CHAPTER IV

Institutional Arrangements under the Constitution

There are several instruments under which ethnic demands can be accommodated. It is customary to divide them into two kinds: institutional and policies. Institutional instruments are concerned with making provision for structural arrangements within the political system. Various measures that can be adopted for institutional accommodation are — ensuring political representation, restructuring division and allocation of power, formulating mechanisms for negotiations and bargaining, entrusting bodies with special responsibilities for ensuring the protection of the rights of minorities and dealing with their grievances (e.g. special provision for the Schedule tribes, the Commission on Backwards Castes in India), initiating judicial review, etc. Policy instruments refer to expanding priorities and preferences for ethnic groups, for example, the use of specific languages for the purpose of administration and education, affirmative action, the status of religion, regulation of land and migration, etc. While the analytical distinction is clear, in practice it is hard to understand one without the other, for structures produce policy outcomes, and policies need reliable structures. Both are often interdependent and complement each other but seldom can work in isolation.

India has over a period of time adhered to both coercive and non-coercive methods of reconciliation to provide a fair treatment to all groups and giving special consideration to those who are disadvantaged; socially, culturally and economically. Some of the methods are constitutionally enacted and some of them are methodically resolved through negotiations. They have been discussed here critically in particular reference to the North East India. Non-coercive powers in dealing with ethnic problems, may be important at times for the state from getting disintegrated. It should also be noted that in many instances these provisions are marginal in the management of ethnic tensions, the more potent instruments being the coercive powers used as internal security, anti-terrorism and preventive detention legislation. Even for a country like India, which has aspired to
maintain democratic solutions of its ethnic claims, it is hard to understand the actual mechanisms without bringing the army into equation.

**Provision for Preferential Equity**

The preferential policies in India are constitutionally permitted derivatives from the general principle of equality. It enables the Parliament to make special provisions for the advancement of "any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes" (Article 15 (4)). More specifically, it may provide for the reservation of appointments or posts in favour of any "backward class of citizens" (art. 16(4)). There are also provisions for the special political representation of scheduled castes and tribes. Extensive use has been made of these provisions, both at the national and the provincial levels. Reservations based on caste and tribe, often associated with socio economic background are established for admission to educational institutions and to appointments as well as promotions within the public services, which include state companies. As the constitutional provisions are rather broad, there has been considerable litigation on their scope. They have also been politically controversial.

**Provision for Federal Arrangements:**

Federal arrangements are particularly appropriate for a multi-ethnic state as they enable ethnic communities to exercise a significant degree of autonomy; can accommodate diverse cultural and linguistic traditions; can provide for parity among ethnic groups; and establish a pluralistic basis for their relationship with the centre\(^\text{183}\). The Indian federal system has been often described as quasi federal but in recent times with the emergence of regional parties and coalition politics; it has been showing signs of being more federal than in the period 1950s to 1980s.

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\(^{183}\) Ghai Yashpal, Occasional paper no. 1 Presented as a Lansdowne Lecture at the University of Victoria, January 1993.
Provision for Decentralisation

The search for ways to rebuild India free from the yokes of deprivation, disparities, discrimination proceeded along with the struggle against foreign rule. It was recognized that political, economic, social and cultural spheres of life were interdependent. Gandhiji had advocated the concept of village republics and village self-government. His vision imagined each village being a republic, self sufficient for its own vital needs, and yet inter-dependent. In this model, the village was the centre of a super-structure of concentric circles of governance with a bottom up approach. Below are mentioned some of the major provisions of decentralization in the Indian federal system.

Provision for Schedule Tribes and Areas

The British colonial system enacted many Acts and Regulations specifically for the North Eastern region like the Inner Line Regulation of 1873, the Scheduled Districts Act, 1874, the Government of India Acts, 1919 and 1935. Under the scheme of provincial autonomy, the hill areas of the then province of Assam fell into two categories, viz., the Excluded and Partially Excluded Areas, as scheduled in the Order-in-Council under the Government of India Act, 1935. The main concern of the administration at that period of time was more static than dynamic. Thus, the administrative insulation contributed to the prolongation of backwardness of the North-Eastern region especially the areas predominantly inhabited by the tribal people. The British did everything possible to check the emotional integration between the tribal and non-tribal for the evolution of a spirit of common identity superseding ethnic diversities. There were even abortive attempts at keeping the North-Eastern tribal areas outside the Indian Dominion when the Indian Independence Act of 1947 was being passed by the British Parliament.

When the Indian Constitution was adopted, it envisaged strong democratic institutions at the grass-root level as well as concerning the affairs of the tribal communities.

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186 Karna M.S., Gassah L. S., Thomas C.G., Power to The People in Meghalya: Sixth Schedule and the 73rd Amendment, Regency Publication, p.5 New Delhi, 1997
Consequently, democratic decentralisation and establishment of Panchayati Raj became one of the Directive Principles of State Policy. However, in the case of the Tribal Areas in the country, especially those in the North-East, there are certain specific provisions provided in the constitution. The constitution makers also recognised the necessity of a separate political and administrative structure for the Hill Tribal Areas of the erstwhile province of Assam by enacting the Sixth Schedule to the Constitution of India. In doing so, they were guided broadly speaking by three major considerations:

(i) The necessity to maintain the distinct customs, socio-economic and political culture of the tribal people of the region and to ensure autonomy of the tribal people and to preserve their identities;

(ii) The necessity to prevent their economic and social exploitation by the more advanced neighbouring people of the plains;

(iii) To allow the tribal people to develop and administer themselves according to their own genius.\(^{187}\)

There had been demands for regional autonomy and better status within the constitutional framework by the tribes of the hill areas of the Assam. The interim Government of India in 1947 realised the critical situation and the political aspiration of the tribal people of the hill areas of Assam in the background of assurance given by the outgoing British rulers. The Government further thought of providing regional autonomy for the hill people of Assam that they might participate in policy or decision-making, manage their indigenous local affairs and safeguard tribal interests. So the Government in order to look into the grievances and affairs of the tribal people appointed a sub-committee of the Constituent Assembly known as the North-East Frontier (Assam) Tribal and Excluded Areas Committee under the Chairmanship of Gopinath Bordoloi, then Chief Minister of Assam. This sub-committee known as the Bordoloi Committee made as on the spot study of the demands and aspirations of the hill people and submitted its recommendations for a simple and inexpensive set up (District Council) for the hill areas, which were later accepted and incorporated into the Article 244 (2) of the Sixth Schedule of the Indian

\(^{187}\)Ibid. Pp 7-8
Constitution. The sub-committee visited the tribal areas in the then composite State of Assam and interacted with the representatives of the hill people in order to formulate a model administrative set up for these areas within the State of Assam.

When the sub-committee studied the problems of the tribal people, it realized that these areas needed protection and safeguard so that they might be able to preserve their way of life and at the same time participate in political life of the country along with others. It also noted the existence of the traditional tribal self-governing institutions which functioned democratically and settled their disputes in accordance with their own customs and traditions. The sub-committee sought to evolve a system by which it could be possible to remove the apprehensions of the tribal people, simple and backward as they were, so that they might not be exploited, subjugated and oppressed by the more advanced people.

The Bordoloi Committee also made provision for Regional Councils for the smaller tribes other than the main tribe. This scheme was conceived with a view to building up autonomous administration (District councils and the regional council) in the hill areas of Assam so that the tribal people could continue to follow their traditional way of life, preserving customs, manner and cultures with such changes as they themselves might like to introduce. The committee found the tribal people to be sensitive about their laws, interests and judicial systems. It also recommended the abolition of the excluded and partially excluded areas and representation of the hill Districts, including Mizoram in the Legislative Assembly of Assam on the basis of adult franchise. It was also felt that the State and the Central Government would help them in securing the benefits of a democratic, progressive and liberal constitution of the country by promoting their educational and economic interest and protecting them from social injustice and all forms of exploitation; as enshrined in the Directive Principles of State Policy.

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188 Karna M.S. et.al., Op.cit. P. 63
189 Dutta P. S. (Ed), North East and the Indian State: Paradox of a Periphery, pp.43,45, Vikash Publication, New Delhi, 1995
If the state government formulate any scheme for the Schedule Tribes and the central government approves it then the central government is bound to finance the scheme. Strange ingredients are provided for the State in terms of the legality and financial arrangements. The State cannot have any excuse that they are not empowered enough. The V schedule is a unique aspect of the Constitution - it empowers the governor of a state to suspend any act of parliament or state legislature if he thinks it is not in the interest of the Scheduled Tribes. This he can do even with retrospective effect. A similar aspect is not found anywhere else in the constitution. The VI schedule enables an autonomous District level body to be formed where there are a large percentage of tribal groups. This has been formulated especially for North-eastern region which is unique in many respects. Districts in the northeast can be mini-states - they have a lot of financial, legislative, executive, and judicial power.

Recognition under Schedule V and VI of the Constitution

Focus on the Special Arrangements for Tribal

Recognising the special needs of STs, the Constitution of India made certain special safeguards to protect these communities from all the possible exploitation and thus ensure social justice. While Article 14 confers equal rights and opportunities to all; Article 15 prohibits discrimination against any citizen on the grounds of sex, religion, race, caste etc; Article 15(4) enjoins upon the State to make special provisions for the advancement of any socially and educationally backward classes; Article 16(4) empowers the State to make provisions for reservation in appointments or posts in favour of any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State; article 46 enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and, in particular, the STs and promises to protect them from social injustice and all forms of exploitation. Further, while Article 275(1) promises grant-in-aid for promoting the welfare of STs and

for raising the level of administration of the Scheduled Areas, Articles 330, 332 and 335 stipulate reservation of seats for STs in the Lok Sabha and in the State Legislative Assemblies and in services. Finally, the Constitution also empowers the State to appoint a Commission to investigate the conditions of the socially and educationally backward classes (Article 340) and to specify those Tribes or Tribal communities deemed to be as STs (Article 342 - 2.4). The recommendations of the sub-committee were incorporated in the Sixth Schedule to the Constitution. The idea behind the Sixth Schedule was to provide the tribal people with a simple and inexpensive administration of their own, so that they could safeguard their own customs, traditions, culture, etc, and to provide them maximum autonomy in the management of their tribal affairs. The Bordoloi sub-committee in particular, appreciated that the tribal people were particularly sensitive about their land, forests, traditional system of justice and social customs.

The Sixth Schedule to the Constitution also refers to the administration of Tribal Areas in the states of Assam, Meghalaya, Tripura and Mizoram by designating certain tribal areas as Autonomous Districts and Autonomous Regions and also by constituting District Councils and Regional Councils (Article 244(2)). To ensure effective participation of the tribal in the process of planning and decision-making, the 73rd and 74th Amendments of the Constitution are being extended to the Scheduled Areas through the Panchayats (Extension to the Scheduled Areas) Act, 1996\(^1\).

The Fifth Schedule of the Constitution

The provisions of the Fifth Schedule cover the other regions of the country where there are large population of tribal. This is totally different from the Sixth Schedule States where the emphasis is on self-rule because most of the communities inhabiting these areas had ruled themselves until the British subjugated them in the 19th century. The issues of emotional, physical and political distances and alienation still remain.

\(^1\) Savyasachi, Tribal Forest Dwellers and Self Rule, The Constitutional Assemble Debates on the Fifth and Sixth Schedules, Pp. 91-99, Indian Social Institute, New Delhi, 1998
The Fifth Schedule to the constitution lays down certain prescriptions about the Scheduled Areas as well as the Scheduled Tribes in states other than Assam, Meghalaya, Tripura and Mizoram by ensuring submission of Annual Reports by the Governors to the President of India regarding the Administration of the Scheduled Areas and setting up of Tribal Advisory Councils to advise on matters pertaining to the welfare and advancement of the STs (Article 244(1). The Fifth Schedule of the Indian Constitution provides protection to the adivasi people living in the Scheduled Areas, has been under imminent threat of being amended to allow the transfer of tribal lands to non-tribal and corporates. Samata, a Non Government Organisation working in the scheduled area of Andhra Pradesh, filed a case against the Government of Andhra Pradesh for leasing tribal lands to private mining companies in the scheduled areas. The special leave petition (SLP) filed in the Supreme Court led to a historic judgement in July 1997 by a three judge-bench which declared that government is also a 'person' and that all lands leased to private mining companies in the scheduled areas are null and void.

The future of the North Eastern States hinges on choosing self-governance. During the last few decades, the system of local-governance promoted under the provisions of the Sixth Schedule has been seeking to guarantee political dominance for backward groups, better local governance at the community level, better economic development and ethnic security for those who feel threatened by large scale influx of illegal migrants and even settlers from other parts of India.

**The Balwant Rai Mehta Committee**

The growing ethnic tension led to the formation of a Committee by the Union Government under the Chairmanship of Mr. Balwant Rai Mehta to look into decentralization of power to accommodate the interests and demands of various ethnic groups. The sad fact is that only some sporadic initiatives were taken during 1950-1980. The most serious attempt was in the late 1950s following the review of the working of the community development programme by the Balwant Rai Mehta Committee. The Committee held that in the absence of democratic decentralization, no meaningful and

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192 Hidayatullah M, The Fifth and Sixth Schedule to The Constitution of India, P. 43, Gauhati, 1979
sustained development could be expected. Following the Mehta Committee report, states like Andhra Pradesh, Rajasthan, Maharashtra and Gujarat took some legislative and administrative initiatives to set up Panchayat Raj Institutions. But it was only in the late 1980s that the first time effective initiative was taken.

The significance of decentralization in accelerating the process of development was emphasised by the Balwantrai Mehta Committee (1957) which was set-up to make recommendations on new structures and to involve local people in the development process. The committee recommended the "establishment of an interconnected three-tier organisational structure of democratic decentralization at the village, block and District levels". While the pattern suggested by Balwantrai Mehta Committee was generally followed in most of the States, there were some local variations; the most significant being the primacy given to the District tier in the states of Maharashtra and Gujarat by having strong Zilla Parishads with considerable administrative powers. Notwithstanding the local variations, there was general acceptance of the need to decentralise political and administrative power. Subsequently, Panchayati Raj legislations were amended in a number of states to give greater responsibilities to Panchayati Raj bodies to accelerate the process of development.

The interest and support for Panchayati Raj, however, did not last long due to various reasons. After the mid-sixties, the process of decline was visible. The flow of funds for block development was reduced to a trickle after the close of the intensive stage of the community development programme. In many States, tendency to postpone the Panchayati Raj elections indefinitely was also noticeable. Simultaneously, parallel bodies came to be set-up at the District level in some States, thus reducing the role of the Panchayati Raj Institutions in development planning and implementation.

**The Autonomous District Council Administration**

Under the provisions contained in the Sixth Schedule of the Constitution, Articles 244(2) and 275(1), six Districts inhabited by tribal of the then State of Assam became autonomous Districts, and the Lushai Hills District (Mizoram) was one of the six Districts. The sequential event that followed was that two
autonomous councils- the Lushai Hills District Council and the Pawi-Lakher Regional Council were granted under the Lushai Hills District (Mizoram) with immediate effect. Then in order to form the 24 member Lushai Hills District Council, the existing advisory Council headed by the Superintendent of the Lushai Hills District formed for an interim period soon after Indian Independence in 1948 at the time when L.L. Peters was the Superintendent of the District was dissolved on November 12, 1951.\textsuperscript{193}

The recommendations of the Bordoloi sub-committee suggested the formation of Autonomous District Councils (ADCs) in certain hill Districts of the then composite State of Assam. The ADCs were created in the hill areas of North East India in response to the demands of the tribal people for autonomy out of their apprehensions about the preservation of their ethnic identity and their rights over the lands, natural resources, customary laws, traditions, etc. They were conceived to ensure the right to self-rule for the tribal people, to manage their affairs according to their own genius, to enable them to preserve their ethnic identity and to face the forces of assimilation squarely from their more advanced neighbours in the plains.

The Sixth Schedule confers few developmental functions on the ADCs, though there is an enabling clause whereby the State governments can entrust such functions with them. On the event of the re-organisation of State in North East India in 1971, there was some sort of understanding at the political level as a result of which a number of developmental functions were conferred on the ADCs. \textit{In this aspect, certain ADCs in North East India experienced subsequently that this arrangement was a fragile one. Lacking in statutory support, the ADCs had to depend on the changing political relations with the State leadership. The developmental actives of the ADCs therefore depend very much on the political party or parties that run the State administration.} If the same political party is in power both at the State and District Council levels, the latter may have a smooth sailing in its programme of developmental activities. If it is otherwise, a number of obstacles and

\textsuperscript{193} Karna M.S. et.al. Op.cit. P. 5
hurdles may be created by the party in power at the State level to jeopardize the plan of action that might be framed by the District Council for the development of the autonomous Districts.

The Autonomous District Councils (ADCs) in certain hill Districts (except Naga Hills) of the then composite State of Assam were first introduced in 1952, and in 1953 Regional councils (now District Councils) were introduced in the then Lushai Hills District (now Mizoram), as per the provisions of the Sixth Schedule. For the last more than five decades, these ADCs have functioned in their respective autonomous Districts. Many of these ADCs have passed from time to time a number of laws, rules, regulations, acts, etc. dealing with and affecting the people of their respective areas in diverse ways- relating to such pertinent issues like land, forests, primary school education, planning processes, markets, trade, developmental activities, etc. to mention a few of them. Some such acts have direct effects on the traditional institutions like the Chiefs, tribal councils etc.

Many changes have taken place since 1952. The role, functions and workings of these constitutional institutions have been studied from time to time by many scholars of the region itself. A number of criticisms have also been leveled against the working and effective functioning of these councils. The relevance of the ADCs has been questioned from time to time especially after the creation of full-fledged States where District councils are in existence. On the part of the District Councils, they have been demanding more autonomy and direct funding from the Central government itself to strengthen their power and functions.

However, soon after the creation and the setting up of the ADCs in the Sixth Schedule areas of North-East India, they have been persistently voicing their grievances against the treatments meted out to them by the different State Governments in the matters of provision of grants, according of approval of the legislative proposals of the ADCs, super session of the ADCs, etc. Before the re-organization of the then composite State of

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Assam (pre-1972), such grievances were directed against that State. The situation is not so different today even after the re-organisation of Assam which gave way to the formation/establishment of full fledged States like Meghalaya, Mizoram, Manipur, Tripura, etc. For instance, in Meghalaya today, a tug-of-war is still continuing between the State Government and the three ADCs over a particular paragraph (paragraph 12A) of the Sixth Schedule. The ADCs in Meghalaya, Mizoram, Tripura, the hill Districts of Assam (Karbi Anglong and North-Cachar) are unhappy and dissatisfied with the decisions of their respective State Governments.

The Mizo Union leaders in one of their memoranda submitted to the Government of India on October 30, 1965 said, “step-motherly treatment meted out to the Mizo Hills is responsible for the unfortunate feeling of discontent that we are being treated as second rate citizens”. It would be impossible to remove this feeling unless the political aspirations of the Mizo people are fulfilled through the early creation of Mizoram state. They also submitted another memorandum to the government on December 15, 1970, apprising the Prime Minister of the political instability and growing economic frustration of the people. The leaders also emphasized the creation of a separate State of Mizoram. Ultimately, the united efforts, continuous struggles, political skill and great sacrifices of the Mizos compelled/forced the Government of India to agree to the political settlement of the Mizo problem. The Government came out with the proposal to elevate the Mizo Hills District to the status of the Union Territory of Mizoram. The Government of India enacted the North-Eastern Areas (Re-organisation) Act, 1971 by amending the constitution of India (Twenty Seventh Amendment) under which the Mizo Hills District became the Union Territory of Mizoram with a 33 member Legislative Assembly. The Union Territory of Mizoram was inaugurated on Jan 21, 1972. It was envisaged in the Act that the Mizo Hills District Council would stand dissolved and cease to exist from the date on which the Legislative Assembly of the Union Territory of Mizoram would be constituted. The Mizoram Legislative Assembly was constituted on April 29,

195 Personal Interview with a Mizo People's Party's District Leader in Aizawl in February 2003
196 Purandare A P Local Self Government Institutions in Mizoram in Maithani B P edited Op cit P. 5
1972 and on this date the Mizo Hills District Council was abolished under the Dissolution of the Mizo District Council (Miscellaneous) Order, 1972 as per the Paragraph 20-A of the Sixth Schedule to the Constitution. The Chief Commissioner of Mizoram passed a number of orders transferring the assets and the liabilities of the council to the government. Provisions were also made for the continuance of the rules/laws made by the District Council and in force immediately before the dissolution.\(^{197}\)

**Preparing the Ground for Autonomous Councils**

The Bordoloi Committee visited Aizawl in April 1947, met political and church leaders, Chief representatives, ex-service men and Government officials, and discussed their administrative problems and desire to have autonomy for the District. Since the Mizos were not represented in the Constituent Assembly, the committee included Saprawnga and Khawtinkhuma of the Mizo Union Party to represent the Mizo people. Later, the two members fully endorsed the report. Thus, the dilemma of the Mizos during the constitution making stage was overcome. The keen desire of the Mizos to link up their political life with Assam on the one hand and the fear of being submerged on the other, could be reconciled within the framework of autonomous existence under the Sixth Schedule to the Constitution of India.\(^{198}\) After the Indian Constitution was brought into force, the immediate formation of the District councils in the hill Districts was not possible. So the government of Assam set up interim tribal advisory councils in each hill District because it desired the participation of the tribal representation in the administration of the areas even during the interim period when the formation of the District council was pending. Accordingly, the Government set up the advisory council in the Lushai Hills. Though the advisory council had no statutory basis, it was treated as a provisional District council\(^{199}\). In the subsequent years, it led to formation of Formation of the Hills District Council and Regional Councils (Lushai and Pawi Lakher), District Councils and Regional Council, and formation of Village Councils in Mizoram.

\(^{197}\) Ibid
\(^{198}\) Ibid
\(^{199}\) Information given in an interview in Aizawl by a Mizo Leader during the survey, Feb 2003
The Lushai Hills District Council Judiciary and Mizo Customary Laws

The District Council's Judiciary in the Mizo territory was run in accordance with the Mizo Customary Laws. Customary laws are usually unwritten and are established usages handed down from generation to generation but they may undergo changes according to the changes in the practices of the society. The Mizo customary laws were no exception to this. These were unwritten in the past. It was N.E. Perry, I.C.S the then Superintendent of the Lushai Hills District who first put these laws in black and white in 1927 in the form of a booklet named Mizo Dan. Then, after Indian Independence, the Lushai Hills District became an Autonomous District. With the coming of Lushai Hills Autonomous District Council, the Mizo customary laws automatically became imperative as the District Council Judiciary ran in accordance with these laws. To keep pace with the changes in the practices of the Mizo society, the original Mizo customary laws (Mizo Dan) framed by N.E. Perry were revised many times by the District Council, the first being done in 1957 when the original Mizo Dan was renamed as Mizo Hnam Dan. A conspectus of some of the Mizo customary laws laid down in the Mizo Hnam Dan, based on which the Lushai Hills (Mizo) District Council Judiciary took decisions or passed orders on suits or cases within its jurisdiction.\(^\text{200}\)

Evolution of the Autonomous District Council

As referred earlier in this Chapter, under the provisions contained in Sixth Schedule of the Constitution, the Lushai Hills (Mizo) District Councils with the headquarters at Aizawl was formed on April 25, 1952 covering an area of approximately 6743 sq. miles under its jurisdiction out of the total of 8143 sq. miles of the District leaving the rest 1400 sq. miles in the extreme south for the Pawi-Lakher Regional Council formed on April 23, 1953 with Saiha as its headquarters. The original Lushai Hills (Mizo) District Council and the Pawi Lakher Regional Council came to be non-existent on and from the day of creation of these three District councils in the Chimptuipui District in south Mizoram. And with the upgradation of the Union Territory of Mizoram into a full-fledged State of Mizoram as the 23\(^{\text{rd}}\) State of the Indian Union in February, 1987 all the

\(^{200}\) Ibid
three District councils in the Chimtuipui District were in vogue with 301 Village Councils in the whole of Mizoram.\textsuperscript{201} A move, however, for creation of another autonomous council for the Hmar community of the Mizos dwelling in north eastern part of Mizoram has been going on since the time Mizoram became a full-fledged State. The movement was started by the Hmar people forming an organization called, Hmar Peoples’ Convention\textsuperscript{202}. It even became an armed revolt in April, 1989 causing loss of lives. To put an end to the ‘Hmar People’ Conventions armed revolt ‘Peace Accord’ was signed, after several talks, between the Government and the Hmar People’s Convention. In the Memorandum of Settlement signed by Himngchunghung, President, Hmar People’s Convention on behalf of the Convention and Laifakzuala, Chief Secretary, Government of Aizawl on July 27, 1994, formation of an autonomous council in the name ‘Sinlung Hills Development Council’ for the Hmar people inhabiting north eastern part of Mizoram was agreed upon. It is, therefore, expected that Mizoram is going to have this fourth autonomous council soon.

The 73\textsuperscript{rd} Constitutional Amendment for Decentralization

The Constitution (73rd Amendment) Act, 1992 envisages States to establish a three-tier system of strong, viable and responsive Panchayats at the village, intermediate and District levels. Similarly, the Constitution (74th Amendment) Act, 1992 envisages to establish the Municipalities in the urban areas. States are expected to devolve adequate powers, responsibilities and finances upon these bodies so as to enable them to prepare plans and implement schemes for economic development and social justice. These Acts provide a basic framework of decentralisation of powers and authorities to the Panchayati Raj/Municipal bodies at different levels. However, responsibility for giving it a practical shape rests with the States. States are expected to act in consonance with the spirit of the Acts for establishing a strong and viable system of local self-government.

The 73rd and 74th Amendments to the Constitution of India constitute a new chapter in the process of democratic decentralisation in India. In terms of these Amendments' the

\textsuperscript{201} Ibid

responsibility for taking decisions regarding activities at the grass-root level which affect people's lives directly would rest upon the elected members of the people themselves. By making regular elections to Panchayati Raj/Municipal bodies mandatory, these institutions have been given their due place in the democratic set-up of the country. A stage has arrived to make these bodies an organic part of the development process in the country.

The main features of the 73rd Amendment are - (i) a three-tier system of Panchayat Raj for all States having a population of over twenty lakhs; (ii) Panchayat elections to be held regularly every five years; (iii) reservation of seats for the Scheduled Castes and Scheduled Tribes and for women (not less than one-third of seats), (iv) constitution of State Finance Commissions; (v) constitution of District Planning Committees to prepare development plans for the District as a whole; (vi) establishment of State Election Commissions; and (vii) establishment of Gram Sabhas.

Many States/UTs have got three-tier system (with some modifications in Tamil Nadu and Assam), 5 States/UTs have two-tier system and some States/UTs have only single tier system of Panchayats. Article 243(b)(1) of the Act envisages that all the States/UTs, except those with population not exceeding 20 lakhs, will have to constitute a three-tier system of panchayats i.e. at the village, intermediate and District levels. While the District has been defined as a normal District in a State, the jurisdiction of village and intermediate levels have not been specifically defined in the Act.203.

In the process of implementation of the 73rd and 74th Amendments, considerable gaps have been noticed. The Union Government and the State Governments continue to exercise powers in planning and the Panchayats and Municipalities do not enjoy autonomy – financial or administrative – as institutions of local self-government. While today Panchayats elect some three million members of whom one-third are women, the objectives envisaged in the Amendments have not been fully achieved even after more than a decade.

203 Maithani B P in Karana M S, Gassah L S etc, Op cit p.p.113-114
With a view to generating a debate and eliciting public opinion before examining the problems and suggesting remedial measures, a commission was formed and it released Consultation Papers on (i) Panchayats, (ii) Municipalities, (iii) Cantonments and (iv) Panchayat institutions/Autonomous District Councils/ traditional tribal institutions in the North-eastern India. The Commission heard the views of a delegation of representatives of Panchayat Raj Institutions [PRIs] and representatives of traditional tribal institutions in the North-East region. It also considered the responses to the Questionnaires and the general memoranda received by it.

Analysing Provisions for Devolution of Powers

Even in the States which have shown political will to decentralise, devolution has not gone beyond entrusting to them responsibility for implementation of the schemes/projects conceived by the State or Union government. As a result, Panchayats have not blossomed into institutions of self-government. Instead they have been reduced to an implementing arm of the State Government.

Article 243G along with the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does not guarantee assignment of a set of exclusive functions to the Panchayats. Hence, the kind of role they would be expected to play in governance depends on the regime that controls the government of a State.

As an institution of self-government, the Panchayats should have adequate fiscal capability. To be an institution of self-government, a Gram Panchayat should, as far as possible, be a viable unit. It should be capable of generating internal resources by using its own fiscal powers that include taxing power commensurate with the functions assigned to it. The PRIs at present are principally grant-fed and their dependence upon the State Government even for carrying out their routine functions is heavy.

The Commission therefore, recommended that the Eleventh and the Twelfth Schedules should be restructured in a manner that creates a separate fiscal domain for Panchayats and Municipalities. Accordingly Articles 243H and 243X should be amended making it
mandatory for the Legislature of the States to make laws devolving powers to the Panchayats and Municipalities.\textsuperscript{204}

An institution of self-government must have the power to recruit and control the officers and other employees required for managing its functions. The Constitution is totally silent about this vital aspect of institutional autonomy. The Commission felt that failure to address the human resource issue has definitely affected the growth of Panchayats as self-governing institutions. It is necessary that an enabling provision is made in Part IX of the Constitution permitting the State Legislature to make, by law, provisions that would empower the State Government to confer on the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from State Act/Rules.

The Commission recommended that a provision for constitution of a State Panchayat Council under the Chairmanship of the Chief Minister [on the pattern of Gujarat State Council for Panchayats as provided in the Gujarat Panchayats Act, 1993] may be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council\textsuperscript{205}. The leader of the opposition or even an expert of a non-political in nature may be made \textit{ex-officio} vice-Chairman of the Council to provide a consensual approach to the development of Panchayats as fully democratic, efficient and responsible institutions.

The Commission noted with concern that there is considerable lack of accountability of Panchayats because of inadequate provisions in law relating to audit of accounts of public bodies. There is no time frame to conduct the audit of accounts of a given year, submit the audit report or comply with the objections raised in the report. Delay in audit provides opportunity for misuse of funds, tardy implementation of projects and over-all weakening of the system.

\textsuperscript{204} Maithani B.P. in Karna M.S.et.al., Op.cit P. 114
\textsuperscript{205} Ibid.
The Commission further recommended that necessary provisions may be made for audit of Panchayat accounts to ensure that all works related to audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year at the close of a financial year. To ensure uniformity in the practice relating to audits of accounts, the Comptroller and Auditor-General of India be empowered to conduct the audit or lay down accounting standards for Panchayats.

The State Governments often delay Panchayat elections on purely political considerations. They can do so, because they retain some powers relating to the conduct of elections under the State Acts/Rules. The State Election Commission (SEC) has to depend upon the State Government for logistic support that includes staff and finances. Besides, certain important powers like issuance of election notification, delimitation of constituencies, earmarking of reserved seats etc. are retained by the State Governments in many States. Considering all these, the Commission felt that there is strong case for further strengthening the hands of the state election Commission (SEC) by making specific provisions in the Constitution itself. The Commission recommended that Panchayats should be categorically declared to be 'institutions of self-government' and exclusive functions be assigned to them. The Commission, therefore, recommended that Panchayats should be categorically declared to be "institutions of self-government" and exclusive functions should be assigned to them.

**Participation of Indigenous People**

The 73rd Amendment when passed in 1992 excluded Scheduled Areas and Tribal Areas from its purview. However, Article 243 M(4)(b) provided that Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and Tribal Areas subject to such exceptions and modifications as may be specified in such law. The states having Scheduled Areas were thus bestowed with no authority to extend to the Scheduled Areas, the Panchayat conformity Act passed by them following the 73rd Amendment. They

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206 Singh S K, Panchayats in Scheduled Areas, in Mathew George edited, Status of Panchayati Raj in The States and Union territories of India, p. 23 -28 Institute of Social Science New Delhi, 2000
were obliged to take cognisance of Article 243 M. But most states having Scheduled Areas, violated Article 243M and enacted Panchayat laws for the entire state including the Scheduled Areas contrary to law. Neither the state legislature nor the executive paid heed to 243 M.

Taking cognisance of the growing unrest among the tribal in different parts of the country and the judgement of the High Courts, the Government of India in the Ministry of Rural Areas and Employment constituted a Committee of Members of Parliament and Experts under the Chairmanship of Shri D.S. Bhuria, Member of Parliament on June 10, 1994.

The overall emphasis of the report of the Bhuria Committee was that any legislation on the Panchayats for the tribal areas should be based on basic premises of participative democracy and that “it should be in consonance with the customary laws, social practices and traditional management of community resources.” The Committee visualised that the institutions at the grass root and District levels should have functional autonomy, power relating to management of natural resources be vested in the Gram Sabha and the role of lower level government functionaries be minimal and confined to law and order in Scheduled Areas. The proposals recommended by the Bhuria Committee paved the way for passage of a comprehensive legislation extending provisions of the Constitution relating to the Panchayats in the Scheduled Areas.

The Act called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Central Act No. 40) was made applicable to the states which have Scheduled V areas. These states are Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Madhya Pradesh, Chattisgarh, Maharashtra, Orissa and Rajasthan. The concerned state governments were allowed a period of one year to amend such provisions of their existing Panchayat Acts which contravened the provisions of the Central Act. This Act received the assent of the President on 24th December 1996.

Role of the State in the Development of Scheduled Tribes

In the Rajiv Gandhi era, the 73rd and the 74th constitutional amendments changed the government tier from central-state-District-block (at the lowest tier the block was simply an appendage of the state govt. with no real power) to bring about a radical change by
having Panchayats at three levels: village (Panchayat), groups of villages (Panchayat Union), District (District Panchayat) purported to have elected representatives. In some states they have come into being, but in some states they have not.

**Present status of the scheduled tribes**

Efforts made from the beginning of the planned era (1951) through various developmental plans, policies, special strategies and programmes have registered a definite quantifiable improvement in the socio-economic status of the tribal. However, the progress made by them could not bring them anywhere nearer to the mainstream society as the gap in their socio-economic status continued to prevail, not only as a matter of prime concern, but also as a task to accomplish during the Tenth Plan and further.

**Empowering Tribal in Governance**

Empowerment of tribal, in actual terms, can be realised only when the tribal themselves are bestowed with the right to participate in decision making besides being equipped to find answers to their own problems. An answer to this was bringing the people-oriented 73rd and 74th Constitutional Amendments of 1993 into action, besides extending the same to the tribal areas through the Panchayats (Extension to the Scheduled Areas) Act of 1996, (popularly known as PESA Act).

With the strength and support of PESA Act, 1996 the traditional Gram Sabhas in the tribal areas are being endowed with special functional powers and responsibilities to ensure effective participation of the Tribal Societies in their own development and in harmony with their culture so as to preserve/ conserve their traditional rights over natural resources. All states, except Bihar have, so far, enacted parallel State legislations to give effect to the provisions of the PESA Act, 1996. Thus, the PESA Act, 1996 is a landmark legislation which attempted to legitimise the involvement of tribal in their own empowerment process not only as active participants, but also as effective decision-makers, implementers, monitors, supervisors and evaluators.
Problems of the Operation of the District Councils and Regional Council

District Councils and the Regional Council have extensive power/functions—legislative, executive, judicial, and financial. Accordingly, they are expected to uplift the tribal communities in the domains of primary education, culture, customs, social welfare, forests, agriculture, water supply, communications, economic, and rural development. However, the performance of the District Councils has not been satisfactory. So the District Councils/Regional Council have come under severe criticism. Under the context, let us examine how far the District Councils as per the laws/rules framed or the provisions under the Sixth Schedule have actually perfumed to bring about socio-economic changes in the tribal society of Mizoram in particular and North-Eastern States in general.

As experience shows, one fourth of the members of the District Council is nominated by the Minister-in-charge, Tribal/District Council Affairs, on the advice of the Chief Executive Member, though this power is vested in the governor, a constitutional head. The purpose is to give representation to the minority or unrepresented tribes. Thus the power of nomination is frequently abused for narrow party gains. The Minister, Tribal/District Council Affairs, often nominates persons, who will support the party in power. As a result, sometimes, a majority is reduced to minority and vice versa. It, thus, violates the provision of the minority representation enshrined in the Sixth Schedule to the Constitution of India.

The District Councils/Regional Council have been authorised to frame laws for the administration of justice. The District councils/ regional council in Mizoram constituted their own system of courts to administer justice at three levels, the village courts, the Subordinate District Council Courts and the District Council Courts. But it is experienced that the council courts have no legal experts or trained judicial officers, who can carry on the trial of cases and disputes efficiently and expeditiously, whereas in the plains courts, justice is administered by legal experts and trained judicial courts, especially District Council Courts who have no knowledge of law, is against the principle of judicial

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207 A Member of the District Council in a personal Interview in Aizwal Feb 2003
administration. Besides, the District Council Courts due to lack of coordination, cannot utilize the judicial and administrative experiences of the Deputy Commissioners court in the trial of cases and disputes of civil and criminal nature.\textsuperscript{208} The Deputy Commissioner and the District Councils are two sets of authorities working independently of each other in judicial spheres. Hence the judicial autonomy and customs are often abused and misinterpreted. The District Councils in Mizoram and other North-Eastern States have not yet codified all customary laws in the autonomous Districts. Above all, customary law is not observed. However, the District Councils play and may be expected to play in future, an important part in the process of rule adjudication in these areas.

The District Councils and Regional Councils have powers to make rules for the District Councils Funds and the Regional Councils Funds. The member in charge of the finance is responsible for the management or control of funds. But no District Councils in Mizoram, except the defunct Mizo Hills District council, has yet to frame funds rules.

Moreover, it has been found from various reports and records maintained by the councils that financial irregularities were committed by the councils. The funds provided by Government are always overspent. Thus the councils are often unable to balance their receipts and expenditures. Thus, the leaders try to confuse the autonomy granted in the Sixth Schedule with a licence to mismanage public money as they feel like. However, such financial irregularities were mostly found or heard before, 1969 when there was no provision to audit the accounts of the councils.

The District Council has power to levy tax on profession, trade, callings, even within the jurisdiction of the Regional Council. The Regional Council has no such power. Even the Chief Executive Member of the Regional Council is subject to the levy of professional tax by the District Council. The income from such taxes collected from areas of the Regional Council goes to the District Council, which is unfair and against economic autonomy. There is hardly any regulation framed by the District Councils to levy tax on the maintenance of schools, roads, dispensaries and goods carried in ferries. However, the

\textsuperscript{208} Another Member of the District Council in a personal Interview in Aizwal Feb 2003
Chakma District Council has adapted the law enacted by the Pawi-Lakher Regional Council.

To the Sixth Schedule of the Constitution, the Regional Council has no share in the royalties from licences or leases granted by the State Government for extraction of minerals within its areas, and the proceeds from such axes are shared by the District Councils and the State Government in certain agreed ratio.

The provisions of the Sixth Schedule suffered from certain shortcomings and defects. Since there is no provision at all for coordination of the activities of the District Councils and the Regional Council and the State Government; the State has no power to review and assess the working of the councils except to approve their legislation's by the Governor and to sanction loans and grants for development schemes. They are independent in their functions. As a result, the councils do not surrender the unspent balance of the grant to the State Government. The councils serve the interests of mainly the neo-rich class or class of rich traders, contractors, bureaucrats and the educated, who have emerged from within the tribal society of North-Eastern States due to the enlarging money economy on development activities. This emerging socio-economic power structure in the tribal areas does not allow the benefits of the Sixth Schedule to flow towards the weaker section of the tribes.

But no amendment under the Sixth Schedule has been made to bring these councils closer to the State Government, which is felt necessary to revitalize the working of the District Councils for the larger interests of the tribes. Besides, nothing to encourage self-governance and mass-participation in the councils working and to strengthen the poor in protecting themselves from the exploitative behaviour of the rich has been done. It is clear that the power structure which exists today in our tribal areas is likely to exploit the poor or with or without the Fifth and Sixth Schedules. If the benefits of the Sixth Schedule have to flow to the poor and if the poor are to participate in the councils activities, it is necessary that their position is strengthened by various means, such as

\[209^{A \text{ Member of the District Council in Mizoram in a personal Interview Feb 2003}}\]

\[210^{A \text{ former member of the Legislative Assembly of Mizoram on his opinion of Sixth Schedules of the Constitution Feb 2003}}\]
efficient public distribution system (seed banks, grain banks/social security measure), giving right to work to the poor tribes so as to ensure them minimum employment and income to live on, redistribution of assets in favour of the poor by implementing land reforms and encouraging organization of the poor and recognizing the role of voluntary agencies in rural development.

The provision of the Sixth Schedule was undemocratic in the sense that the accounts of the District Councils and the Regional Council were not auditable by the Accountant General before 1969. The council’s accounts were also outside the purview of the Public Accounts Committee of the state legislature. As a result, there was an extravagance in public expenditure.

The member of the District Council was not in the beginning allowed to be a member of the Legislative Assembly or Parliament. But the amended Peoples Representation Act later permitted the members of the councils to be members of the Assembly and Parliament. This is certainly not a healthy practice. The Sixth Schedule and the rules made there lay down that no person shall be a member of the two District Councils. Similarly, no person should be a member of two legislative bodies—the District Council and the Legislature. Such a provision will check the concentration of power in the hands of a few. It also provides confiscations of membership and disqualification of any member.

The District Councils are not created by the State Legislature. The provisions of the Sixth Schedule can be amended only by the Parliament. The autonomous District council is a body corporate as such; it appears that the council may act independently of the state legislature. But the position in actual practice is quite different.

The Governor being the head of the State is also head of the District council and can suspend an Act or resolution of the District council which is contrary to the provisions of the Sixth Schedule or likely to endanger the safety of the country or is prejudicial to public order he can take any such step as he thinks necessary, including suspension of

211 A Member of the Legislative Assembly of Mizoram on his opinion of Sixth Schedules of the Constitution Feb 2003
the council. He may assume to himself all or some of the functions and powers of the
council on the recommendation of the enquiry commission to be appointed under para 14
of the Sixth Schedule which mismanages the affairs of the council. As experiences have
shown, to set up such an enquiry commission is often recommended by the State Council
of Minister rather than the Governor of the State. This, indeed, leads to constitutional
impropriety.

Mr. M. Hidayatullah, the former Chief Justice of India, explains in his book, The Fifth
and Sixth Schedules to the Constitution of India, “the main problem which is likely to be
faced by governor will act in discharging his functions under the Schedule, that is to say,
whether as a constitutional Governor he is bound to act only on the aid and advice of the
council of ministers independently of the council. The Schedule does not answer this
question directly. What it does is to make the Governor the final decision-making
authority in relation to Autonomous District Councils and Autonomous Regions. If
one examines the whole of the Sixth Schedule, no duty appears to be cast on the State
Governments as such although a Minister in charge of tribal areas is to function. Every
matter goes to the Governor himself and the only matter in which the State Government
comes into the picture is with regard to mines and minerals. It is not compulsory for the
Governor to consult the Council of ministers. He may do so but he is not bound to
accept their advice. The entire history of these areas, the thought that went into the
enactment of the Sixth Schedule as a constitutional provision independent of the rest of
the Constitution clearly establishes this that the Rules of Business have to be approved by
the Governor as he must satisfy himself that executive authority of the state must be
confined to situations in which the safety of India is involved or a problem of law and
order arises. In other matters, the executive authority of the autonomous District must be
independently exercised by the District council. This provision as envisaged in the
constitution needs to be observed as regards the autonomy of the District councils laid
down in the Sixth Schedule which is in itself a constitution within the constitution of
India.

213 Ibid.
The State’ Initial Response to Autonomy Demands of the Ethnic Tribes

The conventional response to militant activity has been to measure the gravity in terms of a soldier’s reaction. The soldier has the habit of regarding every militant action in terms of the efficacy of his gun. And the longer the militant holds out, the more military mind can think of only the possible military response needed to fight the militant. As Mr. Robert McNamara at last admitted that his strategy had failed the world’s most formidable war machine to crush the Vietnamese. If the armed forces of the US could not crush the Vietnamese, despite all the unspeakable atrocities perpetrated, it would be useful for us to realise that no Indian Army can effectively put down any militant group out to harass the government of the day.

By the yardstick of the average observer in New Delhi – official as well as non-official – the North-East evokes a spectre of troubles and turbulence, of militants and secessionists taking to terrorising means. It is regarded as being in a state of quasi-paralysis, halfway to secession. In fact, a large section of opinion makers regards it as almost irrecoverable, next only to Kashmir. And if they take a lenient view, it often regarded and passed as a law and order problem.

In other words, an army can at best contain militancy, but can never put it down: it can only contain it and it is for the political establishment to deal with the militants with flexibility and statesmanship. In fact, the North-east today stands as a living indictment of the bankruptcy of statesmanship at the national level, both on the official and political planes. A solution to the North-East problem certainly does not lie in only reinforcing the active presence of the Army. This is by no means a shoot-to-silence situation. But with no sign of any vision of how the North-east has to emerge in the near future, the governments at the Centre seem to have had nothing to fall back upon. If the government becomes transparent in a democratic system, it has to admit that the increased presence of

215 A Mizo Political leader on his reaction to India’s Response to Ethnic Movements Oct 2002
the armed forces in this region, stretching out along one part of the country’s frontier, is the only tangible measure it has taken to deal with discontent and frustration. Frankly speaking, an unthinking rule of thumb has been followed in the five decades since Independence. Discontent and disenchantment have been sought to be mollified by the grant of Statehood without bothering to take into account the viability of a State structure. Besides, every manifestation of discontentment is seen with suspicion and has been dealt by the might of the Centre’s military power.

Another response of the Central Government has been extension of reservations which has frequently been violent protested by other groups affected. Thus paradoxically policies intended to promote social and ethnic justice and ethnic harmony have stimulated the sharpening of ethnic distinctions and the worsening of ethnic relations. They have also intensified the role of the state in the management of ethnic relations, and made it seem partisan. It would be worthwhile to see Centre’s response to woo of the major ethnic conflicts in North East. Though both the cases illustrated here were of more or less of the same nature in terms of its demands, one met with fair level of success (Mizo Accord), while the other case (Bodo Accord) miserably failed in turn, and sharpened the ethnic conflicts and erupted violent modes of protests. The only difference between the two Accords has been that while after signing the Mizo Accord, it was followed up by a constitutional amendment (56th Amendment) as a guarantee to the implementation process to accommodate those demands legally and an institutional framework was created while in the case of the Bodo Accord neither any constitutional back up was given nor institutions were established to implement the provisions of the Accord.

The New Bodo Accord of February 2003

Exactly 10 years later, in 2003, another accord was signed in New Delhi. This time it was the militant Bodo Liberation Tigers (BLT) that the Centre and State governments had struck the deal with. The fresh ‘Memorandum of Settlement’ (MoS) has paved the way

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216 A Bodo Leader nearly reiterating the words of a Mizo political leader on his response to India’s reaction on Ethnic Movements Feb 2003
217 A senior Bodo Leader in a personal interview on differences of the two Accords Oct 2002
for the creation of a Bodoland Territorial Council (BTC) with greater autonomy under the Constitution's Sixth Schedule. The new council would to replace the now-defunct BAC and will have larger areas under it.

As a result of the new deal some 2641 Bodo Militant Cadres of the Bodo Liberation Tigres surrendered at Kokrajhar on December 6, 2003, and the subsequent swearing in of the 12-member interim Bodoland Territorial Council (BTC) on December 7, an infamous chapter of Bodo insurgency in Assam came to a close. The formation of the new autonomous self-governing body, BTC, after the failure of a similar attempt in the form of the Bodoland Autonomous Council (BAC) in 1993, was yet another move to bring peace to Assam's Bodo inhabited areas, which have witnessed violent agitations and accompanying terrorist violence since 1987.

The tripartite Memorandum of Settlement (MoS) entered into by the Union Home Ministry and the Assam Government with the Bodo Liberation Tigers (BLT), could indeed be the basis for a lasting settlement of the crisis that has been affecting the region for over a decade now. The BLT would serve its own cause and the interests of the tribal in the region by drawing lessons from the experience with the District Administration Council in the Darjeeling hill tracts and the manner in which the concept of autonomy was put into practice. The contours of the Bodo settlement (despite differences in detail), after all, are on lines similar to the Accord that the Gorkha National Liberation Front (GNLF) leader, Subash Ghising, agreed to within the framework of the Constitution. It is another matter that the Council proposed in the Bodo Accord falls within the scope of the Fifth Schedule of the Constitution while the accord with the GNLF was not the same and hence if the constitutional amendments take place under the fifth schedule, the chances of succeeding Bodo Accord would be much brighter.

The Chief Minister also observed that the mammoth gathering on the occasion had beyond doubt proved that the Bodos have accepted BTC with their heart. He asserted that all rights of non-Bodos including acquiring and selling of land, socio-political,
economic, culture and religion etc. would be protected as enshrined in the Constitution of India. But even as bursting firecrackers, processions and victory-rallies marked the celebrations in lower Assam, many believe that the real challenge before the Centre, State government and Bodo leaders is to ensure proper implementation of the accord. After all, it was for the non-implementation of the 1993 accord that Bodos had revived the statehood agitation, which later turned violent and necessitated a fresh deal.

The BTC was being formed nine months after the signing of a Memorandum of Settlement (MoS) between the BLT leadership, the Union Government and the State Government of Assam on February 10, 2003. The main provisions of the MoS relate to the creation of the BTC within the State of Assam under the Sixth Schedule of the Indian Constitution, to fulfill the economic, educational and linguistic aspirations, as well as the claims of the socio-cultural and ethnic identity of the Bodos in Assam (numbering 1,267,015 in the 1991 Census, more than 44 per cent of the State's total population), and to speed up the development of infrastructure in the BTC area. The area of the proposed BTC will comprise of 3,082 identified villages, which will be divided into 4 contiguous Districts after reorganization of the existing Districts of Assam, subject to clearance of the Delimitation Commission. The functioning of the BTC is yet to take a concrete shape. Only future will tell us how it functions and whether it fulfills the aspirations of the Bodos. A lot will depend on the amendments made in the Sixth Schedule of the Constitution. Though one thing which has been conspicuous since the Accord has been signed that little violence and disruption of life has taken place. It has been widely reported that since the Constitution now guaranteed their demands enumerated in the Accord, nothing can stop them from realizing their aspirations which have been long due.

After the Mizo Accord of 1986, the formation of the BTC could possibly be the only and still qualified success story in the resolution of an insurgency in India's northeast. The ray of hope comes because it has been promised that it will have all constitutional guarantees under Schedule Sixth of the Constitution to implement the provisions of the Accord.

221 Bhaumik Anirban; Deccan Herald, Sunday, February 16, 2003
Ray of Hope for the New Bodo Accord

All major democratic Bodo organisations extended support to the stand taken by the BLT in the ongoing dialogue. Besides such organisations, all responsible intellectuals of Assam welcomed the development, and expressed their support in granting autonomy to the Bodo people. The settlement of the Bodo problem depends upon two centers of power - the Central Government and the State government.

The Centre has given its word to amend the Constitution and widen the scope of the existing Sixth Schedule to facilitate autonomy for Bodos. The inclusion of the Bodo language into the Eights Schedule of the Indian Constitution, inclusion of Bodo Kocharis of Karbi-Anglong in the Scheduled Tribe (Hills) list, establishment of a central university, an engineering college, a medical college and an agricultural college in the proposed state, special financial grant for its rapid development, and strong financial powers to Bodoland are the basic features of the autonomy concept. Meanwhile, most commendably, non-Bodos residing in the proposed Bodoland area have extended their support towards the concept of autonomy.

According to the new agreement, the existing BAC will be abolished as soon as the 46-member autonomous body called the Bodoland Territorial Council (BTC) is constituted. The people of the Bodo region will get an opportunity to participate in the decision-making process with the election of 30 tribal members to the BTC. In addition, five non-tribal and five from other groups will also be elected. Six members will be nominated by the Governor from the communities not otherwise represented. The BTC, covering about 8,000 square km, would comprise 3,082 villages and a population of about 23 lakh. A three-member Delimitation Commission will decide about the status of an additional 95 villages. What is more, according to a package announced by the Centre, the Bodo people will get Rs 100 crore a year for infrastructural development as also a Central Institute of Technology (to be upgraded subsequently as a Central University). "The Centre will provide a financial assistance of Rs 500 crore to the BTC for a period of five years in

\[222\] In conversation with a Bodo Academician and a political leader at a Bodo Sammelan in Kokrajahr.
order to give a fillip to development. The State government will also earmark some amount as grants-in-aid.223

Positive Reactions on the New Accord of 2003

Ten years ago, AGP candidate Paniram Rabha didn’t dare campaign after filing his nomination from the Kokrajhar Lok Sabha seat. The fear of ultras, the All Bodo Students’ Union (ABSU) and the Bodo Peoples’ Action Committee (BPAC) kept him away. ‘‘Things have changed, and so has changed the political equation’’224 he said in his interview to the Assam Tribune. The AGP, which used to be a party of only Assamese-speaking people, has undergone a change in mindset and attitude,’’ says Bwiswmutiary. Rabiram Narzary, echoed similar feelings, ‘‘It is significant that the AGP has adopted a positive attitude towards the problems of Bodos225. Chief Minister P.K. Mahanta has come forward to find a viable and long-lasting solution to our demands,’’ ‘‘We now have sympathetic governments both at the Centre and in the state.’’

Narzary claims the Centre has promised a Bodoland Territorial Council (BTC) that will replace the existing and almost defunct Bodoland Autonomous Council (BAC). The ABSU, which signed an accord with the state government, on February 20, 1993 disowned the Bodoland Accord three years later, terming it as an eyewash. ‘‘The previous Congress state and Central governments cheated us in the name of an accord that was never implemented in the true sense. For the Bodos, the accord is a failure and the Congress an enemy of Assam,’’ said Narzary226.

Urkhaw Gwra Brahma, former president of the ABSU and now an advisor, is singing praises of Mahanta. ‘‘The state government has already accepted our three-decade-old demand for introducing a Roman script for Bodo language. People haven’t forgotten how the Congress government imposed the Devanagari script on us in 1975’’ he stated.227

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223 A Jubilant Bodo leader announced this in a rally in Kokrajhar in Feb 2003
224 The Assam Tribune; February 12, 2003
225 In conversation with the Bodo Leader in Dhubari
226 Rabiram Narzary in a political meeting during the survey, also quoted in the local newspapers
227 In conversation with the author during a personal interview in February 2003
Negative Reactions on Bodo Accord

“This is murder of democracy,” said Phani Medhi, Chief Convenor of the Sammilita Janagosthiya Sangram Samiti (SJSS), a joint forum of 18 non-Bodo organisations, which has been spearheading the non-Bodos’ agitation against the move to create the BTC since 2001. In fact, when the Bodo accord was signed in New Delhi, parts of lower Assam was under a bandh, called by the All Assam Koch Rajbangshi Students’ Union (AAKRSU). The SJSS followed up with a 36-hour bandh and violent demonstrations. Irate mobs damaged offices of the Congress, Asom Gana Parishad (AGP) and All Assam Students’ Union (AASU) in Bongaigaon. The SJSS claimed that Bodos constitute a “microscopic minority of twenty per cent” in the areas, which proposed to go under the BTC’s control, while all other groups — like Koch Rajbangshis, Santhals, Adivashis, Rabhas, religious and linguistic minorities — together count for the remaining 80 per cent. “A region — inhabited by so many communities since time immemorial — cannot be identified as a territory exclusively for Bodos, only to appease chauvinist and sectarian Bodo militant leaders. The provisions of the Sixth Schedule provide Bodos an exclusive socio-political authority over an area and thereby put in jeopardy majority non-Bodos’ fundamental rights,” Brajen Mahanta, Deputy Chief Convenor of the SJSS, he said “We are demanding a review of the Bodo accord.” He threatened that otherwise, a 100-hour economic blockade in lower Assam will be launched as soon as the notification for the constitution of BTC is issued.” Mr Medhi said. The SJSS’ stir got a momentum after the Jharkhand Mukti Morcha MP Shibu Soren and the state’s leader of opposition Stephen Marandi visited Kokrajhar and expressed solidarity with the Adivasis in their protest against the accord.

Reservations and anxieties about the BTC have also been expressed by organisations representing other non-Bodo populations living in the area — the Adivasis, the Nepalis and the tea garden labour communities. Another important segment of non-Bodo population in the envisaged BTC area, the Muslim peasantry of East Bengal ancestry, has

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228 In an interview with Mr. Phani Medhi after a Party Meeting in Guwahati Jan 2003
229 An AAKRSU leader in Dhubari in a personal interview Oct 2002
230 Brajen Mahanta, Deputy Chief Convenor of the SJSS in a personal interview. Also was quoted in newspapers
on occasion been at loggerheads with the Bodoland agitation, ending up more often than not as victims of violence.

**Hurdles in Bodo Accord 2003 for BTC**

The most difficult challenge, however, comes from the active Bodo militant outfit, the National Democratic Front of Bodoland which finds itself marginalized with the finalisation of the BTC deal. The NDFB, fighting for an independent 'Bodo hadat' (Bodoland), issued statements asking people not to support the BTC, which they claim is not in the interest of the Bodo people. The Union Minister of State for Home Affairs, Swami Chinmayananda was also reported to have said on December 6, 2003, that, "the security forces would do everything to ensure that they (BLT cadres) were not victimized by the still active militant groups." Though the grossly diminished military strength of the NDFB may, within this context, prove to be an advantage for the BLT as well as a matter of relief for the Union Government.

Under the circumstances, the BLT men who will take charge of the BTC will need support and patience not only from their own tribesmen and the non-tribal in the BTC area, but also from the State Government. There are a number of unresolved issues, such as the demarcation of the geographical boundary of the proposed Bodoland Territorial Area District (BTAD), comprising four Districts - Kokrajhar, Chirang, Baska, and Udalguri (the last three are yet to be formed by the State Government) and the inclusion of additional villages.

**Analysing the New Accord**

All this, however, in no way assures that the MoS and the BTC will have a smooth passage to their implementation, let alone their future functioning. The impending problems and obstacles are still to be resolved, though a settlement has been reached. While the 'political aspirations' of the leadership of the Bodoland agitation may be met by the BTC and the powers bestowed upon it, other obstacles arising out of the
'constitutional arrangements' provided in the MoS deserve to be noted\textsuperscript{231}. The most fundamental of these is the ambiguity of the relation between the proposed BTC and the Sixth Schedule of the Constitution, described as the 'main provision of the MoS' in the Press Information Bureau's press note issued on February 10\textsuperscript{232}.

The main provisions of the Memorandum of Settlement relate to creation of an Autonomous self-governing body to be known as Bodoland Territorial Council (BTC) within the State of Assam and provision of constitutional protection under the Sixth Schedule of the Constitution of India to the said autonomous body; to fulfil economic, educational and linguistic aspirations. It is interesting that the passage does not unambiguously state that the BTC, referred to as an 'autonomous self-governing body' which, when the delimitation process is completed, is to comprise four contiguous Districts, will be created under the provisions of the Sixth Schedule. Rather, what is promised is that this autonomous self-governing body will have the "provision of constitutional protection under the Sixth Schedule\textsuperscript{233}".

In other words, without being created specifically under the provisions of the Sixth Schedule, in which case the new body would be invested with constitutional rights, which is what other structures mentioned at the end of the Sixth Schedule have, the BTC will have the "provision of constitutional protection under the Sixth Schedule". There is bound to be more verbal jugglery as the process evolves over the next coming months, one of the two timeframes mentioned in the MoS. In another respect, however, the existing provisions of the Sixth Schedule too will be affected by the creation of the BTC. According to the Home Commissioner of the Assam government, the Sixth Schedule will be amended to enable the BTC to have a membership of 46, up from the present 30. Clearly, the linkages, such as they are envisaged, require to be clarified and fine-tuned further.

One of the trickiest issues that was a constant in the demands of the Bodoland agitation related to the status of the Bodo Cacharis in Karbi Anglong District. The ABSU's charter

\textsuperscript{231} Frontline, August 2, 2002
\textsuperscript{232} Ibid.
\textsuperscript{233} A Bodo leaders opinion and hope on the new Accord in Dhubari in Jan 2003
of demands invariably included the demand that the Bodo Cacharis be recognised as Scheduled Tribes - a demand rejected with equal consistency by the leadership of the Karbi Anglong District Council. The demand and its rejection are related to the curious anomaly in the position of the Plains Tribal people whose tribal status is not recognised if they happen to move to the Hill areas - though the reverse is not the case. The MoS simply acknowledges this problem, promising it only 'sympathetic consideration'.

The State government, however, recommended several amendments to the Sixth Schedule to safeguard interests, socio-political rights and privileges of non-Bodos. “To ensure that non-Bodos are not deprived of their political right, It has recommended certain modifications in the Article 332 (6) of the Constitution so that the existing status of representation of BTC areas in the Parliament and State Assembly remains unchanged”.

Reforming the Constitution - BTC under the Sixth Schedule of the Constitution

Under the Sixth Schedule, the BTC will have control over 10 major socio-political subjects — land, any unreserved forest, any canal or water course for purpose of agriculture, shifting cultivation, establishment of village and town bodies, matters related to village and town administration, appointment of village headmen for villages and towns, inheritance of property and other social customs. Laws made by the BTC must have the assent of the Governor, but any legislation by the State assembly in these 10 subjects will not be valid in areas under the council, which can levy fees for services rendered in any of those subjects. It will also have powers to set up village councils or courts to settle civil disputes in accordance with customary laws and also laws enacted by itself. However, appeal against the decision of these courts can go up to the High Court and Supreme Court. But, just as the Centre-NSCN (IM) peace-talks raised hopes for Nagas and sparked off apprehensions among their neighbours in Manipur, Assam and Arunachal Pradesh, the Bodo accord too has triggered both celebrations and protests. While the accord gave Bodos a virtual homeland with constitutional recognition, non-
Bodos, who live in proposed BTC areas, fear that they would be deprived of their constitutional rights once the council comes into being.

**Important Landmarks in Tribal Development:**

Recognising the special needs and problems of tribal, a special niche was accorded to tribal development in the country’s Development Agenda from the very beginning of the Plan Era. Some important landmark achievements in Tribal development are as below:

- Programmes were designed with a special focus on STs (1951)
- Adoption of ‘Panchsheel’ – the five Guiding Principles of the process of Tribal development (1956)
- Opening of Multi-Purpose Tribal Development Blocks for intensified development of STs (1961)
- Introduction of Special Strategies of TSP and SCA to TSP to ensure flow of population– proportionate funds from other developmental sectors for tribal (1974)
- Poverty alleviation programmes for at least 50 per cent of tribal families to cross poverty line and expansion of infrastructural facilities in tribal areas (1985)
- Setting up of special financial institutions viz. Tribal Co-operative Marketing Development Federation (1987) and National Scheduled Castes and Scheduled Tribes Finance and Development Corporation (1989)
- Ensure participatory development of STs at the grass root levels involving PRIs and Gram Sabhas as per the 73rd and 74th Amendment of the Constitution (1993) and the Panchayats (Extension to the Scheduled Areas) PESA Act, (1996)
- A major shift in the approach from ‘Welfare’ to ‘Development’ and to Empowerment of Tribal’ 1997);
- Setting up of an exclusive Ministry of Tribal Affairs (1999) and
- Instituting a separate National Scheduled Tribes Finance and Development Corporation (2001)