

**PARLIAMENT OF INDIA
RAJYA SABHA**

129

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND TWENTY NINTH REPORT

ON

**THE SIXTH SCHEDULE TO THE CONSTITUTION
(AMENDMENT) BILL, 2007 AND THE CONSTITUTION (ONE
HUNDRED AND SEVENTH AMENDMENT) BILL, 2007**

**(PRESENTED TO RAJYA SABHA ON 28 FEBRUARY 2008)
(LAID ON THE TABLE OF LOK SABHA ON 28 FEBRUARY 2008)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
FEBRUARY, 2008/ PHALGUNA, 1928 (SAKA)**

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* to be inserted at printing stage.

COMMITTEE ON HOME AFFAIRS
(Constituted on 5 August 2007)

1. Smt. Sushma Swaraj - Chairperson

RAJYA SABHA

2. Shri V. Narayanasamy
3. Shri Rishang Keishing
4. Shri R.K. Dhawan
5. Shri S.S. Ahluwalia
6. Shri Janeshwar Mishra
7. Shri Prasanta Chatterjee
8. Shri N. Jothi
9. Shri Satish Chandra Misra
10. Shri Sanjay Raut

LOK SABHA

11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Shri Ilyas Azmi
14. Km. Mamata Banerjee
15. Smt. Sangeeta Kumari Singh Deo
16. Shri Biren Singh Engti
17. Shri Tapir Gao
18. Shri Raghunath Jha
19. Shri Naveen Jindal
20. Shri Ajit Jogi
21. Prof. K.M. Kader Mohideen
22. *Shri Amitava Nandy
23. Shri Ram Chandra Paswan
24. Shri Sachin Pilot
25. Shri Ashok Kumar Pradhan
26. Shri G. Karunakara Reddy
27. Shri M. Rajamohan Reddy
28. Shri Baju Ban Riyan
29. Choudhary Bijendra Singh
30. Shri Brij Bhushan Sharan Singh
31. Shri Mohan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Director
Shri D.K. Mishra, Deputy Director
Shri Bhupendra Bhaskar, Committee Officer

* Nominated w.e.f. 12th December 2007 vice Shri T.K. Hamza who was nominated to Standing Committee on Commerce.

PREFACE

I, the Chairperson of the Department-related Parliamentary Standing Committee on Home Affairs having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Twenty Ninth Report on the Sixth Schedule to the Constitution (Amendment) Bill, 2007 and the Constitution (One Hundred and Seventh Amendment) Bill, 2007 (**Annexures I & II**).

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha in consultation with the Speaker, Lok Sabha referred* the Sixth Schedule to the Constitution (Amendment) Bill, 2007 and the Constitution (One Hundred and Seventh Amendment) Bill, 2007, as introduced in the Lok Sabha on 30 November 2007 and pending therein, to the Committee for examination and report by the last day of the first week of the first part of the Budget Session, 2008.

3. The Committee held nine sittings in all spread over eighteen hours on the Bills. In its meeting held on 13 December, 2007, the Committee heard the presentation of the Home Secretary, Government of India and other officers of the Ministry of Home Affairs, on the Bills and held preliminary discussion thereon. Keeping in view the political sensitivity and implications of the proposed legislations and the large number of representations received from organizations and public, the Committee heard the oral evidence of local MPs of both the Houses of Parliament, namely, Shri Dawa Narbula, representing Darjeeling in Lok Sabha and Shri Saman Pathak representing State of West Bengal in Rajya Sabha; former Members of Parliament from that area, namely, Sarva Shri Ananda Pathak, R.B. Rai & S.P. Lepcha and Smt. Dil Kumari Bhandari; eighty-four witnesses representing twenty organisations including political parties and seven individuals including some of the former Councillors of the Darjeeling Gorkha Hill Council, in its sittings held on 20th December, 2007, 10th and 11th January, 2008.

3.1 The Committee also interacted with the representatives of an All Party Delegation of the West Bengal Legislative Assembly on the provisions of the Bills, in its sittings held on 21st January 2008.

4. The Committee also heard the oral evidence of Administrator, Darjeeling Gorkha Hill Council and the Chief Secretary and senior officers of the Government of West Bengal in its meeting held on 7th February, 2008.

* vide Rajya Sabha Parliamentary Bulletin Part II No. 44729 dated 11 December, 2007.

5. In its sitting held on 18th February, 2008, the Committee held in-house discussion on the Bills in the light of the evidence tendered by witnesses and written views submitted by individuals and organisations. The Committee also heard the oral evidence of Home Secretary on various issues raised on the provisions of the Bills in the same meeting. The Committee took up clause-by-clause consideration of the Bills on 19th February 2008.
6. The Committee considered the draft Report in its sitting held on 27th February, 2008 and adopted the same.
7. The Committee has made use of the following documents in the finalization of the Report:
- (i) Sixth Schedule to the Constitution (Amendment) Bill, 2007;
 - (ii) Constitution (One Hundred and Seventh Amendment) Bill, 2007;
 - (iii) Background Note on both the Bills supplied by the Ministry of Home Affairs;
 - (iv) Memorandum of Settlement signed on 22.08.1988 (Darjeeling Accord);
 - (v) Memorandum of Settlement signed on 23.08.1988 (Darjeeling Accord);
 - (vi) Darjeeling Gorkha Hill Council Act, 1988 enacted by the West Bengal Legislative Assembly on 15.10.1988;
 - (vii) Memorandum of Settlement (MOS) signed on 06.12.2005 between the Government of India, Government of West Bengal and Shri Subash Ghisingh, Administrator, Darjeeling Gorkha Hill Council;
 - (viii) Written memoranda submitted by organizations/individuals to the Committee;
 - (ix) Oral evidence tendered before the Committee;
 - (x) Debates of the Constituent Assembly dated 5th & 6th September, 1949 relating to the Sixth Schedule;
 - (xi) Books titled :
 - (a) "Fifth and Sixth Schedules to the Constitution of India": by P. Chakraborty, 2005, Capital Publishing House, Delhi;
 - (b) "Sixth Schedule to the Constitution" by Justice B.L. Hansaria, Second Edition 2005, Universal Law Publishing Co. Pvt. Ltd, Delhi.
8. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

9. On behalf of the Committee, I would like to acknowledge with thanks the valuable contributions made by the Members of the Committee in its deliberations; sitting Members from Darjeeling and a former Member of the House from that region and witnesses who deposed before it and facilitated the Committee in formulating its views on the Bills. I would also like to express my thanks to the officers of the Ministry of Home Affairs and the Ministry of Law and Justice, Department of Legal Affairs and Legislative Department for their invaluable assistance rendered to the Committee in the course of the examination of the Bills. A special word of thanks for the Secretariat for the hard work done in preparing this report in a very short time.

NEW DELHI;
27th February, 2008.

SUSHMA SWARAJ
Chairperson
Committee on Home Affairs

REPORT

CHAPTER-I

INTRODUCTION

1.1 Background to the Bills and their Salient Features

1.1.1 The Sixth Schedule to the Constitution (Amendment) Bill, 2007:- The Bill seeks to create an autonomous self governing Council called the Gorkha Hill Council, Darjeeling (GHC) under the Sixth Schedule to the Constitution within the State of West Bengal, which shall have legislative, administrative and financial powers in respect of specified subjects. The Bill also provides for adequate safeguards for the non-tribals to ensure that any law as may be made by the GHC will not, in particular:-

- (a) extinguish or modify the existing rights and privileges enjoyed by any citizen including his land rights within the areas under the GHC at the commencement of the Sixth Schedule to the Constitution (Amendment) Act, 2007; and
- (b) bar any citizen from acquiring land either by way of inheritance, allotment, settlement or by way of transfer if such citizen is otherwise eligible for such *bona fide* acquisition of land within the areas under GHC.

1.1.2 The Constitution (One Hundred and Seventh Amendment) Bill, 2007:- This Bill seeks to amend articles 244 and 332 of the Constitution. Clause (2) of article 244 of the Constitution provides that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. This Bill seeks to amend article 244 of the Constitution so as to bring the administration of the areas under the GHC in the State of West Bengal within its ambit. Article 332 of the Constitution provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States. To protect the rights of non-tribals in the Gorkha Hill Council in Darjeeling, in pursuance of the MoS dated 6th December, 2005, the existing representation of the Scheduled Tribes and non-Scheduled Tribes in the Legislative Assembly of the State of West Bengal from the areas under the

Gorkha Hill Council is proposed to be kept intact. The Bill, therefore, seeks to insert a new clause after the existing clause (6) of article 332 of the Constitution.

1.2 Darjeeling Accord: Before and After

1.2.1 As per the information submitted to the Committee, the background relating to the Darjeeling Accord and the subsequent events till the introduction of the Bills under reference is explained in subsequent paragraphs.

1.2.2 Four major communities inhabit the hills and plains of Darjeeling District- the Nepali, the tribals, the Bengalees and the original inhabitants (Mech, Rajbansi, Lepcha, Bhutia etc.). The atmosphere in the hills of Darjeeling was in keeping with the excellent tradition of communal harmony till the emergence of Gorkhaland agitation led by Gorkha National Liberation Front (GNLF) which raised the issue of separate State of Gorkhaland with economic blockade and violence. The agitation reached its crescendo in 1980. As many as 1200 people were killed while fighting for their demand for a Gorkha State within the Union of India.

1.2.3 Following the agitation, two Memoranda of Settlement also known as 'Darjeeling Accord' were signed between the Government of India, Government of West Bengal and the Gorkha National Liberation Front (GNLF) on 22 & 23 August, 1988, respectively, to put an end to the violent agitation. This Accord paved the way for setting up of an autonomous hill council, named, Darjeeling Gorkha Hill Council (DGHC) through the Darjeeling Gorkha Hill Council Act, 1988 enacted by the Legislative Assembly of West Bengal on 15.10.1988, for fulfillment of socio-economic and political aspirations of the hill people of Darjeeling district.

1.2.4 The salient features of the Darjeeling Gorkha Hill Council to be set up under the Darjeeling Accord, 1988 are as under:

- (a) An autonomous hill council named as 'Darjeeling Gorkha Hill Council' to be set up under a State Act.

- (b) The Council will cover the three hill sub-divisions of Darjeeling District namely, Darjeeling, Kalimpong and Kurseong plus 13 revenue villages (Mouzas) in the Siliguri sub-division.
- (c) The executive power of the Council will cover various subjects, including allotment of land, management of any forest other than reserve forest, agriculture, public health, tourism, transport, fisheries, education, small scale and cottage industries, etc.
- (d) The Council shall exercise general powers of supervision of over Panchayat Samities, Gram Panchayats and Municipalities falling within the area of the Council's jurisdiction.
- (e) The DGHC Council consists of 42 members, 28 elected and 14 nominated by the State Government, with a term of five years.
- (f) There will be an Executive Council and the Chairman and Vice-Chairman of the General Council will be ex-officio members of the Executive Council with the Chairman of the General Council functioning as the Chief Executive Councillor.
- (g) The Chairman of the General Council-cum-Chief Executive Councillor will have the ex-officio status and privileges of a Minister in the Council of Ministers in the State.
- (h) The Bill for setting up the Hill Council will be introduced and passed in a special session of the State Legislature. The election to the Hill Council will be held by the 15th December, 1988.
- (i) The State Government in order to restore normalcy in the region agreed to review all cases registered under various laws against persons including Government servants involved in GNLf agitation.
- (j) GNLf agreed to surrender all unauthorized arms to the district administration and withdraw all agitation activities and to extend full cooperation to the administration for the maintenance of peace and normalization of the political process in the hill areas of Darjeeling.

1.2.5 Pursuant to the above mentioned Settlements, GNLf agreed to drop the demand for a separate State of Gorkhaland and an autonomous hill council, viz., Darjeeling Gorkha Hill Council (DGHC) was set up under 'The Darjeeling Gorkha Hill Council Act, 1988' notified by the Government of West Bengal on 15.10.1988. In pursuance of the

Darjeeling Accord, elections under the DGHC Act, were held in 1988, 1993 and in 1999. The term of the last Council expired on 22 March, 2004 after completing its five year term.

1.2.6 The term of the Council was extended upto 26th March, 2005. However, elections to the Council could not be held and as per provisions of the DGHC Act, Shri Subash Ghising was notified as Administrator of the DGHC exercising caretaker powers of the General Council from March, 2005 and his term was extended six times and the last extension was granted on 26.09.2007 for six months or till the first meeting of the newly elected General Council is held whichever is earlier.

1.2.7 However, the Administrator, DGHC had been constantly demanding constitutional status for the DGHC as the above mentioned settlement could not fulfil the aspirations of the hill people of Darjeeling. A series of tripartite meetings were held between Government of India, Government of West Bengal and Administrator, DGHC to review the implementation of Darjeeling Accord and other issues arising from it. Alternately it emerged that the solution lies in according Sixth Schedule status to the hill areas of Darjeeling District within the State of West Bengal. Accordingly, the Union Cabinet Committee on Political Affairs approved the proposal of the Government of West Bengal to enter into an 'in principle' Memorandum of Settlement (MOS) to set up a new council under the Sixth Schedule replacing the DGHC.

1.2.8 The main objective of MoS is to replace the existing Darjeeling Gorkha Hill Council by an autonomous self governing council to be known as Gorkha Hill Council, Darjeeling under the Sixth Schedule to the Constitution following due consultative legislative and constitutional processes by the State and Central Governments, so as to fulfill the economic, educational and linguistic aspirations and socio-cultural and ethnic identity of the hill people, while duly protecting the rights of the non-tribals. Accordingly, a Memorandum of Settlement (MoS) popularly known as 'tripartite agreement' was signed on 06.12.2005 between the Government of India, Government of West Bengal and Shri Subash Ghisingh, Administrator, DGHC.

1.2.9 Salient Features of Memorandum of Settlement (MoS):

- (a) The autonomous self-governing Gorkha Hill Council shall comprise of 33 Members of whom 28 shall be elected on the basis of adult suffrage out of whom 10 shall be reserved for STs, 15 for non-tribal communities, 3 open for all communities, the remaining five nominated by the Governor from amongst the unrepresented communities of the areas under the council. Out of the five nominated members at least two shall be women.
- (b) The area of the proposed council shall comprise of three contiguous hill sub-divisions, viz., Darjeeling, Kalingpong and Kurseong and 16 Mouzas of Siliguri sub-division which shall be transferred to Kurseong sub-division.
- (c) There shall be safeguards for the non-tribals in terms of their settlement rights, property rights etc. and *bona fide* acquisition of land by any citizen.
- (d) The Council will have legislative powers in respect to (45) subjects mutually agreed between State Government and Administrator, DGHC.
- (e) The Council shall have same powers of supervision over lower tiers of Panchayats as that of the existing DGHC. Existing arrangement of lower tiers of Panchayats would continue to function under the new Council.
- (f) Executive functions of the Council area to be exercised through its Principal Secretary who shall be an officer of the rank not below that of Commissioner/Secretary to Government of West Bengal.
- (g) For interim administration immediately after signing of the agreement and till such time the process of constitutional amendment is carried out and the new Council is put in place, elections to the DGHC and to Panchayat bodies would be held in the DGHC areas in accordance with the relevant provisions of the Constitution/existing Laws of the Central/State Governments, among other things.
- (h) Resolution by State Legislative Assembly recommending the grant of Sixth Schedule status for Darjeeling Hill Areas and any other Legislative process as may be necessary shall be carried out precedent to initiating process for amending Article 244 of the Constitution.
- (i) Amendment of Article 244 of the Constitution.

- (j) Amendment of Sixth Schedule through an Act of Parliament and enactment of any other consequential Parliamentary Act(s).
- (k) Dissolution of the DGHC and repeal of the DGHC Act 1988 with appropriate saving clause.
- (l) Election and Constitution of new Council (within six months of enactment of Parliamentary Acts).

1.2.10 Following the signing of the MoS, the West Bengal Legislative Assembly adopted a Resolution on 16.03.2006 recommending grant of Sixth Schedule status for Darjeeling hill areas. To achieve the above objectives, the two Bills were introduced in the Lok Sabha on 30 November 2007.

1.3 Historical Background of Sixth Schedule

1.3.1 The Sixth Schedule to the Constitution provides for special status to certain areas in the States of Assam, Meghalaya, Mizoram and Tripura in the North Eastern Region of the country, in terms of administrative and functional autonomy.

1.3.2 The genesis of this special status to some states of North Eastern part of our country in the constitutional system can be traced back to 18th and 19th centuries. In 1765, estates bordering north east regions came under the control of the authorities at Fort William. Though the Company appointed its own officers for the collection of public revenue, the actual collection was made by Zamindars and their officers. The internal quarrels among Zamindars and unrest in these areas laid the foundation for the pattern of administration to follow in respect of the tribal areas of north-east India. Acts of British Government in the course of time conferred on the Governor-General powers to legislate laws separately for the backward areas of Assam valley and its hill districts¹.

1.3.3 The Government of India Act, 1854 enacted by the British Parliament brought certain territories in India, including Kamrup, Darrang, Nowgong, Sibsagar, Lakhimpur, Garo Hills, Khasi & Jaintia Hills, Naga Hills, Cachar & Goalpara of erstwhile Assam, under the immediate authority and management of the Governor-General-in-Council. In 1874, the Scheduled Districts Act was passed under which areas inhabited by such backward tribal people were comprised into Scheduled Districts. Around 1880, a need was felt to render again a separate treatment to certain frontier tracts of Assam, owing to the stage of backwardness prevailing in such tracts or areas. Accordingly the Assam Frontier Tracts Regulation, 1880 was promulgated to give the power to the Chief Commissioner of Assam, to remove any part of that area from the coverage or extent of the laws in force in such tract. It was extended to the frontier tracts including the erstwhile Lushai Hills District of Assam².

¹ Hansaria, Justice B.L., *Sixth Schedule to the Constitution*, Universal Law Publishing Co., Delhi, 2005, pp 1

² Chakraborty, P., *Fifth and Sixth Schedules to the Constitution of India*, Capital Law House, Delhi, 2005, p 1-2

1.3.4 Again after a careful examination of the whole issue, the Governor-General in Council by a notification under the Government of India Act, 1915-19, declared certain territories in the then Province of Assam as backward tracts.

1.3.5 The Government of India Act, 1935 created three types of special areas. Under the Act of 1935, these backward areas were classified as excluded areas and partially excluded area. The newly created excluded areas, to the extent of about 18,600 square miles in Assam and 10,000 square miles in the provinces of Madras, Bengal, North-West Frontier, Punjab and Assam, were placed under the personal rule of the Governor's in their discretion. The newly created partially excluded areas were placed under the responsibility of a Minister specifically in charge of such areas while the Governor was assigned with certain special responsibility in the administration of these areas only in certain matters in respect of which he had the power to act in his individual judgment and to overrule the Minister's advice¹.

1.3.6 In a statement on 16th May, 1946, the Cabinet Mission reiterated the need for special attention of the Constituent Assembly to these excluded and partially excluded areas and tribal areas while drafting the new Constitution of India. An Advisory Committee was planned on Fundamental Rights and Minorities in such manner that it should contain due representation of all the interests likely to be affected, and should advise the Constituent Assembly on framing an appropriate scheme for the administration of tribal and excluded areas⁴.

1.3.7 The Advisory Committee in its meeting held on 27th February, 1947 set up three Sub Committees – one to consider the tribal and excluded and partially excluded areas in Assam, another to consider the tribal areas in the North-West Frontier Province and Baluchistan, and a third Sub Committee to consider the position of excluded and partially excluded areas in the Provinces other than Assam. The Sub Committee on tribal and

¹ Chakraborty, P., *Fifth and Sixth Schedules to the Constitution of India*, Capital Law House, Delhi, 2005,

⁴ p 4

⁴ Ibid p5

excluded and partially excluded areas submitted its report on 28th July, 1947, while the other Sub Committee on the excluded and partially excluded areas in the provinces other than Assam submitted its interim report on 18th August, 1947 and final report in September, 1947⁵.

1.3.8 The Drafting Committee considered the recommendations and the draft prepared by the Sub Committees were included in the draft Constitution of February, 1948. When the Sixth Schedule was being considered for adoption in the Constitution Assembly, Shri Gopinath Bordolai supporting the idea of Sixth Schedule in the Constitution said:

"..... I want to place before you the, background in which this draft had to be formulated. It is not unknown to you that the rule of the British Government and the activities of the foreign Missions always went together. These areas were formerly entirely excluded areas in the sense that none from the plains could go there and contact them.Sir, some of these areas were war zones. During the war, the then rulers and officers developed in the minds of these tribal people a sense of separation and isolation and gave them assurances that at the end of the war they will be independent States managing their affairs in their own way. They were led to believe that the entire hill areas would be constituted into a province and put under some irresponsible Governor. You might possibly have read in the papers that plans were hatched in England in which the ex Governors of Assam evidently took part, to create a sort of a Kingdom over there.People of this area were already fully suffused with these ideas of isolation and separation. The point therefore that presented itself to us was whether we should raise in them a spirit of enmity and hatred by application of force or whether we should bring them up under the broad principle of government by good will and love. With that background the draft was prepared and was placed before you. In the meantime, great changes have come in the structure of the Government of India. More powers are being vested in the Centre today than it was contemplated then. The trend of criticism on the amendments that have been submitted seems to indicate that we gave more powers to these autonomous Councils, perhaps very much beyond what the State Legislature of Assam could. I do not agree with this view.I submit, therefore, that nothing has been proposed here which is not in line with the pattern and the structure of the Constitution which we are framing for the whole of India."

1.3.9 While replying to the debate on the discussion on Sixth Schedule Dr. B. R. Ambedkar, Chairman of the Drafting Committee of the Constitution stated:

⁵ Ibid pp5

"..... The tribal people in areas other than Assam are more or less Hinduised, more or less assimilated with the civilisation and culture of the majority of the people in whose midst they live. With regard to the tribals in Assam that is not the case. Their roots are still in their own civilisation and their own culture. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus. I think that is the main distinction which influenced us to have a different sort of scheme for Assam from the one we have provided for other territories. In other words, the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the Red Indians in the United States, as against the white emigrants there. Now, what did the United States do with regard to the Red Indians? So far as I am aware, what they did was to create what are called Reservations of Boundaries within which the Red Indians lived. They are a republic by themselves. No doubt, by the law of the United States they are citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that it would be dangerous to bring them at one shot, so to say, within the range of the laws made by the white people for white persons and for the purpose of the white civilisation. I agree that we have been creating Regional and District Councils to some extent on the lines which were adopted by the United States for the purpose of the Red Indians."

Development during post-independence period:

1.3.10 As per the provisions of the Constitution, the provisions of Sixth Schedule can be amended in three different ways:-

- (a) by Constitutional amendment by following procedure laid down in Article 368 of the Constitution;
- (b) by an ordinary Parliamentary legislation as provided in paragraph 21 of the Sixth Schedule; and
- (c) by notification issued by the Governor under paragraph 1(3) of the Sixth Schedule resulting in amendment to the table appended to paragraph 20 of the said Schedule.

1.3.11 After independence, the Sixth Schedule has been amended on 10 occasions as a consequence of the following details of amendments made from time to time:-

1. State of Nagaland Act, 1962
2. Assam Reorganisation (Meghalaya) Act, 1969

3. North-Eastern Areas (Reorganisation) Act, 1971
4. Government of Union Territories (Amendment) Act 1971
5. Repealing and Amending Act, 1974
6. Constitution (Forty-ninth Amendment) Act, 1984
7. The State of Mizoram Act, 1986
8. Sixth Schedule to the Constitution (Amendment) Act, 1988
9. Sixth Schedule to the Constitution (Amendment) Act, 1995
10. Sixth Schedule to the Constitution (Amendment) Act, 2003

1.3.11 The National Commission to review the working of the Constitution under the Chairmanship of Hon'ble Mr. Justice M.N. Venkatachaliah also dealt with the decentralization and devolution of powers. The Commission while dealing with institutions working in North-eastern regions of the country recommended that:-

1. The subjects mentioned in the Eleventh Schedule to the Constitution (relating to entrustment of powers, authorities and responsibilities of the panchayats) may be entrusted to the Autonomous District Councils functioning under the Sixth Schedule.
2. The implementation of centrally funded projects should be entrusted to the Autonomous District Councils with strict audit by the CAG.
3. Anti defection law should be made applicable to all the Sixth Schedule areas⁶.

⁶ Hansaria, Justice B.L., *Sixth Schedule to the Constitution*, Universal Law Publishing Co., Delhi, 2005, pp 19-28

CHAPTER-II

Presentation of Ministry of Home Affairs

2.1 The Joint Secretary (Centre State), Ministry of Home Affairs made a PowerPoint presentation before the Committee on 13 December 2007. The salient points of the presentation are given below:

- (a) From 2001, the GNLF raised the issue of constitutional status and four tripartite meetings were held between the Government of India, State Government and GNLF.
- (b) West Bengal Government amended the DGHC Act to provide for appointment of an Administrator for a period not exceeding six months at a time.
- (c) From March 2005, Shri Subhash Ghisingh has been notified Administrator of the DGHC exercising caretaker powers of the General Council.
- (d) It became clear that the solution to the issues raised by GNLF could not be satisfactorily resolved without a constitutional amendment.
- (e) There was clear perception that Sixth Schedule Status need to be considered for DGHC areas under exceptional circumstances.
- (f) On 01.12.2005, the Cabinet Committee on Political Affairs approved the proposal to enter into an in principle Memorandum of Settlement, to set up a new Council under the Sixth Schedule replacing the DGHC. The MOS was accordingly signed on 06.12.2005.
- (g) Under the GHC based on the mutual agreement between the State Government and DGHC the area has been expanded to include 4 more mouzas from Siliguri sub-division to the DHC areas.
- (h) The MoS also provides for safeguards for the non-tribals in terms of their settlement rights, property rights, etc. and bonafide acquisition of land by any citizen.
- (i) Provision in the Sixth Schedule will ensure that in the new Council area, language and medium of instruction in educational institutions will not be changed without approval of the State Government.
- (j) Amendments to the Sixth Schedule shall include provisions in such manner that non-tribals are not disadvantaged in relation to the rights enjoyed by them at the commencement of the new Council and their rights and privileges including land rights are fully protected.

- (k) New Council will have legislative powers in respect to 45 subjects mutually agreed between State Government and Shri Subhash Ghisingh.
- (l) New Council shall have executive, administrative and financial powers in respect of subjects transferred to it.
- (m) There shall be an Executive Council comprising not more than 6 Executive Members from amongst the members of the General Council, one of whom shall be Chief and another one the Deputy Chief.
- (n) At least two Members of the Executive Council will be represented by non-tribals.
- (o) State Government to provide an amount, to be decided every year on population ratio basis, as grants-in-aid in two equal installments to the new Council for executing developmental works.
- (p) To accelerate development of the region, Government of India is to provide financial assistance of Rs.30 crore per annum for five years for projects in the new Council areas in addition to the normal State Plan.
- (q) The State Government also agreed to provide grants-in-aid of Rs.10 crore annually in addition to the budget provisions for development projects.
- (r) Immediately after signing of the MoS and till such time the process of Constitutional amendment is carried out and the new Council is put in place, the administration of the area shall continue to be with the existing DGHC constituted under the existing Act.
- (s) On 16.3.2006 the West Bengal Assembly resolved to recommend grant of Sixth Schedule status to DGHC area
- (t) On 3.7.2006 the State Government finalized the areas and subjects to be transferred to the new Council and on 12.12.2006 issued necessary notification reorganising the existing sub-divisions of Darjeeling district.
- (u) Under the Sixth Schedule paras 1-17 relate to administration of the autonomous areas.
- (v) The GHC would be vested with legislative powers on specified subjects and allotted certain sources of taxation.
- (w) The Council will have powers to maintain services in respect of land, revenue, forest, etc. and to administer their system of justice.
- (x) It is proposed to amend Article 244 of the Constitution to bring GHC areas within the ambit of the provisions of the Sixth Schedule.
- (y) It is proposed to insert a new clause after clause (6) of Article 332 in order to protect the existing representation of STs and Non-STs in the Legislative Assembly of the State by keeping their constituencies intact in the GHC areas.

CHAPTER-III

Oral Evidence of Witnesses/Memoranda from Public

3.1 The Committee received memoranda in thousands from organizations/individuals expressing views on the Bills. More than one hundred organizations/individuals submitted their memoranda to the Committee. A list showing organizations/individuals who submitted memoranda is at Annexure-III.

3.2 The Committee also received an overwhelming number of requests seeking to express their views before the Committee. The Committee gave opportunity to most of the organizations/individuals who requested for an audience before it. The organizations/individuals were classified into certain categories and out of each such category individuals having a representative character were invited to speak before the Committee. Care was taken to ensure that every shade of opinion got an opportunity to make their views before the Committee. A list of organizations/individuals who appeared before the Committee is at Annexure IV.

3.3 The Committee also heard local MPs, namely, Shri Dawa Narbula, representing Darjeeling constituency in the Lok Sabha and Shri Saman Pathak representing State of West Bengal in Rajya Sabha; and also former Member of Rajya Sabha from West Bengal, namely, Shri Ananda Pathak.

3.4 The views expressed in the memoranda as well as the oral evidence by witnesses are divergent and diametrically opposite. Some have supported the Bills whereas an overwhelming majority has rejected them. Some other views also emerged before the Committee. The views have been summarized and listed below.

3.5 Viewpoints against the Proposed Legislations

3.5.1 The Bills conferring Sixth Schedule status to the Gorkha Hill Council, Darjeeling are vehemently opposed on the following grounds:

- (i) In order to accord Indian identity to the entire Gorkha population in India and also to recognise their patriotism and services to the nation, a separate state for Gorkhas be created at the earliest by taking together Darjeeling district and adjoining areas of Duars under the provision of Article 3 (a) of the Constitution;
- (ii) Without a State of their own, the Gorkha community in India is always being misconceived and misconstrued as outsider and immigrant;
- (iii) The Administrator, DGHC is an appointee of the State Government. Hence making him a party to the tripartite agreement will in no way reflect people's participation and fulfill their aspirations;
- (iv) The Bills defy common logic as they seek to declare an area with nearly seventy per cent non-tribal population as a tribal area and then to extend Sixth Schedule status to that area by Constitutional amendment;
- (v) A sizeable population of Gorkhas resides in the Siliguri sub-division whereas only 18 Mouzas are intended to be made part of the proposed Gorkha Hill Council, Darjeeling. This would further divide the people of the region and also make the region economically backward;
- (vi) As per the para 10 (ii) of MoS, election to DGHC and panchayat bodies in DGHC areas were to be held in accordance with the relevant provisions of the Constitution/existing laws, as an interim step. Surprisingly, it has not been accomplished before the Bills are taken up in Parliament, thus breaching the chronology of the process without any logic;
- (vii) Implementation of the Sixth Schedule Amendment Bill in the present form will lead to compartmentalization between tribals and non tribals and between tribals of the region and create sharp divisions between them;
- (viii) Granting of Sixth Schedule status will deprive the population of the region from assimilating with the mainstream;
- (ix) According to Census 2001, the Scheduled Tribe population of Darjeeling district stood at 12.69 percent. There is almost three fold increase in the ST population in 2005, which was achieved after including Tamangs and Limbus under the ST category. The ground on which these two communities were included in the ST category is unknown;

- (x) Hill people including Scheduled Castes and Scheduled Tribes apprehend that the Bill if passed will bring about division, disharmony and disunity among the people, disturb the peace and tranquility and it will ultimately lead to destabilization of the strategic area, the Siliguri corridor, which connects the mainland to the North Eastern Region;
- (xi) The passage of these Bills and imposition of Sixth Schedule status will lead to violence and bloodshed in the entire region;
- (xii) A disturbed Darjeeling will affect Sikkim and a turbulent Nepal with a similar populace existing in the west of Darjeeling Hills with a potential spill over of its Maoist plague which, according to Hon'ble Prime Minister, is the greatest threat to internal security in our country;
- (xiii) If at all the Sixth Schedule is to be imposed in DGHC areas it should be done by a referendum which would be the proper democratic step.

3.6 Viewpoints in favour of the Proposed Legislations

- (i) The Bills and conferment of Sixth Schedule status to the Gorkha Hill Council, Darjeeling are necessary for the region;
- (ii) Bloodbath is imminent in case the Bills are stalled;
- (iii) Functioning of DGHC could not redress the grievances of the public and the hopes and aspirations of the people could not be fulfilled. To provide Constitutional recognition and safeguard to DGHC, passage of these Bills is important and it would lead to the development of this area;
- (iv) The frustration among the people of Darjeeling was due to not holding of elections for a long time. These Bills may be passed with some amendments like giving power to the Council to establish heavy industries; giving representation to its members in the WB Planning Commission and Central Planning Commission and giving specified package to the Council;
- (v) Power should be decentralized in the new administrative set up;
- (vi) An elected body of Gorkha Hill Council may be constituted at the earliest. Self-governing bodies like municipalities, panchayats, etc. shall be operationalised through elections at the earliest;
- (vii) The Bills may be passed immediately.

3.7 The Committee was informed that the West Bengal Legislative Assembly had adopted another Resolution on "Inclusion of Darjeeling Gorkha Hill Council in the Sixth Schedule to the Constitution of India" on 19th December 2007. A request was received from the Government of West Bengal requesting the Chairperson of the Committee to grant audience to an All Party Delegation of the West Bengal Legislative Assembly which would brief her on the subject. The Chairperson placed the request before the Committee as she thought it appropriate that the Delegation may if it so desires, meet the full Committee instead of its Chairperson. The proposal of the Chairperson was endorsed by the Committee. The suggestion was accepted by the State Government and the All Party Delegation from the West Bengal Legislative Assembly led by Shri Ashok Bhattacharya, Minister-in-Charge Municipal Affairs and Urban Development Department, Govt. of West Bengal interacted with the Standing Committee in its sitting held on 21st January, 2008. The delegation informed the Committee that the West Bengal Legislative Assembly had adopted two resolutions regarding inclusion of Darjeeling Gorkha Hill Council in the Sixth Schedule; one on 16th March 2006 and the other on 19th December 2007. The members of the delegation consisting of four Ministers and eighteen MLAs while supporting the Bills requested the Committee to submit its report at the earliest so that the Bills could be enacted by Parliament soon after it meets for the Budget Session and elections held and the new Council under the Sixth Schedule could be set up which would help in restoring peace and normalcy in Darjeeling hill areas. It was also stated by the members of the delegation that delay in passage of the Bills would cause frustration amongst the people and send confusing signals.

3.7.1 The members of the delegation further stated that the Gorkha Hill Council under the State Act did not have the constitutional sanctity as, in the Indian Constitution there was no provision of autonomous "District Council" outside Sixth Schedule. They added that since the existing DGHC was not a constitutional body, a lot of confusion took place between the State Government and the DGHC in terms of power sharing. The members of the delegation were of the view that the Constitutional sanctity granted through the

Sixth Schedule would take care of the people's sentiments. They further added that early passage of the Bills was imperative to end the turbulence in the hill areas and any further delay could lead to unrest among people which may also be violent in nature.

3.8 Other viewpoints on the Proposed Legislation

- (i) The territory of Duars may also be included in any proposal that seeks to solve the problem of the area as these are contiguous areas of the Darjeeling district and linguistically united by the Nepali language;
- (ii) There is no provision in the Sixth Schedule for the constitutional rights and privileges of the Scheduled Castes. While reserving 10 seats for Scheduled Tribes, 15 for non-Tribals and 3 open, no seats have been kept reserved for Scheduled Castes inspite of its substantial population. There should be reservation for women in the Council.
- (iii) The Bill seeks to empower the West Bengal Government to nominate five members with equal powers including voting rights and privileges to the Council. West Bengal Government intends to use the nominations to tilt the balance in the proposed Council in its favour in forming the Executive Council. This might lead to confrontations.
- (iv) Instead of Sixth Schedule status, status of Union Territory may be granted to the Darjeeling Gorkha Hill Council areas and it should be governed by Central Government.
- (v) Special provision with respect to the Darjeeling Gorkha Hill Council areas may be provided by inserting a new Article 371J in the Constitution.
- (vi) Darjeeling Gorkha Hill Council areas should remain a part of the State of West Bengal duly governed by it and no Sixth Schedule status be granted to the area so as to defuse the prevailing tension in the region.

- (vii) Both the demands of Sixth Schedule and separate State of Gorkhaland would mean ultimate partition and disintegration of West Bengal. Both the demands should be rejected.
- (viii) Darjeeling Gorkha Hill Council may be abolished and the Darjeeling District put directly under state administration, with Army protection.
- (ix) Clause-VII of the Indo-Nepal Treaty of 1950 may be repealed to prevent foreign Nepali infiltration.
- (x) All foreign Nepalese should be identified and pushed back to Nepal, as per the Foreigners Act, 1964 as is being done in the case of illegal Bangladeshi migrants.
- (xi) Border outposts be set up with barbed-wire fencing. Visa be introduced in the Indo-Nepal border as is the case with Bangladesh.

3.9 Committees' proposed visit to Darjeeling:

3.9.1 Almost all the witnesses representing groups/organizations who appeared before the Committee and the organizations/individuals who had sent written memoranda, requested the Committee to visit Darjeeling to make on-the-spot study of the area and assess the situation at the ground. Since divergent views had been expressed before the Committee and it had been suggested by some that parties/organizations which opposed the Bills were splinter groups of GNLF and were politically motivated, it unanimously proposed to visit Darjeeling and Siliguri in its sitting held on 21st January 2008, to assess for itself the actual situation prevailing therein. The Committee also decided to hear the Administrator, DGHC and the representatives of the Government of West Bengal at Kolkata while returning from Darjeeling. The Committee proposed to undertake the study visit, tentatively, from 6th to 8th February, 2008.

3.9.2 As per practice, the Chairperson of the Committee had sent a formal request to the Chairman, Rajya Sabha seeking permission for the Committee's proposed visit. However, the Chairman, Rajya Sabha in his minutes dated 25th January 2008 marked to

Secretary General/Secretary, Rajya Sabha Secretariat referred to a communication dated 24th January 2008 alongwith a report from Darjeeling Police authorities, indicating the prevailing circumstances and a request to review the proposed visit of the Committee. In the said minutes the Chairman, Rajya Sabha suggested that in the given circumstances, it would be appropriate that the Committee may review the proposed visit.

3.9.3 The note of the Chairman, Rajya Sabha based on the report of the Government of West Bengal, Home Department, suggesting that in the context of the circumstances prevailing in Darjeeling, the proposed visit of the Standing Committee be reviewed, was considered by the Committee in its sitting held on 31st January 2008. As desired by the Chairman, Rajya Sabha the Committee reviewed its proposed visit to Darjeeling and decided to drop the proposal.

3.9.4 After the Committee decided to drop the proposed visit, several organizations had written to the Chairperson of the Committee expressing their dismay over the cancellation of the visit of the Committee to Darjeeling. The main submissions made therein are as under:-

- (i) This move of the Committee deprived the people of Darjeeling and Duars of being heard before the Committee;
- (ii) Law and order problem might have been raised by the State Government to discourage the visit of the Committee. Nothing could be farther from the truth. Darjeeling is completely tranquil. There is absolute peace and harmony;
- (iii) As the Standing Committee did not physically visit Darjeeling to gauge the situation prevailing on the ground there, any report/recommendation made on the fate of the people of Darjeeling cannot be realistic. It was incumbent upon the Committee to actually feel the pulse of the majority of the people before coming to any conclusion in this regard;
- (iv) Volunteers of Gorkha Janmukti Morcha have started fast unto death programme in support of the following demands:
 - (a) That the Sixth Schedule Status of the Constitution should not be implemented in the Darjeeling Hills. Forcible imposition of the Sixth Schedule status will bring political unrest in the Hills.

- (b) That Shri Subash Ghisingh should be removed immediately from the position of Caretaker Administrator of DGHC. He should not be given any more extension.
- (c) Parliamentary Standing Committee on Home Affairs should visit Darjeeling to assess the actual situation before sending the report to the Lok Sabha.

CHAPTER-IV

Oral Evidence of Administrator, Darjeeling Gorkha Hill Council

4.1 Shri Subhash Ghisingh, Administrator, DGHC who was one of the signatories to the Darjeeling Accord 1988 as well as the Tripartite Agreement i.e Memorandum of Settlement (MoS) 2005, was invited to appear before the Committee for evidence.

4.1.1 The Administrator, DGHC, raised various issues concerning the Darjeeling Accord and the present Bills. The submissions made by him are briefly as under:-

- (i) After signing of the MoS, 2005 there has been undue delay in implementing the provisions of MoS leading to non fulfillment of expectations from the leadership;
- (ii) Sixth Schedule is being opposed by the disgruntled people;
- (iii) Only a few section of the people have started the movement stating that Sixth Schedule could cause division among various communities of Gorkhas;
- (iv) There is inherent fault in the MoS. Reservation for Scheduled Tribes and non-Scheduled Tribes community was opposed (by the Administrator) vehemently at the time of signing of MoS, Government was told that all 28 constituencies seats should be open to all;
- (iv) Any reservation, if required at all, should be confined to the category of 5 members to be nominated by the Governor;
- (v) Darjeeling being attached to international borders touching Nepal, Bangladesh, China and Bhutan has got strategic and diplomatic significance for the country. Traces of international spying network have been found which has been accordingly communicated to the Government of West Bengal and Government of India;
- (vi) The calculative move and mission of international spying network hovering around Darjeeling have the ulterior motive of annexing Darjeeling. It was in this context, Administrator, DGHC wanted the conferment of Sixth Schedule to keep the people of Darjeeling pleased and integrated with India with a sense of belongingness;

- (vii) Removal of Administrator, DGHC would pave the way for gaining ground by the international spying network who have sinister design and mission;
- (viii) Original demand of GNLF was a separate state of Gorkhaland. However, due to amicable settlement Darjeeling Gorkha Hill Council became the reality which functioned for 15 to 16 years;
- (ix) DGHC practically worked as only a developmental agency for construction work, salary dispensation, as a result of which political aspirations of the people could not be fulfilled;
- (x) The prevailing emotional outburst of the people of Darjeeling can be attributed to the delay caused in introducing the proposed Bills in the Lok Sabha after signing of MoS. The Government of West Bengal and the Government of India took undue time to agree to confer the status of Sixth Schedule to Gorkha Hill Council;
- (xi) Due to non fulfillment of political aspirations and delay caused in implementation of provisions of MoS, frustration among the people is mounting. Fuel is being added by international spying network active in the region. Armed guerrilla training in the deep forest is going on along with procurement of arms. The situation in the region has become explosive which needs to be tackled with administrative suave and political willingness to give the due to the people of Darjeeling;
- (xii) Since the political aspiration of the people of Darjeeling could not be fulfilled with the mechanism of DGHC, he requested the Government that either the existing DGHC be upgraded by entrusting more power by conferring Sixth Schedule status or special provision under Article 371J of the Constitution may be considered;
- (xiii) To save the Darjeeling from regional turbulence and falling prey to international spying network, cooperation of Government of India and Government of West Bengal is essential as DGHC has no power pertaining to Home and Defence;
- (xiv) Opposing the proposed Bills amounts to support to the international spying network seeking to balkanize. Therefore, conferment of the Sixth Schedule status to the DGHC is the appropriate route to ward off danger from international spying network;

- (xv) As per Census 1931, all the Gorkha communities were Hill tribes. But thereafter the "Limbus" community has been conferred tribal status while "Rai" community was left out. Similarly, "Tamang" was given tribal status, while "Gurung" has been considered as non-tribal community;
- (xvi) People residing around Darjeeling have composite culture and tribal character with their old practices. They recognize the existence of spirits and worship them. Such culture and religious practices are typically tribal in character. Even the Britishers recognized the fact. It was on this basis that he approached the Government to recognize the whole Gorkha community as hill tribals;
- (xvii) Conferment of Sixth Schedule to the proposed Gorkha Hill Council, Darjeeling on the pattern of Bodoland Territorial Council with sufficient and appropriate power would ensure sustenance and survival of Darjeeling. Therefore, sooner the proposed Bills are passed by the Parliament, the better it would be in the interest of the nation and the people of Darjeeling;
- (xviii) The people who opposed the Bills are deliberately and baselessly doing so to make it a political issue for their personal interest which was neither in the interest of Darjeeling nor in the interest of the nation;
- (xix) Majority of the people of Darjeeling still desired the Sixth Schedule.

4.2 Responding to the Member's queries, the Administrator, DGHC gave the following replies:

- (i) Provision for election to the DGHC and Panchayat Bodies was there in sub-clause (ii) of Clause 10 of the Agreement under Interim Administration and it was contemplated that election would be conducted just after the signing of MoS. However, that did not happen;
- (ii) Duars should also be included in the Council; and
- (iii) He was not satisfied with the draft MoS and registered his protest. However, having realized that grant of statehood was not forthcoming and that constitutional recognition to the Council was very crucial at that point of time, he signed the settlement.

CHAPTER-V

Oral Evidence of Representatives of Government of West Bengal

5.1 The Chief Secretary and other representatives of the Government of West Bengal appeared before the Committee and tendered oral evidence on the two Bills. The oral-evidence of the representatives of Government of West Bengal was the penultimate round of oral testimonies. During the rounds of oral deposition the Committee came across conflicting and divergent views on the Bills. On the one hand, the overwhelming majority of the witnesses objecting to the Bills were of the view that in case the Bills were passed there would be civic unrest and bloodshed in the region. On the other hand, some witnesses vehemently supported the Bills stating that the Bills would fulfill the aspirations of the local people. The latter group averred that in case there was further delay in passing the Bills, there would be bloodshed in Darjeeling. It was in that backdrop that the Committee heard the views of the Chief Secretary and other officers of Government of West Bengal.

5.2 The Chief Secretary, Government of West Bengal stated that the two Bills were in line with the tripartite MoS signed by the Government of India, Government of West Bengal and the Administrator, DGHC on December 6, 2005. Therefore, the Government of West Bengal was fully in agreement with the provisions of the Bills including the setting up of an Interim Council till the election to autonomous district council under the Sixth Schedule was held. To a poser of the Committee as to how Shri Subash Ghisingh could be considered as the true representative of the people of Darjeeling as he was merely an appointee of the State Government at the time of signing of the MoS, the Chief Secretary responded as follows :

"The tripartite Memorandum of Settlement,, was signed on December 6, 2005., at that time, Mr. Subash Ghisingh appeared to be or, in our assessment, he was the undisputed leader of Darjeeling. Elections to the DGHC were held once after signing of the 1988 Memorandum. After that twice it was held, but later on, it was not held mainly at the insistence of Mr. Subash Ghisingh because he wanted a constitutional status for the hill areas of Darjeeling. We

amended the DGHC Act and provided for constitution of an Administrator or a body of Administrators and Mr. Subash Ghisingh was appointed Administrator for the first time on March 26, 2005. His term has been extended by six months five times since then. Now, when the Memorandum of Settlement was signed in 2005, the State Government's expectation was that, at least, within a period of one year, the constitutional amendment would be carried out. It was not done. Because of procedural reasons or some other reasons, it did not happen. As a result of which, there have been a lot of misgivings among the people of Darjeeling now as to whether Sixth Schedule status will at all be given to Darjeeling hill areas or not. This created an atmosphere of uncertainty, but I would still say on behalf of the State Government that we are aware of the situation and we have discussed with our Chief Minister and Council of Ministers. Our assessment is that if this Constitutional Amendment is carried out within a very short period of time, the situation in Darjeeling will come to normalcy. There are a large number of fence sitters who are hesitant about what will happen in the future. So, they will all fall in line and take part in the Sixth Schedule Autonomous District Council elections to be held thereafter".

5.3 The Chief Secretary, the Government of West Bengal further added:

"In this connection, I would like to draw your attention to the Memorandum of Settlement which was first signed in 1988. There, in the Preamble itself, it has been mentioned that as a result of this Memorandum of Settlement, the Settlement that was made with the Gorkha National Liberation Front, the GNLFF had agreed to drop the demand for a separate state and following that all these things happened in Darjeeling. So, I think that with the conferment of the constitutional status on the hill areas of Darjeeling, there will be a permanent solution and things will become absolutely normal. Now, it is our assessment that because of this delay there is a lot of resentment among the people and there are doubts in their minds as to whether this Sixth Schedule status would be given to the hill areas at all."

5.4 The Chief Secretary further averred that "it was true that the Administrator was an appointee of the State Government at the time of signing of MoS in 2005. He was the undisputed leader of the hill region of Darjeeling, therefore, the State Government's stand was that if at all any agreement was to be signed it should be with Shri Subhash Ghisingh".

5.5 The attention of the Chief Secretary was then drawn to clause 10 of MoS which inter alia provides for holding election to DGHC and Panchayat Bodies in the DGHC

areas in accordance with relevant provisions of the Constitution/existing laws of Central/State Governments, in the interregnum between the MoS and the constitution amendment, and was asked to explain the reasons for not holding the election. The Chief Secretary replied that the State Government was anticipating that the constitution amendment and the parliamentary acts would be carried through quickly. Therefore, it was not considered necessary to conduct the election as per said provision of MoS which was subsequently amended on 22nd March 2005 to incorporate a provision for appointment of Administrator and also for providing extension of his term by six months at a time.

5.6 In support of that stand the Chief Secretary made the following statement:

"So, as all hon. Members are aware, there was a situation where the State Government had to take a decision, not purely from administrative point of view, but taking into consideration all other factors operating at that point of time, like what the situation could be, the need for maintaining peace and tranquility in the hill areas of Darjeeling, and so on. So, all these factors were taken into consideration."

5.7 When the Chief Secretary was asked whether at any given point of time during the fifteen years of functioning of the Darjeeling Gorkha Hill Council, any resolution seeking conferment of the Sixth Schedule or Statehood was passed, he told the Committee that he was unaware of any such resolution. A Member while pointing out that a certain percentage of tribal population was required to meet the criteria for conferment of the Sixth Schedule status to an area and enquired as to since when the Government of West Bengal started contemplating Sixth Schedule status to Darjeeling. The Chief Secretary, the Government of West Bengal explained as under:-

"after 1988 elections took place, two other elections were held, and, within the extended term, the fourth election to the General Council of the Darjeeling Gorkha Hill Council was to be held before March 26th 2005, and, during this time, Mr. Subash Ghisingh, the Chairman of the Darjeeling Gorkha Hill Council started demanding the Sixth Schedule on the basis that there is a demand for constitutional status for DGHC or the hill areas of Darjeeling. Then only the State Government started examining the issue. At a time even before he started demanding, there was a proposal from DGHC for declaring two

communities, Limbus and Tamangs, as tribals in 2004-05 and that was being examined by the Government of India. So, finally, sometime in 2005, they declared these two communities as 'tribals'. We made a brief calculation and we have given papers as to how we did that. We found that if we added the population of Limbus and Tamangs in the scheduled tribe population, it came to about 31.4 per cent of the total population of tribal hill areas. On the basis of that and on the analogy of the Bodoland Autonomous District Council, we supported the stand taken by the Administrator, DGHC and we requested the Government of India to examine this issue, and, as a result of that,, the Memorandum of Settlement was arrived at."

5.8 Since the Constitution originally intended application of Sixth Schedule to the State of Assam and later on to states of Tripura, Mizoram and Meghalaya, and that the proposed Bills intended to extend it further to Darjeeling Hills, a query was put to the Chief Secretary, whether any exercise was undertaken to examine the constitutional sanctity of the two Bills. The Chief Secretary replied that the requisite action was undertaken by the Ministry of Home Affairs which in turn consulted the Ministry of Law & Justice for expert legal opinion.

5.9 A Member of the Committee questioned the urgency of suddenly identifying 'Limbus' and 'Tamang' as hill tribes and leaving out two other Gorkha communities 'Rai' and 'Gurung' without waiting for the next census and the such exercise was undertaken by the Cultural Research Institute of Kokatta instead of the National Commission for Scheduled Tribes. The Chief Secretary clarified as under:-

"It was because the question of conferment of constitutional status was very much there in the minds of the State Government and the Government of India..... The Cultural Research Institute is under the Backward Classes Welfare Department (Government of West Bengal), which looks after Scheduled Castes, Scheduled Tribes and also other Backward Classes. It is not merely for other Backward Classes. And we did a quick job in the sense that we took the 2003 electoral rolls, and from that on the basis of"

5.10 The Chairperson asked the Chief Secretary that by transferring only 18 Mouzas of Siliguri Sub-Division to GHC, a large number of tribal population would be left out of

the jurisdiction of GHC and a sizeable non-tribal population in the area proposed to be included, would come within the purview of GHC.

5.11 Replying to the Chairperson's and Members' queries, the Chief Secretary responded as under:-

"The Hill areas of Darjeeling have certain special characteristics; they have certain cultural affinities within themselves, which really distinguish them from the rest of West Bengal. And the entire thing was done; you are fully aware of this that there has been a persistent demand for a separate Statehood for the hill areas of Darjeeling. And the State Government assessed that conferment of Sixth Schedule, or initially, it was the Darjeeling Gorkha Hill Council, according to a State Act, was a good alternative to the ultimate demand of Statehood. So, that was done in order to ensure that there is no further demand for Statehood for Darjeeling. That is the assessment."

5.12 In the same argument, Chief Secretary made the following observations:-

"the point is that supposing the Sixth Schedule status could not be conferred and the Bills are not passed. Then, what would be the situation like? Then, either we have to go back to the current DGHC Act, hold elections and run it..... But our assessment is, the fallout will be something else. There will be a united decision; their agitation for a separate Statehood. That is the assessment of the State Government..... Because they will say that despite all our demands, DGHC could not function and Sixth Schedule status could not come; so, the only way out is to go for an agitation to have a separate State."

5.13 The Chief Secretary's attention was drawn to the fact that nineteen out of the twenty organizations that appeared before the Committee opposed the Bills taking the stand that the proposed Bills were creating a division between the Gorkhas and non-Gorkhas and amongst the Gorkhas themselves, notwithstanding the fact that all Gorkha communities were united by a common culture and ethnicity. Since the Bills were creating division between Gorkhas and Non-Gorkhas, Tribes and Non-Tribes, those were unacceptable.

5.14 The Chief Secretary replied as under:-

“No, I think the divide..... that the hon. Chairperson is talking of is not there because Gorkhas, whether they are tribals or whether parts of them have been declared tribals or not, constitute more than 90 per cent of the population of the hill areas. So, there is no question of a divide within the Gorkhas.”

5.15 The attention of Chief Secretary was drawn to the submission made by Shri Subash Ghisingh, Administrator, DGHC, that he was unhappy with the provision of reservation for tribals and non-tribals in the MoS and he wanted all the twenty eight seats to be thrown open. He had gone on record before the Committee that he had signed the MoS because he wanted the Sixth Schedule status at any cost. The Chief Secretary in response clarified that the proposed Bills did the right thing by having provision for ten reserved seats for STs. The Chief Secretary said that the provisions for reservation for scheduled tribes in the Bill was intended to fulfill the constitutional obligation while reservation for non-tribal communities were aimed at protecting the interests of that section of the society under the proposed GHC regime.

5.16 In regard to the charge of Darjeeling being the hotbed of international spying network, vehemently and repeatedly levelled by the Administrator, DGHC and pleading for conferment of Sixth Schedule at the least, to make the people happy, the Chief Secretary clarified that the Administrator, DGHC was over-blowing the issue and the Darjeeling Hill areas and the entire North Bengal were under surveillance by the State Government, intelligence agencies as well as by the Central I.B, and the State Government was fully aware of the situation prevailing there.

5.17 Responding to a Member's query whether the West Bengal Government was not trying to create "a state within a state" the Chief Secretary replied:

“This kind of a provision already existed in the Constitution. The Government had not agreed to something which was outside the purview of the Constitution. So we are trying to say that the Sixth Schedule status may be there as it is in some States of the North-East. It is in a way a State within a State. They have a lot of

autonomy because of their special characteristics. We protect their cultural affinities. This is the provision which is there in the Constitution."

5.18 One Member enquired whether Shri Subash Ghisingh was enjoying the support of the majority of the people of Darjeeling in view of the fact that nineteen out of twenty groups who appeared before the Committee, opposed the Bills and whether the Government of West Bengal had ever assessed the support base of the Administrator. The Chief Secretary replied as under:-

"The exact support enjoyed by any political leader can only be assessed through the process of election. But, as there has been no elections since 2004, it is very difficult to say officially or on the basis of logic as to whether he enjoys overwhelming support or not. The only point I wish to make before here is that after signing the Memorandum of Tripartite Settlement in December, 2005, the expectation was that the constitutional status would be conferred very soon within a period of one year. That was our expectation, but this did not happen. That actually created a lot of confusion, a lot of doubts, in the minds of the people of the hilly areas of Darjeeling, that the State Government says something, but the Central Government never does it. Our assessment from intelligence sources is that conferment of the Sixth Schedule is going to solve a lot of problems, and a large number of people will support this and they will take part in the elections."

5.19 A question was posed to the Chief Secretary also whether it would not be better to conduct election first under the existing set up, which was otherwise pending since 2005 and thereafter the elected representatives decide whether they wanted Sixth Schedule or Gorkhaland or something else, to maintain peace and order. The Chief Secretary stated as under:

"We had initially given some powers to them in 1988, later on we carried out amendment and gave further powers and practically barring reserve forest, law and order, police and higher education, we have transferred all the powers, all Departments to DGHC. In fact, the proposed Sixth Schedule will not make much of difference between the present DGHC and the Sixth Schedule so far as exercise of powers and functions is concerned. But, there is a big difference. DGHC is a statutory body set up under an Act of the Legislative Assembly. If Sixth Schedule is brought into play in the hill areas it will be a constitutional body and there is a lot of difference in the perception of the people, they would like to have constitutional status for the Hill areas. That is what Mr. Ghisingh has been

saying right from the beginning to which we also agree because it will be easier to convince the people."

5.20 When the Chief Secretary's attention was drawn to the idea that several States may demand similar constitutional status for certain areas in the respective States and it may open the Pandora's Box, the Chief Secretary stated as under:

"Sir, you have raised a very large issue. The only thing I would like to say is that so far as Darjeeling hill areas are concerned, historically, there has always been a demand for treating Darjeeling areas and the Gorkhas of Darjeeling somewhat separately from the rest of the country and rest of Bengal. This dates back to Morley-Minto Reforms. There also they had represented for a separate identity for them. So, over a period of time, they have been staying with the West Bengal Government and we tried to accommodate their aspiration that brought us to this State of DGHC and they are now asking for Sixth Schedule status. We think we should consider this practically. So far as the rest of the tribal conglomerates and concentrations are there in our State, their integration with the general population is much higher; much closer compared to the hill areas of Darjeeling. Since they have been agitating for long, I think, this is a practical solution for the problem."

5.21 The Chief Secretary supporting the Sixth Schedule status to Darjeeling Hill stated as under:

"Madam, I can tell about the situation existing in Darjeeling as of now. It is a fact that an agitation of the Jan Mukti Morcha did take place, but everybody is now waiting with baited breath to see what this august body is going to decide about the Sixth Schedule. The agitation is presently not there. They are waiting for the Constitution amendment to come or not to come. By and large, the people of hill areas of Darjeeling are not in favour of violence per se. They want some decision by the Government of India. As has been rightly pointed out by the hon. Member, the State Government has unanimously taken a decision that the entire legislation should be brought forward."

CHAPTER-VI

Issues Raised and Responses of Authorities

6.1 The Home Secretary appeared before the Committee on 18th February 2008 to clarify various issues raised in the Bills. The Committee also received written replies on certain other issues. On the question of non-provision of reservation to Scheduled Castes in the proposed Council despite the SCs having a population of one and half lakh, the Home Secretary stated that the same was not provided in the present Council and also in the proposed Council. He explained that in the proposed Council, ten seats are reserved for Scheduled Tribes, fifteen are reserved for non-tribals, and three seats are open to all and besides this five seats are for nominated representatives. Unrepresented communities would be given priority in the category of nomination. He informed the Committee that the SCs constitute 5.7 % of the total population there and through this arrangement their representation could be ensured.

6.2 On being asked as to whether any Commission was constituted by the Government of India or by the State Government to make an assessment before conferring the ST status to 'Tamang' and 'Limbus', the Home Secretary stated that those communities had already been given tribal status and were already listed as STs in Sikkim and the inclusion thereof was not intended to enhance percentage of the tribal population in Darjeeling so as to confer Sixth Schedule status on it.

6.3 The Additional Secretary & Registrar General of India (RGI) stated that the 'Lokur Committee' set up by the Government of India in 1965 which had surveyed the whole country, recommended 5 criteria to confer ST status to any group. The Cabinet Committee on Tribal Affairs had accepted these criteria in 1999 which were slightly amended in 2002. According to it, any State Government can send a proposal to the Central Government to confer ST status to a group or groups. Then, it would be examined by the RGI, which would submit its recommendations to be scrutinized by National Commission for Scheduled Tribes and submit its report to the Central

Government. The Central Government would then take a final decision on it. He further stated that 'Tamangs' and 'Limbus' were conferred tribal status through this process only.

6.4 As already stated elsewhere in this report, Sixth Schedule status is intended for the North-Eastern region. The Ministry of Home Affairs was therefore asked as to whether that Schedule could be extended to any other State/area outside the North-East and in a non-tribal area and whether Government satisfied itself about the *intra vires* of the proposed move to extend the Sixth Schedule status to Darjeeling Gorkha Hill Council. In response, the MHA in its written reply stated that both the Department of Legal Affairs and Legislative Department of the Ministry of Law and Justice were consulted at the stage of preparation of Cabinet Notes and neither of the Departments had found any legal or constitutional objection to carry out the proposed amendments.

6.5 Since the Administrator, DGHC is apparently an appointee of the State Government, the Ministry was asked as to how such an appointee could represent the people of Darjeeling to sign the Memorandum of Settlement (MOS). The Ministry of Home Affairs in the written answer stated

“Shri Subash Ghisingh who is the President of the GNLF was the Chairman of the DGHC for more than 15 years as an elected representative. All the three members of the Legislative Assembly from the Darjeeling Hill area belonged to the GNLF. Therefore even though the administrator was appointed by the State Government as an interim arrangement till the regular elections are held, Shri Ghisingh who was appointed as Administrator was a political functionary and can be considered as representative of hill population to sign the Memorandum of Settlement.”

6.6 The Ministry was asked whether it would not be desirable to make separate provisions with respect to the hill areas of Darjeeling District in the State of West Bengal on the analogy of special provisions made in respect of certain States/regions in Part XXI of the Constitution. The Ministry of Home Affairs in the written answer stated-

“Various options for granting greater autonomy to Darjeeling Gorkha Hill areas were examined during discussions with Shri Ghisingh and also during the Tripartite Review Meetings, prior to MOS of 6.12.2005. At one stage an attempt

was made to make separate provision with respect to Hill areas of Darjeeling District on the analogy of special provisions made in respect of certain states/regions in Part XXI of the Constitution by inserting Art. 371J. However, in the 4th Tripartite Meeting held on 1.7.2005, the proposal was not accepted. Thereafter it was felt that inclusion of Darjeeling Hill areas within the Sixth Schedule of the Constitution would perhaps be the best option to provide greater autonomy to the Council and conferring constitutional status on the hill areas of Darjeeling.”

6.7 Eighteen mauzas of Silligui sub-division are intended to be made part of the Gorkha Hill Council (Darjeeling). The Committee was given to understand that a sizeable portion of Gorkhas reside in Siliguri sub-division but the entire sub-division of Siliguri was not included in the GHC. When the Ministry of Home Affairs was asked to explain the reasons thereof, the MHA stated that:

“In the 4th Tripartite Meeting held on 1.7.2005, the issue of including the entire district of Darjeeling including Siliguri sub-division within the Sixth Schedule jurisdiction was considered. This was, however, not accepted by the State Government. It was felt that 18 Mouzas of Siliguri sub-division, which have a majority of Gorkha population, have been made part of the DGHC. Since Gorkhas are not predominant in other parts of the sub-division, the inclusion of entire Siliguri sub-division in the DGHC was not considered justified”.

6.8 When the Ministry of Home Affairs was asked to comment on some media reports about a reported proposal on constitution of the Second State Re-organisation Commission (SRC), the Ministry in the written reply stated that the Government was 'yet to take a decision in the matter'.

This issue was again raised in the meeting of the Committee on 18th February 2008, in response to which the Home Secretary stated as under:-

“Madam, on the issue of the media reports on creation of SRC, I can tell you with complete clarity that there was no such statement issued or indicated by the Government or the MHA. The Ministry even in a written reply to a question raised in Parliament, stated that the Government has yet to take a decision in the matter.”

CHAPTER-VII

Issues Raised and Observations of Committee

7.1 The Committee notes that two diametrically opposite views have emerged on the Bills. One group strongly supported the Bills and emphasized for early passage of the Bills and conferment of Sixth Schedule status to Darjeeling Hill areas, whereas another group with overwhelming majority among those who appeared before the Committee, vehemently opposed the Bills and the grant of Sixth Schedule status to the areas. The Committee also notes that both groups claimed that there would be law and order problem if their viewpoints were ignored.

7.2 It was suggested to the Committee that the Bills should be passed and the events that may unfold could be handled later on according to the circumstances. It was also suggested that instead of conferring Sixth Schedule status, the Council could be given more power and autonomy and the solution should be found within the State of West Bengal. According to them, the spirit of the Constitution was being changed by giving Sixth Schedule status to Darjeeling, and a new precedent was being created by extending the Schedule to an area beyond the NE region. It was further apprehended that in future it would have to be extended to other areas as the tribal areas of Orissa, Chhattisgarh, Jharkhand, Andhra Pradesh and Bihar may demand Sixth Schedule status. The Committee also notes the fact that there are already such resolutions from Arunachal Pradesh and Manipur and such demand may gain momentum.

7.3 The Committee notes the considered view of the Law Secretary on the issue of judicial scrutiny and legal sustainability of the Bill. According to him, Article 244 does not anywhere say that the Sixth Schedule is only confined to tribal areas and constitutionally there is no problem in extending it to West Bengal. The Committee also notes the views of the Home Secretary that the resolutions of Arunachal Pradesh and Manipur Governments were under consideration and would be considered in the light of other factors. He does not foresee opening of the Pandora's Box if the Sixth Schedule

status is given to Darjeeling and he was quite sure in his own assessment. However, the Committee is not convinced by the assertions of the Home Secretary.

7.4 The Committee also takes note of the viewpoint of both the State Government as well as the Home Secretary that those, who are opposing the Bills, are splinter groups, who had been together with the original party when the resolution for conferring Sixth Schedule status to the Council was adopted. It was further pointed out that as elections had not been held since long, it was difficult to assess who enjoyed the majority. The Committee is, however, not convinced by the reasons given by the representatives of Government of West Bengal and the Home Secretary for not holding elections since 1999 and for the delay in bringing forward the Bills. Home Secretary's assumption and the Chief Secretary's observations that those who are opposing the Bills are fence sitters and they will fall in line once the Bills are passed and elections are held, could have been verified had the Committee visited Darjeeling to assess the ground reality. **The Committee observes that if the Bills had been passed immediately after signing of MoS, the situation would have been different because Shri Ghisingh was the undisputed leader at that time. During the last two years, much water has flown down and non-holding of election has added fuel to the fire.**

7.5 The Committee cannot be oblivious to the opposition by the overwhelming majority of the representatives those appeared before it who asserted time and again that there would be bloodshed in the region if the Bills are passed. At the same time, the Committee cannot also ignore the official viewpoint that if the Bills are not passed there would be chaos, unrest and agitation. **The Committee has no mechanism at its disposal to find out the ground reality except depending on the official stand of the Central and State Governments. Had the Committee visited the area, it could have felt the pulse of the people. The Committee therefore, observes that it has no option but to go by what the Government tells it in regard to the prevailing situation or possible future law and order situation.**

7.6 The Committee notes the submission of the Home Secretary that the first tripartite discussions took place in 2001 when it was *inter-alia* decided that the DGHC would send its proposal through the State Government for its inclusion into the Sixth Schedule. But for some reasons, it took a long time. When the tripartite agreement was signed, people were aware of it and a lot of representations mainly on the issue of reservation for Scheduled Castes were received which were examined by the Central Government in consultation with the State Government. The State Government was of the opinion that it would not be appropriate to disturb the consensus which had been arrived at after prolonged interaction and deliberation. According to the Home Secretary, as a result of prolonged dialogue of over 20 years, two things had emerged; one was that the Statehood demand not accepted and two the best solution after considering various options has been to include the Council under the Sixth Schedule. He also asserted that if the whole matter was reopened, as people are opposing, the situation may become more serious.

7.7 The Committee also notes that one of the options discussed was to insert Article 371J in Part XXI of the Constitution. Regarding giving of special status under Fifth Schedule, the Committee has been given to understand that this was neither discussed nor contemplated. According to the Home Secretary special status under Fifth Schedule would have been totally confined to the Tribal Advisory Council only and the Fifth Schedule solution would not have been appropriate for Darjeeling Hill areas. The Law Secretary supplemented that the Fifth Schedule does not offer any autonomy in the real sense and there are no law making powers available to the Tribal Council.

7.8 In the context of the issue raised by Shri Ghisingh concerning working of international spying network in the sensitive area which is called the "chicken neck" of the country, the Committee notes the following submission of the Home Secretary:-

"In so far as any training etc. or the international espionage ring is concerned, all I can say is that the Government is continuously looking at every such kind of possibilities wherever they may be and we do not have any specific

information of this kind. I can assure you that if there is any information of that kind, it shall be seriously and promptly act upon.”

7.9 One school of thought pleaded for Gorkhaland on the argument that the trend in our polity is of creating smaller States and if smaller States like Uttarakhand, Jharkhand and Chhattisgarh can be created to the satisfaction of those regions, Gorkhaland can also be carved out. The Committee in this regard would like to clarify that the issue of a separate State of Gorkhaland is not its brief and it will restrict itself to the examination of the Bills. A overwhelmingly large number of people, who deposed before the Committee, were against the Bills and wanted Gorkhaland. But the Committee is bound by the mandate given to it which precludes it from making its recommendations on any matter outside the scope of the Bills.

7.10 The Committee observes that 'Police' and 'Public Order' are the responsibilities of State Government and the Committee enquired several times both from the State Government as well as Central Government as to whether the law and order would not deteriorate with the passage of the Bills because the evidence before it was to the contrary. Representatives of both Governments have asserted more than once that the enactment of the Bills would not lead to any major law and order problem and rather the local people would in course of time join the mainstream of electoral politics.

7.11 The Committee after taking into consideration the statements made by the Union Home Secretary and the Chief Secretary, Government of West Bengal before it to the effect that as per their assessment the passage of the Bills would fulfill the aspirations of people of Darjeeling; they would in course of time participate in the electoral process under the new dispensation of the Sixth Schedule; and that there would be no serious law and order problem in Darjeeling consequent upon the passage of the Bills by Parliament and that the apprehensions of civil unrest and turmoil in the hills in the event of conferment of the Sixth Schedule status were highly exaggerated and in view of the lack of any mechanism with the Committee to

verity the averments of the authorities, it had no other option but to rely on the official statements and decided to proceed with the clause-by-clause consideration of the Bills. In this context the Committee would like to caution and advise the Ministry of Home Affairs to make a fresh assessment of the ground realities all over again before proceeding with the Bills in the two Houses of Parliament.

CHAPTER-VIII

Clause-by-Clause consideration

8.1 The Committee accordingly in its sitting held on 19 February 2008 took up the clause-by-clause consideration of the Bills. The Committee first took up the Constitution (One Hundred and Seventh Amendment) Bill, 2007:

8.2 Constitution (One Hundred and Seventh Amendment) Bill, 2007:

Clause 2

8.2.1 This clause seeks to amend clauses (1) and (2) of Article 244 of the Constitution by substituting the words “and Mizoram” with the words “Mizoram and the areas under the Gorkha Hill Council, Darjeeling in the State of West Bengal”.

8.2.2 The clause is adopted without any change.

Clause 3

8.3.1 This clause seeks to insert a new clause after clause (6) in Article 332.

8.3.2 The Committee pointed out printing mistakes in line 8 and accordingly recommended that the words “in clause (6), after” should read as “after clause (6)”. The representative of the Legislative Department pointed out that a corrigendum has already been issued to that effect.

8.3.3 The Committee noted the statement of the representative of the Legislative Department and adopted the clause.

8.4 Clause 1, Enacting Formula, and the Title are adopted with some changes which are of consequential or drafting nature, namely, “2007” and ‘Fifty-eighth” to be substituted by “2008” and “Fifty-ninth”, wherever these occur.

8.5 The Committee thereafter took up the Sixth Schedule to the Constitution (Amendment) Bill 2007.

8.6 Sixth Schedule to the Constitution (Amendment) Bill 2007:

Clause 2

8.6.1 The Committee took up clause 2 of the Bill. Sub-clause (3) of clause 2 provides for insertion of following proviso in paragraph 1, after sub-paragraph (2) of the Sixth Schedule:-

"Provided that nothing in this sub-paragraph shall apply to the areas under the Gorkha Hill Council, Darjeeling in the State of West Bengal".

8.6.2 Sub-paragraph (2) in paragraph 1 of Sixth Schedule provides that if there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area inhabited by them into autonomous regions. The Committee noted that by adding the special proviso, the power of the Governor would be restricted. The Committee wanted to know the necessity of the proviso and the implications thereof.

8.6.3 In response to the query of the Committee, the MHA in their written comments stated as under:

"Sub-paragraph (1) of paragraph 1 of the Sixth Schedule makes provisions about autonomous districts for tribal areas enumerated in the table appended to paragraph 20 of the Schedule. Sub-paragraph (2) of paragraph 1 makes provision enabling the Governor to divide such area or areas into autonomous regions if there are different Scheduled Tribes in an autonomous district. Sub-paragraph (1) of paragraph 2 makes provision for the composition of District Councils in terms of the total number of elected and nominated members.

These provisions have remained unaltered with reference to Autonomous Hill Councils in respect of various areas which have been constituted under the Sixth Schedule to the Constitution from time to time. However in the case of the

Bodoland Territorial Council, the following two distinctive provisions were made:-

- (i) a provision was made whereby nothing in sub-paragraph (2) of paragraph 1 would apply to the Bodoland Territorial Areas District; and*
- (ii) specific provision was made in sub-paragraph (1) of paragraph 2 through a proviso indicating the composition of the Council which was different from the general composition stipulated in sub-paragraph (1) of paragraph 1.*

These changes were necessitated on account of the fact that the decision to include the areas of Bodoland Territorial Areas District had been arrived at as a part of an Accord in which, inter alia, the specific territories to be covered and the composition of the Council were also decided.

In the case of the Darjeeling Gorkha Hill Council also the proposal to bring it under the Sixth Schedule follows Tripartite discussions between Government of India, Government of West Bengal and Shri Subash Ghisingh (President, GNLG and Administrator, DGHC) and a Memorandum of Settlement in which specific provisions were made pertaining to the area to be brought under the Council (which was part of the District of Darjeeling) and the composition of the Council. Keeping this in view similar provisions as in the case of the Bodoland Territorial Council have been made with reference to non-application of sub-paragraph (2) of paragraph 1 of the Sixth Schedule.

The underlying logic is that where, on the basis of an Accord or Settlement specific provisions regarding the area and composition of the Council have been made in the Constitution, the existing provision in sub-paragraph (2) of paragraph 1 enabling the Governor to divide such area or areas into autonomous regions would no longer be required".

8.6.4 In view of the clarification given by the Ministry of Home Affairs, sub-clause (3) is adopted.

8.7.1 The Committee then took up sub-clause (4) of clause 2, which seeks to insert following proviso after sub-paragraph (1) in paragraph 2 of the Sixth Schedule:-

"Provided that the Gorkha Hill Council, Darjeeling in the State of West Bengal shall consist of not more than thirty-three members, of whom

twenty-eight shall be elected on the basis of adult suffrage out of whom ten shall be reserved for the Scheduled Tribes, fifteen for non-tribal communities, three open for all communities and the remaining five, of which at least two shall be women, having same rights including voting rights and privileges as other members, to be nominated by the Government from amongst the unrepresented communities of the areas under the Council."

8.7.2 The proposed proviso makes provision for reservation of seats in the proposed Council, which is in the nature of a local body. The Committee takes note of the fact that the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992 provide for reservation of not less than one third seats for women in Panchayati Raj institutions and urban local bodies. This special provision has also been incorporated in the Cantonment Act, 1924 by a recent amendment. The Committee pointed out that this constitutional reservation has not been provided in the elected category of the members of the Council.

8.7.3 The Committee accordingly, recommends that thirty three percent reservation for women should be provided in the composition of the proposed Council. Provision already exists for reservation of two seats for woman out of five nominated seats. The Committee, therefore, recommends that nine seats (three out of ten seats reserved for ST, five out of fifteen seats reserved for non-tribals and one out of three open seats) should be reserved for women out of the twenty eight elective seats.

8.7.4 The Committee further noted from the composition of the Council that there is no provision for reservation for Scheduled Castes. Darjeeling Hill areas have substantial SC population and there is no reason why reservation to SC should not be provided in the Council which is a constitutional requirement. The Committee is not convinced by the reply of the Ministry of Home Affairs that the SC population is

not sufficient to provide reservation to them. The Committee therefore, recommends that necessary reservation to SCs may be provided in the Council.

8.7.5 The Committee recommends that necessary amendments, may, accordingly be made in sub-clause (4).

8.7.6 Subject to the above, Clause 2 is adopted.

8.8 Clause 1, Enacting Formula and the Title are adopted with some changes which are of consequential or drafting nature, namely, "2007" and 'Fifty-eighth" to be substituted by "2008" and "Fifty-ninth", whenever these occur.

8.9 The Committee recommends that the Constitution (One Hundred and Seventh Amendment) Bill, 2007 and the Sixth Schedule to the Constitution (Amendment) Bill 2007 be passed taking into account amendments suggested in this chapter and the observations made in Chapter VII.
