja's* pleasure and shall be responsible to him for the executive and administrative functions of Government".³³

The Executive Council was constituted of the *Dewan*, who was its *Ex-officio* President, and such other elected members of the State Council to be appointed by the *Maharaja* from time to time. The Executive Councillors were entrusted with the administration of the Transferred Subjects such as Education, Public Health, Excise, Markets (*bazaars*), Transport, Forest and Public Works. The Executive Councillors were to retire from the office and also the commencement of the first session of each new State Council, where they were eligible for reappointment. The *Maharaja* retained the right to vote any decision made by the Executive Council and to substitute his own decision thereof as and when required.³⁴

The Reserved Subjects which were exclusively under the control of the *Maharaja* consisted of Ecclesiastical, External Affairs, State Enterprise, Home and Police Finance, Land Revenue, Rationing and Establishment Departments.³⁵ The Executive Councillors could not deal with any of these matters. However, the *Dewan* was the sole administrator of the Reserved Subjects in the Country.³⁶

The Executive Councillors : Their Powers, Position and Appointment :

The Executive Councillors were held individually responsible for their respective departments to the Council. In the sessions of Council, the Chief Secretary submitted the reports of achievements of the Government relating to Reserved Subjects and the Executive Councillors submitted reports of their respective Departments. P.S. Tsong once raised a question in the Sikkim Council that with regard to Transferred Subjects, presumably the Executive Councillors concerned would had to resign subject to failure of their departmental responsibilities, but relating to Reserved Subjects either the Chief Secretary or the *Sidlon (Dewan)* was made accountable.³⁷

The Chief Secretary mentioned that among responsible, against whom action was usually taken in such cases which might range from simple warning to dismissal and prosecution in Court.³⁸ In reality, the Executive Councillors were responsible to the *Maharaja* as they were appointed by him, and to a great extent, it was the discretion of the Ruler as to whom he would appoint. The number of the Executive Councillors varied from time to time. In 1953 two Executive Councillors were appointed. In 1959 two Executive Councillors and three Deputy Executive Councillors were appointed. Among them, Kasiraj Pradhan was made the senior Executive Councillor.³⁹ Pradhan, of course, resigned after the declaration of the judgement of the Election Tribunal. In 1967, three Executive Councillors and two Deputy Executive Councillors were appointed in the State Council.⁴⁰

In 1970, the *Chogyal* appointed six Executive Councillors and there were no Deputy Executive Councillors that year.⁴¹ In 1973, six Executive Councillors were appointed by the *Chogyal*.⁴² Though the members

representing the Sikkim National Congress and Sikkim Janata Congress did not participate.

The power of the Executive and Deputy Executive Councillors to grant expenditure and contingent grant were fixed by the *Maharaja* as 'financial power' by which the Executive Councillors could spend Rs. 500 and the Deputy Executive Councillors could spend Rs. 100. But this power was to be exercised in respect of duly authorized item of expenditure for which there was budget provision.⁴³ The Senior Executive Councillors, the Executive Councillors and the Deputy Executive Councillors were entitled to emoluments of Rs.600 + 150 spl. Allowance. Rs. 600 and Rs. 350 per month respectively along with a house rent allowance of Rs. 75 per month.⁴⁴

The *Chogyal* approved in the year 1967 certain Rules of Business for the Executive Council and powers for the Executive Councillors, which included enhancement of financial power in so far as the Executive Councillors were authorized to sanction expenditure not exceeding Rs. 5,000/- (Rupees five thousand), and the Deputy Councillors were authorized to sanction expenditure not exceeding Rs. 2,500/- (Rupees two thousand and five hundred) in each individual case as grants other than contingent grant and maintenance of vehicle grant. Regarding contingent grant was concerned the provision of 1958 was retained.⁴⁵ These grants could be made provided there was specific provision in the budget and proposals of grants were processed through the Finance Department. The Executive Councillors were also to see that the proposals did not involve the *Darbar* in any recurring liability. Any proposal for expenditure of an urgent nature, not provided for in the budget, must be proceeded through the Finance Department for obtaining approval of the *Chogyal*.⁴⁶

So far the legislation procedure of Sikkim as established norm, was concerned, the Executive Councillors were authorised to legislate on Transferred Subjects. Any such proposal should unanimously be passed in the Executive Council, as far as possible in case of differences of opinion, the matter had to be referred to the *Chogyal* for final order. If there would be a

difference of opinion between the President and the Executive Councillors, the President would refer the matter to the *Chogyal* for his decision. In pending matters, the President was competent to take action in urgent cases, however, he was to obtain the *Chogyal's* orders at the earliest. The Executive Councillors were bound to keep the *Chogyal* informed of all the important matters through the Principal Administrative Officer of the country.⁴⁷

The Executive Councillors were to submit to the *Chogyal* for approval their itinerary before a week through the PAO. The Executive Councillors were authorized to sanction casual leave, privilege leave and leave without pay to Class II and III Officials of their respective Departments. All cases of leave, transfer, increment, promotion etc. of Gazetted and Class I officers would be referred to the Establishment Department by the Head of Departments through the Executive Councillors. The Executive Councillors were to forward the tour programmes of the Head of Departments to the Pay and Accounts Office.⁴⁸

Despite of the fact, the Executive Councillors were placed in charge of Transferred Subjects. The policy decisions were, in fact, taken by the *Dewan* (who as later designated as the Principal Administrative Officer and a *Sidlon*) in consultation with the *Chogyal*. The Executive Councillors were to execute those decisions through the Departmental Officers under them.⁴⁹ While taking part in the debate in Sikkim Subject Regulation Act of 1961, one of the members expressed his surprise that the Executive Councillors could do nothing to prevent such regulation. He also criticised that the Executive Councillors were nothing, but mere clerks.⁵⁰

Further, "The Executive Councillors, though elected by the people, but nominated by the Ruler, have no real executive powers, nor have they been vested with the powers to which they are entitled. This, it would appear, has been motivated with the specific idea of bringing disrepute to the people's representatives in the eyes of the people and thereby disrupts any progress towards the introduction of democracy in Sikkim".⁵¹

A Brief Sketch on Administration in Sikkim :

John Claude White took pains to lay down the basic administrative structure and with the passage of time it adapted itself to modern forms of Government. By 1908, the post of the Private Secretary to the *Maharaja* was created, to help, and assist the *Maharaja* to administer the departments under his control.⁵² Since, the power of *Maharaja* was successively increased by 1916. Another post of Assistant to His Highness was created. He was the Chief Executive Officer of the State, who was to control all the departments under the *Maharaja*.⁵³ This post was, however, abolished in 1919.⁵⁴ Later, the *Maharaja* was assisted by an organized Secretariat and the entire administration was carried on through specific Departments. All other departments were controlled by three secretaries, besides the State Engineer who also acted as the Secretary for the Public Works Department of the State.⁵⁵ Of the three Secretaries, the General Secretary dealt with Police, Arms and Ammunitions, Land Administration, Registration, Cooperatives, Forest, Political i.e. Chamber of Princes etc. Miscellaneous and Stationery and so on and so forth.

The Judicial Secretary dealt with Education, Medical, Ecclesiastical, Jails, Printing Press, Income tax, Excise, Bazaars, Veterinary, Stamps, Census and Miscellaneous (internal dealings) etc.⁵⁶ Since, 1st April, 1940, the State Services and Provident Fund Rules came in to force.

It is to be noted here that the decision of the *Maharaja* in the case of doubt in the interpretation of any rule was made final. The State servants were divided into four grades⁵⁷; the first grade included officers of the State service drawing salary exceeding Rs. 650; the second grade included officers drawing salary between Rs. 150 and 650; the third grade included all other State servants in superior service, and the fourth grade included police constables, wardens, forest guards, excise peons and other State servants. The retirement age was fixed at 55 years as optional and 60 years compulsory.⁵⁸ Sikkim *Darbar* reserved the right to retire an employee or his attaining the age of fifty five as the rules were enforced.⁵⁹

In 1949, an officer given on loan by the Government of India, was appointed as *Dewan*. The *Dewan* was made in charge of administration of the State. The modernization of the administrative system achieved a steady progress. Landlordism was abolished in 1949 also the magisterial powers of the landlords. Several *Tahsils* were established and Revenue Officers were appointed. The rate of taxes was also reduced to some extent to be affordable by the common subjects.⁶⁰

Later, for administrative purpose, the State was divided into four districts with their respective Head quarters. The District Officers were appointed who also functioned as Magistrates. Apart from the District Officers, Deputy Development Officers and Inspectors of Land Revenue were also placed in the District Service.⁶¹

Several Departments were created from the year 1973 and later a full-fledged Secretariat started its functioning under the Chief Secretary. The post of the Chief Secretary was created in 1954 and T.D. Densapa was appointed as the first Chief Secretary of Sikkim.⁶² After the retirement, D. Dadul was appointed the next Chief Secretary. Later, T.S. Gyaltzen became the Chief Secretary in 1973.⁶³ In 1954, the post of a Development Commissioner was created and His Highness appointed the *Maharaj* Kumar Jidgal Tsewang Namgyal to the post.⁶⁴ The Departmental Secretaries were under the Chief Secretary. The Chief Secretary was also the Head of the District Administrative System functioning through four District Officers.⁶⁵ A number of departments were there headed by the Directors. The Education Office was re-designated as the Directorate of Education.⁶⁶ The office of the Superintendent of Police was designated as Police Commissioner.⁶⁷ There were Director of Health Services, Conservator of Forest as well as a Financial Advisor and a Chief Accounts Officer. A new Department of Audit and Accounts was established in 1971, with the post of an Auditor General in the rank of Secretary to the Government.⁶⁸

The *Dewan*, was however, the over all in-charge of the administration. "As President of the two Councils and Administrator of the

Reserved Subjects, the *Dewan* was placed in a position of commanding power. The reforms as envisaged by J.S. Lall necessitated the exercise of the *Dewan's* authority over a wide field of administration."⁶⁹ This post of *Dewan* was designated as Principal Administrative Officer and later as *Sidlon*.⁷⁰

The Chief Secretary, the Secretaries and the Directors were subordinate to the *Sidlon* and they worked under his orders. The village administration was carried out through the Panchayats established since 1966.⁷¹ Earlier, the *Mandals* (Village headman) of the villages were given certain powers so that they could be the custodians of law and order. Besides their legitimate duties connected with land revenue, the *Mandals* were to help the Government in all matters pertaining to development and welfare schemes in their blocks and villages.⁷² The Last *Sidlon* was I.S. Chopra. When Chopra was relieved of his responsibilities, the *Chogyal* directly assumed the administration of the State in 1972.⁷³ In December 1972, the *Chogyal* found it expedient to appoint an adhoc Council of Senior Officers to look into the urgent and important matters of policy decisions affecting the country and the administration, including the General Election during his absence. As such, he constituted a Special Council with D. Dadul (in his absence T. Gyaltshen), J.T. Densapa, M.M. Rasaily and M.P. Pradhan. All decisions, taken by the Special Council, would be interim in nature subject to the *Chogyal's* review and/or ratification or modification or alteration.⁷⁴

"Though Sikkim was a Protectorate of India prior to its admission as an "Associate State" by and under the Constitution (Thirty Fifth Amendment) Act, 1974 and its subsequent incorporation in the Union of India as a component State by and under the Constitution (Thirty Sixth Amendment) Act 1975, the Ruler of Sikkim wasn't a limited Ruler in regard to its internal administration – limited neither by any written Constitution nor by any Legislature. As regards its internal governance and administration, the Ruler was the Supreme Legislature, the Supreme Executive and the Supreme Judiciary and as such all his orders, however issued, were equally effective and were to govern and regulate the affairs of the State and its citizens."⁷⁵

The Powers and Position of the *Chogyal*

The Act specified the powers and position of the *Chogyal*. It provided that the *Chogyal* should take precedence over all other persons in Sikkim and he should continue to enjoy the honour, position and other personal privileges hitherto enjoyed by him. The *Chogyal* should exercise his powers and perform his functions in accordance with the provisions of the Government of Sikkim Act and nothing contained above would affect this provision.⁷⁶ The *Chogyal* was functioning more as a nominal executive or ornamental head.

TABLE – I

THE RULERS OF SIKKIM (1641 – 1975 A.D.)

Sl. No.	Name	Year of accession	Year of demise
1	Phuntsog Namgyal	1641	1670
2	Tensung Namgyal	1670	1700
3	Chagdor Namgyal	1700	1717
4	Gyurmed Namgyal	1717	1734
5	Namgyal Phuntsog (II)	1734	1780
6	Tenzing Namgyal	1780	1793
7	Tsugphud Namgyal	1793	1863
8	Sidkeong Namgyal	1863	1874
9	Thutob Namgyal	1874	1914
10	Sidkeong Tulku	1914	1914
11	Tashi Namgyal	1914	1963
12	Palden Thondup Namgyal	1963	1982

Source : Deokota, Bikash, *Know Your Sikkim*, Gangtok, 2007, p.12.

Administration : The Post-Merger Period

Legislative Powers

The *Chogyal* exercised legislative powers to summon the Assembly on the advice of the Chief Executive, who was the President of the Assembly. The *Chogyal* addressed the Assembly after intimating to the

President of the Assembly. The *Chogyal* or any person nominated by him was to administer oath of affirmation to the members of the Assembly.⁷⁷ The powers of the Assembly to discuss, to make recommendation or to make laws had been limited to twelve specific spheres. The *Chogyal* on the recommendation of the Government of India might add, by notification in the Sikkim *Darbar* Gazette, any other matter, which would thereafter be deemed to have been included within the jurisdiction of the Assembly.⁷⁸

Like in Indian style, when a Bill was passed by the Assembly, that it should be presented to the *Chogyal* and the *Chogyal* could either assent to the Bill or withhold the assent there from. In the latter case, he should return the Bill as soon as possible to the Assembly for reconsideration. If the Bill was again passed by the Assembly and presented to the *Chogyal* for assent the *Chogyal* must give his assent to the Bill. The *Chogyal* had the power to reserve certain Bills for the consideration of the Government of India according to the nature and kind of Bill to be passed.

Executive Powers

All executive actions of the Government of Sikkim, taken in accordance with the provisions of the Government of Sikkim Act, 1974, should be expressed to have been taken in the name of the *Chogyal*. The *Chogyal* was to appoint the Chief Executive nominated by the Government of India. The Chief Minister and other Ministers were to be appointed by the *Chogyal* on the aid and advice of the Chief Executive. The Chief Executive was to submit all important matters to the *Chogyal* for his information and his approval. If there was any difference of opinion between the Chief Executive and the *Chogyal* in respect of any matter, it had been referred to the Government of India for further decision and the decision of the Government of India would be final.

A confrontation appeared when K.C. Pradhan, Minister in charge of Agriculture and Animal Husbandry, was dismissed from the Ministry with effect from 18th March, 1975.⁷⁹ The *Chogyal* wanted that the Chief Minister must assign reasons for dismissing K.C. Pradhan from the Ministry, but the

Chief Executive maintained that it was not necessary to give any specific reason. Again, the *Chogyal* maintained that the terms 'Darbar' and 'Sikkim Darbar' mentioned in various acts, rules and regulations which were in force in Sikkim, meant the Government of Sikkim and not the *Chogyal*. Once again a difference of opinion arose between the *Chogyal* and the Chief Executive about the authority, as to whom the cases of the Judicial Department requiring higher orders in Government should be submitted. The *Chogyal* maintained that those should be submitted to him. The matter was referred to the Government of India and the Government of India opined that the Chief Executive as the head of the administration of Sikkim had full control over the Judicial Powers. Hence, all cases relating to Judicial Department of Sikkim requiring high-level Government orders such as those pertaining to appointments and transfers and others should be submitted to the Chief Executive and not to the *Chogyal* of Sikkim.⁸⁰

Situation arising out of any difficulty in giving effect to the provisions of the Government of Sikkim Act, 1974, the *Chogyal* in consultation with the Chief Executive, by order, could do anything not inconsistent with this Act, which would appear to be expedient or necessary for the purpose of removing the difficulty. The *Chogyal* was also to make rules for the allocation of business to the Ministers and for more convenient transaction of business on recommendations of the Chief Executive taken in consultation with the Chief Minister. The Government of Sikkim Act made the *Chogyal* a Constitutional Head of the State. His supreme authority in the internal governance of the State was gone and he was subjected to the advice of the Chief Executive and the Council of Ministers. He was also bound to the decision of the Government of India, in case there was a difference of opinion between him and the Chief Executive. Thus, the Institution of the *Chogyal* was transformed into a mere titular one very practically speaking.

The Chief Minister *vis-à-vis* the Council of Ministers

The Government of Sikkim Act also provided for a Council of Ministers with one of the members thereto as the head who would be

designated as the Chief Minister and others as members of the Council of Ministers.

The Chief Executive

The Chief Executive was placed at the head of the administration in Sikkim. In fact, he was an officer of the Government of India placed in that high post formally being appointed by the *Chogyal*. His functions were to ensure that the responsibilities of the Government of India, accrued as a result of the Tripartite Agreement of the 8th May, 1973, or any other agreement entered into between the *Chogyal* and the Government of India whether before or after the commencement of this Act or the special responsibilities of the Chief Executive entrusted to him through the "Tripartite Agreement", were duly discharged (*for details - Appendix No. II*).

The Government of Sikkim Act, 1974 further provided that the Chief Executive should have all the powers necessary for the discharge of his functions and responsibilities and the executive powers in Sikkim would be so exercised as to ensure compliance with any decision taken or orders or directions issued by the Government of India in the due discharge of its responsibilities. The Chief Executive had also been empowered to take action, in the performance of the function, on matters of administrative functions allocated to a Minister, though he was to act in consultation with the Minister in respect thereof. He was to take approval of the *Chogyal* for actions proposed to be taken, though he could take action in emergency without prior approval of the *Chogyal*. But, he should get such action approved as early as possible. Thus, the Chief Executive was virtually made all powerful in Sikkim. Whether in the matter of policy decision or in the matter of execution of policies, the voice of the Chief Executive was all that mattered. He was made the President of the Assembly and had the power to regulate the jurisdiction of the Assembly also. Thus, the Chief Executive had been vested with real Executive and Legislative Powers. The Council of Ministers was made completely subordinate and subject to wide control of the Chief Executive. That was why, it was alleged by many people in Gangtok, that the *Chogyal*

was made a Constitutional head, but the Chief Executive was made a real Chogyal or Ruler in the Himalayan Kingdom.

5.3 Kazi Lhendup Dorjee Khangsarpa :The Government, Administration and Politics

In accordance with the Government of Sikkim Act, 1974, a five member Ministry was formed with Kazi Lhendup Dorjee as the Chief Minister on the 23rd of July, 1974.⁸¹ Apart from Kazi, the other four Ministers were Rinzing Tongden Lepcha, B.P. Dahal, Dorji Tsering and K.C. Pradhan. As the confrontation of the Ministry with the *Chogyal* was precipitating dissatisfaction over the Government of Sikkim Act, 1974, among the MLAs and some of the Ministers at the Cabinet Rank. The Sikkimese leaders felt that virtually they had not been given any real power. Before the adoption of the Government of Sikkim Bill by the Assembly, important youth leaders like R.C. Poudyal, N.K. Subedi, Karma Peda, K. N. Upreti and others, went on hunger strike, on the ground that the Bill was far from being satisfactory. When this Act was put into actual working, this feeling raised high among the leaders. The contradictions of the Sikkimese leaders were really bewildering. The exciting thought of getting rid of the *Chogyal* was inciting them to insist on demanding closer ties with the Political institutions of India on the one hand, while fermenting displeasure over the Government of Sikkim Act on the other. Even after the Associate status was granted to Sikkim, this feeling continued. The position and power of the Chief Executive *vis-à-vis* the Council of Ministers was so apparent that by March, 1975, a move was there demanding the transfer of Home, Finance and Establishment portfolios from the Chief Executive to the Chief Minister. It is said that a Charter of Demand was prepared which solicited the reduction of the power of the Indian Government with regard to Sikkim, reduction of the powers of the Chief Executive and diminution of the latter's role to only in advisory capacity. It also demanded withdrawal of three IAS Officers on special duty including the most important Cabinet Secretary.⁸² It hailed the reported statement of the *Chogyal* to hold dialogue with the Chief Minister. A signature campaign was started and at least 18 legislators including a Minister signed it. It was gathered that, as soon as the authorities got him of it, they promptly acted and

insisted on the signatories on withdrawing their signatures. In the emergent meeting of the Legislature Party held on the 16th March, 1975, the entire move was ultimately repudiated.⁸³

The confrontation between the *Chogyal* and the Ministry was mounting. Even though the *Chogyal* had given an assurance to the Prime Minister to act as a Constitutional head and to honour the aspirations of the people, his activities and utterances in Gangtok were alleged to have been contrary to that.⁸⁴ The Sikkim Assembly itself was determined to discuss the future of the *Chogyal* unless the *Chogyal* adhered to his Constitutional role. According to the Ministry, the *Chogyal* had so far not seemed capable of discharging his Constitutional obligations. He had been firmly opposed to Sikkim Assembly's request for participation in India's Political institutions and had mounted a campaign against the Constitutional Amendment Bill intending to give Sikkim an Associate Status.

In his communication to the Government of India, the *Chogyal* claimed that Sikkim had never been a part of India geographically, ethnically or racially. The *Chogyal* contended that Sikkim was not like the other 500 odd Princely States. The Government of India also did not equate Sikkim with former Indian Princely States and that was why it signed a separate Treaty, the Treaty of 1950 with it.⁸⁵ The conflict that was generated over the issue of Government of Sikkim Bill, between the *Chogyal* and the Sikkim Congress, continually went on deteriorating the Political situation in Gangtok.

During the period, the role of the Chief Executive B.S. Das was really crucial. Some expected that his role should be one of a link between the *Chogyal* and his people until such time as the two had sufficiently overcome past prejudices to work together in harmony.⁸⁶ As the head of the administration, Das was expected to reconcile the two principal contenders, the Palace and the Sikkim Congress. Mutual distrust and misunderstanding between the *Chogyal* and the Council of Ministers were gradually widening with the passage of time. B.S. Das was replaced by B.B. Lall as the Chief Executive in September, 1974, the contradictions between the *Chogyal* and the

Cabinet could be said to have precipitated during his time. It is said that the conflict was not an old fashioned struggle between monarchy and republicanism, since for the time being at least, the throne had little Political weightage. Opposition could only be directed against the Chief Executive in whom was vested all real authority.⁸⁷

The *Chogyal* witnessed himself the erosion of his power suffered from humiliation and insult, still he fought, what he said, not for his interest, but for the interest of the Sikkimese and that even by simply demanding to preserve its identity and nothing more. But, the leaders of the Sikkim Congress interpreted each of his actions as contrary to the aspiration of the people and smooth development of democratic Government in Sikkim. In February 1975, the Ministry was expanded by including Nayan Tsering Lepcha and B.P. Kharel as Ministers.⁸⁸ In March, 1975, K.C. Pradhan was dismissed from this Ministry.⁸⁹ However, the conflict between the *Chogyal* and the Political leaders came to such a point that the Sikkim Assembly adopted resolutions seeking abolition of the Office of the *Chogyal* and demanding merger of Sikkim with India. With this, for ever, came to an end of 334 years old Namgyal dynasty, witnessing the Mount *Khang-chen-Dzonga* (the Guardian Deity) of the Himalayan kingdom of Sikkim in the ocean of the Indian National Politics.

III. The Legislature : Sikkim Legislative Assembly

It was conceived and believed that the *Maharaja* of Sikkim was both temporal and spiritual head. The nature and form of Government in the erstwhile feudal monarchy in Sikkim was entirely different from that is existing today. The King was assisted by a National Assembly called the **LHADE-MEDE**. It was an Assembly of monks and the composition comprising of different ranks such as Chutinpa, Lama Dorjee, Omze, Lohpon and influential gentry like the village headmen and other dignified people of Sikkim. The *Kazis* selected its members and later by the Private Secretary to the *Maharaja*. The strength of the *Lhade-Mede* was changing from time to time and had no fixed number. Usually, it met in times of necessity and to

discuss the issues of national importance such as ill omens affecting the country, marriages of members of the Royal family and death of a *Maharaja*. Therefore, it was no advisory body and the *Maharaja* was not bound by its advices, but was normally accepted by the King and the meetings were held at Palace convened by *Maharaja* as and when he felt. The last meeting of the *Lhade-Mede* was held before merger of Sikkim to finalize the marriage of Palden Thondup Namgyal. By and large, the *Lhade-Mede* continued to function with the changes of time.⁹⁰

Very truly speaking, an organized Governmental system in Sikkim was introduced during the time of the British-India rule under John Claude White – the first Political Officer appointed in the end of the 19th century. It was then known as the Council and the *Maharaja* was present in its meetings.⁹¹ The Council was consisted of nominated members and the sessions of the Council were held at irregular intervals. The *Kazies* and landlords were nominated as members and were belonging to Sikkimese Bhutia, Lepcha and Nepali communities. By 1935 the Council consisted of nine members to represent perhaps all interests and sections. It used to meet at least thrice a year and especially in the first meeting it was to analyse the budget to be sent for the approval of the *Maharaja*.⁹² The Emergency Session of the Council was convened at any time of the year at the will of the *Maharaja* of Sikkim.

Later under popular demand, the *Darbar* had to include six representatives among the *ryots* as additional members of the State Council. But, unfortunately as they were dissatisfied, an agitation was launched in 1949. That movement led to appoint an Indian Officer as a *Dewan* and a move to allow active participation of the people in the Government. As a result of it, members were nominated from Political Parties and the *Dewan* was made the President. It once again led to the formation of Panchayats and to hold elections to constitute the future Assembly or Legislative Council in Sikkim.⁹³

In accordance with the provisions of the Proclamation 1953, the State Council had strength of twelve elected members. Six of them were belonging to Sikkim Bhutia-Lepcha communities and remaining six of them to

the Sikkim Nepali community. The President of the Council was appointed by the *Maharaja*.⁹⁴ The *Dewan* of Sikkim was officially called as Principal Administrative Officer or *SIDLON/SILDON* of Sikkim who presided over the meetings of the Council.

The members of the Council were elected on the basis of *Universal Adult Franchise*. Besides the above 12 elected members, five members were nominated by the *Maharaja*.

Table - II

Distribution of Seats in Sikkim State Council in the year 1958	Seats Allocation
Sikkimese Bhutia-Lepchas *	06
Sikkimese-Nepalis	06
<i>Sangha</i> Seat	01
General Seat	01
Nominated by the Chogyal	06
Total	20

Source : Kazi, Jigme N., *Spotlight on Sikkim*, "No Seat - No Vote", Vol. 1, No. 2, August 1983, Gangtok, published and printed at Eastern Express Print Shop, Tibet Road, Gangtok (Sikkim), p.8.

By 1967, the number increased to 24 and the split up was as follows⁹⁵

Table - III

Distribution of Seats in Sikkim State Council in the year 1967	Seats Allocation
Sikkimese Bhutia-Lepchas	07
Sikkimese-Nepalis	07
Nominated by the Chogyal	06
<i>Sangha</i> Seat	01
General Seat	01
Tsongs (Limboos)	01
Scheduled Castes of Nepali origin	01
Total	24

Source : *Ibid.*, p.8.

The Council was to meet twice a year and the budget session was to be held in February-March every year. The Autumn Session used to take place in September. The *Maharaja* of Sikkim exercised powers to summon the Special Session prorogues and dissolves the Council. Its tenure was fixed at 4 years unless dissolved sooner by the *Maharaja*.

The second Council was constituted in 1958 and the third was in 1967 respectively. The rest of the elections to the Council were held once in 4 years. The decisions of the Council were based on majority vote and the President exercised a casting vote. The Council was constituted on Party lines and had treasury and opposition benches. Therefore, the decisions were taken on the basis of majority vote of the members present and voting. Normally the Council was addressed by the *Maharaja* and it was allowed by *Maharaja* some other person to preside over the meetings. R.N. Haldipur, T.D. Densapa, M.P. Pradhan, I.S. Chopra and D. Dadul presided over the meetings of the Council. The Nepali language was used in the proceedings. But it was opposed and therefore, it was decided that no particular language was to be adopted as the language of the House. The members were allowed to speak in a language in which they were free to address the House. The records were kept in English and the work of the House was carried on by order paper. The business of the House was carried on and based on Questions, Resolutions and Legislations.⁹⁶

Further, the State Council had the power to enact laws subject to the assent of the *Maharaja* for all practical purposes and good governance. It had powers to enact laws on the matter enumerated under Reserved Subjects viz., Police, Finance, State enterprises, land revenue establishment, food supply and rationing. But, it had no powers to discuss on the matter pertaining to *Maharaja*, royal family, external relations and relations with Government of India, appointment of the Dewan and the Members of the Judiciary.⁹⁷

Relating to Transferred Subjects such as health, education, agriculture, PWD etc., a member of the Council had to give a fortnight notice of intention to introduce and move a bill, followed by vote on admission and

discussions. Amendments were also to be tabled followed by vote on admission and discussions. The Council by vote used to pass or reject the Legislation. Thus, the Bill became Regulation, if and when it was assented by the *Maharaja*. The Council was unable to legislate on any matter relating to Reserved Subjects. However, the budget was placed and voted upon every year. The *Maharaja* had the power to certify, if any budget estimate was rejected, where it would become a part of the sanctioned estimate. Another important aspect was that expenditures chargeable on the revenue of the State were not subject to the vote of the Council, in particular on civil list and expenditure on the household department of the *Maharaja*, pay and allowances of the *Dewan*, members of the Judiciary and Officers on deputation from the Government of India.

The swearing-in ceremony of the newly constituted Council used to take place at the palace Monastery (*Tsuk-la-khang*) and was addressed by the *Maharaja* at every inaugural session. The head Lama of Pemayangtse Monastery used to conduct the administration of oath and secrecy in the midst of chanting of prayers to the newly elected members of the Council.

The members of the Council were made in-charge of various departments and in the inaugural session the *Maharaja* used to outline the achievements and the members submitted the programmes report of their departments. The then Chief Secretary was made in charge to present reports of progress on Reserved Subjects before the Council. The then President of the Council, N.K. Rustomji in fact, made it clear in 1956 that the Councillors should be fully committed and associated with the problems of administration and administrative machinery, besides achievements and merits. Over and above problems of administration, the Councillors were bound to tender advice and make valuable contributions for shaping up policies, which were in the best interest of the *Darbar*.⁹⁸ Further, it was stated that the representatives of the Council were to be made aware of the implications of the developmental programmes to carry out in order to evolve new policies, which would be confining to the truest interests and development of Sikkim. Thus, in this way the resolutions were moved by the Councillors to attract the attention of the

Government to the specific and general problems of the Constituencies in Sikkim. For which the *Darbar* also used to give assurances to fulfil the promises.

It should also be borne in mind that there were certain limitations e.g., the developmental Plans were not requiring the approval of the Council, but it was consulted with the Council prior to the finalization of the schemes. As far as legislations were concerned, the Bills were introduced by the Members of the Executive Council on the floor of the House. Sometimes select committees were constituted to consider the bills and the committee was constituted from among the Councillors. However, the State Council could not become the main Legislative Organ on the matters relating to Transferred Subjects and nothing much was done in it. Still the Motor Vehicle Bill, Gangtok Rent Control Bill, Excise Bill, Drug Control Bill, Eviction Bill – I of 1956 etc. were some of the Bills passed by the Council. It is surprising to note that the Excise Bill placed before the Council in 1957 was passed in 1970. It was because of many reasons and one of the main reasons was that the election to the State Council took place in 1967 after a long gap i.e., in the year 1967.⁹⁹ The Council was the highest body to deal with and to settle any matter related to objectionable publications and any defamatory statement on the *Maharaja*. In this regard Kazi Lhendup Dorjee was dealt with and was even dismissed from the Councillorship in 1972. The President of the Council who was the Principal Administrative Officer and later *Sidlon* of Sikkim to administer Reserved Subjects exercised commanding power. At the same time, it was considered that the *Maharaja* as the source of all Legislative Powers, the Executive Councillors were under the control of the *Dewan* and the real decision maker was the *Darbar*. The members had powers to ask questions and move resolutions, which were related for the general welfare of the people. Later the Tripartite Agreement of 1973 laid down the basic principles of a new system to establish a responsible Government in Sikkim. It provided for an Assembly with increased Legislative Powers for the Elected Representatives. This Assembly was elected every four years on the basis of *one man – one vote*. The election to the Assembly was conducted by the Election Commission of India on request of Government of Sikkim. The *parity*

which was already in vague was to be strictly adhered to for the Bhutia-Lepcha communities. In accordance with the principles of Tripartite Agreement *Chogyal* issued a Proclamation in December 1973 for the election of New Sikkim Assembly.¹⁰⁰ By 1974, the *Chogyal* proclaimed the Representation of Sikkim Subjects Act, 1974. This Act provided for the first time a 32 member Assembly for Sikkim. It provided 15 reserved seats to Sikkimese Bhutia-Lepcha, 15 for Sikkimese Nepalis, one seat for the *Sangha* and one for the Scheduled Caste Nepalis.¹⁰¹ The election to the New Sikkim Assembly origin was held in April 1974 and the result was as under :

Table - IV

Sl. No.	Name of Contesting Parties	Results
1.	The Sikkim Congress	31
2.	The Sikkim National Party	01
	Total	32

Source : *Ibid.*, p.15.

The newly elected Assembly met in May 1974 and the *Chogyal* in his inaugural address reminded the responsibilities of the elected members to serve the Welfare of the people and preserve their interests. The Assembly adopted resolutions reaffirming the principles, purposes and provisions of the May 8, 1973 to provide a responsible Government and closer relation with Government of India. Further, the Assembly resolved to make the *Chogyal* a Constitutional head and requested to the Government of India to depute a Constitutional Advisor for giving legal and Constitutional framework, besides defining the powers of the *Chogyal*, Executive Council, Chief Executive and the Assembly.¹⁰²

Sikkim Assembly as in the form of Associate State of India, 1974.¹⁰³ A draft Constitution was adopted by the Assembly and was assented by the *Chogyal*. The result of which came out the Government of Sikkim Act, 1974. This act provided for an Assembly constituted of the members elected

by the people on the basis of *one man – one vote* and *Universal Adult Franchise* to be elected for every four years unless dissolved earlier. It was summoned by the *Chogyal* on the advice of the President of the Assembly. The *ex-officio* President was the Chief Executive who performed these functions. B.S. Das was the first President of the Assembly from May 1974 to October 1974 followed by B.B. Lal and C.S. Roy, October 1974 to September 1977. There was a provision to appoint a Deputy Speaker, who would act as the Speaker, in the absence of the President. The *Chogyal* used to address the Assembly. There were qualifications and disqualifications prescribed to the members of the Assembly. The disqualifications were placed before the *Chogyal* and his decision was final on the matter subject to opinion sought by him from the Election Commission and election authority specified by the Government of India. The 1974 Act provided that the Assembly powers to make accommodations or make laws for the whole or any part of Sikkim with respect to any of the following matters : Education, Public Health, Excise, Press and Publicity. Transport, Bazaars, Forests, Public Works, Agriculture, Food Supplies, Economics and Social Planning including State enterprises and Land Revenue. The Assembly had the right to discuss and make recommendations with respect to matter not enumerated in the Sub-Section which may from time to time be referred by the Chief Executive. The *Chogyal* on the recommendation of the Government of India, may by notification in the Sikkim *Darbar Gazette*, could add any other matter to the above list. A Bill duly passed by the Assembly was to be presented to the *Chogyal*. The *Chogyal* had the power to assent the Bill or to withhold his assent. If the *Chogyal* withheld his assent, he used to return the Bill to the Assembly to incorporate any suggestion or amendment. In case the Assembly within a period of three months again had passed that Bill with or without amendment presented to the *Chogyal* for assent, then the *Chogyal* was forced to give assent to such Bills. Again the *Chogyal* was exercising power to reserve any Bill for the consideration of the Government of India or any of the special responsibilities of the Chief Executive and used to act according to the decision of the Government of India. The Assembly according to the Government of Sikkim

Bill 1974 had no power to discuss or ask question on any of the matters relating to :

The *Chogyal* and members of the ruling Party, any matter pending before a Court of Law; appointment of the Chief Executive or members of the Judiciary, any matter which was exclusively the responsibility of the Government of India, whether under this Act or under any agreement or otherwise. Later, a Council of Ministers was formed and it requested the Government of India to do the needful to expedite Sikkim's participation in the Political Institutions of India. The result was that Sikkim was made an Associate State of India vide The Constitution 36th Amendment Bill/34th Amendment Act 1974.¹⁰⁴ This Act allotted one seat each in the House of the People (Lok Sabha) and one seat in the Council of the State (Rajya Sabha).

The Post Merger Administration of Sikkim

The Sikkim Government Rules of Business vide notification no. H (GA) XIV/75/ 16th May 1975, stated that, "The Governor of Sikkim was pleased to make the Sikkim Government Rules of Business conferred vide clause 3 of Article 166 of the Constitution of India. According to which each department of the Secretariat shall consist of the Secretary to the Government of Sikkim who shall be official head of the department and of such other officers and servants subordinate to him as the State Government may determine. The work of a Department was divided between one Secretary sometimes. A Minister-in-charge of a Department shall be primarily responsible for disposal of the business pertaining to the department. Further, no Department shall without previous consultation with the Finance Department authorise any orders. The Finance Department shall after previous consultation with the Home Department, any order which relate to number of grading or cadre of posts or other emoluments or other conditions of service or posts; involve the addition of posts or abolition of a post from the public service or the authorised emoluments of any post; involve the sanction of allowances or special or personal pay for any post or class of posts; involve an

expenditure for which no provision has been made in the Appropriation Act, etc.

The Chief Secretary shall appoint the Council and shall be presided over by himself. The Secretary to the Council shall prepare a record of the decision. The decision of the Council relating to each case shall separately recorded and after approval of the Chief Minister shall be placed with the record of the case and a copy of the approved draft shall be sent to the Governor.

The Departmental disposal of business comprises of General rules, Finance Department Rules, Rules of Law Department and Special responsibilities of the Governor.

The special responsibility of the Governor runs thus where the Government has, in the exercise of special responsibility under clause (g) of Article 371 F, may pass any order, or call for any case, paper, report and the person concerned shall comply with such requisition without delay. In the same way with effect from 16th May 1975 the entire provisions of the Constitution of India was applied in the State of Sikkim.¹⁰⁵

(For details, please see Appendix – IX)

Before 1979 and 1994 there were 37 departments and at present we find more than 40 departments, 18 Public Sector undertakings, State Bank of Sikkim in various districts, Sub-Divisions and some important towns.

The top officials belonging to IAS, IPS, IFS and SCS (State Civil Service) and other allied services, Section Officers, OS, UDC, LDC, Peons, *Chowkidhars*, *Safai Karmacharies* etc., are estimated to be 25,000 (employees). The Police personnel and school teachers are too many. Beside, we find a number of MR and Work-charge employees. Most of the Government servants are local people, but gradually the Departments are going to be headed by AIS officers (including Chief Secretary of the State other than IAS Officers), College Lecturers, some school teachers,

Officers/people with specialisation and Forest officials. At present, we don't find deputationists either from Centre or from other States serving in Sikkim.

Since 2004 some of the departments are renamed and the departments as a whole are as follows :

1. Animal Husbandry L.F. & VS Deptt.
2. Fisheries Directorate.
3. Building & House Deptt.
4. Commerce and Industries Deptt.
5. Directorate of Handicrafts & Handlooms.
6. Co-operation Department.
7. Cultural Affairs & Heritage Department.
8. Department of Personnel ADM, REF & TRG, Public Grievances, Career Option, Employment Skill Development & C.M.'s Self Employment Schemes.
9. Dev. Planning E.C & NEC Affairs Department.
10. Directorate of Economics, Statistics, Monitoring and Evaluation.
11. Ecclesiastical Affairs Department.
12. Election Department.
13. Energy and Power Department.
14. Excise (*Abkari*) Department.
15. Finance Revenue & Expenditure Department.
16. Food & Civil Supplies & Consumer Affairs Department.
17. Food Security & Agriculture, Horticulture & Cash Crop Department.
18. Forest : ENV & Wild Life Management Department.
19. Health Care H S & Family Welfare Department.
20. Home Department.
21. Police Department, Sikkim Police.
22. Human Resource & Development Department.
23. Information and Public Relations Department.
24. Information & Technology.
25. Irrigation & F C Department.
26. Land Revenue & Disaster Management Department.

27. Law Department.
28. Labour Department.
29. Mines, Minerals & Geology Department.
30. Parliamentary Affairs Department.
31. Printing & Stationery Department.
32. PIME, DONER, NECA, CCS PROGRAMME, E & M Department.
33. Roads and Bridges Department.
34. Rural Management & Development Department.
35. Science & Technology.
36. Sikkim Legislative Assembly Department.
37. Social Justice, Empowerment & Welfare Department.
38. Sports & Youth Affairs Department.
39. Tourism Department.
40. Transport Department.
41. Urban Development & Housing Department.
42. Water Security & PHE Department

Besides the above, we find Offices of the District Magistrate in all the four districts, Sub-Division Offices, Block Development Offices and at the grass root level decentralised two Tier Zilla and Gram Panchayat Units. The State Government has established twenty four Block Administrative Centres, one in each Assembly Constituency and rest 07 in the process of setting up at the earliest so as to decentralise administration from the District to the Block Level. A new innovation in administration contributed by Pawan Chamling, the Chief Minister of Sikkim with effect from 2006 is an example towards decentralisation and devolution of power to the grass root bodies so as to fulfil the dream of Mahatma Gandhi. This has made administration easy as the administrative machinery are reached to the door step of villages and also making BDO Offices a *via media* to keep a link between the Gram Panchayat Unit and the Secretariat/Ministries (in Gangtok) including tender of contract work to the extent of RS. 20.00 lakhs and also issuing a number of documents/certificates to the public at large. Further, a Committee has been constituted to make recommendations on the various aspects for the overall

development of the rural areas. Thus, over a period of three decades since the beginning of planned development, there were several suggestions and attempts at the decentralised planning and administration. The conditions required were also outlined and repeated. However, the increase in the number of Ministries, Departments, and Parastatals at the Centre and in the States, the vertical planning, preparation of programmes and methods of funding stood in the way of the decentralised planning and gradually now it is becoming a reality with a far-sighted and futuristic vision and mission of the policy makers in the Government of Sikkim.¹⁰⁵ The Government has gone one step ahead and constituted a State Planning Commission under the Chairmanship of the Chief Minister himself with highly learned and experienced people as members. Their guidances have been of tremendous help towards preparing bottoming up plan and projects. The State Planning Commission has been encouraging and guiding to the local M.Phil, Ph.D. degree holders, scholars so as to make them capable in taking intensive plan preparation work with local/regional requirement.

The Sikkim Government Establishment Rules 4(4) of 1974 has been the Practical bearer of Socio-economic rights of the people of Sikkim. It has always been the Government which has predominantly been the highest facilitator of employment in the State of Sikkim. For the knowledge of all, an explanation to the said enactment is made as under :-

“(4) Appointment.- (A) Appointment to service under the Government shall be by one or both the method indicated below:-

(a) Direct recruitment;

(b) Promotion from one grade to another.

(B) Direct recruitment shall include appointment on contract and appointment on deputation:

Provided these two types of appointment shall be made having the regard to the exact nature of specific duties and responsibilities and the qualification required for the post, and further provided that (i) Non-Sikkimese nationals may be

appointed only when suitably qualified and experienced Sikkimese nationals are not available, and (ii) replacement of such appointees by suitable Sikkimese candidates may be made as and when available.

Mutually agreed terms shall apply to all appointments on contract. For appointments on deputation, formal agreements as to the terms shall be between the Government of Sikkim and the parent organisation of the officer, through the Government of India and not directly with the officer.

(Editor's note.- This provision under rule 4(4) for giving preference to 'locals' was put to test and the Supreme Court, in the matter between State of Sikkim and Surendra Prasad Sharma and others (AIR 1994 SC 2342), upheld the Constitutional validity of the said rules.)

(C) The following conditions shall apply to direct recruitment of Sikkimese nationals:-

- (i) There shall be no direct recruitment to higher posts in the Gazetted Grades except to the lowest Gazetted Grades and below. All appointments to such posts shall be by promotion from the lowest Gazetted Grade on such conditions as may be prescribed by the Government from time to time.
- (ii) Not more than 75 per cent of the permanent posts falling vacant in lowest Gazetted Grade shall be reserved for being filled in by direct recruitment and the remaining vacancies shall be filled in by promotion.

Provided that if a sufficient number of candidates are not available in a particular year to fill all the vacancies within 75 per cent reserved quota for direct recruitment, the vacancies so remaining unfulfilled shall be released

and made available for being filled in by promotion in addition to the 25 per cent promotion quota.

(D) Method of recruitment to the 75 per cent reserved quota as provided for under (C) (ii) above:-

- (i) Vacancies within this quota shall be filled in on the basis of All Sikkim Competitive Examination to be conducted by the Establishment Department and to the extent necessary under the auspices of a Committee of Officers nominated for the purpose by the Government. The examination shall consist of a written test and also a viva voce test.
- (ii) The number of permanent vacancies likely to be available during a year, the syllabus for the examination, the standard of physical fitness required of the candidates and other conditions relating to the examination shall be published through any medium as may be decided by the Government for information of intending candidates.
- (iii) After being selected on the basis of the competitive examination and on being found medically fit for appointment to the posts, and after due verification of character and being found suitable, the candidates shall be treated as Probationary Officers as defined in the Sikkim Government Service Rules. The terms of their training and subsequent conditions of service shall also be regulated under the above mentioned rules.
- (iv) The selected candidates shall be required to execute a bond rendering themselves liable to serve the Government for a minimum period of 10 years after successfully completing the period of training and probation; provided their services are

so required by the Government. If after completion of the training they fail to serve the Government for the prescribed minimum period, they shall be required to refund the expenditure incurred on them by the Government together with interest at a rate to be determined by the Government.

- (E) Direct recruitment may be made to any category of posts in Class III and IV but persons having higher academic and technical qualifications may be directly recruited to posts in Class II Non-Gazetted.

Provided that such recruitment shall not result in the loss of opportunity to eligible candidates already in service for promotion to posts on higher pay scale within the same classes to an extent or more than 75 per cent in each category.

- (F) In all cases where direct recruitment is not specifically provided for in these rules, vacancies in any higher post shall be filled in by promotion among eligible officials serving in the immediately lower post.

For this purpose, it is the duty of the Establishment Department (*Now Department of Personnel, Administrative Reforms and Training*) to compile and maintain up to date seniority list of all Government Servants.”

It is, therefore, obvious that the Sikkim Government Establishment Rule, 1974 is the boon concerning the Socio-economic and Political rights as the Old Sikkim Subject Certificate holders and their descendants are entitled to the Sikkim Government Services excepting certain select cases.

The validity of the existence of the Sikkim Government Establishment Rule, 1974, has conformingly been validated by the Hon'ble Supreme Court of India (State of Sikkim Vs. Surendra Prasad Sharma and others) Case No. JT(1994) 3 SC 372: (1994) 5 SCC 282: AIR 1994, SC 2342:

(1994) 1 SLR 685. Source : Bakshi, P.M., Constitution of India, 2006, Universal Law Publication. Comp. Delhi, P.30. The Supreme Court held that the Sikkim Government Establishment Rules, 1974 are Protected by Article 371F (k) of the Constitution of India and by reason of the non-obstante clause,” not withstanding anything in the Constitution”, at the beginning of the Article, the Supreme Court held that the Sikkim Government Establishment Rule, 1974, giving preference to ‘locals’ can be struck down as unconstitutional and any action taken by the State based on the said provision would not be inconsistent with Part III of the Indian Constitution. Hence, Rule 4 (4) of the Sikkim Government Establishment Rule, 1974, continues to apply as a law in Sikkim. Further, the then Solicitor General of India, T. R. Andhyarujima has opined that, “Sikkim Government Establishment Rules, 1974, have been held by the Supreme Court to be “law in force”, in the State of Sikkim in terms of Article 371F (k) and till they are amended or repealed by the State Legislature or other competent body, they are law in the State and can be implemented by the Government”.¹⁰⁶

With the above legal backing all Government jobs other than specifically mentioned viz – AIS are reserved for locals. Roster system is strictly followed in all the appointments made by the Government on the recommendation of SPSC and various Departments in case of posts not requiring the SPSC proceedings. But, wherever the local talents are not available, outsiders are being appointed till locals are available for replacement. As compared to 1970s, 80s and 90s local talents are fast improving and are employed in specialised fields too. The Government is discouraging engaging MR, Work-Charge categories of employees.¹⁰⁷

In the post-Merger period of Sikkim, all the Departments are governed by Sikkim Service Rules (amended upto 2006), besides, Sikkim Financial Rules, 1979, (amended upto 2006), Sikkim Service Pension Rules, 1980 and the Sikkim State Civil Service Rules, 1977.¹⁰⁸

Developing Economic Status of Sikkim :

The major problems confronting the State are rising unemployment and dropping per capita income because of internal resources that have not been exploited. The economy of the State essentially depends on the huge amount of Central Grant that it gets. So far, the State Government has been the major employer in the State and is now buckling under huge establishment costs. For a population of 5.5 lakhs the State Government directly employs 25 thousand persons – the highest Government employees to population ratio in the country and the Government can no longer continue to provide direct employment. The roads and building construction activity in State, which got a considerable boost immediately after Sikkim became a part of India, till now was a good source of employment for the labourers and provided income for the local contractors. With the road and bridges constructed in almost every corner of the State, there is now a steady decline in employment from this source. Therefore, there is an urgent need to exploit other sources of income as well as finding ways and means to generate internal resources to rejuvenate the Sikkimese economy.¹⁰⁹ With the massive investment programme by individuals from outside and Power Developers the State's economy is likely to boost considerably. The State is, if all goes well, in marching towards self sufficiency by 2015.

Sikkim : A Brief Analysis of Economic Performance :

Since, the State of Sikkim has been debating and deliberating on the entire spectrum of new challenges particularly in the context of globalisation during last over one decade. Thus, a very systematic thought has gone into the process of devising the new strategies, approaches and instruments that fit into the development needs and goals of the State. These are duly reflected in the 10th Five Year Plan and forthcoming 11th Five Year Plan documents of the State.

The Gross Domestic Product (GDP) of the State increased from Rs. 403 crores in 1993-1994 to Rs. 1717 crores in 2005-2006. The growth rate

has been relatively much higher than the National Average. During the last four years of the 10th Plan (2002-2003, 2005-2006) the State GDP has grown over 13% per annum at current prices. If this is maintained Sikkim would for the first time achieve a two digit growth rate.

As mentioned in the 10th Five Year Plan Draft Document of the Union Government, with a growth rate of 8.3% in the 9th Five Year Plan (1997-2001), Sikkim was second to only Pondicherry, Chandigarh and Delhi. The State was ahead of many other well-performing States. The growth estimates in the last four years of the 10th Five Year Plan do indicate that Sikkim has not only maintained growth regime achieved in the 9th Five Year Plan, but also strived to enter into a higher and double digit growth rate in the 10th Plan. This would certainly help achieving the national goal of 8% growth rate for the 10th Plan Period i.e. (2002-2007).¹¹⁰

Table - V

**Sikkimese Economy : A Structural Change in the Gross Domestic Product
(Percentage Share)**

Sectors	1980	1985	1990	1995	1999	2004
	1981	1986	1991	1996	2000	2005 (QE)
Primary	51.59	50.96	46.49	39.41	25.52	20.54
Secondary	18.11	16.46	12.97	18.80	19.73	30.22
Tertiary	30.30	32.58	40.54	41.79	54.75	49.24

QE : Quick Estimate

Source : Sikkim : *Economic Survey 2006-2007*, Gangtok, published by DESME (Government of Sikkim), Sikkim Govt. Press, Gangtok, dated February 24, 2007, p. 3.

From the above table, it is observed that there has been a steady increase in the share of the tertiary sector also, which recorded an increase of 41.79% to 49.24% during the same period. Within the tertiary sector also, sub-sectors like transport, banking, insurance, communications and public

administration are accounting for a much larger share of the State's GDP. Public administration alone contributes to the extent of 30%.¹¹¹

The State Legislative Assembly of Sikkim

The Constitution 38th Amendment Bill/36th Amendment Act 1975 ultimately led to the merger of Sikkim and made Sikkim the 22nd State of India and this Act provides that 'Notwithstanding anything in this Constitution, the Legislative Assembly of the State of Sikkim shall consist of not less than thirty members and the Assembly of Sikkim was formed as a result of the elections held in Sikkim in April 1974 with thirty two members elected in the said elections who were hereinafter referred to as sitting members shall be referred to be the Legislative Assembly of the State of Sikkim duly constituted under this Constitution. It was further maintained that the said Legislative Assembly of the State of Sikkim shall exercise the powers and perform the functions of the Legislative Assembly of a State under the Constitution of India. Further, it provided that the Parliament may for the purpose of protecting the rights and interests of the different sections of the Population of Sikkim make provision for the number of seats in the Legislative Assembly of Sikkim which may be filled by the candidates belonging to such sections and for the delimitation of Assembly Constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the Sikkim State (Article 371 F. The whole Sikkim also was made a single Parliamentary Constituency for electing representative in the House of the People (Lok Sabha) and a single seat in the Council of States (Rajya Sabha).¹¹²

The Chief Executive, B.B. Lall assumed the office of the first Governor of Sikkim and then Ministry headed by Kazi Lhendup Dorjee Khangsarpa was administered oath of office in as the first Chief Minister of the newly founded State namely, Sikkim of the Indian Union. C.S. Roy was appointed as the Speaker of the Legislative Assembly of Sikkim. He was succeeded by B.B. Gooroong between October 1977 and October 1979. The Sikkim Assembly formulated rule of procedures and conduct of the business of

the House consisting at least 106 Rules along with fixation of salaries and other allowances admissible to the Speaker, Deputy Speaker and the MLAs. Further, an independent Secretariat under Article 187 of the Constitution was also constituted. The Secretary of Home Affairs was made the in-Charge of the affairs of the Sikkim Legislative Assembly and a library was also established. Later on, a full-fledged Secretary to the Sikkim Legislative Assembly was appointed. Thereafter, various House Committees of the Sikkim Assembly were constituted. The first time budget preparation was introduced in March 1976. At initial, there was no opposition since N.B. Khatiwara defected from the ruling Party, who formed Sikkim Prajatantra Congress and asked for the recognition of the Opposition Party.

Since, 1974 elected House continued, resignations of Ministers and intra-Party conflict led ultimately to a chaos. Due to the failure of the Constitutional machinery for the first time, the then Governor of Sikkim recommended for the imposition of the Presidential Rule to the Centre in the State of Sikkim in 1979 as both the Houses of the Union Parliament of India were not in session that necessitated Sikkim to go to the polls in October 1979. The Janata Parishad headed by Nar Bahadur. Bhandari won the election by simple majority. However, the Sikkim Congress (I), and Sikkim Prajatantra Congress took their berth in the opposition bench. The second election to the Sikkim Legislative Assembly was held on the basis of the Ordinance issued by the President of India to re-constitute the territorial Constituencies as under :

Table - VI
SEAT RESERVATION : SIKKIM LEGISLATIVE ASSEMBLY

Distribution of Seats in 1979	1974	1979
Sikkim Bhutia-Lepcha	BL - 15	BL - 12
General seats	15	17
Sangha	1	1 Monks
Scheduled Castes (Nepalis)	1 - Nepalis	2 - Nepalis
Grand Total	32	32

No clear cut demarcation was made with regard to the number of seats allotted to Bhutias and Lepchas.

Source : Bhadra, Madhumita, *Sikkim : Democracy and Social Change*, Calcutta, Minerva Associates (Pvt.) Ltd., 1992, p. 139.

Since, the reservation of seats for the origin of Sikkimese-Nepalis community was done away with and declared as General Seats. The President of the Sikkim Congress (Revolutionary) R.C. Poudyal did not contest the election condemning the Bill No. 1979 as a Black Bill. In fact, restoration of seats in the Sikkim Legislative Assembly for the original Sikkimese-Nepalis remains an issue since 1979. However, it is a matter of fact that the various elections to the Sikkim Legislative Assembly and the Popular Governments have been struggling so as to frame and administer a set of laws which are considered to be most suitable for the safeguard of the interest of the common people of Sikkim.

Table - VII

List of Governors of Sikkim :

Sl. No.	Years	Governors
1.	1975-1981	Shri B.B. Lal
2.	1981-1984	Shri Homi J.H. Taleyar Khan
3.	1984-1985	Shri Kona Prabhakara Rao
4.	1985-1985	Shri Bishma Narayan Singh
5.	1985-1989	Shri T.V. Rajeshwar
6.	1989-1990	Shri S.K. Bhatnagar
7.	1990-1994	Admiral R.H. Tahiliani
8.	1994-1995	Shri P. Shiva Shankar
9.	1995-1996	Shri K.V. Raghunatha Reddy
10.	1996-2001	Shri Chaudhary Randhir Singh
11.	2001-2002	Shri Kidar Nath Sahani
12.	2002-2007	Shri V. Rama Rao
13.	2007-2008	Shri Sudarshan Agarwal
14	2008-	Shri Balmiki Prasad Singh

Source : SIKKIM, *Sikkim : Thirty Years of Statehood*, Gangtok, IPR Publication, 2005, pp. 150-151. Sudarshan Agarwal : *New Governor of Sikkim*, Himalayan Darpan, Vol. VI, Issue 98, 26.10. 2007, published by Sandeep Chaudhury, Sevoke Road, Siliguri, p.1. *Sikkim Express*, July 10, 2008 Vol. XXXII, No. 177, *Choice International*, Nam Nam Road, Gangtok, p.1.

Table - VIII**List of Speakers of Sikkim Legislative Assembly Since 1974**

Sl. No.	Years	Presiding Officers/Speakers
1.	1974	Shri B.S. Das
2.	1974-75	Shri B.B. Lal
3.	1975-77	Shri C.S. Roy
4.	1977-79	Shri B. B. Gooroong
5.	1979-85	Shri Sonam Tshering Bhutia
6.	1985-89	Shri T.R. Sharma
7.	1989-1994	Shri Dorjee Tshering Bhutia
8.	1994-1999	Shri Chakra Bahadur Subba
9.	1999-2004	Smt. Kalawati Subba
10.	2004 -	Shri D.N. Takarpa

Source : Shresta, R.S., Sikkim, *Sikkim – Three Decades towards Democracy – Evolution of the Legislative System*, Gangtok, SLA & Kumud Devi Smarak Dharmarth Guthi, Gangtok (E) Sikkim, 2005, Extra Photo Gallery, p. 158.

Table - IX**List of Members of Parliament from Sikkim**

Sl. No.	Years	
1.	1975-	Shri S.K. Rai (Lok Sabha)
2.	1977-	Shri C.B. Katwal (Lok Sabha)
3.	1980-	Shri Pahalman Subba (Lok Sabha)
4.	1984	Shri Nar Bahadur Bhandari (Lok Sabha)
5.	1985, 1996-	Smt. Dilkumari Bhandari (Lok Sabha)
6.	1989-	Shri Nandu Thapa (Lok Sabha)
7.	1996, 1998, 1999	Shri Bhim Dahal (Lok Sabha)
8.	2004-	Shri Nakul Das Rai (Lok Sabha)
9.	1975, 1981	Shri Leonard Solomon Saring (Rajya Sabha)
10.	1987	Shri Kesang Namgyal Paljor (Rajya Sabha)
11.	1988, 1994	Shri Karma Tenzing Topden (Rajya Sabha)
12.	2000	Shri Kalzang Gyatso (Rajya Sabha)
13.	2000	Shri P.T. Gyamtso (Rajya Sabha)
14.	2006	Shri O.T. Lepcha (Rajya Sabha)

Source : Verma Rajesh, Sikkim : A Guide & Handbook, Gangtok, Rajesh Verma Publication, 2007, 15 edn, p. 72.

Note : Lone Rajya Seat is traditionally given to the BLs and Lok Sabha Seat to the Nepalis.

Table - X

List of Chief Ministers :

Sl. No.	Years	Chief Ministers
1.	1975-1979	Shri Kazi Lhendup Dorjee Khangsarpa
2.	1979-1984	Shri Nar Bahadur Bhandari
3.	1984-1984	Shri Bhim Bahadur Gooroong
4.	1985-1989	Shri Nar Bahadur Bhandari
5.	1989-1994	Shri Nar Bahadur Bhandari
6.	1994-1994	Shri Sanchaman Limboo
7.	1994-1999	Shri Pawan Kumar Chamling
8.	1999-2004	Shri Pawan Kumar Chamling
9.	2004-	Shri Pawan Kumar Chamling

N.B. 1. Kazi Lhendup Dorjee Khangsarpa was sworn in as the Chief Minister of Sikkim on 23rd July, 1974 (under Associate State and then from 16th May, 1975 to 18th August, 1979).

2. Presidential Rule : August 18, 1979 – October 17, 1979
May 25, 1984 – March 08, 1985.

Source : SIKKIM, *Sikkim : Thirty Years of Statehood*, Gangtok, IPR
Publication, Govt. of Sikkim, 2005, pp. 150-151.

Verma, Rajesh, *SIKKIM : A Guide and Handbook*, Gangtok, Rajesh
Verma Publication, 2007, 15th edn., p. 71.

Shrestha, R.S., *Sikkim, Sikkim – Three Decades towards Democracy – Evolution of the Legislative System*, Gangtok, SLA & Kumud Devi Smarak Dharmarth Guthi, Gangtok (E) Sikkim, 2005, Extra Photo Gallery, p. 159.

Table – XI

List of Chief Secretaries of Sikkim

Sl. No.	Years	Chief Secretaries
1.	1975-1980	Shri T.S. Gyaltzen
2.	1980-1984	Shri M.P. Pradhan
3.	1984-1986	Shri K.M.L. Chabra
4.	1986-1989	Shri Har Mohinder Singh
5.	1989-1991	Shri K.C. Pradhan
6.	1991-1993	Shri P.K. Pradhan
7.	1993-1993	Shri G.P. Pradhan
8.	1993-1996	Shri K.S. Vardhan
9.	1996-1996	Shri Sonam Wangdi (Offg.)
10.	1996-1998	Shri K.S. Rao
11.	1998-2000	Shri Sonam Wangdi
12.	2000-2004	Shri S.W. Tenzing
13.	2004 -	Shri N.D. Chingapa

Source : Sikkim : Thirty Years of Statehood, Gangtok, 2005, IPR Publication, (GOS), pp. 158-159.

Table - XII

List of Police Heads at Police Head Quarters of Sikkim Police

1.	Shiva Raj Singh	(SP)	(1954-1956)
2.	Mahinder Singh	-	(1957-1960)
3.	Vajran Lal	(CP)	(1961-1967)
4.	S.K. Anand	-	(1968-1970)
5.	S. Datta Choudhoury	-	(1973-1975)
6.	P.K. Khurana, IPS	(IGP)	(1975-1979)
7.	M.N. Gajrel, IPS	(IGP)	(1979-1983)
8.	Raja Shreedharan, IPS	-	(1984-1986)
9.	A. Ghatak, IPS	(DGP)	(1986-1988)
10.	Tashi Namgyal, Inducted IPS(Spl. IGP)		(1988-1989)
11.	S.K. Jha, IPS	(DGP)	(1989-1990)
12.	H.D. Pillai, IPS	-	(1991-1993)
13.	P.S. Baba, IPS	-	(1993-1997)
14.	P.C. Sharma, IPS	-	(1997)

- | | | | |
|-----|-------------------------------|-------|------------------|
| 15. | L.C. Amarnathan, IPS | (DGP) | (1998-2000) |
| 16. | Dr. R.K. Handa, IPS | (DGP) | (2000-2002) |
| 17. | T.N. Tenzing, IPS (Conferred) | (DGP) | (2002-2005) |
| 18. | C.M. Ravindran, IPS | (DGP) | (2005-till date) |

Source : *Sikkim Police Head Quarters*, Gangtok, Sikkim, Dated : 04.03.2008.

Sikkim : Political Leadership Pattern

Prior to 1975 the Sikkim State was autocratic and tradition bound. The stage for Political development and change was set in the late 1940s, when a number of Political Parties emerged such as Sikkim Praja Sammelan, Praja Mandal. Sikkim State Congress, Praja Sudharak Samity were formed, with the main objectives of ameliorating the deplorable conditions of the Sikkimese farmers and formation of a Representative Government. These Parties could organize mass rallies staging *no rent* and *no tax* campaigns to press their Political demands. It created a Political impasse and on the advice of the Indian Government the Ruler agreed to abolish landlordism, rate of house rent reduced and some measures of process in the State was introduced.

As pointed out earlier that the State Council was established in 1953, which consisted of a President to be nominated and appointed by the *Maharaja* along with twelve numbers of elected members and five numbers of nominated members. The village Panchayats in the village level started in the year 1965 and the *Bazaar* Committees at the urban level were established in the year 1969. There were two reasons to establish these institutions : (i) to create a democratic façade in the monarchic State and thereby satisfy the aspirations of the leaders exposing democracy in Sikkim; (ii) the introduction of communal pattern of voting i.e. the candidates securing the highest number of votes of the community which the candidate was representing would be required to secure at least 15% of the total votes of the other community. If he failed to secure this 15% votes of the other community, the candidate securing the next highest vote of his community and also have secured 15% of the total votes of the other community, would be declared as elected provided the

difference between the number of votes secured by him and the highest candidate did not exceed 15% of the total votes secured by the latter.

In that case the highest candidate would be declared elected, notwithstanding that he had failed to secure 15% of the votes of the other communities (Sikkim, Proclamation of *Maharaja*, March 17, 1958, Gangtok, Sikkim Government Press, 1958). This was later on replaced by *one man one vote*, the property qualification of the electorate in the election of the local bodies were intended to limit the popular participation and to prevent further erosion of the King's power. The *Maharaja* remained as the main architect of Policies. The influence of Government of India was also continuing. A system of Diarchy too was introduced by the 1953 Proclamation of *Maharaja* to deal with Reserved and Transferred Subjects. The Reserved Subjects remained the private preserve of the King and on which the Council could not make laws. The Transferred Subjects were to be administered by the State Council. Within this framework of such a system the democratic forces operated in Sikkim till the Political uprising of 1973.

In the late 1940s projected another element of leadership by the Political Parties in Sikkim. Therefore, Political growth in Sikkim was characterized by Political apostasy. This Political anchor influenced Political behaviour of the leaders and legislatures from the various Political events until the Sikkim's merger with the Indian Union. It is further exhibited in the politics of defection from Regional Parties to National Political Parties. Since 1974 to 1984 – 1985, the rulings Regional Political Parties of Sikkim have been pro centre and supporting the Party in power of the Centre.

It is historical and very interesting to note here that in 1974 the Sikkim Congress emerged as a major Political Party by winning 31 Seats in the Assembly. The lone member of the National Party also joined Sikkim Congress later on. By 1975, the Sikkim Congress made an enblock merger with the Indian National Congress. In the debacle of Indian National Congress in the year 1978, the Sikkimese leadership sided with the Janata Party. The 1979 Sikkim Legislative Assembly witnessed individual floor crossing from

Sikkim Congress (I) and Sikkim Prajatantra Congress to Sikkim Janata Parishad. The Sikkim Sangram Parishad founded by Nar Bahadur Bhandari could bag 30 seats in 1985 and in 1989 all 32 seats. There was no enbloc defection to National Political Parties.

The Sikkim Democratic Front which came to power since 1994 is able to maintain its Regional identity, but accepts floor crossing from among Regional Parties. Different Legislations were passed by the Sikkim Legislative Assembly since 19785 to 1979 and 1979 to 1993. However, the policy is primarily agrarian and later amendments. The period between 1994 and 2007 *i.e.* the (Sikkim Democratic Party rule under the leadership of Pawan Chamling shows a marked achievement towards economic development, welfare programmes and upliftment of the poor, weaker sections of the society and women, industrialization, privatization, human resource development, urbanization and maintenance and protection of local identity. Yet another interesting observation is that National Political Parties were not able to win the election and capture power in Sikkim. Regional Political Parties rule since the beginning of the Council in Sikkim.

From the very beginning, the legislators of Council in the pre-merger period had the experience of Panchayats and local Government. Later in the post-merger period some Council members were elected to the Assembly. Since 1979 mostly young and educated leaders are being elected to the Legislative Assembly. In spite of the fact *parity* is an abolished ethnocentrism remains a major factor in the leadership formation. The agricultural group does not find a place in the Assembly since post-merger period. The caste and religious representation is waning out. Ruralisation and indigenisation of leadership seem to be evident. Most of the present leaders do not represent local bodies, but are now entrants to politics of Sikkim and they have no link with older Political order and former socio-Political order.¹¹³

MEMBERS OF SIKKIM LEGISLATIVE ASSEMBLY

CONSTITUENCIES	1974-79	1979-84	1985-89	1989-94	1994-99	1999-2004	2004-2009
YOKSAM	15 BL + 15 NEP 1 SC + 1 SANGHA DAGEY BHUTIA	12 BL + 17 GEN 2 SC + 1 SANGHA S. M. LIMBU	12 BL + 17 GEN 2 SC + 1 SANGHA S. M. LIMBU	12 BL + 17 GEN 2 SC + 1 SANGHA S. M. LIMBU	12 BL + 17 GEN 2 SC + 1 SANGHA A. K. SUBBA	12 BL + 17 GEN 2 SC + 1 SANGHA KALAWATI SUBBA (W)	2004-2009 12 BL + 17 GEN 2 SC + 1 SANGHA KALAWATI SUBBA
TASHIDING (BL)	KAZI LHENDUP DORJEE KHANGSARPA CHIEF MINISTER	DAWGYAL P. BHUTIA	UGEN PINTSO	U. P. BHUTIA	THUTOP BHUTIA	THUTOP BHUTIA	D. N. TAKARPA SPEAKER
GEYZING	HEMLATA CHETTRI(W)	I. B. LIMBU	M. B. DAHAL	M. B. DAHAL	DAL BDR. GURUNG DY. SPEAKER	S. B. SUBEDI	S. B. SUBEDI
DENTAM	NB KHATIWARA	PL GURUNG	PL GURUNG	PL GURUNG	C.B. SUBBA SPEAKER	N.K. SUBBA	DEEPAK GURUNG
BARMIOK	NANDA KUMAR SUBEDI	T. B. LIMBU	BIRBAL SUBBA	BIRBAL SUBBA	T. P. PRADHAN	T. P. PRADHAN	N.K. SUBBA
RINCHENPONG(BL)	NAYEN TSH. LEPCHA	KATUK BHUTIA	ONGDI BHUTIA	CHEWANG LHAMU	PHUR TSH. LEPCHA	O.T. LEPCHA	DAWCHO LEPCHA
CHAKUNG	B.B. GOOROONG SPEAKER 1977-79)	B.B. GOOROONG- VACANT	TARAMAN RAI	TARAMAN RAI	P.S. TAMANG	P.S. TAMANG	P.S. TAMANG
SORENG	CHATUR SINGH RAI SPEAKER TILL 1977	N.B. BHANDARI	N.B. BHANDARI	N.B. BHANDARI	N.B. BHANDARI	RAM BDR. SUBBA	RAM BDR. SUBBA
DARAMDIN	K.B. LIMBU	P.B. GURUNG	P.B. GURUNG	P.B. GURUNG	RAIN BDR. SUBBA	RAIN BDR. SUBBA	RAIN BDR. SUBBA
JORETHANG	K.C. PRADHAN	B.B. GOOROONG- LATER CHIEF MINISTER	B.R. RAI	B.R. RAI	BHOJ RAJ RAI	BHOJ RAJ RAI	KEDAR NATH RAI
RALONG (BL)	PASSANG TSH. BHUTIA	CHAMLA TSHERING	S.G. KALEON	S.G. KALEON	D.D. BHUTIA	D.D. BHUTIA	D.D. BHUTIA
WAK	ADARSING LEPCHA	GARIAMAN GURUNG	B.S. CHETTRI	B.S. PANT, (DY. SPEAKER)	KEDAR NATH RAI	KEDAR NATH RAI	C. B. KARKI
DAMTHANG	RATNA BUOY RAI	P.YONZON	P. K. CHAMLING	P.K. CHAMLING	P.K. CHAMLING	P.K. CHAMLING	P.K. CHAMLING
MELLI	NANDA KUMAR RAI	M. P. SHARMA	D. R. BASNET	D. R. BANSET	GIRISH CHANDRA RAI	GIRISH CHANDRA RAI	GIRISH CHANDRA RAI
RATEPANI WEST	BHUWANI PD. KHAREL	B.B. LOHAR	C.K. MOHARA	C. K. MOHARA	AITA SINGH BARAILY	C.K. MOHARA	A.S. BARAILY
PENDAM (SC)	BADRINATH PRADHAN	N.B. KHATIWARA	I.B. RAI	I.B. RAI	GARIAMAN GURUNG	GARIAMAN GURUNG	GARIAMAN GURUNG
TEMI TARKU	KEHAR SINGH KARKI	B.P. KHAREL	S.K. PRADHAN	S.K. PRADHAN	DILLI PD. KHAREL	SANG DORJEE TAMANG	SOMNATH POUDYAL
CENTRAL PANDAM	BHUWANI PD. DAHAL	K.N. UPRETI	K.N. UPRETI	K.N. UPRETI	K.N. UPRETI	N.B. BHANDARI	BHIM DHUNDEL
RHENOCK	MOHAN GURUNG	T.R. SHARMA	T.R. SHARMA	RAJENDRA UPREI	K.B. CHAMLING	K.B. CHAMLING	K.B. CHAMLING
REGU	SONGPON LEPCHA	RAM LEPCHA	RAM LEPCHA	RAM LEPCHA	RAM LEPCHA	SONAM DORJEE BHUTIA	MINGMA SHERPA
PATHING(BL)	R.C. POUDYAL	J.B. PRADHAN	DY. SPEAKER	DY. SPEAKER	D.B. THAPA	J. K. BHANDARI	DEPUTY SPEAKER
LOOSING PACHEYKHANI	DY. SPEAKER	BY ELECTION VACANT	B.K. RAMUDAMU	B.K. RAMUDAMU	GOPAL LAMICHANEY	GOPAL LAMICHANEY	MANITA MANGAR
KHAMDONG (SC)	KUSU DAS	D. B. DAMJAI	B.K. RAMUDAMU	B.K. RAMUDAMU	GOPAL LAMICHANEY	GOPAL LAMICHANEY	B. M. RAMUDAMU

Some of the observations from the above table can be summarised as follows :

With the Lok Sabha and Assembly elections scheduled for 2009, some unique features of the Sikkim Legislative Assembly, its structure, functions and nature along with some analysis of the results that elections have thrown up in the past are summed up which will help voters to exercise and appreciate their rights better in a democratic set up like India.

Any Government in a federal or unitary form has three main organs, viz., the Executive, Legislative and Judiciary for the purpose of rule application, rule-making and rule adjudication. What this means is that these three arms are responsible for the execution of laws, enactment of laws and interpretation of laws, respectively.

Coming to Sikkim, in the pre-merger period, the Maharajas were both, the temporal and spiritual heads of the Executive Branch. The Maharaja (Chogyal) was assisted by a national council called the "Lhade Mede". Later, it was referred to as just the Council and used to meet at irregular intervals. The Kazis and ranking people of Sikkim were nominated and appointed to this Council. It started with 9 members, then became 12 with 3 nominated members and by the year 1958, it was of a 20 members strength. In the year 1967, the strength was increased further to 24. The Council was constituted on a device called the "Parity system", in order to protect equally the interests of all three ethnic communities – the Bhutia- Lepcha and Nepalis of Sikkim. At times, the Chogyal nominated one or two councillors from the plainsmer community too. Most times, however, it was composed of representatives from the three ethnic communities of Sikkim only.

The Council would normally meet in February-March every year to pass the budget. Special sessions were also convened by the Chogyal to discuss important issues whenever an emergency arose. The tenure of the Council before the Merger of Sikkim was fixed at 4 years. The Council had powers to enact laws on the Reserved Subjects, viz., finance, police, state enterprises,

land revenue, food supply, rationing etc. Matters relating to the royal family were under its jurisdiction, as also the appointment of the Dewan and members of the judiciary. The Transferred Subjects were allowed on vote on admission and discussions.

The swearing in ceremony of the Council used to take place in the Royal Chapel or Palace Monastery Tsuklakhang and the Chogyal used to address the inaugural session. The Head Lama of Pemayangtse Monastery used to administer the oath of office and secrecy in the presence of the Chogyal amidst chanting of prayers.

The members of the Council were allotted departments to manage their respective portfolios by the Chogyal. The Chief Secretary of Sikkim was made incharge to present reports on Reserved Subjects in the best interest of the *Darbar*. The proceedings of the Council were the same as that of any Assembly or Council found elsewhere.

The Tripartite Agreement of May 8, 1973, laid down the basic principles on how to appoint a representative responsible enough to manage and administer the Council. The Chief Secretary was the official head of the State administration and other officials and government servants were made subordinate to him. The work and functioning of one or more departments was shared and looked after by one Secretary sometimes. Some deputationists from Government of India were also appointed for the management of administration. The subordinate posts were, however, manned and managed by local officers, excepting in the teaching and other specialised fields.

In the pre-merger Sikkim, there were only a few departments and directorates, as few as five at one time. Now, we find more than 40 departments, many directorates and several PSUs.

Sikkim has been divided into four districts for quite a while now and at present, these districts have been further subdivided into a total of nine subdivisions into a total of nine sub-divisions and about 20 or more BDO offices.

Returning to the topic at hand, the Sikkim Legislative Assembly is an unicameral body and its strength is a continuation of the pre-merger days of 32 members, including a member of the *Sangha* constituency to represent the notified monasteries of the State. While the Assembly's total strength was not altered, its composition was changed from what it was in the last elections before merger to the first since. For the 1974 elections, Sikkim's 32 Assembly constituencies were divided as : 15 seats for Bhutia-Lepchas; 15 Nepali seats; 1 seat reserved for Scheduled Castes and 1 for the Sangha. In the first Assembly elections held in 1979, the first since the 1975 merger, the seats were redistributed as : 12 BL seats; 17 General seats; 2 SC seats and One for Sangha.

It is important to note that as per Article 170 (I) of the Constitution of India, every State in India should have at least 60 Assembly seats and not more than 500. In the case of some north-eastern states including Sikkim, there are some exceptions made to keep the total number of seats below 60. Also, with regard to Sikkim, Article 332 in relation to autonomous regions and Article 333 in relation to reservations for Anglo-Indians are not applicable.

The Presidential Order of 1979, on the basis of which Assembly elections were held in 1979, was tabled as Bill No. 79 of 1979 and later ratified in 1980. This Bill gave the Sikkim Legislative Assembly its present composition. It was also challenged by RC Poudyal of Sikkim Congress (Revolutionary) in the Supreme Court, particularly with reference to the BL and Sangha seats. He lost the case when the Supreme Court upheld that Article 371F of the Constitution allowed for situations and conditions in Sikkim even if they were in contravention with anything else in the Constitution. Thus, even though Sikkim is a secular state, Assembly seats are reserved here for the Sangha and on the basis of communities (the BL seats). In the 17 general seats left, the voter share is such that the plainmen or the BLs cannot decide the elector on their own strength, effectively meaning that no member of the

plainsmen community or from the BLs can win an election from the general seats. An exception was Balchand Sarda (of the plainsmen business community) who won the prestigious Gangtok Constituency in the 1984 Assembly elections. As for RC Poudyal, he himself did not contest the 1979 Assembly elections as a mark of protest against Bill No. 79 of 1979.

Since 1979, the Sikkim Legislative Assembly has been distributed as follows :

North district has a total of 3 constituencies all of which are reserved for BLs; East district has 12 constituencies, 6 of which are reserved for BLs, 1 is reserved for Scheduled Castes and 5 are general seats; West Sikkim has 9 Constituencies, 2 reserved for BLs and 7 general seats; and South Sikkim has 7 constituencies, 1 each for BLs and SCs and 5 general seats. The Sangha is not a territorial constituency and is elected by an electoral college.

It needs clarifying here that BL is not interchangeable with Scheduled Tribes and the seats reserved in Sikkim are only for Bhutia or Lepcha candidates of Sikkim and not ST. Similarly, SC here does not mean at par with Scheduled Castes of India and the two seats reserved for them can be contested only by Nepali SC.

The Sikkim Government Extraordinary Gazette No. 272 of 04 September, 1972, issued by the Election Department of the Government of Sikkim announces the de-limitation of constituencies of Sikkim as directed by the Delimitation Commission of India. This held till the elections in 2004. The constituencies were delimited again in 2006 and the next elections scheduled for May 2009 are expected to be held under the new shapes and names of constituencies. The total number remains unchanged at 32, but the territorial areas have been realigned and number of seats in individual districts altered. An accompanying table illustrates how they compare.

As a cursory look of the tables will reveal, the number of constituencies in East and North Sikkim remain unchanged while West Sikkim has lost one constituency to South Sikkim. All three constituencies in North Sikkim continue to be reserved BL constituencies while the one SC constituency in South Sikkim has shifted to West District.

In 1979, following the tabling of Bill No. 79, the LD Kazi Government (elected in 1974), already on an extension of six months, was dismissed when it lost majority and President's Rule was imposed on Sikkim. Fresh elections, the first since the merger, were held in October 1979.

In these elections, Sikkim Janata Parishad emerged as the single-largest party and with the support of the Sangha member, Nar Bahadur Bhandari became the Chief Minister of Sikkim. In 1984, however, Bhandari was dismissed despite the fact that he was commanding more than 3/4th majority because of defections from Sikkim Congress (Revolutionary) and Sikkim Prajatantrik Congress. At the time, he was himself a Congress (I) Chief Minister. Governor JH Taleyarkhan, invoking Article 164 (I) of the Constitution, dismissed Bhandari and made B.B. Gurung the Chief Minister. The Gurung ministry lasted for only 14 days and the second time since the merger, Sikkim was placed under President's Rules.

Following his dismissal, Bhandari left the Congress (I) and started his own regional party – Sikkim Sangram Parishad in the year 1984. First, he contested the Parliamentary elections from Sikkim, won and became a member of the Lok Sabha.

When the elections to the Sikkim Legislative Assembly were held in 1985, Nar Bahadur Bhandari and his party won 31 of the 32 seats. Balchand Sarada, a member of the plainsmen business community won from the prestigious Gangtok constituency defeating Dil Kumari Bhandari, wife of Nar Bahadur Bhandari. Pawan Chamling, the present Chief Minister, won his first elections, easing through in his home constituency of Damthang. He was made Chairman of the Sikkim Distilleries at Rangpo and later a Minister to look after the portfolio of IPR and Government Press. When Nar Bahadur Bhandari took charge as the Chief Minister, his Lok Sabha berth fell vacant. Dil Kumari Bhandari replaced him in the Lok Sabha, elected unopposed from Sikkim in 1985 and continued for two terms as a Lok Sabha MP.

Politically, things proceeded smoothly for Nar Bahadur Bhandari from hereon as he went on to sweep the 1989 Assembly elections, bagging all 32 seats. His centralized rule however led to a rebellion by Pawan Chamling, who, in September 1992, rose from his seat in the Assembly, lighted a candle

(though fire is not allowed inside the Legislative Assembly) and moved around “searching” for democracy. In March 1993 he floated his own regional party, the Sikkim Democratic Front. In May 1994, there was a political upheaval in Sikkim and Sanchaman Limboo with his supporters declared himself as Chief Minister under the banner of SSP(S) and rushed to meet the then Governor RH Tahiliani in New Delhi. The dissidents were advised to return to Sikkim to decide about it. The Governor then accepted the leadership of Sanchaman Limbu and asked him to prove his majority. In the vote of confidence and no confidence, Pawan Chamling, who returned to Sikkim, remained neutral. Since Sanchaman Limboo was heading a minority government, fresh elections had to be called. Sanchaman Limboo continued as caretaker Chief Minister till December 1994.

Sikkim Democratic Front, led by Pawan Chamling, won the 1994 elections, bagging 19 seats and securing majority. Sikkim Sangram Parishad bagged 10, Indian National Congress 2 and one Independent candidate made it to the Assembly. Within two years, six Sikkim Sangram Parishad MLAs had split from the party and joined the SDF, taking its strength to 25 in the legislative Assembly in the year 2006.

In the 1999 Assembly elections, Sikkim Democratic Front improved upon its 1994 performance and secured 25 seats in the 32 member Assembly. Indian National Congress was routed and the remaining seven seats went to the Sikkim Sangram Parishad. Before the five term had expired, six of the seven SSP MLAs had crossed over to the SDF, leaving Nar Bahadur Bhandari as the lone Opposition member.

The rout continued in the 2004 Assembly Elections, during which, save the Sangha seat which went to the Indian National Congress, 31 of the 32 seats were won by the Chamling-led Sikkim Democratic Front. Nar Bahadur Bhandari, who had joined the INC before the polls, contested from two constituencies and lost from both. The 2004 elections also saw the nomination papers of four INC candidates get rejected leading to uncontested victories for SDF in four constituencies even before the State went to polls.

Some observations summarised from the way Sikkim has voted and how successive Legislative Assemblies have shaped are as under, along with some highlight points:

1. In 1974, 31 of the 32 seats were won by the Sikkim State Congress which included the first lady MLA, Mrs. Hemlata Chhetri, elected from Geyzing constituency in west Sikkim. Her husband, NB Khatiwara won that year from Dentam, also in West Sikkim.
2. Nar Bahadur Bhandari, individually, won himself a place in the legislative assembly continuously from 1979 to 1999. The first four elections from Soreng constituency in West Sikkim and the 1999 polls from the Rhenock constituency in East Sikkim. In 2004, he lost from both the constituencies – Rhenock and Central Pendam, both in East Sikkim – he contested from. The present Chief Minister Pawan Chamling has been winning from the same constituency – Damthang in South Sikkim – since 1985, a total of five times.
3. In 1983, Dugo Bhutia, resigned as an MLA from Rakdong Tintek constituency. In the bye-elections, Sonam Tshering of INC won the seat.
4. In 1999, Smt. Kalawati Subba, elected from Yuksom constituency in West Sikkim (which she bagged in the year 2004 also), became the first lady Speaker of the Sikkim Legislative Assembly, presiding over it from 1999 to 2004. Interestingly, in the 2004 elections, three lady MLAs were elected – from Yoksum, Losing Pacheykhani and Ranka, the highest in any term. In the Assembly elections since 1974, a total of seven women have been elected MLAs.
5. The only lady Parliamentarian from Sikkim has been Smt. Dil Kumari Bhandari, elected for two terms, once in 1985 and again in 1989.
6. National political parties have consistently fared poorly during elections and the voters have also consistently favoured youth over age, with Sonam Tshering and Kazi Lhendup Dorjee Khangsarpa being the only exceptions.

What is also obvious from the manner in which Sikkim has voted in the past thirty three years is that voters here are drawn to charismatic leaders heading regional parties. Their concerns are more immediate and this is reflected in the fact that only regional parties have been able to establish an identity and presence in Sikkim thus far. It needs to be mentioned here that no national party has been able to establish an organisational base in Sikkim. At the same time, the ruling regional parties of Sikkim have invariably supported whichever party or alliance forms the Government at the Centre. Mushrooming of regional parties and increased activity of national parties is routine in the run up of general elections. Opposition, both within and outside the Legislature has traditional been weak and inconsistent.

While elections and the results are essentially personality-driven, issues still play a role. The political activity surrounding the approaching Assembly elections scheduled for year 2009 suggest that reservation of seats for the Limboo and Tamang communities, which have now been included in the Scheduled Tribes list and thus have claim to reserved seats, will be one of the main debating points.

Regime changes have happened only twice in Sikkim in the past, the last by the present Chief Minister in 1994, and rode on very strong emotive issues backed by extensive grassroots mobilisation. The present State Government has consistently upstaged the anti-incumbency factor by going against political trends and improving its performance with each election. To rattle its position in power is going to be a Himalayan task.

SIKKIM : DELIMITATION OF CONSTITUENCIES : LEGISLATIVE ASSEMBLY – 2006

1. Yoksam-Tashiding (BL)
2. Yangthang
3. Maneybung-Dentam
4. Gyalshing-Barnyak
5. Rinchenpong (BL)
6. Daramdin (BL)
7. Soreong-Chakung
8. Salghari-Zoom (SC)

9. Barfung (BL)
10. Poklok-Kamrang
11. Namchi-Singhithang
12. Melli
13. Namthang-Rateypani
14. Temi-Namphing
15. Rangang-Yangang
16. Tumen-Lingi (BL)
17. Khamdong-Singtam
18. West Pendam (SC)
19. Rhenock
20. Chujachen
21. Gnathang Machong (BL)
22. Namcheybung
23. Shyari (BL)
24. Martam-Rumtek (BL)
25. Upper Tadong
26. Arithang
27. Gangtok (BL)
28. Upper Burtuk
29. Kabi-Lungchuk (BL)
30. Djongu (BL)
31. Lachen Mangan (BL)

Source: Chakaravarthi K.R. and Nepal Y.P., Now, Vol. 1 A No. 219 dated Friday, 11 July, 2008, p.2 and Chakaravarthi K.R. and Nepal Y.P., Now, Vol. 1 A No. 221 dated Monday, 14th July, 2008, p.2. Sikkim, Sikkim Govt. Gazette, Gangtok, Sikkim Govt. Press No. 272, dated : 4, Sept 2006.

IV. Sikkim : The Pre and Post Merger Judiciary

In the erstwhile kingdom of Sikkim, there were no codified laws and it continued till it became protectorate of India. In fact the *Maharaja* was fountain of law and all legal and judicial authority upon the Subjects were based on his orders. These orders were laws. Further, the orders of the

Jongpons, Kazis, Thikadars and Feudal Lords were also considered to be one of the sources of Law in Sikkim, besides the Buddhist rules, customs, usages and unwritten conventions of a pure Buddhist society. By and large, laws in Sikkim came under the influence of Buddhism, Tibetan Mongolian cultures and of the Aryans later on. These laws combined Tibetan-Mongolian and Indo-Aryan civilizations. The customary laws and usages prevalent among various communities of Sikkim over the past several hundred years reflect the unison and interaction of these two great civilizations.

History

The Sikkim laws are believed and founded on those spoken by *Raja Me-long-dong*, who lived in India before the time of Buddha. This *Raja* is mentioned in the *K-gyur* in the 31st chapter. They were again written by *Kun-ga-gyal-tsan* of *Sa-kya-pa*, who was born in 1182 A.D. He was the king of 13 Provinces in Tibet and has called the laws *Tim-yik-shal-che-chu-sum* or *Chu-dug*, there being two sets, one containing 13 laws and the other 16. These are practically the same. The laws were again written by *De-si-sangye Gya-tsho*, who was born in 1653 A.D. and was a Viceroy of Tibet. They were called by him *Tang-shel-me-long-nyer-chik-pa*. The first set of laws deal with offences in general; the second set forth the duties of Kings and Government servants, further, they are simply an amplification of some of the laws contained in the former.

A Brief Description of The Sixteen Laws

1. General rules to be followed in time of war.
 - a. It is written in the *Ka-gyur* that before going to war the strength of the enemy should be carefully ascertained, and whether any profit will be derived from it or not. It should also be seen if the dispute cannot be settled by diplomacy before going to war. Care should also be taken that by going to war no loss be sustained by your Government. Whatever the cause of dispute, letters and messengers between the contending Parties should on no account be stopped, and messengers

should be properly treated. Any one coming with overtures of peace should be well received.

- b. Should two or more enemies combine against you, no means should be left untried to separate them, and if possible to bring one over to your side, but false oaths should not be resorted to, nor the using of God's name.
- c. The lie of the ground should be well examined to see how the roads run, and whether your position is strong.
- d. If it is necessary, other methods having failed, to go to war, you should all combine, and being of one mind should attack. See that there are no sick, lazy or timid in the ranks, but only those who fear not death. See that your own soldiers obey the law, and all should obey the orders of the General. Experienced men should only be sent, and not those who look after their own interest only.

The army should be divided into Three Divisions under the Command of Different Officers. The General and his staff should be trusted men who can guide the Army; they should be kept in good order. A doctor, diviner, astrologer and lama should be appointed.

The tents should be properly arranged the first day and this arrangement adhered to so as to prevent confusion. On moving, the fires should first be put out, the wounded should be cared for, and in crossing rivers order should be kept, and those behind should not push forward. Things found should be returned without asking a reward, and should not be concealed or kept. Thieves are not to be flogged, but only to have their hands tied behind them, but they may be fined. Should any one kill another by mistake, he must pay the funeral expenses. Should any combine and kill another, they must pay twice the fine laid down by law. Any disputed loot must be drawn for by lots between the contending Parties.

The General should appoint sentries, who must look to the water supply and see they become not easily frightened. They should allow no stranger to enter the camp armed, but should be careful not to kill any messenger. If a sentry kills a messenger coming to make peace, he shall be sent to his home in disgrace on some old, useless horse with broken harness.

2. **For those who are being defeated and cannot fight**

When a fort is surrounded, those in the fort should remain quiet and should show no fear. They should not fire off their arms uselessly and with no hope of hitting the enemy. The well within the fort should be most carefully preserved. Those within the fort should not be allowed to communicate with the enemy for fear of treachery. They should not be lazy. Until peace is declared the messenger should receive no reward. Should you be defeated, you must give up your arms, and those who give them up must not be killed. Should any one kill one who has given up his arms, he must be derided and scoffed at as a coward.

During a conflict, if you capture a General or Officer at rank, you should bind his hands in front with a silk scarf; he should be allowed to ride his own horse or another good horse, and should be treated well, so that in the event of your ever falling into his hands he may treat you well also. Any other prisoners should have their hands tied behind them and they should be made to walk. Officers should be placed on old, worn-out horse with broken harness and rope stirrups. Should an army be defeated and be obliged to fly, nothing should be said to them, but they should not be rewarded or receive any presents, even though the leader be a great man. The prisoners should receive what is necessary for subsistence and also expenses for religious ceremonies, and men of rank should be treated well and with consideration. A man can only make a Treaty for himself and his descendants.

3. For Officers and Government Servants

These should leave off their own work and apply themselves entirely to Government work, should obey the orders of the Viceroy and head of the religious institution, and should not change the *Shari* (hat sects) and *Tub-tha* (religious sects).

In the fifth month they should kill no animals, and the *Raja's* store should be well kept, so that there is no deficiency. They should repair the images, temples and books, and all passes and roads. Also on the 10th of this month the *dadok* ceremony must be performed.

If a man be sent on private business, the name of Government should not be used. Debts may be recovered through officers, who should patiently hear the case and not give arbitrary orders. They should give just judgement and not favour those who can reward them. They should enquire diligently into all cases, and leave no case undecided, so that all men can say your work has been well done.

4. Law of Evidence

You should listen carefully to what is said by both Parties. Equals by birth should be heard at the same time and place. Those that are not equals should be heard separately. Should any one not agree to your decision, he can be fined. If a decision has been given and the Parties wish to compound between themselves, one-half of the fines is only imposed.

5. Grave Offence

There are five sins :

- a. Murder of mother,
- b. Murder of holy men,
- c. Murder of father,
- d. Making mischief amongst *Lamas*, and
- e. Causing hurt to good men.

There are also the sins of taking things from *Rajas* and *Lamas* for our own use; causing a good man to fall through no fault of his own; administering poison, killing any one for gain; causing strife in a peaceful country; and making mischief.

For the above offences punishments are inflicted, such as putting the eyes out, cutting the throat, having the tongue cut out, having the hands cut off, being thrown from cliffs and being thrown into deep water.

6. **Fines Inflicted for Offences in Order to Make People Remember**

Certain crimes may be punished by money fines, varying in accordance with the gravity of the offence. When a number of men have committed *dacoity*, they may be fined from 15 to 80 gold srang. For small offences smaller fines are imposed, and can be paid either in money or in kind; the amount to be settled by the Officer trying the case.

7. **Law of Imprisonment**

Any one rioting, using arms and disputing near the court can be imprisoned. Thieves and those who destroy property, and those who do not obey the village headman, those who give bad advice, those who abuse their betters, can be bound and put in the stocks and fined accordingly to the law, and are only released if petitioned by some one in authority who makes himself responsible for his fine.

8. **For offenders who refuse to come in an orderly has to be sent expressly to enquire about the case**

A messenger who is sent of at a moment's notice should receive three (3) Parties of barely per diem for food and a small sum of money, according to the importance of the case in which he is employed, but the

messenger's servants shall not be fed. The messenger is allowed one-fourth of the fine for his expenses. Should an agent not settle a case properly, he must return to the villagers what he took, otherwise the villagers will have much trouble giving them.

The agent should report having received the fine on penalty of forfeiting one-fourth what he has taken. When a fine is imposed, it should be at once collected, no excuse being taken. If an agent is set to collect rent, he should be fed twice by the headman. Of stolen property recovered by an agent, the Government receives one-tenth value.

9. Murder

For killing a man the fine is heavy even upto many thousands of gold pieces. In the *Tsalpa* Law Book, it is written that if a child, a madman, or animal kills any one no fine is taken, but that money must be given by the relations of the first two for funeral expenses, and one fourth of that amount must be given by the owner of the animal towards these expenses. Should one man kill another and plead for mercy, he must, besides the fine, give compensation and food to the relative of the deceased. Should a man kill his equal and the relatives come to demand compensation, he must give them 18 oz. of gold in order to pacify them. The price of blood should never be reduced too much, or a man may say, "If this is all, I have to give, I will kill another".

The arbitrator must take the seal of each Party, saying they will abide by his decision, and they must each deposit 3 oz. of gold as security. Fines can be paid in cash, animals and articles of different kinds.

The price for killing a gentleman, who has 300 servants, or a superintendent of a district, or a *Lama* Professor, is 300 to 400 oz. gold srang. For full *Lamas*, Government officers, and gentlemen with 100 servants the fine

is 200 oz. of gold. For killing gentlemen who possess a horse and 5 or 6 servants, working *Lamas*, the fine is 145 to 150 oz. of gold. For killing men with no rank, old *lamas*, personal servants, the fine is 80 oz. of gold. For killing a man who has done good work for Government, the fine is 50 to 70 oz. of gold. For killing common people and for villagers, the price is 30 to 40 oz. of gold.

Men should be employed who know both Parties and are intelligent and truthful. Those willing to take an oath should be of equal rank. When all are present, the case should first be settled, if possible by arbitration. If this fails, the ordeal either by hot stones or boiling oil is resorted to. That by oil : The oil must be supplied by Government and must be pure. It is boiled in a pan at least 3 inches deep. In the oil a black stone and a white stone are placed of equal size and weight. He who has to take the oath must first wash his hands in water, in milk, and in widow's urine. His hand is then bound in a cloth and sealed. This is done a day or two before the ordeal in order to give him a chance of confessing. The vessel with the boiling oil is then placed so that the stones cannot be seen, and he has to take one out. If he takes out the white one without any burn, he wins his case. He who gets the black stone is sure to be burnt and loses his case. Should he who gets the white stone be slightly burnt, it means he has partially spoken the truth and wins half of his case.

That by hot stone : The stone is made hot by the blacksmith, taken out of the fire with tongs, and placed on a brass dish. The man's hands are washed as before, examined to see what marks there are no it produced by labour, and the hot stone placed in the palm. With the stone he must walk 4 to 7 paces. His hand is then bound up and left for 3 to 7 days. On examination if there are no marks, or if there is a long mark called *rdo-lam*, he wins his case. He also wins his case if the stone bursts three times being heated. It depends on the number of marks how much of his case he wins.

A cloth and a rug have to be paid as expenses, and the brass vessels go to the blacksmith. In order to test the oil for boiling, a grain of

barley is thrown in : if it flies into the air, the oil is ready. Whilst placing his hand in the oil of holding the hot stone, a statement in writing of the case is placed on the person's head. The ordeal by oil may be gone though without using the stone. Mud and water can be used in place of oil. Hot iron used to be employed in place of the stone, but is now discontinued.

10. **Bloodshed**

In the old law it is written that for any drop of bloodshed the rice varies from one to one-quarter zho. A man may even be beheaded for wounding a superior. For wounding his own servant, a man is not fined, but he must tend the wounded man. Should two men fight and one wound the other, he who first drew his knife is fined, and he who is wounded must be tended by the other till his wounds are well. The fines are payable in money or kind. Should one man wound another without any fight, he is fined according to the law of murder. If in a fight, a limb or an eye is injured, the compensation to be given is fixed by Government.

11. **For Those Who are False and Avaricious : The Following Oaths are Required**

If it is thought a man is not telling the truth, an oath should be administered. At the time of taking an oath powerful gods should be invoked, and those who are to administer the oath must be present. It is written in ancient law that the bird of Paradise should not be killed, the poisonous snake should not be thrown down, the raven should not be stoned, and the small turquoise should not be defiled. Thus, pure *Lamas* and *monks* should not be sworn-in. Magicians, shameless persons, women, fools, the dumb and children should not be sworn.

For taking a *Jongpen's* or other great man's things, 10,000 times their value has to be given in return. For taking a *Lama's* things 80 times their value has to be given, a neighbours' things 9 times, and a villager's 7 times.

For taking a stranger's things 4 times. Beggars who steal from hunger have only to give back what they took.

Should one man accuse another falsely of stealing, he must give him as compensation what he accused him of stealing. Should a man find anything on the road and without telling take it for himself, he must be fined double its value; but should he tell, he receives one-third the value. Should any one recover stolen property, but not be able to catch the thief, he receives half of the property recovered. Should any one find a horse, any cattle, yaks or sheep and keep them for a year without finding the owner, he receives one fourth the value, provided he has not in the meantime used the animals for his own benefits.

Should any one wound a thief he is not fined. If a thief whilst running away is killed by an arrow or stone, a small fine only is taken. Should any one having caught a thief kill him, he is fined according to the law of murder. The reward for catching a thief is from 1 to 5 oz. of gold, according to the amount of the property stolen.

12. Theft

For killing unmarried men, servants, and butchers the price is 30 gold srang and for killing blacksmiths and beggars 10 to 20 oz. of gold. These prices can also be paid in grain. The prices for funeral expenses must be paid within 49 days. On the fines being paid, a letter must be written and a copy given to each Party, saying that everything has been settled. If a case is re-opened, a fine must be paid by him who opens the case. The murderer must write to the effect he will not commit such a crime again. Part of the fines can be given towards the funeral expenses of the deceased.

13. Disputes between near relatives between man and wife and between neighbours who have things in common.

If a husband wishes to be separated from his wife, he must pay her from 18 zho, the amount varying in accordance with the length of time they have been married. If the wife wishes to leave her husband, she must pay him 12 zho and one suit of clothes. The wife on separation also receives the clothes given to her at her marriage, a list of which is always taken, or its equivalent in money. Should there be children, the father takes the boys and the mother the girls; the father paying from 5 to 15 zho for each son, called the price of milk. If the woman has committed no fault, she receives her ornaments.

Should a family wish to separate, a list of the whole property should be taken and divided according to circumstances. The father and mother are asked with whom they would like to live, and if there is any dispute about it, lots are drawn. The married children's property is first separated from the rest, and if any children are going to school, their expenses must be taken from the whole before decision.

14. Taking another's wife or adultery

The old laws runs that if any one takes a *Raja's* or *Lama's* wife, he may be banished have his hands cut off, his penis cut off. He may also have to pay a weight in gold equal to his penis and testicles. For violating a woman of different position 3 oz. of gold have to be paid to the woman's relations and 4 gold srang to Government, besides many things in kind. For violation of a woman of the same position, 2 or 3 gold srang and several kinds of articles have to be paid. If the woman goes of her own accord to the man, he has only to pay 1 gold srang and 3 kinds of articles. Should one man's wife entice another married man to go with her, she has to pay seven things in kind. Should a man and woman cohabit on a journey there is no fine.

15. Law of Contract

Should any one take a loan of cattle, yaks, sheep etc., and they die in his charge, he must pay for them. Should they die one night after being returned it is the owner's loss. If they die before midnight of the night they are returned, the borrower has to pay. Should a horse die whilst on loan from a wound, one fourth to one third of its value has to be paid. Should any one having made an agreement to take anything refuse to take it, the articles being good, he must pay one fourth of its value. If there be any mistake in an account, it can be ratified upto one year.

16. For Uncivilized People

Such as Bhutias, Lepchas, Mongoloids, who know no law, therefore what is written below is not required in Tibet. The Mongoloids also have their own law, written by *Raja Kesar*, of which we know little.

Any Government messenger must be supplied with what he wants (such as horses' food, etc) and if not provided he can take them. Also whilst halting he must be supplied with food and fire. But the messenger must not draw his sword or use his bow, or he will be liable to a fine, and he must only take what is necessary to the performance of the Government work.

Marriage, Customs of the Sikkimese

(Note :- These customs have been gathered from actual observations, and are the customs now observed amongst the Bhutias. However, many scientific and major changes have undergone at present).

If the eldest brother takes a wife, she is common to all his brothers. If the second brother takes a wife, she is common to all the brothers younger than himself. The eldest brother is not allowed to cohabit with the wives of the younger brothers.

Should there be children in the first case, the children are named after the eldest brother, whom they call father. Their brothers can marry three sisters, and all the wives be in common, but this case is not very often seen. In such a case the children of the eldest woman belongs to the eldest brother, and so on, if they each bear children. Should one or more not bear children, then the children are apportioned by arrangement. Two men not related can have one wife in common, but this arrangement is unusual. A man occasionally lends his wife to a friend, but the custom is not general and uncommon.

If a girl becomes pregnant before marriage and afterwards marries the father of the child, the child is considered legitimate, but the man is fined a bull or its equivalent, which goes to her relatives. Should the man by whom the girl was made pregnant not marry her, and should she afterwards marry another, the child remains with the woman's brothers or relatives. A woman is not considered dishonoured by having a child before marriage. The marriage ceremony consists almost entirely in feasting, which takes place after the usual presents have been given to the girl's relations. These presents constitute the women's price, and vary in accordance with the circumstances of both Parties.

The only religious ceremony is performed by the village headman, who offers up a bowl of *marwa* to the gods, and presenting a cup of the same *marwa* to the bride and bridegroom, blesses them, and hopes the union may be fruitful one. *Lamas* take no part in the ceremony. The marriage tie is very slight, and can be dissolved at any time by either the man or the woman.

A man may marry his mother's brother's daughter, but he can marry none of his other first cousins till the second generation. Their system of relationship is peculiar and interesting, and is given below.

Regarding succession the following order seems to be generally, though not always used :

1. Son
 2. Grandson, and so on, through the males ... LSI
 3. Brother by same mother
Father's brother's son
 4. Father's sister's son
Mother's brother's son
Mother's sister's son
- By choice
5. If only distant relatives, they only receive a portion, a portion going to the *Lamas* and the remainder to Government.
 6. If no relatives, funeral expenses, etc. to the *Lamas* and the remainder to Government.¹¹⁴

Roles and Functions of Judiciary in Sikkim :

Pre-Merger Period : Historical Perspective of the Sikkim Judiciary :

Sikkim has a past history of its own. Prior to its merger with the Union of India in the year 1975 by the Constitution (Thirty Sixth Amendment) Act, 1975, the erstwhile Sikkim was under a monarchy. The King who was popularly known as "The *Chogyal*" was the fountain head of justice. Kings' words were the laws. Under the then administrative set up there was no place for an Independent Judiciary. The judicial procedure being followed then was very simple and free from legal technicalities. The Courts were dispensing substantive justice based on the principle of justice, equity and good conscience. Lawyers were not allowed to appear in the Court.

The available records do not throw much light into the remote past. It can, however, be gathered from these records that the administration of justice in Sikkim in the last century was being carried out by the Feudal Landlords (Adda Courts), *Jongpons* (District Officers). *Pipons* (Headmen) and *Mandals* with the *Chogyal* at the top.

In 1909, *Kazis*, *Thikadar* and *Lamas* were empowered with judicial powers by a State Council resolution. They could try civil suits up to the valuation of Rs. 500/-.

In 1916, Appellate Courts by the designation of Chief Court were created with jurisdiction to try important original suits and also to hear appeals against the decisions of the Adda Courts. This Court also exercised supervisory and appellate jurisdiction over the Adda Courts. The Chief Court was not the final Court. The appeal against the decision of the Chief Court would lie to the Supreme Court of His Highness, the *Maharaja*. The Court of the *Maharaja* was the final Court of appeal in the State. It has no original jurisdiction. A Board of the lines of the Judicial Committee of the Privy Council in England, would hear the Parties and scrutinize the evidence regarding merit of the case and then tender its opinion to the *Maharaja*.

In 1949, the Adda Courts were abolished on the recommendation of the Judicial Proposal Committee. The State was divided into 4 (four) revenue Districts and Magistrates were appointed in District with original and appellate jurisdiction on the criminal and civil side. The Courts of the Assistant Magistrate and the Court of *Tahsildars* were created. In the lowest rung, a few Honorary Courts of Magistrates were created to dispose of petty criminal and civil cases. The Chief Magistrate had both original and appellate jurisdiction on civil and criminal sides. He had unlimited powers.

Table - XIV

List of Chief Justices of Sikkim

Sl. No.	Years	Chief Justices
1.	1976-1983	Mr. Justice M.M. Singh Gujral
2.	1983-1985	Mr. Justice M.L. Shrimal
3.	1986-1989	Mr. Justice J.K. Mohanty
4.	1993-1996	Mr. Justice S.N. Bhargava
5.	1999-2003	Mr. Justice R. Dayal
6.	2003-2004	Mr. Justice R.K. Patra
7.	2004- ?	Mr. Justice N. Surjamani Singh
8.	???	Mr. Justice Arun Kumar Ray

Source : *Sikkim : Thirty Years of Statehood*, Gangtok, 2005, IPR Publication, (GOS), pp. 157.

Post Merger Judicial System in Sikkim :

From the available records it appears that in 1953, a Judge of the High Court of Sikkim was appointed but in 1955, High Court of Judicature (Jurisdiction and Powers) Proclamation, 1955 was issued establishing a High Court in Sikkim. The High Court thus established was made the final Court in all judicial matters, civil or criminal, subject to the exercise of prerogative by the *Maharaja* to grant mercy, pardon, remission, commutation and reduction of sentence in case of conviction. The *Maharaja* had also retained his prerogative to set up a Special Tribunal for the review of any case, civil or criminal.

Upon merger, Sikkim became the 22nd State of India. Under Clause (i) of Article 371F, the High Court functioning immediately prior to the date of merger became the High Court for the State of Sikkim under the Constitution like any other High Court in the country. Under Clause (i) of the same Article all Court of Civil, Criminal and Revenue, Jurisdiction, all Authorities and all Officers, Judicial, Executive and Ministerial throughout Sikkim were to continue to exercise their respective powers subject to the provisions of the Constitution and under Clause (k) all laws in force immediately before the appointed day in Sikkim were to continue to be in

force until amended or repealed by a competent legislature or other competent authority.

The Government of Sikkim Act, 1974, which came to be passed in the Sikkim Assembly (which received the assent of the *Chogyal* on 4th July, 1974) in pursuance of the historical agreement of 8th May, 1973, between the *Chogyal*, the leaders of the Political Parties representing the people of Sikkim and Government of India, provided that all function. In keeping with the ideal and the set goal, the process of separation of judiciary from the executive started soon after the merger, in 1978, Sikkim Civil Courts Act was passed with a view to consolidate the laws relating to the Constitution of Civil Courts subordinate to the High Court and other relevant matters. The Sikkim State Judicial Service Rules 1975 and the Sikkim Superior Judicial Service Rules 1980 were framed providing for the mode of recruitment and services of Judicial Officers, thereby creating a separate cadre of Judicial Officers in the State. Besides, the Code of Criminal Procedure 1973, which provided for separation of judiciary from the executive was extended and enforced in the State of Sikkim in the year 1994.

With the commencement of the Constitution and under the new democratic set up the restriction placed earlier on lawyers to appear in Courts came to be ignored. Thus, institution of lawyers as it exists today came into existence.

On April 26, 1975 Sikkim became a part of Indian Union. The history of Judiciary in Sikkim prior to the establishment of British Suzerainty over Sikkim is associated with the rule of the king, who was the ultimate authority of all Legal and Judicial issues.

Among the different sources of law in the context of Sikkim the notable contribution were from the customs and usages, proclamation of the king and rules etc. as were formulated by the *Darbar*. For the purpose of administration of law and justice bodies like *Jongpons*, feudal landlords, *pipons*. *Mandals* or headman of the village used to be the authorities. In areas like Lachen and Lachung (North Sikkim) the authorities like *gyenme* or *pipons*

had jurisdiction to decide all matters civil and criminal. Both the judges and the Parties used to be taken oath *Dhang-na* by Judges and *Gnen-na* by Parties in disputes. When the Britishers came into power, the entire State was divided into number of estates for the purpose of Revenue and Judicial Administration and each estate was under the control of Lessee Landlords who were vested with the Judicial Powers.

In 1909 as per the State Council Resolution *Kazis, Thikadars* and *Lamas* were vested with power to decide civil suits and limited pecuniary jurisdictions. Accordingly, First Class *Kazis, Thikadars* and *Lamas* got jurisdiction for adjudicating money suits upto the value of Rs. Five hundred; Second Class exceeding to Rs. Three hundred; Third Class *Kazis, Thikadars* and *Lamas* could decide monetary suits upto Rs. Two hundred and Fourth Class *Kazis, Thikadars* and *Lamas* had jurisdiction to decide monetary suits upto the value of Rs. One hundred.

In 1916 a modern type of Court designated as Chief Court was created with jurisdiction to try important original cases and also to hear appeals against the decisions of the landlords. The Courts of the landlords were called the Adda Court which had jurisdiction to decide civil and criminal cases. First Class Adda Courts exercised criminal powers to impose punishment upto one month's imprisonment and fine upto Rs. 100/-. On the civil side, they could decide suits upto the value of Rs. 500/-. Second Class Adda Courts were invested with powers to inflict punishment of fine only upto Rs. 50/-. They had the jurisdiction to decide suits upto the value of Rs. 300/-. Third Class Adda Courts could impose fine upto Rs. 25/- in criminal cases and decide suits upto the value of Rs. 200/-. The Fourth Class Adda Courts could impose punishment of fine upto Rs. 15/- only on the criminal side and could decide suits upto the value of Rs. 100/-. The Chief Judge exercised supervisory and appellate jurisdiction over the Adda Courts. The Chief Court had both appellate and original jurisdiction. On the original side, it decided cases which were beyond the jurisdiction of the Adda Courts or litigations between the residents of different estates. On the appellate side, it heard appeals and references from the decisions of the Adda Courts. The Chief Court

was also invested with jurisdiction to decide revenue suits. The Chief Court was not the final court of Justice in Sikkim. The appeal against the decisions of the Chief Court would lie to the Supreme Court of His Highness, the *Maharaja*. The Court of *Maharaja* was the Supreme and Final Court of appeal in the State, it had no original jurisdiction. It was on the lines of the Judicial Committee of the Privy Council in England. It would hear the Parties and scrutinize the evidence regarding the merit of the case and then tender its opinion to the *Maharaja*.

The Political Officer had also exercised Judicial Powers side by side with the *Darbar* Court. The British subjects were not amenable to the jurisdiction of the *Darbar* Courts in the trial of criminal cases. They were required to approach the Court of the Political Officer in the first instance. However, the Political Officer could waive his right of trial in favour of the *Darbar* Court. In civil litigation, the plaintiff, if happened to be a British subject had a choice to select the forum between the *Darbar* Court and the Court of the Political Officer. The Political Officer exercised the powers of the District Magistrate and District Sessions Judge. No appeal would lie against his orders except in certain classes of crimes. The Courts in Sikkim followed British Laws in India. Technicalities of procedure, law of evidence and a hard and fast limitation law were not observed.

In 1949, J.S. Lall took over the Administration of Sikkim as *Dewan*. A Judicial Proposal Committee was set up under the Chairmanship of H. Pradhan. On the recommendation of the Committee, the judicial powers conferred on the landlords were abolished. Sikkim was divided into four revenue districts. Magistrates were appointed in each District with original and appellate jurisdictions on the criminal and civil sides. The Court of the Assistant Magistrate and the Court of the *Tahsildars* were set up. In the lowest level, a few Honorary Courts of the Magistrates were created to dispose of petty criminal and civil cases. Those Honorary Courts were established at suitable places in the locality for the convenience of the public. Above the district level Court, there was a Court of the Chief Magistrate. The Chief Magistrate had both original and appellate jurisdiction on civil and criminal

sides. He had unlimited powers. In 1955, the *Maharaja* issued High Court of Judicature (Jurisdiction and Powers) Proclamation for the establishment of a High Court of Sikkim. The Judges of the High Court were to hold Office for such period as provided in the terms of their appointment by the *Maharaja*. The High Court was the final Court in all Judicial matters, civil or criminal subject to the exercise of prerogative by the *Maharaja* to grant mercy, pardon, remission, commutation and reduction of sentence in case of conviction. All Courts and Tribunals in Sikkim were subordinate to the High Court. Appeals or Revisions against the decisions of all Courts and Tribunals would lie to the High Court. The High Court dispensed justice according to the Laws and Usages prevalent in Sikkim. The *Maharaja* had also retained his prerogative to set up a Special Tribunal for the review of any case, civil or criminal. The Proclamation provided that the President of such Tribunal should be from amongst the Judges of the High Court.

Where there were no Bench Court there used to be Adda Court. The Bench Court used to exercise Magisterial Power and also some Civil Powers. The Bench Court consisted of educated local dignitaries and were appointed by the King. The Adda Courts were manned by *Zamindar*. They were also called as *Kachari* Court. Indian Penal Code was adopted by the State of Sikkim by 1950-51. The Judges of the High Court and of the Chief Magistrate's Court were appointed from among the retired District and Sessions Judges of different States of India.

The *Tahsildars* and Assistant Magistrates were later designated as District Magistrates and Deputy District Magistrates. They exercised powers both on criminal and civil sides. Since, the Judiciary was not separated from the Executive. The Magistrates exercised both Judicial and Executive powers. In 1955, the Council Members felt that the insufficiency of local laws were detrimental to the security of life and property of the Sikkimese people. They also demanded the enactment of Sikkim's own laws and reorientation of Judiciary to impart Justice in a manner befitting the conditions of the Sikkimese people. A Deputy Magistrate was appointed in the Eastern Circle with powers of the Magistrate of the Second Class. Head jurisdiction to decide

Civil Suits upto the value of Rs. 2000/-. He was also conferred with powers to record statements and confessions made during the investigation of criminal cases by the police. A Deputy Magistrate was appointed in the West *Tahsil* with the power of the Magistrate of the First Class. He had jurisdiction to decide Civil Suits upto the value of Rs. 5000/-.

In 1963, an attempt was made to separate the Judiciary from the Executive by creating the post of Munsiff-Magistrate with purely judicial functions. The Chief Magistrate was invested with powers to dispose of all appeals from the decisions of the Courts of all Magistrates in Sikkim in respect of both Civil and Criminal cases. All the cases triable by a Court of Session or Magistrate of the First Class were to be filed before the Chief Magistrate's Court for trial and disposal. Other cases triable by the Magistrates were to be filed in the respective courts of the Magistrates.

In 1970, one separate Munsiff-Magistrate was appointed for South and West Districts with headquarter at Gyalshing (West Sikkim) and with his appointment District Officers/District Magistrates were divested of the powers to try Civil Suits. Perhaps this was the first step towards separation of the Judiciary from the Executive. After the tripartite agreement, certain changes in the Judicial Structure were made. The lowest Court of Law at the District Level was designated as District Court and the Presiding Officer was designated as Assistant District Judge or District Judge according to seniority in status. The post of Munsiff-Magistrate was abolished. The Court of the Chief Magistrate was designated as a Central Court of Sikkim and the Presiding Officer was designated as the Chief Judge of the Central Court. The High Court of Judicature in Sikkim remained as the High Court presided over by the Chief Justice of Sikkim. The Government of Sikkim Act provided that the Judges should be independent in the exercise of their judicial functions, subject only to the said Act and the Laws. Before Sikkim became the 22nd State of India, the Courts were dispensing substantive justice according to the Principles of Equity and Good Conscience. Presiding Officers of the Courts used to follow the customs which were difficult to trace or the spirit of laws of India or other countries.

The Constitution (Thirty-Sixth Amendment) Act, 1975 provided for the merger of Sikkim with India. It became the 22nd State of India. Article 371F (i) of the Constitution of India provides that the High Court then functioning as such would be deemed to be the High Court for the State of Sikkim. Article 371 F(i) provides that all Courts of Civil, Criminal and Revenue Jurisdiction, all authorities and all Officers, Judicial, Executive and Ministerial, throughout Sikkim would continue to exercise their respective powers subject to the provisions of the Constitution. Article 371 F (k) provides that all laws in force immediately before the appointed day in Sikkim shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority. In exercise of the Powers conferred by Clause (1) of Article 371 F of the Constitution, the President modified suitably the High Court of Judicature (Jurisdictions and Powers) Proclamation of 1955. Accordingly, the Sections in the said proclamation dealing with Judges of the Court, tenure of Judges, oath, power to punish for contempt, language, *Maharaja's* prerogative, pay of the Judges, disposal of work etc. were omitted. The High Court is the final authority in all judicial matters, Civil or Criminal. In 1975, the District Officers were designated as District Magistrates with powers provided in the Criminal Procedure Code of 1898. Accordingly, in 1978, Sikkim Civil Courts Act was passed with a view to consolidate the laws relating to the Constitution of Civil Courts subordinate to the High Court and other relevant matters.¹¹⁵

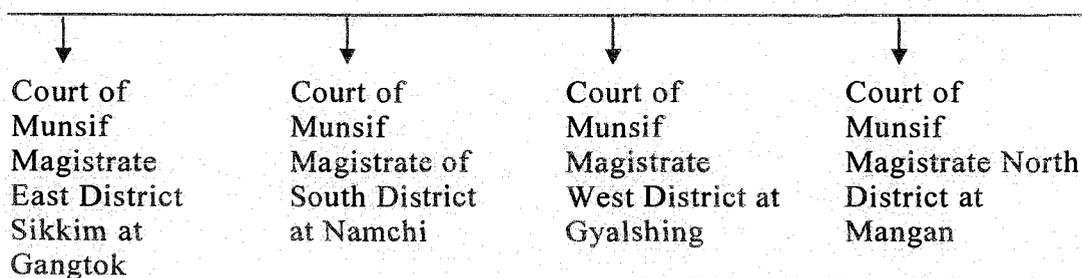
Prior to Sikkim becoming 22nd State of India in the year 1975, Courts of Sikkim were as under :

Table - XV

HIGH COURT

Single Judge

COURT OF THE CHIEF MAGISTRATE AT GANGTOK



Orders passed by the Munsif Magistrates herein above mentioned were appealable before the Chief Magistrate and the orders passed by the Chief Magistrate and the orders passed by the Chief Magistrate were applicable before the High Court.

The High Court had power of supervision over the Subordinate Courts. Besides the Judicial bodies herein before described, the then *Chogyal* (King) of Sikkim also exercised some Quasi Judicial authority mainly in civil matters.

The I.P.C. 1860 with few amendments was enforcing in Sikkim during the period. The Courts followed the procedure laid down in the Code of Cr.P.C. 1889, with few Local Amendment, in dealing with Criminal matters under the I.P.C. So far as civil matters were concerned the Courts were guided by the principle of natural justice and equity. The justice delivering system was prompt, simple with emphasis on as substantial justice.

Parties were allowed to be represented by lawyers only with the prior permission of the *Darbar*. Hence, Parties were assisted by lawyers only in very few cases.

Institutions like village elders, Panchayat members and local institutions like *Zumsa* in North Sikkim also played their role in the justice delivering system in Sikkim by amicable settlement of disputes between the Parties.

After the merger of Sikkim with the Union of India in the year 1975, efforts are constantly being made to have uniformity with other States of Union in so far as justice delivering system and establishment of Courts are concerned.

Accordingly the hierarchy of judicial courts in Sikkim are as follows:

Table - XVI

**HIGH COURT
3 JUDGE BENCH**

COURT OF THE CHIEF MAGISTRATE AT GANGTOK

District & Sessions Judge East & North Sikkim at Gangtok			District & Sessions Judge South & West Sikkim at Namchi		
↓	↓	↓	↓	↓	↓
Court of Civil Judge- cum- J.M. North Sikkim at Mangan	Court of Chief Ju- dicial Magistrate cum-Civil Judge E&N	Court of Civil Judge- cum- J.M. Gyalshing	Court of Civil Judge- cum- J.M. at Namchi	Court of C.J.M Civil Judge (S & W) Sikkim,	Court of Civil Judge- cum- J.M. Gangtok

There also exist two Courts of the District and Sessions Judge, Spl. Division which are located at Gangtok.

Following Special Courts under different Acts are also set up and functional :

1. Special Courts under the NDPS Act, 1985.
2. Special Courts under the TADA (since repealed).
3. Special Courts under the Family Courts Acts.
4. Special Courts Prevention and Atrocities to ST & SC Acts.
5. Special Courts Prevention of Corruption Act 1984.

The institution of *Lok Adalat* is also functional in the State and good numbers of cases are being amicably settled by the Parties through the institutions.

Besides the above, there are also some Quasi Judicial bodies like the Labour Tribunal, Motor Vehicle Claims Tribunals, the Collector under the Sikkim Public Premises Eviction of Unauthorized Occupants and Rent Recovery Act, 1985, the Certificate Officer under the Sikkim Public Demands Recovery Acts, the Collector under the Sikkim Cultivation Protection Act and the Collector under the Forest Act.

To hear appeals from these bodies, there also exist different appellate forum.

The last but not the least, the different Consumer Courts under the Consumer Protection Act have also been established in the State and cases under the Act are being decided by these Courts, though in small numbers.¹¹⁶

To be very precisely, the District Judges are the members of Sikkim Superior Judicial Service. The Civil Judge-cum-Judicial Magistrates and Chief Judicial Magistrates are the members of Sikkim Judicial Service.

V. SIKKIM : Panchayati Raj Institution and Decentralization of Powers

The concept of democratic decentralisation seeks to explain and widen the extent of people's participation, authority and autonomy and distribution of powers. The main objective of democratic decentralization is not only to project dispersal of powers and associate the people with local

administration, but to recognize the people's right to initiate and execute policy decisions at a given grassroots level. It is a process and is associated with the idea of local Government. To substantiate the above view, the Panchayati Raj provides democratic decentralization as a Political ideal and the system itself as its institutional form.¹¹⁷ According to Sonam Wangdi, Advisor to Government of Sikkim, in the past there were no codified rules and regulations to guide the affairs of villages in Sikkim. As pointed out earlier, nevertheless, Sikkim had its own Councils which were called *GYEME* (village elders) in the Sikkimese language. It was known as 'Panchayat' in Nepali. The head of the *GYEME* was called *KHYOMEE*. The Gyeme was primarily concerned with trying of petty village cases referred to by the judicial authorities, but not with Welfare activities.¹¹⁸

India after Independence was inspired by Gandhi's school of thought which believes in traditional and rural basis i.e., from below by establishing self-governing villages and to retain values of rural life. Article 40 under Directive Principles of State Policy of the Constitution of India stipulates that, the State shall take steps to organize village Panchayats and enable them to function as units of self-Government. The traditional democratic local institution of 'DZUMSAS' were existing in Lachen and Lachung areas of North Sikkim for more than 350 years. Prior to 1948, the *Zamindari* system was prevalent and on abolition of the *Zamindari* system, there were village headmen called *Mandal* employed for collection of land revenue. Along with *Mandals* as heads, informal bodies of village elders used to look after the affairs of the villages. In the initial period of development local bodies in the structure of Managing Committees were to run schools and also to execute other social activities in the villages of Sikkim.¹¹⁹

The Sikkim Panchayat Act, 1965 was promulgated to consolidate and amend the laws relating to the Panchayats in Sikkim to facilitate rural development and enable participation by all communities at the village level. The term of such Panchayat was for three years. Altogether sixteen items were listed as duties and functions of the Panchayats. Funds of the Panchayats comprised of house tax, 10% of land revenue, matching grant

by the Durbar for original works for which public contribution were collected, sanitation and water cess. This Act also provided reservation for minorities. In 1982, a new Act was enacted which introduced the constitution of the Zilla or District Panchayat. At the time of the enactment of the Constitution (Seventy-third) Amendment Act, 1992, an effective local administration was already in place. In fact, the elections under the Sikkim Panchayat Act, 1982 were conducted in 1992 and the Panchayats constituted through this election were allowed to complete its five year term.

The Sikkim Panchayat Act, 1993 (Act No. 6 of 1993) was enacted and notified on 18.10. 1993. This Act follows the guidelines laid down by the Constitution (Seventy-third) Amendment Act, 1992 for the Constitution of Panchayats in the State. Thus, Panchayati Raj Institutions were to be a collective action of communities and their network capable of sustainable development.¹²⁰

In order to recognize the Panchayats in 1948, the Sikkim Government constituted *Elakha* Panchayat Tribunal in every estate consisting of a landlord and Government recognized Panchayat of four villagers of the estate: They were elected by the people. The Panchayat Tribunal was empowered with Civil powers to her suits upto a value of Rupees one hundred only. The Criminal Jurisdiction was confined to affray, spreading diseases, fouling water, simple injuries, assault, theft, wrongful restraint, criminal force, misappropriation, criminal breach of trust money amounting to less than Rs. 10/- only, mischief to property and person, insult and abuse and misconduct by a drunken person. For these the criminals have to inflict sentence of fine to the extent of Rs. 25/- only.¹²¹ This notification was subsequently reaffirmed by another notification.¹²²

Since, Sikkim follows a two-tier system of Panchayati Raj with the Zilla Panchayat at the District level and the Gram Panchayat at the village level. Thus, the State is divided into four Zillas or districts presently consisting of 100 Territorial Constituencies and 166 Gram Panchayat Units comprising of 905 wards. The traditional institutions of Lachung and Lachen,

known as the *Dzumsas*, were deemed to be Gram Panchayat Units for the purpose of the Sikkim Panchayat Act, 1993 and exercise its traditional powers and functions in addition to those of a Gram Panchayat. At the district level, the *Dzumsas* were recognized as Territorial Constituencies of the North District Zilla Panchayats.

Though a majority of the developmental programmes are targeted towards the weaker and backward sections of society, they generally do not get adequate representation in the developmental process. With a view to involve the weaker and backward sections of the society in the day-to-day developmental activities, the Sikkim Panchayat Act, 1993 provides for the reservation of seats for the Scheduled Castes, Scheduled Tribes and Women in both tiers of the PRIs. Proportional reservations for the SCs and STs of the state are made in accordance with their population in the state. Today women Panchayats of Sikkim enjoy greater role and responsibilities with the 40% seat reservation. Similarly, the Backward Classes are also provided reservation in both tiers. Similar reservations are also provided for the post of the *Adhyaksha* and *Up-Adhyaksha* of the Zilla Panchayats and *Sabhapati* and *Up-Sabhapati* of the Gram Panchayats.¹²³

The *Dzumsas*

The origin of the institution of the *Dzumsas* system can be traced back through the centuries having metamorphosis to adapt to the growing needs of the people. The distinctive characteristic of these institutions may be attributed primarily to the geographical location of the habitats of these people as the ecological milieu of these people is determined by high altitude, comparatively low rain-fall and violent local winter winds. Even the steppe vegetation is characteristic by stunted shrubs. The Teesta cut across North Sikkim with its tributaries, Lachen Chu, Lachung Chu, Lonak Chu and their distributaries dividing the area into separate inaccessible valleys inter woven by high mountain features. Human settlement is concentrated in and around the two major valleys of Lachen and Lachung.

These people lived by travelling from one ecologically zone to another. They inhabit climatic zones varying from temperate. Sub alpine to alpine.

This traditional social structure is an adaptation to the climatic and geomorphological limitation of the high altitude environment. This natural environment sets limit to human intervention. To utilize the meagre natural resources the people have created an institution based on sharing instead of competition. This has kept the society intact through the centuries. In earlier times the title to land holdings had communal character and it was usufructuous rather than absolute. This right was extended to the members of the village community. The environmental condition limits the mode of livelihood which in turn determines the dominant value of the people and strongly influences their social organization.

As the traditional laws of Sikkim have been upheld by the Supreme Court, the traditional system of governance which prevailed in the villages of Lachen and Lachung, known as the *Dzumsas*, were continued without any changes. This system of governance is traditional and follows the tribal social organizational set-up which renders it that uniqueness that sets it apart from other parts of the State. This traditional village level body consists of all the elders of every household of the village including women and lamas of the secular sect. Two persons are elected from amongst the members of the *Dzumsas* and are known as the Senior and Junior *Pipon*. The *Pipons* are assisted in their work by a representative of the religious sect (*Lamas*) called the *Chutimpa*. The *Pipons* have extensive powers in accordance with the customary laws and practices, although the local laws of the state and country apply to the area as well. The *Dzumsa* performs all the developmental functions that are assigned to the Panchayats in other areas and also have customary judicial powers for trials of cases in their respective villages. The term of office of the *Pipon* is for one year. No official is nominated to these *Dzumsas*.

All office bearers are directly elected by the village community.

- Pipon* - The highest office bearers in the administrative hierarchy and are directly elected by the village community.
- Gyapon* - The next in the administrative hierarchy. They are also elected.
- Thimpeon* - The jury, often 10 in number are elected as and when exigencies of the time so demand i.e., during disputes or settlement of cases.
- Mong-Khim* or *Dzumsas* house - The place where people meet to discuss their problem or to transact important business of the welfare of the community. The house is square roofless structure with a religious flag (*Tharcho*) mounted on a long pole in the centre a concrete Platform with the roof surrounds the wall of the *Mong-khim*. The *Pipon* sit opposite the entrance on the concrete platform, White public (*Misey*) sit in the middle ground or on the platform.
- Dzumsas* meeting - The meetings are called to conduct public business. Calls for the meeting by the *Gyapon* from three different areas by shouting. These areas are situated at different altitudes and suitably located to ensure that whole village gets to hear the message. Immediately the head of each family proceeds to the *Dzumsas* to attend the meeting.¹²⁴

Taking the spirit of the Constitution (Seventy-third) Amendment Act, 1992 contained in the Statement of Objects and Reasons presented by the former Prime Minister P.V. Narishmha Rao, namely, "to improve participation of the people in the process of their own development" and "it was felt that involvement of people was lacking and they were not having opportunity to decide the matter which directly affects their life" as the guiding principle, the Rural Management & Development Department (RM&DD), Govt. of Sikkim has initiated the following steps since the Constitution of the second generation Panchayats in November, 2002 :

1. Generation awareness of Gram Sabha & decentralization.
2. Transfer of functions.
3. Transfer of funds.
4. Transfer of functionaries.
5. Capacity building.

6. District Planning Committee.
7. State Finance Commission.
8. Monitoring & Evaluation.
9. Creation of assets.
10. Identification of core sectors.
11. Gram *Prasashan* Kendra.
12. Planning methodology.
13. Social audit.
14. Quorum for women in Gram Sabha.
15. Strengthening of accounting procedures.
16. Establishment of Block Development Offices.¹²⁵

SIKKIM : The State Election Commission

In Sikkim, the State Election Commission was constituted immediately after the enforcement of the Sikkim Panchayat Act, 1993. The superintendence; control and conduct of elections to the local bodies are vested with the State Election Commission. Elections to the Territorial Constituencies and Gram Panchayat Units were consequently held on 06.10.1997. The four Zilla Panchayats were constituted after these elections with the *Adhyaksha* and *Up-Adhakshya* elected by the elected members of the territorial constituencies in accordance with the provisions of the Sikkim Panchayat (Procedure for election of *Sabhapati* and *Up-Sabhapati* of Gram Panchayat and *Adhyaksha* and *Up-Adhakshya* of Zilla Panchayat and manner of convening meetings) Rules, 1997, The second Panchayat elections were held in 2002 before which a process of delimitation was undertaken and the number of Territorial Constituencies was increased to 100 from 92 and the number of Gram Panchayat Units was increased to 166 from 159 and the numbers of wards were increased to 905 from 873.¹²⁶

State Finance Commission

The First State Finance Commission was constituted in 1998 and a majority of its recommendations have been accepted by the State Government and are being implemented. The Second State Finance Commission was constituted in 2003 and submitted its report in 2004. The report recommends the introduction of certain taxes, rates and charges to

augment the revenue of the State and also assignment to the Panchayats. In addition, the report has also recommendations for strengthening the administrative and planning machinery of the Panchayats. The recommendations contained in this report were placed in the State Legislative Assembly and unanimously passed and shall be implemented from April, 2006.

The recommendations were :

- 1) *Introduction of taxes on property in municipal areas.*
- 2) *Introduction of user charge for drinking water in Panchayat areas.*
- 3) *Introduction of user charge for use of irrigation water.*
- 4) *Introduction of fees for construction of houses in Panchayat area.*
- 5) *Introduction of fees for occupation of Haat sheds.*
- 6) *Assignment of taxes on fairs, meals, markets and entertainment in Panchayat area to the PRIs.*
- 7) *Introduction of service charge for registration of births and deaths.*

Further more, the State Institute of Rural Development (SIRD) has been vitalized to play an effective role in the training of PRI members and Government functionaries working with the PRIs. The SIRD has been conducting trainings in accordance with its Training Calendar. Capacity building is the main focus of the Rural Management & Development Department during the year 2006-2007.

Table - XVII
Sikkim Panchayati Raj Update

Serial No.	District	No. of GPUs	No. of Territorial Constituencies	Total No. of GPU Members
1	East	50	31	273
2	South	45	24	255
3	North	20	20	103
4	West	51	25	274
Total		166	100	905

Note : Including the 2 Dzumsas in the North District i.e., Lachen and Lachung. Total number of Panchayat Members including the Zilla Panchayat Members : 2005

Source : SIKKIM, Sikkim Panchayati Raj in Sikkim, Rural Management and Development Department, Government of Sikkim, (n.d.) p. 7.

In the Himalayan State of Sikkim, the Panchayati Raj Institutions are empowered to function as "institutions of self government", enhancing their powers to plan and implement programmes of economic development and social justice by Article 243G of the Constitution of India. The Rural Management & Development Department has initiated a process of multi-level intervention to build up the right procedures, capabilities, evolving suitable structures and bringing about basic necessary technical changes including attitudinal changes among the bureaucrats and politicians for the transition to a democratic decentralized and devolved Panchayati Raj Institution.

Further, the RM & DD is of the firm opinion that the Panchayats can fulfil their responsibilities as instruments of self governance if devolution is patterned on the nexus between the functions, finances and functionaries – the 3 Fs. It is also being ensured that devolution once made is irreversible and a function once developed should not be arbitrarily taken back. Thus, it has been ensured that this process of devolution is done through legislative action rather than administrative orders.

It was also noted that elected local bodies cannot act as "institutions of self government" until they are entrusted with substantial untied fund which shall be spent at their discretion; in consultation with the public, in the Gram and Ward Sabhas. This aspect too has been empowered by Article 243 1 of the Constitution. Thus, the quantum of finances that will be available on a five year and annual basis to the Panchayats at each level for the implementation of various schemes is done in an unambiguous manner. There has also been a felt need for the attitudinal change among the local bodies in their functioning as representatives and as responsible bodies of the people. To overcome this, the participation of large numbers of Panchayat representatives at each level has been incorporated.

The Panchayats at different levels must be aware of funds which shall be placed at its disposal. This is an essential prerequisite for each tier of the PRI to prepare plans in its areas of responsibility. The Gram and the Zilla Plans are consolidated by the District Planning Committees and forwarded to the State Planning Board for integration in the State Annual Plan. Strict monitoring and Evaluation of the funds devolved to the Panchayati Raj Institutions is being done by the State Committees.

The devolution of functionaries to the Panchayati Raj Institutions has been patterned on the Activity Mapping of activities related to the devolved functions to the Gram Panchayat and Zilla Panchayats. Since in Sikkim, the officials have been sent on deputation to assist the elected PRIs in the planning and implementing of the devolved activity, it is being ensured that the officials concerned are primarily responsible to and under the disciplinary control and supervision of the elected PRIs. The Constitutional requirement of the "self government" requires the subordination of the bureaucracy and technocracy at the Panchayati Raj level to the elected bodies and there should be no ambiguity regarding this.

Inadequacy of man-power may not allow all line departments to depute their field staff in each and every one of the 166 Gram Panchayats. Therefore, 51 Gram Panchayats have been identified as the administrative offices where the line department functionaries shall be stationed. From such Office each line department functionary shall look after about 3 Gram Panchayat Units. In addition to the members of the Gram Panchayats, a Rural Development Assistant, an Office Helper, VLO, VLW, Stockman, and Block Officer are stationed in these *Kendras*. At present there are 103 Panchayat *Ghars* which are owned and maintained by the Panchayats. The target is to construct at least 4 Panchayat *Ghars* every year.

Article 243 G of the Constitution of India envisages the nodal role of the Panchayats at all levels in regard to local area planning. This is also one of the prerequisite conditions of the Panchayati Raj Institutions are to function as institutions of self-government and not as mere implementing

agencies of plans and schemes they have had no hand in formulating. Under Article 243 Z D of the Constitution, the District Planning Committees have to consolidate the plans prepared within the districts by the Panchayats at all levels. These District Planning Committees have been constituted and are playing an effective role in the preparation of the plans. Further, it is very necessary that the Gram and Ward Sabhas are adequately mobilized in order to make the planning process meaningful.¹²⁷

Sikkim : Decentralization of Powers vis-à-vis The Grass Root Level Government Are As Follows :

1. 70% of the State budget goes towards the development of rural areas.
2. Women are given 40% reservations. This also holds for the elections of the *Adhakshya* and *Up-Adhakshya*
3. Gram Panchayat Units & Zilla Panchayats now have the power to prepare, sanction, supervise and implement the schemes in their own area, depending upon the nature of the work.
4. To enable the Panchayats to exercise these powers, the Government has provided funds.
5. Government institutions like Primary Schools, Junior High Schools, Primary Health Centres, VLO centres, Libraries, CICs, schemes for minor Irrigation work, Community centres, Play grounds etc. within a Gram Panchayat Unit have been put under the administrative control of the President of the respective Gram Panchayat Units.
6. Transparency and accountability are the salient features of democratic decentralization. All plans and schemes are to be passed in the Gram Sabha and District Planning Committee meetings. People are given equal opportunity in the decision-making process in all the developmental activities of the village.

The key objective is to ensure that PRIs function as institutions of self-government rather than mere implementing agencies for other authorities in respect of functions developed to them. Rural Management and Development Department had initiated a process of multi level intervention so

as to build up in the right procedures, capabilities, evolving suitable structures and by bringing necessary technical and administrative changes including attitudinal changes among the bureaucrats and politicians for the transition to democratic decentralized and developed Panchayati Raj Institutions.

The Eleventh Schedule of the Constitution indicates 29 subjects of functions that need to be devolved to the Panchayati Raj Institutions. Further, strengthening our commitment towards democratic devolution, the Rural Management and Development Department is of the firm opinion that Panchayats can only fulfil their responsibilities as Institutions of Self Government after devolution is patterned on a nexus between the 3 Fs – Functions, Functionaries and Finances. The idea is to link the formal devolution of functions as the means for actualizing such devolution through the devolution of functions, functionary and finances.

To be very precise, the critical importance of the bureaucracy and technocracy in planning, executing and monitoring the whole gamut of the poverty alleviation and rural prosperity schemes, however, cannot be denied. Though participatory development demands that elected representatives be answerable to their electorates, therefore, it is necessary that bureaucracy and technocracy should serve the elected representatives at the Panchayat level on the same principle under which they serve the elected authority at the State and Central level. Further, District Planning Committees have to consolidate plans prepared within the districts by Panchayats at all levels.¹²⁸

Much before the Panchayat poll held on October 26, Sikkim Democratic Front President and Chief Minister Pawan Chamling had forecast that the opposition Parties will not be able to win a single seat in the election. True to his prediction, two Opposition Parties, CPI (M) and Sikkim Gorkha Prajatantrik Party drew a blank. But the Congress may argue that they have proved the prediction wrong by winning a solitary Gram Panchayat seat in the West District out of 889 Gram Panchayat seats and 93 Zilla Panchayat seats in

the whole State. Results declared on October 29 shows that SDF has won 90.43% Gram Panchayat seats and 91.39% Zilla Panchayat seats. It indicates that the Opposition Parties were no where to come in the way of a thumping victory of the ruling Party.

Table - XVIII
Result of Panchayat Election held on 26th October, 2007

East District	
Zilla Panchayat	Seats Won
1. Sikkim Democratic Front	14
2. Independent	03
Gram Panchayat	
1. Sikkim Democratic Front	95
2. Independent	27
West District	
1. Sikkim Democratic Front	08
2. Independent	Nil
Gram Panchayat	
1. Sikkim Democratic Front	27
2. Independent	10
3. INC	01
North District	
Zilla Panchayat	
1. Sikkim Democratic Front	08
2. Independent	01
Gram Panchayat	
1. Sikkim Democratic Front	23
2. Independent	15
South District	
Zilla Panchayat	
1. Sikkim Democratic Front	10
2. Independent	03
Gram Panchayat	
1. Sikkim Democratic Front	74
2. Independent	32

Source : Sikkim Reporter, Vol. 1, Issue 65, October 30, 2007, published by Ashok Chatterjee, Daragaon, Tadong, Gangtok, p. 1.

However, as indicated in the editorial analysis of Sikkim Reporter October 29 issue, independents have fared far better than any of the opposition Parties in the state by winning 7.52% Zilla Panchayat and 9.44 % Gram Panchayat seats in this election.¹²⁹

To be precise, prior to merger of Sikkim, the Panchayats were launched in accordance with the noble desire of *Chogyal*. It was to see the people of Sikkim to be associated with the shaping of their common destiny, i.e., the rural people should be associated intimately with the implementation of Sikkim's rural development programmes with a view of fulfil the aspirations of the people. It was also to enable the people to participate in the common endeavour with willing and cheerful heart empowered to impose taxes, rates and fees of its own in addition to the contribution and grants received from the State Government. It is to prepare its own budget to be approved by the Government of Sikkim. However, in the post-merger period the PRIs function as Institutions of self government rather than mere implementing agencies for other authorities in respect of functions devolved to them. Rural Management and Development Department had initiated a process of multi-level intervention so as to build up in the right procedures, capabilities, evolving suitable structures and by bringing necessary technical and administrative changes including attitudinal changes among the bureaucrats and politicians for the transition to democratic decentralized and devolved Panchayati Raj Institutions. The Eleventh Schedule of the Constitution indicates 29 Subjects or functions that need to be devolved to the Panchayati Raj Institutions. Further, strengthening State's commitment towards democratic devolution, the Rural Management and Development Department is the firm opinion that the Panchayats can only fulfil their responsibilities as Institutions of Self Government after devolution is patterned on a nexus between 3 Fs – Functions, Functionaries and Finances. The idea is to link the formal devolution of functions so as to attain the goals.

Notes and References

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2. See Appendix VII
3. See Appendix III
4. *Ibid.*
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