Chapter 6

Autonomy, Constitutional Patriotism and Asymmetric Federalism — I: The Socio-Cultural and Political Routes

In chapter 3, we examined how the instrumentality of ‘tribe’ recognition defines and redefines the contours of inter/intra-tribe relations in India’s North-East. While ‘tribe’ identities incontrovertibly broaden the horizon of tribal imaginations, they also constrict the space of their pan-tribal imaginations as specific ‘tribe’ identities erect walls of separation within and across themselves. By linking collective entitlements to opportunities and scarce resources with the instrumentality of ‘tribe’ recognition, the state has been largely able to shed its earlier image of being ‘external’ and ‘marginal’ to the tribal societies. It has also been able to directly penetrate into their lifeworlds by broadening the cake of tribal stakeholders in its institutions. In the long run this helps in the construction of ‘constitutional patriotism’ in India’s North-East as it engenders loyalty of the tribal ‘others’ to the Indian state and its representative institutions. Needless to say, it also helps extend India’s state-building and state-nation building projects in the hitherto protected ‘ethnic/tribal enclaves’ of its North-East frontier which had for long remained insulated to pan-Indian national imaginings. This is remarkable in the face of persistent ‘greater’ homeland demands of some ethnonationalist groups like the Naga and Zo people, which often assume irredentist/separatist turns in India’s North-East thereby endangering the ‘unity and integrity’ of the Indian Union.

Given that India adopts the Westminster model of democracy where decisions are made by the numerical majority in the national parliament, it is certainly not enough to envisage special representational rights to tribal groups of India’s North-East or elsewhere.

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1 Greater homeland demands of the Naga and the Zo people seek to integrate the contiguous territorial homelands of the Nagas and Zo people in India, Bangladesh and Myanmar. This is however problematic as these demands cross-cut territorial boundaries of the states of Assam, Arunachal Pradesh, Nagaland and Manipur in India’s North-East, as also of the international borders. On this see chapter 4.

2 We have discussed how the politics of territoriality, homeland demands, and nation building of ethnonational groups like the Nagas and the Zo people run parallel to the Indian state-nation building project and how they continue to counterpose against each other in Chapter 4.
in the national parliament.\(^3\) As they are territorially concentrated and are endowed with embedded autonomous ‘societal culture (s)’\(^4\), they had and continue to demand separate homelands for their own. While these separate homeland demands were largely met by envisioning asymmetric federal design in the form of Autonomous District Councils and Regional Councils under the Sixth Schedule, the refusal of the Nagas to finally endorse the Sixth Schedule and the initial reluctance of the Indian state to accommodate their ethnonationalist aspirations literally bereft the Indian state of any legitimate structure to process their demands. However when the voice of the irredentist Nagas became more strident and there was increasing possibility of their breaking away from the straightjacket of the Indian Union,\(^5\) the state of Nagaland was created to accommodate the moderate/integrationist Nagas.\(^6\) In effect, this entrenches the asymmetric federal design of India’s Constitution to institutionally accommodate the ethnic particularity of the Nagas by incorporating Article 371A. The Article validates existing laws and gives overriding powers to the State Legislative Assembly on matters pertaining to the Nagas’s religious and social practices, customary laws and procedure, administration of civil and criminal justice, ownership and transfer of land and its resources.\(^7\) As already discussed in the

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\(^3\) Article 330 and 332 of India’s Constitution respectively reserve seats for the Scheduled Castes and Scheduled Tribes in the Lok Sabha (House of the People) and State Legislative Assemblies. On the number of seats reserved for STs in North-East Indian states see Table 1 in chapter 1.

\(^4\) The term ‘societal culture’ is borrowed from Kymlicka who used it to denote ‘a territorially concentrated culture, centred on a shared language’. It involves, as he says, ‘a common language and social institutions, rather than common religious beliefs, family customs, or personal lifestyles.’ Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford: Oxford University Press, 2001), p.25.

\(^5\) To be sure, the Indo-China War (1962) exposed the vulnerability of India’s North-East frontier for the first time. Subsequently security and governance become the overriding concerns of New Delhi in dealing with ethnonationalist aspirations of tribal groups in the North-East. On this see Maya Chadda, “Integration through Internal Reorganization: Containing Ethnic Conflict in India,” *The Global Review of Ethnopolitics*, Vol.2, no.1, September 2002, pp.44-61.

\(^6\) See chapter 4 on this.

\(^7\) See Article 371A in P.M. Bakshi, *The Constitution of India* (Delhi: Universal Law, 2009 ninth edition)[1991], pp.308-10. Also see L.P. Singh, “The Problem,” *Seminar*, no.366, February 1990, pp.12-18. An offshoot of this is that only the spirit of Criminal Procedure Code, and not the Code *per se* is applicable to the state of Nagaland. An illustrative case came up before a 4-judge Constitution Bench of the Supreme Court of India in what is known as the *State of Nagaland Vs. Ratan Singh, etc* case. In delivering its judgement on 9 March 1966, the bench headed by M. Hidayatullah ‘set aside’ the Assam and Nagaland High Court’s judgement of 26 August 1965. The apex Court held that the Additional Deputy Commissioner of Kohima was right in insisting that Ratan Singh and others should be tried under the ‘procedure laid down in the Rules for the Administration of Justice and Police in the Naga Hills District, 1937’ rather than under the Criminal Procedure Code as the latter was not applicable to Nagaland. An illustrative case came up before a 4-judge Constitution Bench of the Supreme Court of India in what is known as the *State of Nagaland Vs. Ratan Singh, etc* case. In delivering its judgement on 9 March 1966, the bench headed by M. Hidayatullah ‘set aside’ the Assam and Nagaland High Court’s judgement of 26 August 1965. The apex Court held that the Additional Deputy Commissioner of Kohima was right in insisting that Ratan Singh and others should be tried under the ‘procedure laid down in the Rules for the Administration of Justice and Police in the Naga Hills District, 1937’ rather than under the Criminal Procedure Code as the latter was not applicable to Nagaland. To put in perspective Ratan Singh and others belonged to the 7th Battalion of the Central Reserve Police under whose custody ‘seven hostiles Nagas … were murdered and their dead bodies secretly disposed of.’ They demanded that their case be tried by the Court of Session which the apex Court declined. For details see *State of Nagaland Vs. Ratan
chapter 4, the creation of the state of Nagaland was a departure from the usual norm of state creation in India as Nagaland was the first state to have been created on the basis of ethnicity and without taking into account its economic viability. Article 371A was extended in the same format when the state of Mizoram was created in 1987 by inserting Article 371G. With the creation of Sikkim in 1975 (Article 371F), and Arunachal Pradesh in 1987 (Article 371H), the same Article, i.e. Article 371 was used to invest the Governor with special responsibilities and power in matters pertaining to ‘law and order’. The Governor of Manipur is also invested with a special responsibility vis-à-vis the administration of the Hill Areas of the state by requiring him to submit periodical reports to the President of the Indian Union after duly consulting the Hill Areas Committee constituted under Article 371C in 1971 when the state was created.

This chapter examines the architecture of autonomy envisaged by the Sixth Schedule and the omnibus Article 371. The chapter is divided into three sections. The first section examines how the Sixth Schedule and the omnibus Article 371 put in place North-East India’s exceptionalism and how they have, to a large extent, given security to minority tribal groups within their ethnic homelands. In section two we locate the beleaguered premise of autonomy by examining the Constituent Assembly Debates on the Sixth Schedule. We shall contend that despite the triumph of the ‘knowledge solution’ approach in the Constituent Assembly Debates the trapping of ‘power solution’ approach, which is manifested in the managerial and paternalistic designs of the state, can overtime erode self-management rights of the tribal ‘others’. Against this backdrop we examine the working of the ADCs and the emerging contours of debates on identity, land

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Singh, et al., 1967 AIR 212 1966 SCR (3) 830 [Full text of the Supreme Court judgement is available online at http://judis.nic.in].


10 We shall employ the term ‘architecture’ in a formal or structural sense.

11 Following Jaipal Singh, a member of India’s Constituent Assembly, we shall employ the terms ‘knowledge solution’ and ‘power solution’. Singh borrowed the terms from an anonymous, yet ‘learned Ambassador in Moscow’. See the Constituent Assembly Debates in Savyasaachi, Tribal Forest-Dwellers and Self-Rule: The Constituent Assembly Debates on the Fifth and the Sixth Schedules (New Delhi: Indian Social Institute, 1998), p.129.
and culture — the foundations upon which the Sixth Schedule and the omnibus Article 371 are structured in the last section. In this section relevant judgements of the Supreme Court and the Guwahati High Court would be taken up to broaden the debate.

I. Putting North-East's Exceptionalism in its Place:

The Sixth Schedule and Article 371

The architecture of autonomy enshrined by the Sixth Schedule in the form of Autonomous District Councils (hereafter simply as ADCs) and the omnibus Article 371 is indeed one of the most illuminating cases of asymmetric federalism in India. Although Tillin considers this as inconsequential, given that the North-East is peripheral to the Indian national imagining, it however exemplifies a constructive constitutionalism at its best. To be sure, the Sixth Schedule and the omnibus Article 371 firmly put in place North-East India’s exceptionalism by recognising the unique socio-cultural, political and historic rights of selected ‘tribals’ in India’s North-East to maintain their ‘self-rule’ within the broad framework of a ‘shared rule’. Towards this end Article 371A and 371G validate existing laws and give overriding powers respectively to the State Legislative Assemblies of Nagaland and Mizoram in matters pertaining to religious and social practices, customary laws and procedure, administration of civil and criminal justice, ownership and transfer of land. While ADCs established for Sixth Schedule areas have more or less similar powers, their powers are circumscribed as they do not wield the plenary powers to ‘transfer land’ and laws/rules made by them have to conform to those enacted by the state.

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13 See Tillin, “United in Diversity?”

Table 6

A Glance at Autonomous District Councils in India’s North-East

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Autonomous District Council (ADC)</th>
<th>Year Estd.</th>
<th>State/Headquarters</th>
<th>No. of Elected Members</th>
<th>No. of Nominated Members</th>
<th>Total No. of Members</th>
<th>No. of Subjects Devolved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Karbi Anglong ADC</td>
<td>1952</td>
<td>Assam/Diphu</td>
<td>26</td>
<td>4</td>
<td>30</td>
<td>30@</td>
</tr>
<tr>
<td>2.</td>
<td>North Cachar Hills ADC</td>
<td>1952</td>
<td>Assam/Haflong</td>
<td>26</td>
<td>4</td>
<td>30</td>
<td>30@</td>
</tr>
<tr>
<td>3.</td>
<td>Khasi Hills ADC</td>
<td>1952</td>
<td>Meghalaya/Shillong</td>
<td>29</td>
<td>1</td>
<td>30</td>
<td>18</td>
</tr>
<tr>
<td>4.</td>
<td>Garo Hills ADC</td>
<td>1952</td>
<td>Meghalaya/Tura</td>
<td>29**</td>
<td>1</td>
<td>30**</td>
<td>18</td>
</tr>
<tr>
<td>5.</td>
<td>Jaintia Hills</td>
<td>1966***</td>
<td>Meghalaya/Jowai</td>
<td>29</td>
<td>1</td>
<td>30</td>
<td>18</td>
</tr>
<tr>
<td>6.</td>
<td>Lai ADC#</td>
<td>1972</td>
<td>Mizoram/Lawngtlai</td>
<td>12</td>
<td>2</td>
<td>14</td>
<td>18+20^</td>
</tr>
<tr>
<td>7.</td>
<td>Mara ADC#</td>
<td>1972</td>
<td>Mizoram/Saiha</td>
<td>9</td>
<td>1</td>
<td>10</td>
<td>18+20^</td>
</tr>
<tr>
<td>8.</td>
<td>Chakma#</td>
<td>1972</td>
<td>Mizoram/Chawngte</td>
<td>8</td>
<td>1</td>
<td>9</td>
<td>18+20^</td>
</tr>
<tr>
<td>9.</td>
<td>Tripura Tribal Area ADC (TTAADC)</td>
<td>1985##</td>
<td>Tripura/Khumulwung</td>
<td>28</td>
<td>2</td>
<td>30</td>
<td>NA</td>
</tr>
<tr>
<td>10.</td>
<td>Bodoland Territorial Council/Bodoland Territorial Autonomous District (BTAD)</td>
<td>2003</td>
<td>Assam/Kokrajhar</td>
<td>40*</td>
<td>6</td>
<td>46*</td>
<td>40</td>
</tr>
</tbody>
</table>

Notes: * It includes 30 seats reserved for STs, 5 for non-tribal communities and another 5 to be opened to all communities.
**Since 1977.
***Functional since 1 February 1967.
@ Including additional subjects devolved by the Assam State Government in 1995 following a memorandum of understanding signed between Union Government, State of Assam and the Autonomous State Demand Committee.
^Additional subjects entrusted by Mizoram government.
# Earlier known respectively as the Pawi (now Lai), Lakher (now Mara) and Chakma Regional Councils, they were upgraded to full-fledged ADC on 2 April 1972.
##TTAADC was established in 1979 under the Fifth Schedule. It has been placed under the Sixth Schedule since 1985.

These asymmetric devices are supplemented by ensuring weighted representation to tribals in the State Legislative Assemblies (SLA). Under this rubric Arunachal Pradesh, Mizoram and Nagaland have all but one of the total SLA seats reserved for the Scheduled Tribes (ST). This is remarkable as it enables the STs to corner 98.33 percent of the SLA seats in Arunachal Pradesh despite accounting for just 64.2 percent of the population (2001 census). In Mizoram and Nagaland they respectively get 97.5 and 98.33 percent of the total SLA seats although they respectively account for 94.5 and 89.4 percent of the population of the states. In Meghalaya the tribals are ensured 55 of the 60 SLA seats. In

15 See Table 1 in chapter 1 for details.
states like Assam (16/126), Manipur (19/60), Sikkim (12/32) and Tripura (20/60) the tribals are also accorded reservation of seats almost proportionate to their population.\(^{16}\)

While these help accommodate ethnocultural aspirations of diverse tribal groups in North-East India and give them security in their ethnic homelands, they also lend efficacy to asymmetric federalism. Undoubtedly these asymmetric arrangements are useful in constructing ‘constitutional patriotism’ and extremely crucial in ‘holding together’ the least administratively/culturally integrated parts of the Indian state.\(^{17}\) What needs to be underlined here is the possibility to exclude the non-tribal ‘others’ from participation in the democratic process and institutionalise two-tier citizenship. Demands are now being made to address this constitutional anomaly by redrawing the electoral constituencies to represent the non-tribal ‘others’ and establish institutional mechanism to protect their rights. The case of tea labourers in Assam like the Santhals who are now demanding constitutional recognition and protection, among others, is a glaring example.\(^{18}\)

It is a truism that the Sixth Schedule was originally intended for the six tribal hill districts of ‘undivided’ Assam, viz; Karbi-Anglong, North Cachar, Khasi and Jaintia, Garo, Naga\(^{19}\) and Lushai (now Mizo) hills to protect their socio-cultural and political rights. It has been extended to three tribes of Mizoram (Lai, Mara and Chakma), tribal areas of Tripura and to the Bodo areas in Assam.\(^{20}\) Outside the ambit of the Sixth Scheduled areas, Autonomous Councils have been extended to three plain tribes of Assam.\(^{21}\) Similar experiments are also being tried out in Darjeeling (West Bengal),

\(^{16}\) Ibid.
\(^{17}\) For helpful analysis see B.G. Verghese, *India’s Northeast Resurgent: Ethnicity, Insurgency, Governance, Development* (Delhi: Konark, 1996).
\(^{18}\) This is outside the ambit of our present research enterprise.
\(^{19}\) The Nagas however opted out of the Sixth Schedule, reducing the number of ADCs to four in India’s North-East in the 1950s. See Gopinath Bordoloi’s letter to the Chairman, *Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. of the Constituent Assembly*, in B. Shiva Rao (ed.), *Framing of India’s Constitution*, Vol.3 (New Delhi: Indian Institute of Public Administration, 1967), pp.684-5.
\(^{20}\) See Table 6 below.
\(^{21}\) The three plain tribes, other than Bodos, which have been given autonomous councils, are Rabhas, Mising and Tiwas. There are now nine ADCs under the Sixth Schedule in the Hill Areas of India’s North-East, which would total thirteen if the four ADCs envisaged for the plain tribes of Assam were added on to the list. There are similar demands for more autonomy under the Sixth Schedule by, inter alia, the Naga and Zo people in the Hill Areas of Manipur, by sections of the Zo people, viz., Hmars and Kukis in Karbi-Anglong (Assam) and the Hmars, Paites and the Brus in Mizoram.
Jharkhand\textsuperscript{22} and Ladakh (Jammu and Kashmir) districts respectively for the Gorkhas, Jharkhandis and Ladakhis.\textsuperscript{23}

It is pertinent to underline here that while for some ‘lucky’ tribal groups, specifically the Mizos and the Khasis, the Sixth Schedule acted as a half-way house to statehood and helped them in protecting and preserving their tribal culture and identity via the omnibus Article 371, it still continues to provide a beleaguered premise of autonomy for the Karbis and Cacharis of Assam; Jaintias and Garos of Meghalaya; Chakmas, Lais and Maras of Mizoram as ADCs practically fail to take off in right earnest.\textsuperscript{24} For them, the tall promise of autonomy enshrined in the Sixth Schedule tapers off soon enough as it fails to protect their land, identity and rights. This is compounded even as it gets enmeshed in the paternalistic design of dual control, interspersed as ADCs were, between the arm’s length intervention of the respective state government where they are operationalised on the one hand, and a distant and benign Central government control on the other hand. However, the Sixth Schedule engenders similar autonomy demands in the Hill Areas of Manipur and in certain pocket of tribal dominated areas of Assam and Mizoram today.\textsuperscript{25} How then do we make sense out of this paradox? It would be helpful to revisit the ideational premise of the Sixth Schedule and understand the evolution of this idea.

II. Revisiting a Beleaguered Ideational Premise:

Constituent Assembly Debates and the Sixth Schedule

Right from the onset of colonialism in the Indian subcontinent, resolving the tussle between the demand of tribal communities of India’s North-East to maintain their

\textsuperscript{22} Autonomous Councils were experimented for a brief period between 1994 and 2000 in Jharkhand, which were abandoned following the creation of a separate state in 2000.


\textsuperscript{24} See H. Kham Khan Suan, “Salvaging Autonomy in India’s North-East: Beyond the Sixth Schedule Way,” Eastern Quarterly, New Delhi, Vol.4, issue 1, April-June 2007, pp.5-16.

autonomous ‘societal culture’ and the Indian state’s project to maintain its unity and integrity has been a nagging constitutional conundrum. At stake here is the issue of accommodating autonomy demands of disparate tribal groups without compromising the imperative of a developmentalist state’s project and its nationalising space. Given that entrenched colonial institutional mechanism to recognise and protect antecedent autonomous ‘societal culture’ by way of Inner Line Regulations (1873), Scheduled District (1874), ‘Backward Tracts’ (1919), and the ‘Partially Excluded and Excluded Areas’ (1935) spawned special and asymmetric autonomy demands among tribal and sub-tribal groups in India’s North-East, it was not an easy challenge for the Indian state.

In fact the terms of enquiry of the Bordoloi Committee, constituted by the Constituent Assembly on 27 February 1947, mandated it to report on a scheme of administration for the ‘tribal and excluded areas’ which would help in “reconciling the hill peoples’ demand for political autonomy with the Assam government’s drive to integrate them with the plains.” The Committee, mindful of the call of the Cabinet Mission’s statement of 16 May 1946 that the tribals in partially excluded and excluded areas required special attention, undertook extensive tours to India’s North-East and came up with a comprehensive report. The Committee was struck by a wide range of demands, some of which ‘even instilled ideas of an independent status the external relations under which would be governed by treaty or agreement only.’ Apparently, the sudden political development which sought to reduce the tribals into ‘stateless’ minorities

26 Kymlicka, Politics in the Vernacular, p.25.
27 Baruah argues that erecting protective discriminatory regime alongside creation of small states sans economic viability in North-East India is against the actually existing political economy. He considers that perpetual deprivation of land ownership rights to ‘outsiders’ erect a discriminatory regime of ‘citizens and denizens’ in this part of the country. It is however difficult to imagine how the tribals would be able to maintain their identity and rights without them. See Sanjib Baruah, Postfrontier Blues: Toward a New Policy Framework for Northeast India, Policy Studies 33 (Washington: East-West Centre, 2007). Also see his, “Protective Discrimination and Crisis of Citizenship in Northeast India,” Economic and Political Weekly, Vol.38, no.17, 26 April-2 May 2003, pp.1624-26.
28 The Bordoloi Committee is also known as the Sub-Committee on the North-East Frontier (Assam) Tribal and Excluded Areas. It was one of the Sub-Committees formed under Constituent Assembly of India’s Advisory Committee on the Rights of Citizens, Minorities and Tribal and Excluded Areas. See Rao (ed.), Framing of India’s Constitution, Vol. 3, p.681-732.
29 See Bordoloi Committee Report in ibid., p.684.
32 Ibid., pp.690-91.
of the Indian state-nation overnight spawned a palpable sense of insecurity and fear in the minds of the tribals. Not surprisingly, the Nagas demanded an 'interim Government ... under the protection of a benevolent “guardian power” who would provide funds for development and defence for a period of ten years.' An important caveat which underlined the aspirations and demands of all tribal groups in India’s North-East was the desire to bring ‘people of the same tribe ... under a common administration.’ In the ultimate analysis, the Bordoloi Committee felt that the tribals would largely be satisfied ‘if control over land and local customs and administration of justice’ are ensured. Towards this end, it recommended a ‘self-contained code’ for the tribals in India’s North-East in the form of Sixth Schedule. The report was thoroughly debated by the Constituent Assembly for three days, viz.; 5-7 September 1949.

The Constituent Assembly Debates on this proposed administrative scheme provided moments of interplay between the development and security paradigms which echoed in the power versus knowledge solution approaches. The searching debates reflected in large measure much of the problematic of the debates on asymmetric federalism in Canada and the West in the 1960s. The concern for stability, security and development was so palpable that Kuladhar Chaliha, a member of the Constituent Assembly, saw in the proposed Sixth Schedule an ‘old separatist tendency’ and anticipated the creation of a ‘Tribalstan’ or a ‘Communistan’. He anticipated what he called, ‘a negation of justice or administration’ if the Nagas were allowed to perpetuate their practice of ‘summary justice’ under the Sixth Schedule. This, Chaliha felt, would tantamount to ‘misrule’ or ‘a primitive rule’. The power solution approach emanated from this concern. Chaliha and other proponents of this approach like Brajeshwar Prasad

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34 Ibid., p.691.
35 Ibid.
36 Ibid.
37 See Constituent Assembly Debates, Official Report, Vol.9, nos. 26, 27 & 28, 1949; see especially pp.1001-82. We would however refer to the Debates reproduced in Savyasaachi, Tribal Forest Dwellers and Self-Rule. Henceforth CAD.
38 See the debates on asymmetric federalism in chapter 2.
39 Interestingly, Chaliha did not seem to be aware that the Nagas had refused to endorse the Sixth Schedule. See Kuladhar Chaliha (from Assam)’s speech in CAD, pp.118-19.
and Rohini Kumar Chaudhury were particularly sensitive to the vulnerable geo-strategic location of Assam as it shares porous international borders with 'China, Tibet, Burma and Pakistan.' Mindful of the economic backwardness and the periodical internal disturbances caused by inter-ethnic conflicts in Assam, they felt that the problems of the state was far too 'complicated and large' and 'are beyond the economic resources of the province to tackle.' Moreover, any talk of self-determination and for that matter autonomous 'societal culture' was considered inopportune as the Constitution was framed under the dark shadows of partition.

Read against this backdrop, it would seem natural that protagonists of the power solution approach posit national interests above 'provincial autonomy'. Brajeshwar Prasad, participating in the debate, minced no words and made his views explicitly clear when he said:

"Therefore, Sir, is it right, is it safe, is it strategically desirable, is it militarily in the interests of the government of India, is it politically advisable that the administration of such a vast tract of land should be left in the hands of provincial government, especially in a province where there is no element of political stability? Sir, I love this country more than provincial autonomy."

Prasad painstakingly made a case for a centralised administration of these tribal areas as he anticipated that 'to vest wide political powers into the hands of tribals is the surest method of inviting chaos, anarchy and disorder throughout the length and breadth of this country.' Another member, Rohini Kumar Chaudhuri, lamented that "the bond of friendship which we expect to come into being after the attainment of independence" had gone haywire following the Bordoloi Committee's recommendation to have a separate administrative set-up for the tribals. He attributed this 'more to ignorance than to intention'. He then categorically cautioned: 'If you want to keep them separate, they will combine with Tibet, they will combine with Burma, they will never combine with the rest

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40 The Indian Statutory Commission also known as the Simon Commission also emphasized on this aspect and recommended that the 'backward tracts' be placed under central administration and should subsequently be categorized as 'excluded areas.' See Government of India, Indian Statutory Commission Report, Vol.2 (Calcutta: Central Publication Branch, 1930), especially chapter 2, para 127-131.
41 CAD, p.115.
42 Ibid., p.120.
43 Ibid., pp.126-7.
of India.'

Chaudhuri also underlined the fear of losing entirely the whole of tribal areas on lack of information and forcefully stressed the policy of assimilation, thus: ‘We want to assimilate the tribal people. We were not given that opportunity so far.’

The outright approach of assimilation was, however, considered inimical and insensitive to the unique and distinct ‘lifeworld’ of the tribals. Moreover, the overriding concerns for dominant mainstream development and security ignored the fundamental question of tribal self-rule/autonomy by relegating their basic aspirations to the background. In other words the issue of self-rule or autonomy was considered to be adjunct to development and security, which could only be taken care of when these overriding concerns were fulfilled. The so-called ‘state within a state’ demand in the 1960s was an attempt to reverse these priorities.

There was a counter approach to this which we earlier referred to as the knowledge solution approach. It sought to take tribal sensitivities into account and dealt them with understanding. Prominent proponents of this approach were Gopinath Bordoloi, Rev. J.J.M. Nichols Roy, Jaipal Singh and B.R. Ambedkar. Intervening in the debate, Bordoloi and Ambedkar contended that unlike the tribals elsewhere who are — to borrow Ambedkar — ‘more or less Hinduised, more or less assimilated with the civilization and culture of the majority,’ the hill tribal people in Assam have ‘their roots ... still in their own civilization and culture.’ Ambedkar justified separate administrative provisions for the tribal people as ‘their law of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus.’ Against the common misperceptions he clarified how laws made by the Indian Parliament would apply to these tribal areas. He saw in the Sixth Schedule prospects for ‘many cycles of a participation in which both [mainland Indians and the tribals] can politically come together, influence each other, associate themselves with each other, and learn something from one another.’

In the same vein, Bordoloi appreciated the autonomous practices of the Ao Nagas, especially their efficient age-based functional distributions of services, delivery of justice (by elders) and matters pertaining to distribution of jhum lands. For him, ‘the most
important fact that presented itself ... for the purpose of integration' is 'the methods of force' or a method of 'willing cooperation of these [tribal] people.' Endorsing the latter he stood for the preservation of autonomous practices of the tribals. Apparently this was informed by his conviction that the use of force would arouse in the tribals a 'spirit of enmity and hatred'. In the ultimate analysis he was largely successful in allaying the fear of ‘misrule’ or ‘primitive rule’ posited by the power solution approach by persuasively substantiating his claim that ‘what is necessary for good government is already there.’

Speaking with authority, Nichols Roy forcefully made a case against the contention that introducing the Sixth Schedule would leverage separatism. A product of what he called a 'wrong understanding of facts and a wrong psychological approach,' Roy emphatically underlined the vibrant democratic and egalitarian principle practiced by the tribal people. He categorically stated that the best way to preserve the unity and safety of India is to accommodate the tribal people by giving them 'a certain measure of self-government so that they may develop themselves according to their own genius and culture.' He tried to dissuade the majoritarian 'plainsmen' from their condescending attitude to 'assimilate' and 'swallow' tribal cultures. He contended that if India were to keep 'the frontier areas safe', it would have to 'satisfy' the tribals. Speaking from a vantage point of what he called 'a sense of universality and brotherhood of mankind,' his suggestion was, ' ... the first principle for bringing about a feeling of reconciliation between people who are estranged from one another is that one must place himself in the place of another.' According to Roy, 'advancement comes by a process of assimilation of a higher culture, higher mode of thinking and not by force.'

Another member of the Constituent Assembly who vigorously championed the knowledge solution approach was Jaipal Singh. He considered the power solution as a recipe for 'disintegration' of India and asked the members to 'inspire confidence ... in
the hearts of the tribals' whom he referred to as ‘our fellow citizens’. He steadfastly defended that the intention of the Sixth Schedule was never to keep ‘the hill tracts permanently in water-tight compartments.’ He was at his persuasive best when he said:

I would appeal to members to be generous in what they say about the tribal people, to be generous to them and not think as if they were enemies of India ... I am very optimistic about the future of Assam, particularly if the Sixth Schedule, even with all its shortcomings, is operated, in a spirit of accommodation and in the real desire to serve the hill people of Assam, as our compatriots, and as people whom we want to come into our fold, as people whom we will not let go out of our fold and for whom we will make any amount of sacrifice so that they remain with us. (emphasis added)

To be sure, the ideas which informed CAD were drawn largely from the colonial debates of the early 19th century and more prominently from the debates between G.S. Ghurye and Verrier Elwin in the second quarter of the 20th century. We have discussed this in chapter 3. What emerges eventually out of these debates, most specifically debates on the Sixth Schedule, is an ideational premise that privileges paternalist control of tribal communities by the state. The premise posits a civilisational burden on the postcolonial state to manage, as it were, the developmental affairs of the tribals in line with the dominant mainstream development model. Central to this idea is the naïve assumption that the tribals ‘other’ for whom the administrative arrangement is contrived are essentially seen as lacking a sense of order and organisation. They are also perceived to be susceptible to the ‘wiles of the money-lenders’ because their traditional barter economy was awfully unequal to the modern monetised economy. Given that longstanding tradition of autonomous ‘societal culture’ has already animated feeling of separateness and self-rule and given the real possibility of these areas breaking away from the straightjacket of the Indian Union sans asymmetric federal arrangement, it is imperative that the emergent

57 Ibid., p.130.
58 Ibid.
59 Ibid., p.131.
60 See H. Khan Khan Suan, Special Status of the North-East in Indian Federalism (New Delhi: Unpublished M.Phil Dissertation, Centre for Political Studies, School of Social Sciences, Jawaharlal Nehru University, 2002), chapter 3. Also see Suan, “Salvaging Autonomy.”
architecture of autonomy elaborately accommodates the distinct tribal identity and rights. Nevertheless, this architecture continues to be unmistakably informed and defined by two different yet overlapping trappings, as Stuligross aptly put it thus: ‘assimilation of individual tribespeople into a common national community, and integration of tribal communities into a multicultural Indian nation.’\(^{62}\) The first trapping, framed as it were within the liberal democratic framework, privileges the ‘individual’ citizen over the ‘community’. It is precisely here, as Roy Burman and others contended, that erosion of the tribal community \textit{per se} and concomitant decadence of its identity and rights are embedded into the very concept of autonomy envisioned by the Sixth Schedule.\(^{63}\) The second trapping captures the communitarian agenda to privilege the community over individuals. In North-East India, however, this implies sustaining traditional community practices and rights, which in the long run tends to normalise exclusion of the tribal communities from the ambit of uniform law of citizenship.\(^{64}\) We shall show in the next section how successful processing and accommodation of these conflicting demands/trappings will determine the legitimacy and success of India’s democracy and state in the North-East.

III. Institutionalising Autonomy:

The Challenge of Reconciling Competing Claims

In an influential essay, Dasgupta convincingly argued that the Sixth Schedule epitomizes an innovative institutional crafting which transcends standard federal arrangements in developed countries.\(^{65}\) He contended that the Schedule not only helped the Indian state process autonomy demands of tribal groups in its North-Eastern frontier without granting full-fledged statehood, it also provided avenues to ‘convert [these] demands into supports for the system through a system of cascading linkages joining together various units of the

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\(^{64}\) On this see the line taken by Sonntag, “Autonomous Councils in India.”

federal polity in a complex system of coordination. While these linkages productively helped generate the ‘desired process of a nationwide development of political, economic, and human resources’, he contended, ‘they were not defined in the oversimplified terms of an absence of federal control over states.’ On the contrary, he considered that ‘a series of negotiated jurisdiction and their changing boundaries authorized by a federalizing process’ within the framework of sharing of powers ‘were to link the center, the state, the autonomous councils, and the scheduled areas in one connected series of coordinated efforts.’

A careful perusal of the Sixth Schedule provisions convincingly shows that concerted efforts are made to negotiate the terms of autonomy envisaged for the major tribes in the formerly excluded and partially excluded tribal areas of India’s North-East within this framework. A critical component of this is the idea of ‘cascading autonomy’ wherein locally concentrated tribes are integrally linked with the state structure via the ADCs. The explicit provision of an ‘autonomous region’ within ADC through subparagraph 2 of Paragraph 1 of the Sixth Schedule is the outcome of this. To be sure, both the ADCs and RCs (established for the ‘autonomous region’) secure the participatory rights of the tribals. While the size of membership of RCs varies from state to state, a maximum of thirty members has been fixed for ADCs, out of which not more than four seats would be reserved for the minority tribes and the rest twenty six members would be elected by the tribal themselves on the basis of universal adult suffrage [paragraph 2(1)].

The logical consequence of this is that it broadens what Ambedkar in the Constituent Assembly Debates called the ‘cycles of participation’ of North-East tribals in India’s democratic institutions. More remarkably, both ADCs and RCs secure the self-management rights of the tribals in matters pertaining to, inter alia, marriage, social customs, culture, land, religion and tradition [vide paragraph 3]. As these rights are minimally considered essential to provide ‘meaningful contexts’ to preserve, protect and sustain their autonomous ‘societal culture’, the legislation of the state would not normally

66 Ibid.
67 Ibid.
68 Ibid.
69 The Bodoland Territorial Council is an exception though. It has 46 members.
and automatically apply to these matters until it is discussed by the tribal representatives and thereafter consented to by the Governor. In the process they engender local autonomy and help construct patriotic loyalty to pan-Indian constitutional architecture.

To make our analysis more specific we shall discuss the working of autonomy under the Sixth Schedule and the omnibus Article 371 by highlighting the role of the Governor, social customs and legislation, land, property and inheritance rights, administration of justice and finance of ADCs.

The role and function of the Governor have been one of the most pivotal and controversial aspects of the Sixth Schedule and the omnibus Article 371. In both the cases, the Governor is empowered to regulate ‘law and order’ and make regulations for ‘peace and good government.’ He has also been endowed with the ‘filter mechanism’ via paragraph 19(1)(a) of the Sixth Schedule. This is an extension of the colonial legacy whereby the Governor as an agent of the Governor-General was given special and discretionary powers in matters pertaining to ‘law and order’, in ensuring ‘peace and good government’, and also in adapting Central/state laws and regulations.

The Governor under the Sixth Schedule has also been empowered to use the ‘filter mechanism’ on Central or state acts which seek to prohibit and restrict consumption of any non-distilled alcoholic liquor in ADCs or Regional Councils [paragraph 12(l)(a)]. He is also empowered to appoint an ‘Inquiry Commission’ on a wide range of issues which include, inter alia, ‘the administration of laws, rules and regulations made by the District and Regional Councils’ [paragraph 14]. The Governor wields a Damocles Sword as he, acting upon the advice of such Commission, has the power to annul or suspend any act and resolution passed by the ADCs and Regional Councils [paragraph 15]. This is not enough. He has the power to dissolve the Council(s) and after getting the previous approval of the State Legislature assumes the charge of their administration for a year [paragraph 16]. Experience shows that this power has been abused to subserve the interest of the party in power in the state. The case of the suspension of the Karbi Anglong Autonomous Council on a highly contested ground in November 1992 by the Governor upon the advice of the state government of Assam is a glaring example of the possible

71 Enforcement of these regulations would, however, require the assent of the President of India vide paragraph 19(1)(b) of the Sixth Schedule.
abuse of paragraph 16 of the Sixth Schedule.\(^{72}\) Again the Governor can use the service of the Inquiry Commission to create a new autonomous district, increase or diminish or even unite two or more autonomous districts into one autonomous district [Paragraph 1(3)(c),(d), (e) & (f)]. This must however be read alongside Paragraph 21 wherein the Indian Parliament is empowered to exercise similar powers by bringing about constitutional amendment.

While this seems to be couched in a mere technicality, it is far from simple. The case of the Bodoland Autonomous Council which has been renamed as Bodoland Territorial Council in February 2003 is an illuminating case. The Council, the first such Council to be established in the plain tribal areas in India’s North-East via a tripartite Accord entered into by the Centre, the state government and the Bodos represented by the All Bodo Students’ Union (ABSU) and the Bodo Peoples’ Action Committee in early 1993, soon stumbled upon the resistance of the non-Bodo tribals who are scattered across the rivers Sankosh and Mazbat/Pasnai where BAC was proposed to be created.\(^{73}\) The non-Bodos protested that they were ignored in the process and demanded constitutional protection. After hard negotiations BAC was constituted for 2700 villages and not for the 4000 villages that ABSU initially demanded.\(^{74}\) Remarkably this come about after much bad-blood and alleged ethnic cleansing by extremist Bodos against the non-Bodos.\(^{75}\) The creation of BAC also led to the formation of Sanmilita Jana-Gosthiya Sangram Samity, an inter-tribal alliance of 14 non-Bodo organisations.\(^{76}\) As a consequence, minority tribal groups in Bodo areas and other parts of Assam have increasingly become more vocal in their demand for institutional recognition and protection. The recent demand of the

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\(^{72}\) The Karbi Anglong Autonomous Council was suspended in November 1992 on charge of ‘financial irregularities’ which however was quashed by the Guwahati High Court.


Santhals for ‘Scheduled Tribe’ status is a case in point. Indeed, similar sense of insecurity and complaints about step-motherly treatment meted out to the minority tribes by the majority tribes was placed before *The Commission on the Hill Areas of Assam* headed by H.V. Patashkar (hereafter simply as the Patashkar Commission) when it visited different parts of the North-East in 1964-65.

Coming back to the role and function of the Governor one may ask as to whether the omnibus Article 371 and the Sixth Schedule have envisioned an active and independent role for the Governor. There are two contrasting views on this. The first view draws from constitutional conventions whereby the Governor is expected to exercise his discretionary powers in his ‘individual judgement’. This is to say that in normal times he would exercise these powers after consulting the Council of Ministers of the state concerned [vide Article 163]. This was upheld by the Supreme Court, among others, in a judgement that it delivered on 11 January 2005 in a Civil Appeal which is known as *Pu Myllai Hlychho & Ors Vs State of Mizoram & Ors* case.77 The five-judge Constitution bench of K.G. Balakrishnan78 upheld the discretionary power of the Governor of the state of Mizoram to appoint four nominated members of the Mara Autonomous District Council on 8 August 2000 and remove them on 5 December 2001 after due consultation of the state’s Council of Ministers.

On the other hand, constitutional experts like M. Hidayatullah considered that when it comes to the Sixth Schedule it is not obligatory for the Governor to do so. The distinction between ‘individual judgement’ and ‘in his discretion’ is drawn up here to drive home the point that in the latter case the Governor may require ‘optional’ but not mandatory/obligatory ‘consultation’ of the Council of Ministers of the state. Hidayatullah considered that the peculiar history of the Sixth Scheduled areas, and the thought that went into the making of the constitutional provision, which largely envisaged a ‘Constitution independent of the rest of the Constitution’, demands that the Governor may consult the Council of Ministers of the state concerned, but he is neither bound to do so, nor is he bound to obey its advice. The idea is ‘to make the Governor the final decision

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77 *Pu Myllai Hlychho & Ors Vs State of Mizoram & Ors, Appeal (Civil) 661-662 of 2003* [Full text of the Supreme Court judgement is available online at http://judis.nic.in].
78 The other members being R.C. Lahoti (then CJI), Shivraj V. Patil, B.N. Srikrishna and G.P. Mathur. See Ibid.
making authority in relations to the Autonomous District Councils and Autonomous Regions. 79 Hidayatullah convincingly put forward his view in a detailed dissent judgement that he delivered in Edwington Bareh Vs. State of Assam and Others, 1965. 80

In this Case, the Supreme Court’s 5-Judge Constitution Bench of the then Chief Justice of India, P.B.Gajendragadkar in a 4-5 majority judgement delivered on 29 November 1965 dismissed the civil appeal made by the appellant, Mr. Edwington Bareh 81 and upheld the judgement of the Assam and Nagaland High Court of 5 February 1965 that the creation of a new ADC need not necessarily require Parliamentary legislation and that the Governor has the power to issue public notification by following established procedure. 82 As a matter of fact, the Governor of the United Khasi-Jaintia Hills ADC appointed an Inquiry Commission under Paragraph 14(1) of the Sixth Schedule on 26 August 1963 because of persistent pressures from the public to establish a new Jowai ADC within the extant UKJH ADC. The Commission submitted its report on 26 January 1964 and recommended the creation of a new Jowai ADC from six of the twenty four constituencies falling within the UKJH ADC. The Council of Ministers of Assam discussed the report in its meeting on 28 April 1964 and decided to implement it. After drawing up an explanatory memorandum on the report, the file was placed before the Governor on 21 September 1964. The Governor read the file, and returned it to the Council of Minister with the remarks, ‘Seen, thanks.’ 83 Subsequently, the Minister-in-Charge of the Tribal Areas and Welfare of Backward Classes placed the report before the State Assembly with an explanatory memorandum on 25 September 1964. The State Assembly then passed a resolution approving the action proposed to be taken by the Government of Assam. In pursuant to this the Governor issued a public notification on 23 November 1964 declaring the formation of a new ADC by ‘excluding the Jowai Sub-Division of the United Khasi-Jaintia Hills District with effect from 1st December, 1964;

79 See Hidayatullah, The Fifth and Sixth Schedules to the Constitution of India, p.70.
80 See Edwington Bareh Vs. State of Assam and Others, 1966 AIR 1220 1966 SCR (2) 770 [Full text of the Supreme Court’s judgement is available online at http://judis.nic.in].
81 Edwington Bareh was the Chief Executive Member of the UKJH ADC when he filed the case. Interestingly he hailed from Barato village which falls within the Jowai area and which was also among the proposed areas to be excluded from UKJH district in order to form a new Jowai ADC. See ibid., p.4.
82 Ibid.
83 Ibid.,p.16.
and that the boundaries of the Jowai District shall be the boundaries of the Jowai Sub-Division of the United Khasi-Jaintia Hills District.  

The points raised by the appellant and his defense to this Case were: (i) that the Governor’s public order can only take effect after Parliamentary legislation, and (ii) the Governor was in the background and he was only acting upon the recommendation of the Council of Ministers. In defense to this contention it was pointed out that the High Court in its judgement failed to take into account the fact that on 29 April 1954 and 29 November 1957 the Parliament of India respectively changed the name of Lushai Hills District into Mizo Hills District and “omitted item 4, i.e. ‘Naga Hills District’ from Part A of the table appended to para 20 of the Sixth Schedule; and substituted ‘The Naga-Hills-Tuensang Area’ as item 2 in Part B of the said table; and made the necessary change in para 20.” The majority however contended that rather than concerned with ‘the nature of power prescribed by paragraph 1(3)(a) or (b)’ it was concerned with the way in which the Governor exercised his discretionary power. Based on this ground, it concluded that since the Governor followed established constitutional procedure in issuing a public notification the appeal stood dismissed.

The crux of the problem however remained which M.C. Setalvad, one of the defendants of the appellant in the Edwington Bareh case, aptly put it thus: ‘whether the Governor considered the report and made his recommendations.’ In his dissenting judgement, Hidayatullah contended that in the whole process the Governor did not play a ‘key role’, he was ‘left in the background’ and merely acted on what he had been told to do so. He pointed that the ‘initiative and formation of opinion’ on the matter was of the State Government and the role of the Governor in this Case ‘hardly squared with the special responsibilities contemplated by the Sixth Schedule’. A critical perusal of the history of the North-East frontier and the constitutional development of this region shows that Hidayatullah was right in making his dissenting judgement. In the ultimate analysis,

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84 Ibid., pp.5-6.
85 Ibid., p.11. Remarkably the Parliament of India enacted Constitutional Amendments to pave the way for the formation of ADCs under the Sixth Schedule in the three Mizoram districts of Lai, Mara and Chakma (1971) and in Tripura Tribal Areas (1985). The Bodoland Territorial Council was also established within the ambit of the Sixth Schedule via a Constitutional Amendment made by the Parliament in February 2003.
86 Ibid., p.15.
87 Ibid., p.33. On this also see Hidayatullah, The Fifth and Sixth Schedules to the Constitution of India, especially pp.69-92.
the special constitutional positions enjoyed by these areas would require an active and more independent role for the Governor till such time the District Councils got ‘assimilated with the Legislatures of the States’, a point that Hidayatullah emphatically underlined.

The second major issue pertaining to the Sixth Schedule is the status, powers and position of ADCs. A close reading of the provisions of the Schedule especially paragraph 3 show that expansive legislative powers are envisaged for the ADCs/RCs which range from the power to make laws on ‘the allotment, occupation or use, or the setting apart of land’, management of any forest not being a reserved forest, the use of canal or water-course for agricultural purposes, the regulation of jhum or other forms of shifting cultivation, the establishment of town committees or councils and their powers as also of their administration, the appointment or succession of Chiefs or Headmen, the inheritance of property, marriage and divorce and social customs.

Before we analyse these further, an important caveat is in order here. Unlike the State Legislatures, ADC and RCs are not however endowed with plenary powers as laws made by them can be overridden by those made by the State in case they overlap. This principle was put in place by the Assam Reorganisation (Meghalaya) Act, 1969 when it inserted paragraph 21A to the Sixth Schedule. Another illustrative case to this is the District Council of United Khasi & Jaintia Hills & Ors. Etc Vs. Miss Sitimon Sawian etc., which the 5-Judge Constitution Bench of the Supreme Court of India decided on 25 August 1971. In this Case the apex Court upheld the judgement of the Gauhati and Nagaland High Court of 3 June 1963 which struck down section 3 of the United Khasi Jaintia Hills (Transfer of Land) Act (No. IV of 1953). The Courts held that unlike the State Legislatures, the ADCs are not intended to be endowed with plenary powers such as

88 Ibid., p.91.
90 The 5-Judge Bench was headed by I.D. Dua and comprised of S.M. Sikri (then CJ), G. K. Mitter, C.A. Vaidyalingam, and P. Jagmohan Reddy. See District Council of United Khasi & Jaintia Hills & Ors. Etc Vs. Miss Sitimon Sawian etc, 1972 AIR 787 1972 SCR (1) 398 [Full text of the Supreme Court’s judgement is available online at http://judis.nic.in ].
91 Both ‘Gauhati’ and ‘Guwahati’ are used interchangeably to refer to the same city.
92 Section 3 of the Act sought to empower the UKJHADC not only with ‘the allotment, occupation or use, or the setting apart of land’ but also with the ‘transfer of land.’
‘transfer of land’; hence section 3 of the Act was beyond the ‘jurisdiction’ of the District Council. Interestingly the words ‘transfer’ or ‘alienation’ of land are conspicuously absent in the legislative powers of the ADC. The apex Court held that this, and the choice of words, viz., ‘allotment, occupation or use, or setting apart of land’ shows the intent of the framers of India’s Constitution to constrict the powers of the ADCs to ‘actual use or occupation of the land allotted or set apart for the purposes stated therein.’

What clearly emerge from this is that the architecture of autonomy envisaged for the tribals in India’s North-East is a ‘cascading autonomy’ which flows top-down. In contrary to the oft-repeated assertion that autonomy under the Sixth Schedule is an attempt to clip the wings of the state legislatures, studies on ADCs/RCs’ legislation convincingly showed that the legislative powers of the State are far from being constricted by the legislative powers of the ADCs. The Patashkar Commission in 1965, for example, concluded that none of the five ADCs in the erstwhile tribal Hill Areas except the Mizo Hills passed any significant legislation. Even in the Mizo Hills, the Commission contended, the ADC passed insignificant tribal laws pertaining to custom, land, marriage and tradition. Indeed, the Lushai Hills was the only district which was successful in abolishing Chieftainship. It was the culmination of a movement which began with the formation of the Mizo Union in 1946. Once in power, the task of the Mizo Union became just a mere technicality. With a sleight of hand, it sounded the dead knell to one of the last vestiges of Mizo feudal order and laid the foundation of a democratic society.

However, persistent effort to ‘control’ and thereby subordinate the institution of Chieftainship to the ADC was met with staunch resistance in the 1950s especially in UKJH. The contest between the Syiem of Mylliem and UKJH ADC is a protracted one indeed, which became one of the earliest cases pertaining to ADCs to go to the Supreme Court of India in early 1960, i.e. the famous T. Cajee Vs. U. Jormonik Siem and Another.

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93 Ibid., p.2.
95 The name as mentioned earlier was changed to Mizo Hills in 1954. The Council subsequently lapsed following the upgradation of the Mizo Hills District into a Union Territory via the North-East States’ Reorganisation Act, 1971.
96 The Chiefs were invariably known as Syiem, Dolois, Nokmas, etc.
Case. The case pertains to the power of the UKJH ADC to appoint or remove the Syiem. According to an established Khasi custom, the Syiems used to be either elected by the ‘myntri-electors’, or they used to be hereditary. In 1951, prior to the formation of UKJHADC, Mr. U. Jormanik was appointed the Syiem of Mylliem by the ‘myntri-electors’ according to this custom. Following the formation of UKJHADC in 1952, his customary appointment was confirmed by the ADC on 9 April 1953. The Khasi customary law governing the Syiems was changed in 1955 according to which he could be removed from his office ‘in case he did not act in accordance with the terms of his appointment and was [found] guilty of oppression, misconduct or dereliction of duty.’

On these grounds U. Jormanik was suspended from his Syiemship by an order passed by the UKJHADC’s Executive Committee on 7 July 1959. In his writ petition to the Gauhati High Court dated 8 July 1959, the Syiem contended that UKJHADC did not have the administrative power to remove him and that the order of the Executive Committee was ultra vires. Delivering the Judgement on 19 April 1960, the High Court held that although the ADC wields administrative powers, ‘the appointment and succession of Syiems were never intended to be its administrative function’. Hence it ruled that it did not have the power to pass orders to effectualise this without ‘making law with the assent of the Governor’. As a consequence, it stayed the order of the Executive Committee of UKJHADC.

Subsequently the matter was brought before the Supreme Court by T. Cajee, the Chief Executive Member of UKJHADC. The case was decided by a 5-Judge Constitution Bench of the Supreme Court headed by K.N. Wanchoo on 20 September 1960. The Bench held that since the Syiem was an administrative officer of UKJHADC, the latter

97 T. Cajee Vs. U. Jormanik Siem and Another, 1961 AIR 276 1961 SCR (1) 750 [Full text of the Supreme Court’s judgement is available online at http://judis.nic.in ].
98 The Myntries are members of the Council of Elders.
99 T. Cajee Vs. U. Jormanik Siem and Another case, p.4.
100 Ibid. It must be noted here that appointment of the Chief in ADCs are made by the Deputy Commissioner of the District concerned on behalf of the Government.
101 Ibid.
102 Ibid.
103 Ibid., p.1. The other four judges were: Bhuveshwar P. Sinha (the then Chief Justice), J.L. Kapur, P.B. Gajendragadkar, and K. Subbarao.
has the power to either appoint or remove him. In the process it established the fact that ADCs are both administrative and legislative bodies.\textsuperscript{104}

A broadly similar case came up before the Guwahati High Court in 2004.\textsuperscript{105} The case was a highly complex one involving 30 complainants (of whom 26 are ‘myntri-electors’) who filed a series of six complaints against Laborous M. Syiem of Mawlai Mawroh, Shillong between 1997 and 2004. Acting upon the complaint filed against the Syiem in 1997 for ‘malpractices, abuse of power, and irregularities in the discharge of duties’, the Khasi Hills ADC (hereafter KHADC) constituted a preliminary inquiry and suspended him from office on 20 March 2001. The Supreme Court upheld the suspension of the Syiem in its judgement on 9 August 2002 when it was brought before it on a special leave petition. Subsequently a referendum was held in the KHADC hall on 14 May 2004 which was presided over by its Joint Secretary. The proceedings of the referendum was ‘video-taped and was even telecast on local cable TV channels.’ In this referendum twenty-seven of forty-two ‘myntri-electors’ present ‘unanimously’ voted in support of the no-confidence motion against the Syiem. The Executive Committee of KHADC took up the matter on 24 May 2004 and issued an order on the same day terminating the Syiem from his service. He was subsequently removed by a public notification of KHADC dated 26 May 2004. Although the Syiem contested the circumstances under which the referendum and order/notification was made, the single judge bench (of Paul Dutta) of the Guwahati High Court validated the order and referendum. The Court held that the KHADC could neither be ‘faulted’ nor did it see any ‘legal impediment for holding of referendum against a suspended Syiem.’ Furthermore, the Court did not see any problem in the holding of referendum in KHADC hall which is also known as ‘the Durbar Pyllun of the Syiem of Mylliem.’ More pertinently, it held that the Syiem was given enough opportunity to be heard which he voluntarily declined and that the proceeding of the referendum was ‘fair and transparent’. In the final analysis it ruled that the ADC did ‘what was warranted in law’. Hence, it dismissed the petition filed by the Syiem against the KHADC.

\textsuperscript{104} Ibid., p.7.
\textsuperscript{105} See Laborous M. Syiem Vs The Khasi Autonomous District Council, et al, WP (C) No.153 (SH) of 2004 [For full text of the Judgement see http://indiankanoon.org/doc/302529/].
The above discussion pertains to elected Chieftainship. What about customary laws governing the hereditary ones? Let us take the case of the Jaintia Hills ADC. In early 2006 a two-judge bench of the Supreme Court of India heard the civil appeal made by Ewanlangki-e-Rymbai against the Guwahati High Court judgement of 21 July 2003 in a case known as Ewanlangki-e-Rymbai Vs. Jaintia Hills District Council and Others. The latter had dismissed Rymbai and Elaka Jowai Secular Movement’s (hereafter EJSM) writ petition to quash the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 on the grounds that it is violative of Articles 14, 15 and 16 of India’s Constitution. In pursuant to the Act in question, E.M. Lyngdoh, the Secretary of the Executive Committee of the Jowai ADC issued a public notification on 4 September 2001 prescribing that only three clans ‘from the Niam Tynrai Niamtre (Non Christians) who ... practice the indigenous religion within the Raij Jowai’ would be eligible for the Dolloiship. As Rymbai, one of the appellants was a Christian he was precluded from the post. This led him to challenge the Act on the contention that it sought to impose ‘unreasonable and arbitrary’ restriction on a person solely because he was a Christian. The Supreme Court however validated the Guwahati High Court’s judgement that the Act in fact affirmed the longstanding custom which required the Dolloi to perform both administrative and religious function. The apex Court drew its judgement from the ‘admitted fact’ that exclusion of Christians from the post of Dolloiship was founded on a ‘good reason’ as ‘a Christian cannot perform the religious functions attached to the office of the Dolloi.’ Hence it held that the Act of 1959 did not violate Articles 14, 15 and 16 of India’s Constitution and dismissed the appeal made by Rymbai and EJSM.

What is significant about this case is the apex Court’s affirmation of legal pluralism; the legitimation of longstanding customary practices governing the administration of tribals in North-East India. However, protagonists of liberal democracy are skeptical of

106 See Ewanlangki-e-Rymbai Vs. Jaintia Hills District Council and Others, Appeal (Civil) 9561-9562 of 2003 [Full text of the Supreme Court’s judgement is available online at http://judis.nic.in]. The Judgement was delivered by B.P. Singh on 28 March 2006.
107 Ibid.
108 The three clans are: ‘Sookpoh Khatar Wynrai’ (with 22 sub-clans), Le-Kyllung’ (with 3 sub-clans), and ‘Talang-Lato’ (with 3 sub-clans). See ibid, pp.3-4.
109 Ibid., p.4.
110 Ibid., p.8.
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the sustenance of these traditional practices as they leverage non-democratic forces overtime. It is precisely on this ground that Chaube, an eminent expert on hill politics in India’s North-East, finds fault with the structural arrangement of the Sixth Schedule. According to him, this architecture is problematic as it is based on two institutional bedrocks having contrasting loyalties: (i) the village authority (ies) or village council (s) under the leadership of the Village Chief (s), which is based on kinship relations; and (ii) the district council (s), which is based on territorial loyalty and, which in turn operates according to the principle of democratic citizenship. The sustenance of the first impels legitimising ‘non-democratic forces’ as the head of the village authorities/councils i.e. the Village Chief is more often than not hereditary and is based on lineage which precludes popular electoral participation in his appointment. The second implies the extension of single-line administration which flows from the Union to the state and thereafter to the district (s) and the village levels. By giving the power of ‘filter mechanism’ to the Governor who is simultaneously the representative of the Union executive and head of the state, it establishes a cascading linkage between the three levels of government, viz. the Union, state and sub-state/district. The extension of state’s power to the grassroots has the potential to override extant traditional self-governing institutions. It is interesting here to note the dissatisfaction shown by tribals, particularly the Khasis, for superimposing the District Councils’ authority over their Chiefs/Syiems when the Patashkar Commission team visited Shillong in the early 1960s. They demand a reversal to this as the Chiefs are considered the custodians of community identity and rights. The National Commission to Review the Working of the Constitution (2002) also recommended that the Village Councils should be suitably modified to represent


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traditional institution like Chieftainship. Indeed, the 1972 Amendment Act made to the United Khasi-Jaintia Hills ADC (Social Customs and Usages) Validating Act, 1958 attempted to open up Chieftainship to popular participation by prescribing that the ‘Chief’ (Syiem, Dolloi, or Nokma) or an ‘acting Chief’ can be appointed by the ADC from ‘any clan’. Given the enormous symbolic significance the Chiefs continue to enjoy in tribal societies, it is imperative to reform the institution by making it more responsive and accountable to the system and the ‘governed’ at large.

Another key component of the Sixth Schedule is the question of control over land and property which has far reaching implications on tribal customary laws and social organisation. As mentioned earlier, the Courts held that while the ADCs would chiefly be concerned with ‘actual use or occupation’ or setting apart of land, they are not intended to wield the plenary power to ‘transfer land’. Largely ignored here are the fear of land alienation and the concomitant sense of insecurity about tribal identities and rights. These stem not only from exogenous forces, but also from the endogenous forces. The flood of labour migrants from Bihar and Jharkhand who came to Assam since the latter half of the 19th century for tea plantations, the massive influx of migrant Bengalis from Bangladesh to Tripura in search of land/settlement, the burgeoning demand of building constructions in the plains and of railways sleepers for the booming transport and communication industry, and the state’s conservationist projects are among striking examples of exogenous forces which continue to exert tremendous pressure on tribal lands and property. It is a common knowledge in various parts of India’s North-East how non-tribal ‘outsiders’ began to acquire de facto ownership of land and property in collusion with tribal businessmen and traders.

How do we explain this growing nexus between the exogenous and the endogenous forces? A plausible way to explain this could be to understand the emerging modes of tribal land ownership and the logic of jhum cultivation, which is the dominant mode of land-use in tribal North-East India. There are three broad modes of land ownership in the

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tribal areas: (i) government/public land; (ii) private land (also known as ‘ri kynti’ in Meghalaya), and (iii) community land (‘Akhing’ or ‘ri rymbai’ in Meghalaya). While the government/public lands are concentrated in the urban cities/towns and municipalities which are acquired overtime by the government officials, contractors, and military personnel, the other two modes of ownerships are largely ‘communal’ in character. It has to be qualified here that private lands are those acquired by the individuals by jungle clearing or improving upon waste lands. Hence concerned individuals can exercise heritable, proprietary and transferable rights over these lands. These rights are however not applicable to the community lands. There are two contrasting views on ownership of tribal land. According to one view, all lands belong to the King/Raja or by extension to the state. According to this view, the tribal chiefs derive their right of ownership from the specific land deeds or sanads that they got from the colonial state. This view was held mostly by colonial administrators and government officials. The problem with this viewpoint is that it ignores the fundamental fact that the tribal village-state system had been impervious to direct control of the Kings in the plains or the colonial Raj. We have discussed this in chapter 4. On the other hand, there is a view that tribal lands belong to the clan or community (locally known as the Akhing in Garo hills, Ri Raid in Khasi hills, etc., for example). According to this view, the chief is not the owner but the guardian of tribal lands and property and he owe them to the clan or community.

It has for long been a customary practice that ‘jhum’ lands are allotted either by the Chief or by the Village Council randomly or by lottery among the village households. The size of jhum land ownership may be determined by proximity to the Chief (either by clan or kinship relations), size of family, status or position in the village, etc. According to the Report on Development of North-Eastern Region, 1981 prepared by the National Committee on the Development of Backward Areas which was constituted by the

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119 The practice of issuing ‘sanads’ (decree or certification of authorization) to tribal chiefs in India’s North-East started in 1833, when the Khasi syiems began to receive them from the British. The ‘sanads’ recognised the Syiems/Chiefs as legitimate authorities with titles and rights to rule.
Planning Commission, as many as 4.25 lakh tribal families in the seven states of North-East India are dependent on jhum cultivation.\(^{120}\) Again citing Sarvekshana’s\(^{121}\) data of April 1979, the Report showed that 33.5 percent of the tribal households in Arunachal Pradesh, 18.6 percent in Assam, 46.1 percent in Manipur, 15.4 percent in Meghalaya and 12.1 percent in Tripura were engaged in jhum cultivation. To put in perspective, the Report used this data to show the backwardness of the North-East. It considered that jhum cultivation is ecologically and economically unsustainable as frequent clearing of forests (by felling of trees and their subsequent burning) led to depletion of soil fertility and productivity.\(^{122}\) The Committee came up with a three-pronged strategy: (i) in areas where jhum cycle is more than 10 years and the problem is not yet acute, it recommended ‘better agronomic practices and improved varieties’, (ii) in areas where the jhum cycle is below 5 years and the problems are ‘already acute’ it recommended “settled cultivation within a period of 10 years’ on a priority basis, and (iii) in other areas where the problems would be acute in the future, it recommended ‘gradual introduction of settled cultivation … over a period of 20 years.’\(^{123}\)

This must be read alongside Indian Council of Agricultural Research’s three-tier system: crop husbandry (cultivation of rice, maize, millet, etc) with bench terracing in the lowest-third of the hill slope, horti-pastoral crops (especially cash crops/fruit) with half-moon terracing in the mid-portion and forestry (tree plantation) in the top hill slope.\(^{124}\) The project to transform jhum lands into settled cultivation is however considered problematic as it leverages private land ownership. The increasing tendency among the tribals to get individual \textit{pattas} (meaning legal deeds/documents) for their lands in the low lying slopes after they have been converted into terraced paddy cultivation goes against


\(^{121}\) Sarvekshana is a publication of the Ministry of Agriculture, Government of India.

\(^{122}\) This is the common refrain of most standard studies on jhum cultivation in India’s North-East. See among others, Shankar, “Effects of Slash-and-Burn Shifting Cultivation on Rainforest Birds in Mizoram, Northeast India.”

\(^{123}\) See \textit{Report on Development of North-Eastern Region}, p.27.

\(^{124}\) Ibid., p.28.
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the grain of actually existing tribal economy and mode of ownership. The whole scheme of social forestry and converting the areas covered by this either as ‘protected’ or ‘reserved’ forest by the state has encroached upon tribal lands. As a consequence, the tribals are deprived of their source of livelihood, rights and identities. The extent of incursion of the state into tribal lifeworld can be ascertained from the fact that in 1987 the proportion of areas covered by state’s forests (‘protected’, ‘reserved’ and ‘unreserved’ forest put together) to the total geographical areas of the state was 72.24 percent in Arunachal Pradesh, 33.64 percent in Assam, 79.18 percent in Manipur, 73.71 percent in Meghalaya, 90.56 percent in Mizoram, 86.56 percent in Nagaland, 40.01 percent in Sikkim and 54.77 percent in Tripura. By 2005, the corresponding figure for Arunachal Pradesh was 61.55 percent, Assam (34.21), Manipur (78.01), Meghalaya (42.34), Mizoram (79.30), Nagaland (55.62), Sikkim (82.31), and Tripura (60.02). The table in Appendix II shows that India’s North-Eastern states have 2 to 3 times more than the average all India forest cover areas. Interestingly, while Assam and Tripura have shown marginal to medium range increase, the area of forest cover in Sikkim has more than doubled. The case of Sikkim is an outlier as the state sponsored programmes of horticulture and social forestry, among others, have been able to substitute traditional practices like jhum cultivation. The other states of India’s North-East have not been able to do this. It is not our intention here to examine these in detail.

Despite the overall decrease in the areas of forest cover in India’s North-East, the areas under state’s forests have still been sizeable. This implies the extension of state’s revenue-driven policies into tribal lands, that too behind the façade of forest ‘conservation’. The complex way in which the state’s project of conservation of forest impacts on the traditional rights of tribal forest dwellers is certainly beyond the scope of this work. Yet a striking example of the impact of a judgement that the Supreme Court delivered on 12 December 1996 on the state of Meghalaya would give us insights into the larger picture as to how the state’s conservation projects impinge on tribal rights. While

125 Roy Burman, “Land and Forest Rights.”
126 See Appendix II for a decadal overview of the areas of forest cover in India’s North-East. The data are computed from Government of India, The State of Forest Reports, 1987 and 2005 (Dehradun: Ministry of Environment and Forests).
127 For a perceptive analysis see Tiplut Nongbri, Development, Ethnicity and Gender: Select Essays on Tribes in India (Jaipur and New Delhi: Rawat, 2003), especially chapter 5 and 6. Also see M.N. Karna, “The Agrarian Scene,” Seminar, New Delhi, no.366, February 1990, pp.30-38.
delivering its judgement on a civil writ petition no.202 that T.N. Godavarman filed against the Union of India, the apex Court imposed a ban on tree felling and wood-related activities in the states of Tamil Nadu and Jammu and Kashmir. The ban was subsequently extended to India's North-East in 1997. Purported to apply only on the state's 'forest', the term of which was not defined even by key state Acts like the Forest Conservation Act, 1980 or the Forest Conservation (Amendment) Act, 1988 the ban was extended to cover not only the state's forests but also to private forest/land. Interestingly the latter falls within the control of the ADCs. The two-judge bench of the Supreme Court had, in the District Council of the Jowai Vs. Dwet Singh Rymbai etc, 1986 case, upheld the Gauhati High Court's decision of 31 July 1972 that the Jowai District Council did not have the power to 'levy tax' or 'royalty' on private forests.

The ban shows how ambiguity in the term 'forests' could give undue latitude to the state while implementing it. It also raised serious questions about the issue of livelihood and tribal rights. It was argued that such a blanket ban deprived the tribals of their source of food, medicine, timber, fodder, energy, etc. which are so critical for their survival. In a perceptive case study of the impact of the Supreme Court's judgement in Nongkhlaw and surrounding villages within Shillong jurisdiction, Nongbri convincingly showed how the ban was insensitive to gender issues. According to her, the apex Court's judgement increased the hardships of the tribal women as they subsequently had to go to distant place for alternative sources of energy. Hitherto their energy requirements were largely supplied by resin and dry/dead woods of the forests. The adverse impact of the ban on tribals' livelihood also came out very strongly in her study. This, according to Nongbri,

128 We infer the following analysis from Nongbri, "Timber Ban in North-East India."
129 Vide paragraph 3(1)(b) wherein 'the management of any forest not being a reserved forest' is explicitly the prerogative of the ADCs under the Sixth Schedule. This means that unless or otherwise a public notification to this effect is issued by the Governor, no central/state laws would generally apply to the Sixth Scheduled areas.
130 The two judges of the Supreme Court were: E.S. Venkataraman and G.L. Oza. The case in point pertains to more specifically to section 8 of the United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 which sought to impose 'royalty' on 'red pine, white pine and log pine' grown on two private forests, viz., Lum Langkaraw and Lumkhliem Moriap which were owned by Joseph and Kailla Rymbai. The two forests were situated within the Jowai ADC. The District Council contended that it had, under the Act, the power to impose 'royalty' or 'tax' on the presumption that the trees are grown on lands within the ADC's area. It sought to infer this power from paragraph 8(1) of the Sixth Schedule. The High Court and the Supreme Court were not in agreement to this and hence struck down the sections of the Act which sought to impose 'royalty' or 'taxes' on private forests. See District Council of the Jowai Vs Dwet Singh Rymbai etc, 1986 AIR 1930 1986 SCR (3) 569 [Full text of the Supreme Court’s judgement is available online at http://judis.nic.in]. The judgement was delivered by E.S. Venkataraman.
'finds stark reflection in the depression of wages, rising unemployment and the high incidence of student drop-out from schools and colleges.' Strikingly the minimum wages depressed from a minimum of Rs.60/- per day prior to 1996 to a maximum of Rs.50/- per day in 1999. The ban also drastically increased the number of drop-out rates of students both in the college and school. While the number of college students fell from 36 to 2, the number of school students declined from 120 to 70 during the corresponding period. That the ban was rested on a misplaced priority was showed by the fact that in Meghalaya three large companies were exempted from the purview of the ban, viz., Meghalaya Plywood, Timpack Private Ltd and Vishal Enterprise. Interestingly these companies are owned by non-tribal entrepreneurs and they respectively have ongoing contracts with the government run ordinance factory, the currency press, and Northeastern coal fields.

Whilst the impacts of the exogenous factors on tribal land and property rights were not slight, the emerging pattern of land-ownership goes against the very logic of jhum cultivation which hitherto 'led to a system in which the control of land was not vested with the individual but with a village council or chief.' The operationalisation of the Sixth Schedule in the erstwhile tribal hill areas of Assam might have put legal control of land and property in the hands of tribal representatives, yet they do not translate into protection. Indeed, a study by Barbora discerns a regular pattern of superseding 'community ownership' of land and property by encouraging private property since 1979. This, he contended, is facilitated by the propensity of ADCs and the Village Chiefs to play into the hands of vested propertied class. When friendly party dominates the Executive Council of ADCs, it opens up space for political manipulation as the ADCs members and the Chiefs are known for their political affiliations.

It is pertinent to underline how privatization of land increasingly gets de facto sanction and operates under the shadow of formal legal protection of tribal lands. The informal way of leasing out and transference of land ownership rights to individuals (both

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132 Ibid.
133 Ibid, p.1897.
134 See Report on Development of North-Eastern Region, p.11.
136 Ibid., p.207.
tribals and non-tribals) overtime is facilitated by a perceptible shift in patterns of land ownership from clans to that of the individuals. As a result, it is not uncommon experience in India’s North-East to come across tribal land speculators and real estate owners who are as ‘foxy’ and ‘cunning’ as the non-tribal ‘outsiders’ — purportedly against whom the protective discrimination regime is in place. Karna aptly captures the implications of such a shift when he said, ‘it is no longer surprising to come across a Naga or a Garo owning a thousand acres of land. Nowhere in these areas would customary practices have permitted such a concentration of land, but new linkages have brought with them hitherto unknown phenomenon like absentee landlordism, realisation of rent from land, share-cropping, land mortgage, landlessness and so on.’ What is remarkable is the large scale collusion of these landed interests with local tribal politicians and state officials on the one side and influential non-tribal businessmen on the other side in grappling community and traditional lands. A study of human rights violations in Karbi Anglong (Assam) traced their source from land-based conflicts. It unearthed a deep nexus between the aforementioned parties which leverages informal control of what is formally designated as public lands by the non-tribals. The Dimasas/Cacharis, taking umbrage at the increasing political and economic clout of these non-tribal ‘outsiders’ — specifically the Biharis — resorted to a series of bloody ethnic cleansing in mid-July 2000 under its ethnic armed group called the United People’s Democratic Solidarity (UPDS). Interestingly the Black Panthers, the central government’s elite counter-insurgency force, called in to rein the UPDS unwittingly connived with the Biharis in counter killing the Dimasas. The conflicts between the Nagas and Kukis, the Kukis and Cacharis/Dimasa and other groups since the 1990s trace their lineage from conflicting claims over land, or imagined homelands.

To be sure the proliferation of armed ethnic groups in India’s North-East largely stems from this sense of insecurity of their land and the fear of losing out to ‘outsiders’ in their imagined ethnic homelands. In a situation of perceived ‘ethnic security dilemma’ which is accentuated by ineffective and unreliable state’s security apparatus, the demand

137 Karna, “The Agrarian Scene,” p.36.
for territorially concentrated cultures and contingent ethnic homeland demands engender violent ethnic conflicts. Prolonged sustenance of such conflictual situations tends to normalize militarized polity. As discussed in chapter 4, this could engender deinstitutionalization of de jure local democratic institutions and pave the way for non-tribal armed groups to become de facto owners of tribal lands.\textsuperscript{139} Another ramification entailed by this is massive internal displacements of people. In significant ways this seeks to perpetually legitimize an undemocratic regime which distinguishes the tribal ‘citizens’ from the non-tribal ‘denizens’.\textsuperscript{140}

Seen from another perspective, this nefarious informal ways of superceding community rights over land also goes against the grain of actually existing political economy of India’s North-East. Against this backdrop Sachdeva and Baruah, inter alia, painstakingly make a case to rethink the state’s policy of perpetual discrimination of non-tribals and their concomitant deprivation of land ownership in the tribal Hill Areas. Such an enterprise, they contended, should take into account the contributions of non-tribals to the much needed labour and service to generations of tribals. Towards this end, they strongly favour radical labour and land reforms to shed the ‘rigid barriers’ constructed by the Inner Line Regulation and other institutional protective discrimination regimes.\textsuperscript{141} Sachdeva is particularly optimistic that in spite of the sensitivity of the tribals on matters pertaining to their land and customs, these reforms could be fructified by actively involving the tribals in working out some ‘control mechanism’.\textsuperscript{142} There is a also a compelling need to revisit the legislative powers of ADCs and RCs so that they be endowed with the plenary power to regulate on ‘transfer of land’ not only between the tribals, but also between the tribals and non-tribals in the Sixth Scheduled areas. Needless to say, such a reformed land and labour regime should be sensitive to the widening disparities/inequalities not only across tribes but also within tribes, in as much as they accommodate the concerns of the non-tribals.

\textsuperscript{139} See chapter 4.
\textsuperscript{140} See Baruah, \textit{Durable Disorder}, especially chapter 9, pp.183-208.
\textsuperscript{141} See Gulshan Sachdeva, \textit{Economy of the North-East: Policy, Present Conditions and Future Possibilities} (New Delhi: Centre for Policy Research, 2000), p.162; and Baruah, “Protective Discrimination.” Also see Baruah, \textit{Postfrontier Blues}.
\textsuperscript{142} Ibid.
It is also pertinent to note the bleak performance of the Sixth Schedule provisions in the financial domain. ADCs are empowered to mobilise their own resources by investing them with the power to collect taxes on profession, trades, callings, animals, vehicles, etc. [vide paragraph 8(3)]. Grants-in-aid received from the Union via Article 275(1) supplement their income and resources. It is disheartening to note, however, that ADCs could not satisfactorily mobilise their own resources which are at best limited. For example, the Patashkar Commission found that from 1960-61 to 1964-65 forest accounted for the bulk of ADCs’ income contributing 69.6 percent to Mikir Hills, 67.03 percent to United Khasi and Jaintia Hills (UKJH), 53.62 percent to North Cachar Hills, 51.01 percent to Mizo Hills and 38.45 percent to the Garo Hills. The contribution of land revenue was significantly poor accounting respectively to 20.91, 4.8, 7.19, 33.87 and 23.29 percent. The contribution of market varied from 0.63 percent in Mizo Hills to 25.94 percent in North Cachar Hills. In a relatively recent study, Stuligross convincingly showed how ADCs in India’s North-East continued to be ‘weak agents of economic development’. Strict control of the finance of ADCs by the state means that ADCs could merely ‘discuss’ rather than ‘advise’ and ‘direct’ their own budget estimates [vide paragraph 13]. Stuligross pointed out how states like Meghalaya repeatedly delayed required disbursements for ADCs, and how meager development budget allocation for ADCs disproportionately compared with that of the State. For example, citing KHADC’s budget for 1995-96 he showed that while this was just Rs.65 million, it was a whopping Rs.8.7 billion for the State as a whole. The ineffectiveness of ADCs in collecting taxes and generating revenues is another major contributing factor towards this plight. In the case of Meghalaya heavy reliance of ADCs on forest and mineral royalties has adverse impacts on environment and livelihood of the tribal people.

The thesis of non-viability of a ‘state within a state’ in a situation of economic insufficiency seemed to be buttressed by the mismatch in receipts and expenditure of the five ADCs. The gross mismatch could somehow be bridged by grants-in-aid made by the Union Government, which till 1961 stood at a measly Rs.40 crore. ADCs are notorious

144 Forest and mineral royalties (especially coal and limestone) account for 40 percent of the ADCs revenues in the 1990s. See Stuligross, “Autonomous Councils in Northeast India,” p.507.
145 Ibid., p.508.
146 Ibid., p.509.
for incurring massive non-developmental expenditure which eats up to their vitals. The Patashkar Commission pointed out that between 1960-61 and 1964-65 the proportion of expenditure on staff and establishment to their own resources excluding grants-in-aid received from the Union has been abnormally high. The Mizo Hills topped the list with a whopping 99 percent, followed by UKJH (63 percent), NC Hills (57 percent), Mikir Hills (44 percent) and Garo Hills (32 percent). On the contrary, the proportion of development expenditure to their internal resources was awfully insufficient. Garo Hills which topped the list could spare only 19 percent, followed by UKJH (8 percent), Mikir Hills (16 percent) and NC Hills (3 percent) for the corresponding period. Mizo Hills had to totally rely on Union grants to fund development expenditure of ADCs.

Recent debates highlight the imperative of having a State Finance Commission in line with those established under the 73rd and 74th Constitution (Amendment) Acts, 1993 & 1994 to offset this seemingly insurmountable problem. The task of the Commission should be to advise fiscal prudence and determine the quantum of aid and grants that the state and Union governments must statutorily provided for ADCs in separate ‘budget heads’. It should also help in advising ways of augmenting their financial resources. It was on broadly on these lines that the Autonomous State Demand Committee (ASDC) has been demanding for more powerful autonomous councils in Karbi Anglong and North Cachar Hills since the mid 1980s. In a Memorandum of Understanding reached by ASDC with the State and Central governments on 1 April 1995, 14 additional subjects/departments were devolved to these councils making the total number of subjects devolved to these Councils thirty. The Bodoland Territorial Council which was established under the Sixth Schedule also has a provision for ‘separate budget’.

ADCs are also plagued by opaque financial management. Although Paragraph 7 of the Sixth Schedule provides District Council Fund for ADCs, no uniform rules could be passed. Moreover, the system continued to be plagued by the absence of internal scrutiny mechanism, leave alone external scrutiny. In order to overcome this, the NCRWC

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147 See Gol, Report, 1965, p.84.
148 Ibid., p.85.
149 See NCRWC Report.
Report recommended annual scrutiny of ADCs accounts by the Comptroller and Auditor General of India. In the meantime, it also recommended active involvement of the Public Accounts Committee of the state legislature(s) alongside the Accountant General of the respective states.\textsuperscript{152}

To cut it short, it is plausible to say that the terms of autonomy envisaged by the Sixth Schedule is still being negotiated upon by tribal and sub-tribal groups in India’s North-East. Following the enactment of the Panchayati Raj (Extension in Scheduled Areas) Act in 1997, there are attempts to replace ADCs under this Schedule with the panchayati raj institutions (hereafter simply as PRIs). While PRIs are welcome instruments to fulfill the twin purposes of democracy and development, they have an altogether different constitutional mandate from those of ADCs envisaged by the Sixth Schedule. For the former, the basic intention is to deepen democracy and enlarge the scope of its participatory character. This is facilitated by extensive decentralization of powers wherein women and the erstwhile excluded groups like Scheduled Tribes and Scheduled Castes have substantial powers in decision making process at the village, block and district levels. Overtime, this is also intended to bring about socio-economic justice and development in rural areas. On the contrary, the Sixth Schedule is an institutional contrivance primarily to fulfill the demand for separate/self-rule to the erstwhile tribals in the excluded and partially excluded areas of India’s North-Eastern Frontier. In more than one sense, it encapsulated postcolonial Indian state’s approach to cultural differences which in the meantime would help the tribals sustain their autonomous ‘societal culture’. Critics however argued that this ossifies what Walzer’s calls walls of ‘separation’\textsuperscript{153} between the mainstream Indian society and the tribal ‘others’. The Sixth Schedule is also considered to normalize exclusion as the accepted norm of inclusion of the ‘constitutive others’.\textsuperscript{154} Hence antagonists of the Schedule see in it possible pathways to separatism.

\textsuperscript{152} See NCRWC Report, ibid.
\textsuperscript{153} Walzer considers that one of the characteristic features of the modern liberal approach is inclusion and exclusion between ‘we’ and ‘others’. To quote: ‘liberalism is a wall of walls’. We concur with Selma Sonntag’s contention that autonomous councils envisaged by the Sixth Schedule also epitomize this inclination by normalizing exclusionary protective discrimination regime. It is however questionable to have an alternative policy vis-à-vis India’s North-East tribals given the widespread demand for self-rule or independence. See Michael Walzer, “Liberalism and the Art of Separation,” Political Theory, Vol.12, no.3, August 1984, pp.315-330. Also see Sonntag, “National Minority Rights in the Himalayas,” and his, “Autonomous Councils in India.”
\textsuperscript{154} See Sonntag, “National Minority Rights in the Himalayas.”
What is conveniently ignored here is the longstanding tradition of autonomous 'societal culture' which preceded and remained liminal to colonial and postcolonial India’s institutional framework. Given that even India’s nationalist movement at its heydays could not reach these areas, Gopinath Bordoloi and his Committee members must be appreciated for their statesmanship and sensitivity in successfully incorporating North-East’s tribals into India’s postcolonial constitutional framework. Many a times, the imperative of the developmentalist state and its project of nationalizing space tends to bracket North-East tribals’ demands for autonomy within development-security paradigms. This is a complete misreading of their intent and demands, and amounts to misrecognition.

To be sure, the All Party Hill Leaders’ Conference (APHLC)’s bid to establish a separate hill state and the Mizo movement for ‘Greater Mizoram’ in the 1960s both within the erstwhile State of Assam largely stems from this, not in the grant of autonomy per se. While the Assam Language Bill, 1960 and the disastrous management of the Mautam Famine of 1959 by the Assam government were respectively their immediate catalyst, deep-rooted dissatisfaction over ‘step-motherly treatment’ meted out to the ADCs by the state was cited as the chief cause of their unrest or ‘separatist demands.’ Hence the desire to live on ‘equal terms’ with their self-sustaining autonomous ‘societal culture’ remaining unaffected by the long arm of state’s intervention and regulation, informed these demands. In a way, it was an attempt to reverse the precedence of the state over the community. This was successfully accommodated by innovative asymmetric federal innovations. Creation of an autonomous state (via Article 244A) and later on full-fledged statehood to Meghalaya (1972) and Mizoram (1987) were the natural outcome of this. The creation of Mizoram after a quarter century of embittered conflicts convincingly shows the powerful ways in which innovative asymmetric constitutional provisions sincerely tailored to accommodate ethnic aspirations/demands could transform deadly ethnic ‘militants’ into peaceful institutional stakeholders. There could possibly be no

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156 See Arora, “Adapting Federalism to India: Multilevel and Asymmetrical Innovations.”
better socio-cultural and institutional routes towards the construction of ‘constitutional patriotism’ in India’s North-East.

It would be naïve to expect that creation of these states would give a definitive and finality solution to the problems of ethnicity and autonomy in India’s North-East. The heterogeneity of ethnic groups in this part of the country and their overlapping territorial claims also suggests that there are numerous possible ethnic faultlines which could explode anytime.\textsuperscript{157} The bitter ethnic conflicts that ensued between the Santhals and Bodos following the latter’s ethnic cleansing drive to create a compact, homogenous Bodoland for almost a decade which ended with the creation of Bodoland Territorial Council in February 2003 is a pointer towards this end.\textsuperscript{158} The demand of the Chakmas, Lais and Maras to carve out a separate Union Territory following the reorganisation of the North-East in 1972; persistent demands of the Paite, Hmars and Brus in Mizoram to carve out regional/autonomous councils; and similar demands by the Kukis in Karbi Anglong are pointers towards this. There are possibilities that the majority tribal group within a given state would also continue to do their best bid to deny genuine autonomy demands of minority groups.\textsuperscript{159} Clearly, autonomy envisaged by the Sixth Schedule would continue to have its takers as well as its discontents, depending upon which side of the divide a particular group stands. In the final analysis, what is unmistakable about the omnibus Article 371 and the Sixth Schedule is that they broaden the cycles of democratic participation and lay the institutional bedrocks upon which India’s state-building and state-nation building process could construct loyalty, patriotism and trust across the erstwhile excluded and partially excluded areas in India’s North-East.

\textsuperscript{157} For a perceptive analysis on how ethnic complexities in India’s North-East would continue to confound even the most creative institutional innovations, see James Manor, “Making Federalism Work,” \textit{Journal of Democracy}, Vol.9, no.3, 1998, pp.21-35.


\textsuperscript{159} Take for example, between 1986 and 2000 twenty-one private member’s bills, mostly introduced by the Mizo National Front’s members, of the Mizoram Legislative Assembly sought to abrogate the Chakma ADC. Out of these, 7 got rejected, 14 were allowed out of which 2 were discussed and finally rejected because of stiff opposition from the Congress. Interestingly, both Laldenga and Zoramthanga (former Chief Ministers of Mizoram) have had openly advocated abrogation of Chakma ADC as the Chakmas were considered ‘enemy tribe’ and refugees to Mizoram. See Bhaumik and Bhattacharya, “Autonomy in the Northeast,” p.229.