

APPENDIX 'D'

THE GOVERNMENT OF SIKKIM ACT, 1974

An Act to provide, in pursuance of the historic agreement of the 8th of May, 1973 between the Chogyal, the leaders of the political parties representing the people of Sikkim and the Government of India and of the unanimous desire of members of the Sikkim Assembly expressed in the meeting of the Assembly held on the 11th May, 1974, for the progressive realisation of a fully responsible Government in Sikkim and for further strengthening its close relationship with India.

CHAPTER I

Preliminary

1. This Act may be called the Government of Sikkim Act, 1974.
It shall come into force on the day of June, 1974.
2. In this Act unless the context otherwise requires :-
 - (a) "Assembly" means the 'Sikkim Assembly'.
 - (b) "Chief Executive" means the Chief Executive referred to in Section 28.
 - (c) "Chogyal" means the Chogyal of Sikkim.
 - (d) "Members" means the members of the Assembly.

CHAPTER II

The Chogyal of Sikkim

3. The Chogyal shall take precedence over all other persons in Sikkim and he shall continue to enjoy the honour, position and other personal privileges hitherto enjoyed by him.

4. The Chogyal shall exercise his powers and perform his functions in accordance with the provisions of this Act and nothing contained in Section 3 shall affect the provisions of this Section.

5. All executive action of the Government of Sikkim taken in accordance with the provisions of this Act shall be expressed to be taken in the name of the Chogyal.

CHAPTER III

SIKKIM ASSEMBLY

6. (i) There shall be an Assembly for Sikkim.

(ii) The total number of seats in the Assembly to be filled by persons chosen by direct election shall be such as may be determined by law.

7. (i) For the purpose of election to the Sikkim Assembly Sikkim shall be divided into constituencies in such manner as may be determined by law.

(ii) The Government of Sikkim may make rules for the purpose of providing that the Assembly adequately represents the various sections of the population, that is to say while fully protecting the legitimate rights and interests of Sikkimese of Lepcha or Bhutia origin and of Sikkimese of Nepali origin and other Sikkimese, including Tsongs, scheduled castes, no single section of the population is allowed to acquire a dominating position in the affairs of Sikkim mainly by reason of its ethnic origin.

8. For ensuring free and fair elections in Sikkim, the Chogyal shall appoint a representative of the Election Commission of India nominated by the Government of India in this behalf and the elections shall be conducted under the supervision of such representative, and for this purpose the representative shall have all the powers necessary for the effective discharge of his functions.

9. A person shall not be qualified to be chosen to fill a seat in the Assembly unless he -

- (a) Is an elector for any constituency and makes and subscribes before some persons authorised by the authority conducting the election an oath or affirmation according to the form set out in the Schedule.
- (b) Is not less than 25 years of age.
- (c) Possesses such other qualifications as may be specified in any law for the time being in force.

10. (i) The elections to the Sikkim Assembly shall be on the basis of 'one man one vote', that is to say, every person who on the prescribed date is a subject of Sikkim, is not less than twentyone years of age and is not otherwise disqualified under this Act or under any other law on the ground of residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at any such election.

(ii) Every person whose name is for the time being entered in the electoral roll of any constituency shall be entitled to vote at the election of a member from that constituency.

11. The Assembly shall, unless sooner dissolved, continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as a dissolution of the Assembly.

12. The Chogyal shall, on the advice of the President of the Assembly, summon the Assembly to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for first sitting in the next session.

13. (i) The Chief Executive shall be ex officio President of the Assembly and as such shall perform the functions of the Speaker thereof.

(ii) The Assembly shall, as soon as may be, choose a member to be Deputy Speaker thereof who shall act as a Speaker during the absence of the President of the Assembly for any sitting of the Assembly.

14. The Chogyal may address the Assembly after intimating to the Assembly his intention to do so.

15. Every member of the Assembly shall before taking his seat, make and subscribe before the Chogyal or some persons appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Schedule.

16. If the member of the Assembly -

- (a) becomes subject to any disqualification mentioned in Section 17 for membership of the Assembly, or
- (b) resigns his seat by writing under his hand addressed to the President of the Assembly, his seat shall thereupon become vacant.

17. (i) A person shall be disqualified for being chosen as, and for being, a member of the Assembly -

- (a) if he holds any office of profit under the Government of Sikkim other than office declared by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is so disqualified by or under any law.

(ii) For the purpose of this section, a person shall not be deemed to hold an office of profit under the Government of Sikkim by reason only that he is a Minister.

(iii) If any question arises as to whether a member of the Assembly has become disqualified or being such a member under the provisions of sub-section (i), the question shall be referred for the decision of the Chogyal and his decision shall be final.

(iv) Before giving any decision on any such question the Chogyal shall obtain the opinion of the Election Commission of India or such other Election authority as may be specified by the Government of India for the purpose, and shall act according to such opinion.

18. If a person sits or votes as a member of the Assembly before he has complied with the requirements of Section 15 or when he knows that he is not qualified or that he is disqualified for membership thereof, he shall be liable in respect of each day on which he so sits or votes to a penalty of one hundred rupees to be recovered as a debt due to the Government of Sikkim.

19. (a) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Assembly there shall be freedom of speech in the Assembly.

(b) No member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the

Assembly or in any committee thereof and no person shall be so liable in respect of the publication by or under the authority of the Assembly of any report, paper, votes or other proceedings.

20. (i) Subject to the provisions of this Act, the Assembly may discuss, make recommendations or make laws for the whole or any part of Sikkim with respect to any of the following matters, namely,

- (a) Education,
- (b) Public Health,
- (c) Excise,
- (d) Press and Publicity,
- (e) Transport,
- (f) Bazars,
- (g) Forests,
- (h) Public Works,
- (i) Agriculture,
- (j) Food Supplies,
- (k) Economics and Social Planning including State Enterprises, and
- (l) Land Revenue.

(ii) Subject to the provisions of this Act, the Assembly shall also have the right to discuss and make recommendations with respect to any matter not connected in sub-section (i) which may from time to time be referred to by the Chief Executive.

(iii) The Chogyal shall, on the recommendation of the Government of India, by notification in the Sikkim Darbar Gazette add any other matters enumerated in sub-section (i) and thereupon the matters so added shall be deemed to have been included in the sub-section for the purposes of this Act.

21. When a bill has been passed by the Assembly, it shall be presented to the Chogyal and the Chogyal shall declare either that he assents to the Bill or that he withholds assent therefrom.

Provided that the Chogyal may, as soon as possible after the presentation to him of a Bill for assent return the Bill to the Assembly with a message requesting that they will reconsider the Bill or any specified provisions thereof and in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and when a Bill is returned, the Assembly shall reconsider it accordingly within a period of three months from the date of receipt of such message and if it is again passed by the Assembly with or without amendment and presented to the Chogyal for assent, the Chogyal shall not withhold assent therefrom.

Provided further that the Chogyal shall reserve for the consideration of the Government of India any Bill, which would if it became law affect any of the responsibilities of the Government of India or any other special responsibilities of the Chief Executive referred to in Section 28 and shall act according to the decision of the Government of India.

22. (i) The validity of any proceedings in the Assembly shall not be called in question on the ground of any alleged irregularity in procedure.

(ii) No officer or member of the Assembly in which powers are vested by or under this Act for regulating the procedure or the

conduct of business or for maintaining order in the Assembly shall be subject to the jurisdiction of any court in respect of the exercise by him of these powers.

23. (i) The Assembly may make rules for regulating subject to the provision of this Act, the Assembly shall not discuss or ask questions of any of the following, namely,

- (a) the Chogyal and the members of the ruling family;
- (b) any matter pending before a court of law;
- (c) the appointment of the Chief Executive or member of the judiciary; and
- (d) any matter which is exclusively the responsibility of the Government of India, whether under this Act or under any agreement or otherwise.

CHAPTER IV

COUNCIL OF MINISTERS

24. (i) There shall be an Executive Council (in this Act referred to as the Council of Ministers) with one of the members thereof at the head who shall be designated as the Chief Minister and the others as ministers.

(ii) The Council of Ministers shall be incharge of the administrative departments allotted to them and shall advise the Chogyal in respect of all matters within their jurisdiction.

(iii) Every advice tendered by the Council of Ministers shall be communicated to the Chogyal through the Chief Executive who may, if

he is of opinion that the advice affects or is likely to affect any of his special responsibilities or the responsibilities of the Government of India referred to in Section 23, required the Council of Ministers to modify the advice accordingly.

(iv) The question whether any and if so what, advice was tendered by the ministers to the Chogyal shall not be inquired into by any court.

25. (i) The Chief Minister and other ministers shall be appointed by the Chogyal on the advice of the Chief Executive. (ii) The Council of Ministers shall be responsible to the Assembly. (iii) Before a minister enters upon his office, the Chogyal or such other person as may be authorised in this behalf shall administer to him the oath of office and of secrecy according to the form set out for the purpose in the Schedule.

26. The executive power of the Council of Ministers shall extend to the matter referred to in Section 20.

27. The Chogyal shall, on the recommendation of the Chief Executive taken in consultation with the Chief Minister make rule for the allocation of the business to the ministers and for the more convenient transaction of business.

CHAPTER V

THE CHIEF EXECUTIVE

28. (i) At the head of the administration in Sikkim there shall be a Chief Executive, who shall be a person nominated by the Government of India and appointed to that post by the Chogyal.

(ii) The functions of the Chief Executive shall be to ensure that

(a) The responsibilities of the Government of India in or in relation to the Sikkim as respects all or any of the matters referred to the agreement of the 8th May, 1973 between the Chogyal, Government of India and the leaders of the political parties representing the people of Sikkim or in any other agreement entered into between Chogyal and the Government of India, whether before or after commencement of this Act.

(b) The Chief Executive shall have all the powers necessary for the discharge of his functions and responsibilities and the executive power in Sikkim shall be so exercised as to ensure compliance with any decisions taken or orders or directions issued by the Government of India in due discharge of its responsibilities.

29. (i) The Chief Executive shall -

(a) where any action taken in the performance of his functions concerns a matter the administrative functions relating to which have been allocated to a minister, act in consultation with the minister in respect thereof;

(b) submit all important matters to the Chogyal for his information and for his approval of the action proposed to be taken :

Provided that where immediate action is required the Chief Executive may take such action as he thinks fit and shall obtain the Chogyal's approval as soon as after the action has been taken as possible.

(c) advise the Chogyal in respect of all other matters.

(ii) Where a difference of opinion arises between the Chief Executive and the Chogyal in respect of any matter, it shall be referred to the Government of India for decision. The decision of Government of India shall be final.

CHAPTER VI

GENERAL

30. For the speedy development of Sikkim in the social, economic and political fields the Government of Sikkim may,

- (a) request the Government of India to include the planned development of Sikkim within the ambit of the Planning Commission of India, while that Commission is preparing Plan for the economic and social development of India and to appropriately associate officials from Sikkim in such work;
- (b) request the Government of India to provide facilities for students from Sikkim in institutions for higher learning and for the employment of people from Sikkim in the public services of India (including all India services), at par with those available to citizens of India;
- (c) seek participation and representation for the people of Sikkim in the political institutions of India.

31. All judges shall be independent in the exercise of their judicial functions and subject only to this Act and the laws.

32. (i) All sections of the people in Sikkim shall enjoy basic human rights and fundamental freedoms without discrimination.

(ii) The Government of Sikkim shall make every endeavour to secure for the people of Sikkim the enjoyment of the aforesaid rights and to maintain and promote communal harmony.

(iii) Notwithstanding anything contained in the aforesaid provisions special provision shall be made for the advancement or the protection of the aboriginal inhabitants of Sikkim and other minorities.

33. The Assembly which has been formed as a result of the elections held in Sikkim in April, 1974 shall be deemed to be the first Assembly duly constituted under this Act and shall be entitled to exercise powers and perform the functions conferred on the Assembly by this Act.

THE SCHEDULE

FORM OF OATHS OR AFFIRMATIONS

I

(See Section 9(a))

1. Form of oath or affirmation to be made by candidates for election to the Assembly.

"I, A.B., having been nominated as a candidate to fill a seat in the Assembly do swear in the name of God that I will bear true faith and allegiance to the Constitution of Sikkim as by law established."

II

2. Form of oath of affirmation to be made by a member of the Assembly.

(See Section 15)

"I, A.B., having been elected as a member of the Assembly do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of Sikkim as by law established and that I will faithfully discharge the duty on which I am about to enter."

III

3. Form of oath of office for a member of the Council of Ministers.

(See Section 25)

"I, A.B., do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of Sikkim as by law established and that I will faithfully and conscientiously discharge my duties as a minister and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will".

IV

4. Form of oath of secrecy for a member of the Council of Ministers

(See Section 25)

"I, A.B., do swear in the name of God solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a minister except as may be required for the due discharge of my duties as such a minister".

DEPTO. DE
SECRETARÍA DE
TRABAJO Y PREVISIÓN