

# **Mizo Autonomy Movement - Formation of Autonomous District Council and Regional Council : Issues and Problems of Their Operation**

*R. N. Prasad*

Before the basis or historical background of Mizo Autonomy Movement is discussed, it is necessary to know a working definition of autonomy movement in these words. Autonomy is a particular form of external relation, its need is felt at a particular stage of internal development of a community and can never be an independent demand. It occurs when a fairly large number of people, or an otherwise identifiable segment of the population, deliberately band together for collective action in order to change, reconstitute, reinterpret, restore, protect, supplant or create some portions of their culture or social order, or to better life chances by redistributing the power or control in a society. Such movements may continue over a length of time through repeated action. But these collective activities pursuing instrumental rewards are the least threatening to the national interests insofar as their aim is to bring about

change in the system. Such movements should be encouraged, as these indicate legitimate expression of aspirations by the people. But as regards secessionist movements, they have certainly the highest potentiality for eroding the national vitality and they should be contained at all costs. However, an emphatic understanding about the needs and aspirations of the people involved in these movements and an earnest effort to tackle their problems within the national framework are strategic steps in dealing with these movements.

As is true, ~~the demand~~ for autonomy movement is raised from a wide spectrum of political commitments. In a political system which has a written Constitution, some of the norms of the political system are laid down in the constitutional law itself and the political structures are, to a large extent, shaped by the Constitution. Likewise, the Constitution of India has also spurred the growth of many new political structures. The Autonomous District Council and the Regional Council in Mizoram may be mentioned as a result of the Mizo autonomy movement as well as instances of such political structures.)

### **Background**

The constitutional position of the Lushai Hills District (Mizoram) under the Government of India Act, 1935, was that Mizoram was administered as an Excluded Area, over which the provincial ministry had no jurisdiction. Expenditure incurred in the district was also not voted by the provincial legislature because there was no representative from the district. Briefly, the district was administered by the State Government subject to the special powers of the Governor. This, in fact, did not bring a change in the administrative machinery of the District. The British, as per the 1935 Constitution, did not want to give local self-government or political autonomy to the Mizos to manage their local affairs according to their own genius and ability and wanted to keep Mizoram away from popular rule or under the governor and his political agent. Not only that but no political activity of

any kind in the district was permitted. There was no political agency in the absence of political consciousness, which could voice the people's aspirations and their grievances. Briefly, the British superintendent and the Mizo chiefs used to rule the Mizo people as virtual dictators. The chiefs became the main plank of alien rule over their own people. The Mizo people fully realised that the chiefs' rule was oppressive and unbearable. But they could do nothing because the position of the chiefs was fully safeguarded by the district superintendent. But the war and the political enslavement of the Mizo commoners at the hands of the British superintendent and the local chiefs brought a rapid change in the social and political outlook of both the educated Mizo youths and the common people. Besides, the war also brought a drastic change in the social structure and economic condition of the Mizo people. Flow of money and the experience of the Mizos serving in the army, getting recognition in Government service, profession, trade and commerce and living outside the confines of the hills were the main causes of emergence of a new class in the Mizo society who wanted recognition of their status and hence they came in conflict with the local chiefs. The educated Mizo youths also never wanted the British to hand over powers to the autocratic local chiefs towards the end of their rule. Thus the Mizo people began to aspire for better status since 1940. Not only this but they neither liked to be labelled as a backward people nor liked to be swamped by the plains people. They also did not like to be governed by the ruling chiefs who became the local representatives of the alien government. This position gave support to the common people in their move against the chiefs towards the end of the imperialist rule. The feeling of resentment against the chiefs' oppressive rule started gaining momentum all over the district, which led the common people to organise them-selves into political party. As a result, the first political party called the Mizo Union was formed on April 9, 1946 with the objective of achieving a democratic system of administration for the Mizos.

and also fighting the vested interests of the chiefs. The Mizo Union also decided to boycott 'the District Conference' of Macdonald, the superintendent of the district, and to keep him away from deciding the future constitutional status of the district. Briefly, the party wanted autonomy in all matters affecting custom, law, ethnic identity, culture, land, and the dialects of the Mizo people.

### **Sixth Schedule**

After India attained independence, there were demands for regional autonomy and better status within the constitutional framework by the tribes of the hill areas of Assam. The interim Government of India in 1947 realised the critical situation and the political aspirations of the tribal people of the hill areas of Assam in the background of assurances given by the outgoing British rulers. The Government further thought of providing regional autonomy for the hill people of the hill districts of Assam so that they might participate in policy or decision-making, manage their indigenous local affairs and safeguard tribal interests. So the Government in order to look into the grievances and affairs of the tribal people, appointed a sub-committee of the Constituent Assembly known as the North-East Frontier (Assam) Tribal and Excluded Areas Committee under the chairmanship of Gopinath Bordoloi, Chief Minister of Assam. This sub-committee known as the Bordoloi Committee made an on the spot study of the demands and aspirations of the hill people and submitted its recommendations for a simple and inexpensive set-up (District Council) of the hill areas, which were later accepted and incorporated into the Article 244 (2) of the Sixth Schedule of the Indian Constitution. The Bordoloi Committee also made provision for a regional council for the tribes other than the main tribe. This scheme was conceived with a view to building up autonomous administration (district councils and the regional council) in the hill areas of Assam so that (the tribal people could continue to follow their traditional way of life, preserving

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customs, manner and cultures with such changes as they themselves might like to introduce). The committee found the tribal people to be sensitive about their laws, interests and judicial systems. It also recommended the abolition of the excluded and partially excluded areas and representation of the hill districts, including Mizoram in the Legislative Assembly of Assam on the basis of adult franchise. It was also felt that the State and the Central Government would help them in securing the benefits of a democratic, progressive and liberal Constitution of the country by promoting their educational and economic interest and protecting them from social injustice and all forms of exploitation as enshrined in the Directive Principles of State Policy.)

The Bordoloi Committee visited Aizawl in April 1947, met political and church leaders, chiefs' representatives, ex-servicemen and Government officials and discussed their administrative problems and desire to have autonomy for the district. Since the Mizos were not represented in the Constituent Assembly, the committee included Saprawnga and Khawtinkhuma of the Mizo Union Party to represent the Mizo people. Later, the two members fully endorsed the report. Thus the dilemma of the Mizos during the Constitutionmaking stage was overcome. The keen desire of the Mizos to link up their political life with Assam on the one hand and the fear of being submerged on the other, could be reconciled within the frame work of autonomous existence under the Sixth Schedule to the Constitution of India. After the Indian Constitution was brought into force, the immediate formation of the district councils in the hill districts was not possible. So the government of Assam set up interim tribal advisory councils in each hill district and also desired the participation of the tribal representation in the administration of the areas even during the interim period pending the formation of the district council. Accordingly, the Government set up the advisory council in the Lushai Hills. Though the advisory council had no statutory basis, it was treated as a provisional district council. The Lushai Hills

District Advisory council had a strength of 35 elected members. Ten seats were reserved for the chiefs and 25 for the common people. Of 25 seats, 20 seats were for the general people, 3 seats for towns outgrowing the characteristics of the village and 2 seats for women. The Government nominated the chairman and the secretary. The Mizo Union Party bagged most of the general seats in the elections to the district advisory council. The council advised the district superintendent on various administrative problems and development schemes of the district. So it was really a training ground for the Mizos in self-governing institution. However, the council stood abolished on November 12, 1951.

Similarly, in 1951, the Pawi-Lakher Regional Advisory Council was set up consisting of the representatives of Pawis, Lakher and Chakmas. The strength of the council was six. The Sub-Divisional Officer, Lunglei was the chairman of the Advisory council. The council used to advise the S.D.O. on various aspects of development administration in the region.

### **District Councils and Regional Council**

The Government of Assam framed rules under paragraph 2 of the Sixth Schedule to the Indian Constitution called the Assam Autonomous District (Constitution of District Councils) Rules, 1951 for the autonomous district and the Pawi-Lakher (Constitution of Regional Council) Rules in 1952 for the autonomous region in the Lushai Hills District. According to the said rules, the Mizo Hills District Council (then the Lushai Hills District) for Mizos and the Pawi-Lakher Regional Council for Pawi, Lakher and Chakma tribes were constituted on April 25, 1952 and on April 23, 1953 and inaugurated in Aizawl and Lunglei respectively. Though the Mizos continued to look after their distinctive functions envisaged in the Sixth Schedule of the Constitution by the set-up of the Mizo District Council from 1952 to 1972. They were not satisfied with the autonomous District Council. Because there is no provision in the Sixth Schedule to bring the council to participate in the development schemes and

social welfare to the largest extent possible. Besides, the Mizo Union Party had been having control over the administration of the District Council for more than 18 years. During this period, the party worked for improving the lot of the Mizo people to an extent. It also stood for the status of statehood and advocated peaceful means to achieve this objective. Therefore, the party had started submitting a number of memorandum to the Government of India since 1963 onwards. The Mizo Union leaders in one of their memoranda submitted to the Government of India on October 30, 1965 said, "step-motherly treatment meted out to the Mizo Hills is responsible for the unfortunate feeling of discontent that we are being treated as second rate citizens. It would be impossible to remove this feeling unless the political aspirations of the Mizo people are fulfilled through the early creation of Mizoram state. "While there is no longer any desire to remain as a part of Assam, there is still that sincere desire in the hearts of the majority of the Mizo people to feel themselves as Indians but which they cannot feel in the present circumstances".<sup>1</sup> They also submitted another memorandum to the government on Dec 15, 1970, apprising the Prime Minister of the political instability and growing economic frustration of the people. The leaders also emphasised the creation of a separate State of Mizoram. Ultimately, the united efforts, continuous struggles, political skill and great sacrifices of the Mizos compelled/forced the Government of India to agree to the political settlement of the Mizo problem. The Government came out with the proposal to elevate the Mizo Hills District to the status of the Union Territory of Mizoram. The Government of India enacted the North-Eastern Areas (Re-organisation) Act, 1971 by amending the Constitution of India (Twenty Seventh Amendment) under which the Mizo Hills District became the Union Territory of Mizoram with a 33-member Legislative Assembly. The Union Territory of Mizoram was inaugurated on Jan 21, 1972. It was envisaged in the Act that the Mizo Hills District Council would stand dissolved and cease to exist

from the date on which the Legislative Assembly of the Union Territory of Mizoram would be constituted<sup>2</sup>. After the first election to the Mizoram Legislative Assembly, the Assembly was constituted on April 29, 1972 and on this date the Mizo Hills District Council was abolished under the Dissolution of the Mizo District Council (Miscellaneous) Order, 1972 as per paragraph 20-A of the Sixth Schedule to the Constitution. The chief commissioner of Mizoram passed a number of orders transferring the assets and the liabilities of the council to the government. Provisions were also made for the continuance of the rules/laws made by the District Council and in force immediately before the dissolution.

When the Mizo attained the Union Territory of Mizoram with Legislative Assembly to protect their own way of life by suitable legislations passed by the Assembly, the Pawis, the Lakhers and the Chakmas wanted to take the benefits of the new political status. In fact, they expected more autonomy for their areas. The leaders of the three tribes submitted a memorandum to the Government of India on Sept 7, 1971 demanding creation of a separate Union Territory for their areas. The Government could not accept their demands. So they finally agreed to demand the creation of the District Councils for their respective areas. The Central Government acceded to the demands of the three tribes in the region—the Pawis, the Lakhers and the Chakmas for protecting their own distinct customs and culture envisaged in the Sixth Schedule of the Constitution. After the Union Territory of Mizoram was set-up, the Administrator of Mizoram passed an order as per the provisions of the North-Eastern Areas (Re-organisation) Mizoram Adaption of Laws Order, 1972, and the Government of Union Territories (Amendment) Act, 1971, creating three autonomous regions or three Regional Councils, one each for the Pawis, the Lakhers and the Chakmas on April 2, 1972 in place of the Pawi-Lakher Regional Council. As provided under paragraph 205 of the Sixth Schedule, every autonomous region existing immediately before the date on which the Mizoram Assembly was constituted, would become an

autonomous district on that date and the Regional Council would become the District Council of the corresponding new district. As a result, the three Regional Councils were elevated to the status of the three District Councils such as the Pawi District Council (now Lai District Council,) the Lakher District Council (now Mara District Council) and the Chakma District Council on April 29, 1972 with headquarters at Lawngtlai, Saiha and Chawngte respectively. The Acts, Regulations and Rules framed by the Pawi-Lakher Regional Council remained in force in all the three New District Councils till amended or repealed by them. The Lieutenant Governor of Mizoram specified the number of members in each of the three councils. The Pawi District Council had 14 elected and nominated members (12 elected, 2 nominated). The Lakher District Council had 10 members (9 elected, 1 nominated) and the Chakma District Council had 9 members - 8 elected and 1 nominated. The Mara District Council has, at present, 16 members (14 elected, 2 nominated) while the Chakma District Council has 12 members (11 elected and 1 nominated). The names of the Pawi District Council and the Lakher District Council have been changed as the Lai District Council and the Mara district council by the Sixth Schedule to the Constitution of India (Amendment) Act, 1988. The term of office of the members of the District Council is five years. Thus with the setting up of the District Council and the Regional Council, the Mizos, the Pawis, the Lakhers and the Chakmas have certain amount of autonomy in the administration of their areas. The District Councils and the Regional Council are corporate bodies having perpetual succession and a common seal with the right to sue and be sued. The council consists of both elected and nominated members. The members who are popularly known as MDC (member of the district council) are elected from single-member constituencies on the basis of adult franchise for a term of five years and not more than four persons are nominated by the governor on the advice of the Chief Executive Member. The nominated members normally

represent the minorities and unrepresented communities. For instance, the Mizo Hills District Council had a total strength of 24 members. Of 24, 18 members were elected on June 23, 1952 and 6 members were nominated. Likewise, there were 12 elected and nominated members of the Pawi-Lakher Regional Council in April, 1953. Nine members were elected and three were nominated by the Governor on the advice of the Chief Executive Members.

There is a provision of chairman and deputy chairman in the District Councils and the Regional Council, who normally preside over the council in session. The chairman and deputy chairman are elected by the elected members of the District Councils and the regional council. The chairman is assisted by the secretary to the council. The office of the chairman of the council is of great honour and authority, modeled on the office of the speaker of the legislature. Besides, the rules framed under the Sixth Schedule provide for the executive committee of the district council to carry on its executive functions. So the councils in Mizoram have their executive committees consisting of the chief executive members and two other members. The Chief Executive Member is elected by the elected members of the council in accordance with the procedure provided for the election of the deputy chairman. The two other members of the executive committee from among the members of the council are appointed by the governor on the recommendation of the chief executive member. The executive committee of three M.D.Cs performs all functions of the council. The members of the Executive Committee are known as the Executive Members (EM) and the leader known as the Chief Executive Member (CEM). Thus the Executive Committee is like a cabinet and the C.E.M. and E.M. similar to the Chief Minister and the Cabinet Minister respectively. It is just on the lines of a cabinet system in parliamentary democracy. So the District Council may be called a miniature Government at the district level. The Executive Committee disposes of all matters falling within its purview. It is, thus, clear from the provisions of the

Sixth Schedule that the civil administration of the autonomous district is placed with the two authorities viz. : Deputy Commissioner representing the State Government and the Executive Committees heading the District Councils. There is, thus, dual form of administration.

### **Powers and Functions of District Councils and Regional Council**

The District and Regional Councils have been given wide powers and functions - legislative, executive, judicial and financial.

The District Council have powers to make laws for allotment, occupation, use of land, regulation of shifting cultivation, management and control of forests under the council, use of water-courses and canals for agricultural purposes, establishment of village councils and town committees, administration of village police, public health and sanitation, appointment of succession of chiefs or headmen, inheritance of property, marriage, divorce, social customs, money lending and trading by non-tribals within the autonomous districts. But there is provision that the District Council shall not refuse the grant of license to a money-lender or trader who have been carrying on business in the district since before the assent of the Governor. The Governor has power to alter laws or rules passed by the District Councils, which are contrary to provisions of the Sixth Schedule. The Sixth Schedule, thus, makes the Governor as the head of the autonomous district council.

The District Council has the executive powers to construct or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, waterways and also to prescribe the medium of instruction and manner of education in primary schools. Within its jurisdiction, the District Council has no legislative or regulatory power over the latter subjects. But the Pawi-Lakher Regional Council had no power to establish or manage Primary Schools.

The council has authority in accordance with para 4 of the

Sixth Schedule to set up village Council courts, Subordinate District Council Courts and District Council Courts in the autonomous areas for adjudication or trial of suits and cases or customary laws in which both the parties are tribals. The District Council Court and the Regional Council Court are courts of appeal in respect of all suits and cases tried by the village Council Courts and the Subordinate District Council Courts. No other court except the High Court and the Supreme Court of India have jurisdiction over suits and cases decided by the council courts. The subordinate District Council court is a court of appeal in respect of the cases tribale by the village council courts. The order passed by the District Council Court is appealable to the High Court of Gauhati within 60 days from the date of order or decision.

The District Council and the Regional Council are empowered to create the council's funds and frame rules for their management with the approval of the governor. They are also given mutually exclusive powers to collect land revenue, levy and collect taxes on lands, holdings, shops, entry of goods into market and tolls on persons, residence, forest within their respective jurisdictions. But the District Council has the concurrent power on the professions, trade, callings, employments, animals, vehicles and huts, tolls on passengers and goods carried in ferries, and maintenance of schools, dispensaries or roads, Under para 9 of the Sixth Schedule, the royalty on the licences or leases for the extraction of minerals in the autonomous districts shared with the state government goes to the District Council. As regards tax on motor vehicles, it is assigned and collected by the state government on behalf of the District Council. The Councils also derive their income from grants-in-aid, loans and advances etc. from the State Government<sup>3</sup>

As it appears from the vast powers and functions, the District Council enjoys so much autonomy that the Acts of Parliament and the State Legislature on the above subjects do not normally apply to the autonomous districts. They may be extended there with such exceptions and modifications as

are considered necessary by the District Councils or the Regional Council concerned. But in Mizoram, all the District Councils have failed to exercise their powers in enacting laws on all subjects assigned to them. For instance the Mizo District council and all other District Councils did not formulate laws/rules on the use of water-course and canals for agriculture purpose or on town and village police.<sup>4</sup> Despite all this, the dissolved Mizo District Council went far ahead of other District Councils in the matter of legislation. The Mizo District Council, and also the Pawi-Lakher Regional Council framed laws/regulations on land and revenue administration, forests, social customs, house sites, inheritance of property and establishment of village councils. With the abolition of chieftainship, the councils performed well in bringing forth legislations covering the main social, political and economic issues.

### **Problems of the Operation of the District Councils and Regional Council**

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

As experience shows, one-fourth of the strength of the District Council is nominated by the Minister-in-charge, Tribal/District Council Affairs on the advice of the Chief Executive Member, though this power is vested in the governor, a constitutional head. The purpose is to give

representation to minority or unrepresented tribes. Thus the power of nomination is frequently abused for narrow party gains. (The Minister, Tribal/District Council Affairs often nominates persons, who will support the party in power. As a result, sometimes, a majority is reduced to minority and vice-versa. It, thus, violates the provision of the minority representation enshrined in the Sixth Schedule to the Constitution of India)

The District Councils/Regional Council have been authorised to frame laws for the administration of justice. The District Councils/Regional Council in Mizoram constituted their own system of courts to administer justice at three levels, the village courts, the Subordinate District Council Courts and the District Council Courts. But it is experienced that the council courts have no legal experts or trained judicial officers, who can carry on the trail of cases and disputes efficiently and expeditiously, where as in the plains' courts, justice is administered by legal experts and trained judicial officers. Thus the appointment of such persons in the judicial courts, especially District Council Courts who have no knowledge of law, is against the principle of judicial administration. Besides, the District Council Courts due to lack of coordination, cannot utilise the judicial and administrative experiences of the Deputy Commissioner's court in the trail of cases and disputes of civil and criminal nature. The Deputy Commissioner and the District Councils are two sets of authorities working independently of each other in judicial spheres. So judicial autonomy and customs are often abused and misinterpreted. The District Councils in Mizoram and other North-Eastern States have not yet codified all customary laws in the autonomous Districts. Above all, customary law is not observed. However, the District Councils play, and may be expected to play in future, an important part in the process of rule adjudication in these areas.

The District Council has framed service rules to manage and regulate the service of their employees. Despite the rules

framed by the councils, the staff have increased in a most haphazard manner and have no relevance to the necessity. Most of the staff are not qualified. Most appointments are, sometimes, made for various posts with a view to extending political patronage without any care or consideration for the rules, necessity, availability of funds or qualification of persons. Thus, nepotism and favouritism in the matter of recruitment seem to be rampant in District Councils.

The District Councils and Regional Council have powers to make rules for the District Council's Funds and the Regional Council's Funds. The Funds contain all receipts realised by the councils and also include liquid assets, surplus revenue, customary receipts, cash balance and bank balance. There are also provisions in regard to the location and custody of money in Treasury, payments of funds, withdrawal of money from the funds, procedure for payment of claims, contingent charges, record of contingent expenditure, works expenditure and miscellaneous payments. The member-in-charge of the finance is responsible for the management or control of funds. But no District Councils in Mizoram, except the defunct Mizo Hills District Council, has yet framed Fund's Rules.

Moreover, it has been found from various reports and records maintained by the councils that financial irregularities committed by the councils are glaring. The grants-in-aid are often violated by using development funds for non-development purposes. Even the basic rules of financial propriety as contained in the fund rules are not observed. The councils are overstaffed. Hence, the expenditure is unduly heavy. Despite getting sizeable grants from the Government, the councils' staff, sometimes go without salary for many months. The amount incurred by members of the Executive Committee and officers on travel allowances is sometimes, excessive and completely unwarranted and undesirable. There is no uniformity in the payment of salaries to the elected officials. The funds provided by Government are always overspent. Thus the

councils are often unable to balance their receipts and expenditures. Thus, the leaders try to confuse the autonomy granted in the Sixth Schedule with a licence to mismanage public money as they feel like. However, such financial irregularities were mostly found or heard before 1969 when there was no provision to audit the accounts of the councils.

The District Council has power to levy tax on profession, trade, callings, even within the jurisdiction of the Regional Council. The Regional Council has no such power. Even the Chief Executive Member of the Regional Council is subject to the levy of professional tax by the District Council. The income from such taxes collected from areas of the Regional Council goes to the District Council, which is unfair and against economic autonomy. The District Council neither enforces regulations strictly nor realises the amount efficiently. As a result, revenue or income from taxes on such subjects is meagre. No attempt is made by the District Councils to raise their revenues by exploiting the financial resources available to them. Not only this, but taxes which are imposed are also not collected on time. Consequently, arrears are accumulating. There is hardly any regulation framed by the District Councils to levy tax on the maintenance of schools, roads, dispensaries and goods carried in ferries. However, the Chakma District Council has adapted the law enacted by the Pawi-Lakher Regional Council.

To the Sixth Schedule of the Constitution, the Regional Council has no share in the royalties from licences or leases granted by the State government for extraction of minerals within its areas, and the proceeds from such taxes are shared by the District Councils and the State Government in certain agreed ratio. This is, no doubt, unjust and against the norm of economic autonomy or justice. This needs rectification to enable the Regional Council to share such income.

The District Councils manage primary schools and also prescribe their medium of instruction even within the jurisdiction of the Regional Council. So the Regional Council has no such power to impart primary education. As such, the

power of the autonomous organ suffers considerably owing to its exclusion from this important provision. So the minor tribes of the Regional Council areas have no freedom to read and write in their own dialect and language which is against civil rights or right to language/dialect. In fact, one of the major grievances of the Pawis, the Lakhers and the Chakmas of the Pawi - Lakher Regional Council against the Mizo Hills District Council was on this, which in the long run, compelled these minor tribes to demand for a separate district councils of their own. In other words, there may be more than one tribe in the autonomous district and the major tribes may impose its own language on other tribes. No provision has been made to remedy this situation. At present, the Pawi District Council and the Lakher District Council in Mizoram have taken over the administration of the elementary education and established school in each village. The Pawi District Council adopted the Mizo language as the medium of instruction. The Lakher District Council has introduced the Lakher dialect as the medium of instruction. The Chakma District Council has not yet taken over administration of the elementary education. The Government of Mizoram still looks after the administration of elementary education in the Chakma region.

The provisions of the Sixth Schedule suffer from certain shortcomings and defects. Since there is no provision at all for coordination of the activities of the District Councils and the Regional Council and the State Government. So the State has no power to review and assess the working of the councils except to approve their legislations by the Governor and to sanction loans and grants for development schemes. They are independent in their functions. As a result, the councils do not surrender the unspent balance of the grant to the State Government. They transfer the amounts for other purposes without proper sanction. The councils have neither expert officials and technical experts nor can it utilise the services and experiences of the Deputy Commissioner and other technical experts posted to headquarters, especially for

development schemes going on within the areas of the councils due to lack of coordination. The leaders of the District Councils are also not taking interest in plan formulation schemes at the micro level, village production schemes, implementation or monitoring of various development programmes systematically. They are unable to play any significant role in strengthening the planning process at the micro level. As a consequence, the councils have neither been able to do anything of standard in the interest of the hill people nor have they been able to involve the tribals in developmental activities either as beneficiaries or as decision-makers on any significant scale. In fact, it is shown that the councils have harmed the interests of the poor tribes. The councils serve the interests of mainly the neo-rich class or class of rich traders, contractors, bureaucrats and the educated, who have emerged from within the tribal society of North-Eastern States due to the enlarging money economy on development activities. This emerging socio-economic power structure in the tribal areas does not allow the benefits of the Sixth Schedule to flow towards the weaker section of the tribes. Not only this, but the elected members in the councils and the office-bearers who are normally from the elite group (or the rich) of the tribal society, have vested interests in preserving the exploitative structure, they are not likely to do anything that strengthen the position of the poor in their areas. The members of this group hold the power of decision-making in the councils.

But no amendment under the Sixth Schedule has been made to bring these councils closer to the State Government, which is felt necessary to revitalise the working of the District Councils for the larger interests of the tribes. Besides, nothing to encourage self-governance and mass-participation in the councils' working and to strengthen the poor in protecting themselves from the exploitative behaviour of the rich has been done. It is clear that the power structure which exists today in our tribal areas is likely to exploit the poor or with or without the Fifth and Sixth Schedules. If the benefits of the

Sixth Schedule have to flow to the poor and if the poor are to participate in the council's activities, it is necessary that their position is strengthened by various means, such as efficient public distribution system (seed banks, grain banks/social security measure), giving right to work to the poor tribes so as to ensure them minimum employment and income to live on, redistribution of assets in favour of the poor by implementing land reforms and encouraging organisation of the poor and recognising the role of voluntary agencies in rural development.

The provision of the Sixth Schedule was undemocratic in the sense that the accounts of the District Councils and the Regional Council were not auditable by the Accountant General before 1969. The council's accounts were also outside the purview of the Public Accounts Committee of the State legislature. As a result, there was an extravagance in public expenditure. As it is obvious, grants sanctioned to the councils are public finance or public money. So in the absence of audit, it may lead the elected and appointed officials to political or economic corruption or bungling. So it is a fact that in democracy, audit is a check on the misuse of public money or misappropriation of accounts by officials and ensures a healthy administration by proper expenditure on development schemes. Provision has, however, been made for the audit of accounts of the councils in recent years<sup>5</sup>. Besides, the Government of Mizoram has also formulated rules relating to grants-in-aid to Autonomous District Councils. Accordingly, the Government may withdraw or limit a grant or defer release of grants, if the District Councils fail to fulfil the conditions laid down in the rules.

The member of the District Council was not in the beginning allowed to be a member of the Legislative Assembly or Parliament. But the amended People's Representation Act later permitted the members of the councils to be members of the Assembly and Parliament. This is certainly not a healthy practice. This is likely to lead to the mismanagement of the councils. For instance, if a member of the District Council is

also the Chief Executive Member and at the same time, member of the State Assembly belonging to the party in power, he may indulge in corrupt practices and bunglings because he fully knows that the Minister for District Council Affairs or Tribal Affairs will not take any action against him because the minister himself depends on his support in order to remain in power. The Sixth Schedule and the rules made there under lay down that no person shall be a member of the two District Councils. Similarly, no person should be a member of two legislative bodies - the District Council and the Legislature. Such a provision will check the concentration of power in the hands of a few. It will also provide opportunities to a larger number of persons to participate in decision - making.

The Government can control the Autonomous District Council in several ways. The Governor appoints the Executive Members on the advice of the Chief Executive Member. Rule-making power is also limited because all such rules/regulations need the approval or direction of the Governor. The District Council is also subject to control when it approaches the Government for loan. He also determines the strength of the council, qualifications of membership and disqualification of any member. The chairman cannot summon the meeting of the District Council until specifically authorised to do so by the Government. No Bill regarding any matter that requires the assent of the Governor shall be introduced in the District Council without the prior approval of the Governor. Only when a Bill is assented to by the Governor, it shall have the force of law as provided in paragraph 11 of the Sixth Schedule. Thus, the autonomous character of the District Council is subject to detailed control of the Government, though the Sixth Schedule is in itself a Constitution within the Constitution.

The District Councils are not created by the State Legislature. The provisions of the Sixth Schedule can be amended only by Parliament. The autonomous district council is a body corporate as such, it appears that the council may

act independently of the state legislature. But the position in actual practice is quite different.

The Governor being the head of the State is also head of the district council and can suspend an Act or resolution of the district council which is contrary to the provisions of the Sixth Schedule or likely to endanger the safety of the country or is prejudicial to public order he can take any such step as he thinks necessary, including suspension of the council. He may assume to himself all or some of the functions and powers of the council for a period of six months. He may also dissolve the council on the recommendation of the enquiry commission to be appointed under para 14 of the Sixth Schedule which mismanages the affairs of the council. As experiences have shown, to set up such an enquiry commission is often recommended by the State Council of Minister rather than the Governor of the State. This, indeed, leads to constitutional impropriety.

So, in order to remove such difficulties. M. Hidayatullah, the former Chief Justice of India, has explained in his book "The Fifth and Sixth Schedules to the Constitution of India". That the Main problem which is likely to be faced by governor will act in discharging his functions under the Schedule, that is to say, whether as a constitutional Governor he is bound to act only on the aid and advice of the council of ministers or independently of the council. The Schedule does not answer this question directly. What it does is to make the Governor the final decision-making authority in relation to Autonomous District Councils and Autonomous Regions. If one examines the whole of the Sixth Schedule, no duty appears to be cast on the State Governments as such although a Minister incharge of tribal areas is to function. Every matter goes to the Governor himself and the only matter in which the State Government comes into the picture is with regard to mines and minerals. It is not compulsory for the Governor to consult the Council of Ministers. He may do so but he is not bound to accept their advice. The entire history of these areas, the thought that went into the enactment of the Sixth Schedule

as a constitutional provision independent of the rest of the Constitution clearly establishes this, the Rules of Business have to be approved by the Governor as he must satisfy himself that executive authority of the state must be confined to situations in which the safety of India is involved or a problem of law and order arises. In other matters, the executive authority of the autonomous district must be independently exercised by the district council. This provision as envisaged in the Constitution needs to be observed as regards the autonomy of the district councils laid down in the Sixth Schedule which is in itself a Constitution within the Constitution of India.

As regards the legislative powers of the district councils, he has further explained: "The Legislative field and the legislature (such as it is) is independent of the legislative field and the State Legislatures of the States . There is no room left for the legislatures of the States to take any action. In all these matters, the Governor acts in his discretion and he has no reason to be bound by the Council of Ministers, even if he consults them for his own guidance. Therefore, the executive powers of the autonomous district councils will cover all topics of legislation to which the legislative power of the State extends. The Sixth Schedule also lays down that no law passed by Parliament or the State Legislature on matters within the purview of the district councils shall apply to such autonomous district unless the district council should, however, direct its application. Paras 3 (1) 8 and 10 of the Schedule confers powers on the district councils to legislate where as the para 12-B of the Schedule provided that any law/regulation passed by the State Legislature shall prevail over those made by the district councils on the subject. Thus para 12-B takes away all powers conferred on the councils by para 3 (1),8,10. Here the Sixth Schedule seems to be self-contradictory to that extern and also against its being a Constitution within the Constitution of India. This needs to be removed by the proper amendment of the said para 12-B as in para 12.

The Other Acts of the State Legislature and all acts of Parliament would apply to the autonomous district unless the Governor issues a notification barring the application of such laws in the areas. These provisions continued to remain in force so far as the autonomous district under Assam were concerned. But a change has been made in the case of Meghalaya and Mizoram by giving an overriding character to the Acts passed by the State council on a subject assigned to is under paragraph 3, 8 or 10 of the schedule is repugnant to any provision of law made by the Meghalaya and the Mizoram Assemblies, the former will be void to the extent of repugnancy. This provision empowers the Government to control the district councils, which is no doubt a constraint for the smooth working of the district council. This, in fact, emerges from the amended provisions of the Sixth Schedule to the Constitution of India.<sup>6</sup>

If the district council is to continue to function in a proper shape and manner required under the sixth schedule, adequate grants-in-aid must be given. Because of financial difficulties/limited financial resources, most councils have not yet taken over charge of their many functions as prescribed by the Sixth Schedule. As the fact remains true, the elaborate power of the councils, however, do not appear to have satisfied the aspirations of the tribal people fully. Since there is no provision in the Sixth Schedule to bring the councils to participate in the development schemes and social welfare to the largest extent possible, the district councils have failed to evoke the local initiative and people's participation in the development activities to the desired extent. The councils have hardly brought about social and economic changes in the tribal areas. As S.K. Chaube has also said, "There was a clear paradox in the working of the district councils. As they failed to utilise their socio-economic potential, their attention was diverted to politics and the pretensions of mini State". Even the conversion of some of the Sixth Schedule areas to the status of fullfledged States does not appear to have resolved the consequent problem fully.

Another pre-condition for the success of the district council is to train the member of the council for their role. The council members are not trained formally and systematically with the result that they have very limited knowledge about the Sixth Schedule to the Constitution and its provisions, the objectives and functions of the council, the dynamics of rural society, growth potential of their areas, and skills of planning for overall development of their respective areas. It is necessary to train them if they have to make the working/operation of the Sixth Schedule successful and meaningful.

In spite of these limitations, underlying the provisions of the Sixth Schedule to the Constitution of India, this is also true that the District Councils and the Regional Council provided under the Sixth Schedule have provided a fair degree of autonomy for the tribal people living in Assam, Meghalaya, Manipur and Mizoram. It is also expected that the District Councils under the amended provisions of the Sixth Schedule will play a significant role in giving a sense of purpose and direction to the tribal development movement.

### References

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