

Rethinking Constitutional Measures for Managing Diversity: Working of Sixth Schedule in Meghalaya

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Constitutional provisions such as the Sixth Schedule are created not merely to grant autonomy to tribal communities but to manage ethnic diversity so that the larger aim of peaceful co-existence is achieved. However, existing socio-political unrests illustrate the inadequacy of these provisions. The functioning of ADCs in Meghalaya highlights that the existing mechanisms produce not only 'institutional feud' between three institutions namely, the State, ADCs and Traditional Institutions, it also creates interface between "modernisation" and "traditions" in areas where Sixth Schedules is being implemented. Moreover, the territoriality of the provision provides impetus to marginalise the minorities within minorities.

[Key Words: *diversity, autonomy, institutions, ADCs and territoriality*]

Introduction

The complexity of Indian society especially the cultural, linguistic and ethnic diversity was well read by the constitutional fathers. Efforts were made to evolve systems for granting recognition to diverse cultural values and needs of different communities. For instance, the complex nature of Indian society is one of the key reasons for them to consider about a federal polity of the country. One of the peculiarities of our federalism is that each state has been taken care of in accordance with its particular needs rather than having a uniform mechanism of administration for the whole country. 'The Indian State, in common with all other States, does not merely respond to crisis produced by uneven economic development and social change, but is itself the leading force providing differential advantages to regions, ethnic groups, and classes' (Brass 1994:32).

Indian constitution also incorporates many other provisions that aim not only at supporting and granting autonomy to ethnic communities but also to manage ethnic diversity in regions like the North-East which has often been characterised by explosive ethno-political movements thought to be ensued by ethno-centric struggle for recognition(Meetei 2011). Thus, institutional frameworks such as Sixth Schedule are provided for ensuring autonomy and 'self-government' to tribal communities so that the larger aim of peaceful co-

existence is achieved. It is hope that this sort of measures will enable certain groups or communities to organise and protect their own social practices.

However, there are many unanswered questions concerning the working of the Sixth Schedule. When provisions (to safeguard the tribal communities) are provided in the Constitution and implemented in reality, why claims and counter claims on the insecurity of the ethnic communities keep surfacing in public domain? Is this existing political system unable to hit upon the target? After all, the continued existence of the socio-political unrests ensued by ethno-centric struggles for recognition illustrates the need for relooking at these provisions. This paper, thus, is an attempt to study how institutional provisions provided in the Constitution are being endured by taking up the case of ADCs in Meghalaya.

Constitutional Assembly Debates and Uniqueness of India's North-East

Since time immemorial the Northeast region of India (which was during the British rule called 'Backward Track') had remained administratively, culturally and geographically separated from the mainland India. One of the most important questions in the Constituent Assembly Debate concerning this area and the people living herein was whether for the purpose of integration of these people into the Indian union, 'method of force, Assam Rifles and the military forces, should be used, or a method should be used in which the willing cooperation of these people can be obtained for the purpose of governing these areas' (Hansaria 2005:11). Then, it was found that there were certain institutions, among the hill tribals, which were so good that it would have been wrong to destroy them. Thus, instead of raising a spirit of enmity and hatred by application of force, they should be brought up under the broad principles of government by good will and love. Thus the idea of Sixth Schedule came to the members. It was, as Shri Nicholas Roy assumed, a measure of 'self government' that Sixth Schedule aimed to offer to the tribals. According to Dr. Ambedkar, the tribal people in the region differed from tribals of other parts of India, their laws of inheritance, their laws of marriage, custom, etc. were quite different from that of Hindus. And thus Dr. Ambedkar agreed that the Regional and the District Councils should be created to enable them a form of self-rule (Ibid:12).

Sixth Schedule and Tribal Autonomy: The Idea

The Sixth Schedule, therefore, is a mechanism for the necessary protection and safeguard of the tribal way of life and at the same time allowing them to participate in political life of the country along with others. It will be affected through the recognition and promotion of the traditional tribal self-governing institutions, which functioned democratically and resolved their disputes in accordance with their own customs and traditions. It is the product of 'The Sub-Committee (which) sought to evolve a system by which it could be possible to remove the apprehensions of the tribal people, simple and backward as they were, so that they might not be exploited, subjugated and oppressed by the more advanced people' (Gassah 1997:4).

The ADCs (as per the requirements of Sixth Schedule) were first established in 1952 in certain Hill Districts of the then composite state of Assam, and in 1953 regional councils (now District Councils) were launched in the then Lushai Hills District (now Mizoram).¹ The significance of the timing of its establishment lies in the fact that within the larger state of Assam there were some major tribes who were demanding a separate space of their own, first, to protect themselves from the exploitation by the non-tribals economically as well as politically, and second, to be able to preserve their ethnic identity and customs (Meetei 2007). In this sense the report of Bordoloi Sub-Committee is very important.²

Consequently, this institution was aimed at providing positive value to cultural diversity by empowering the tribal communities to run their own system of customary laws and traditional institutions on the one hand and to provide certain level of political and administrative autonomy that enables them to make their own course of development unhindered by larger community/communities. In this sense Sixth Schedule was supposed to be a remedy for minority discrimination ethnically diverse state like Assam. Again, this sort of arrangement had the potential to diminish the likelihood of inter-ethnic conflicts (Gurr 1993, 2000).³

However, the demand for a separate hill state in Northeast India was made right from the year 1953. Part of the reason for demanding a separate state is the provisions of Sixth Schedule itself. This is especially true in regard to the Khasi Kingdoms. Many knew that the District Council would take away the major functions of the Federation of the Khasi States. Some even said that as a result of the formation of the District Council the federation of the Khasi States suffered an eclipse. Some groups like the Nagas even refused to recognise the local autonomy envisaged in the Schedule. But, in spite of the opposition, J.J. Nicholas Roy, the veteran Khasi leader, persuaded other Hill peoples and managed to get majority in a vote to come under the administrative control of Assam for their greater economic improvement.

Experience of the ADCs

These ADCs have functioned for many years and passed from time to time a number of laws, rules, regulations, Acts, etc., dealing with and effecting the people of their respective areas in a variety of ways – relating to such significant matters like land, forest, primary school education, planning processes, markets, trade developmental activities, etc., to mention just a few of them. One may look at the various political responses to its functioning.

Two years after the introduction of the ADCs, a conference of the Chief Executive Members (CEMs) was held at Shillong on the 6th and 17th June 1954. (Gassah1997:7). Amendment of the schedule was felt necessary because it is clear from experience that the Sixth Schedule does not fully satisfy the aspirations and expectations of the hill people. The reason was that it does not confer real ‘autonomy’ as such. Capt. Williamson A. Sangma, who was then the CEM of Garo Hills ADCs, stated in his speech at the conference thus:

‘By experience, the tribal leaders have found that the provisions of the Sixth Schedule do not give the hills adequate power to safeguard their interest-social, economic and political and on the contrary there are ample loopholes for interference from outside in matters relating to day to day administration of the districts.’(Ibid.)

The other CEMs also supported this claim. In the subsequent years more demands were made for the amendment to the Sixth Schedule and more provisions were also added to the original ones.

There are many arguments against the functioning of the Sixth Schedule. Let me concentrate on one specific issue (for lack of space) which was the main aim of the Sixth Schedule - the protection of the rights of the tribal people. Let us start with the right to occupation of land and the resultant land tenure system. A right of ownership of land anywhere under District Council’s jurisdiction cannot be granted to any non-tribal. But through benami⁴ transactions most of the areas where profit making business establishments locate, such as Petrol pumps or hardware and software shops to mention a few are owned and run by more advanced and moneyed non-tribals who, it is suspected, have hailed even from neighbouring countries.⁵ One could witness hundreds of such shops at Lad Rymbai and Dawki in Jaintia Hills. This has been a concern for the local indigenous citizens and therefore claimed the failure of the ADCs to protect the rights of the tribal communities. It is even claimed that the situation is so alarming, and tribals will be unduly swamped and that too, in a delicate and peaceful penetrative manner where all thoughts of compromise would be too late.⁶

It is also argued that this scheme would only perpetuate the British policy of keeping the tribals isolated from the non-tribals, and create “tribalstan”. So, one of the questions being asked is whether the problems of the tribes who are demanding additional power (and even separate state) occur due to certain state of affairs in which the Sixth Schedule keeps them isolated from the non-tribals. That simply means that the feeling of separation and isolation of the tribal people has not been removed and the feeling of national integration have also not been strengthened through the institution of ADCs.

Institutional inconsistency: State, ADCs and Traditional Institutions

One of the problems produced by the installation of ADCs is some kind of inconsistency which in turn breeds political and administrative tug-of-war between three institutions within the same territory. The three different institutions working side by side are the tribal state of Meghalaya, which was created to fulfil the demands of the local tribal communities, the ADCs which are created to provide the tribal communities the autonomy of administration, and the traditional institutions. These intuitions are supposed to work in tandem. However, the reality speaks otherwise. Let’s have a look at the working relationship of these three institutions.

State Vs. Sixth Schedule

There have been academic discussions over the existence of the District Councils after the Statehood was granted to the people. It was felt that after the creation of the State, District Council may serve the people as local self-government in true sense of the term. It was supposed to have grass root level contact. Conversely, carrying out of the functions of the State Government and the District Councils in parallel does not give much benefit to the people. Studies have shown overlapping of powers of the two. Indeed, the ADCs are given a fairly good amount of matters on which they can make laws.⁷ However, many of these matters are also included or co-related with subjects mentioned in the State List. Therefore, because of this overlapping of jurisdiction on such matters unnecessary confusions and conflicts arose.

The most important concern of the State-ADCs relationship is the issue of autonomy of the later. Its autonomy has been affected in almost all fields: political, economic and social but mainly the financial independence. They have to depend on their respective state governments in matters of financial allotments and assistance. It is alleged that because of the obstructive attitude of the state in release of the funds, undesirable practices are adopted so as to raise funds in order to discharge their constitutional obligations like running of primary schools, dispensaries and even to meet the salaries of the employees. This led the ADCs to demand direct funding from the central government. This will avoid state's control over their finance.

Even with regard to 'development function', ADCs cannot execute the toil thanks to paragraph 12 A in the Sixth Schedule.⁸ The Report on Commission of Inquiry on the Autonomous District Administration in Meghalaya clearly suggests that the status of the ADCs has been reduced more or less to that of a Municipal Board by the insertion of Paragraph 12 A in the Sixth Schedule. The District Council, therefore, can function only if it maintains harmonious relationship with the state government (Government of Meghalaya 1983).

Lacking in statutory support, the ADCs had to depend on the changing political relations with the state leadership. Its activities depend very much on the political party or parties that run the state administration. If the same political party is in power both at the State and District Council levels, the latter may have a smooth sailing, otherwise a number of obstacles and hurdles may be created by the party in power at the state level to jeopardise the plan of action framed by the District Council. For example, primary education, which needs a very sensitive and prudent management by the District Council authorities becomes badly politicised that now it has become a total failure.⁹ Public and teacher's resentment grow high. Of late, the Government in Meghalaya, have decided in principle to take over the primary schools, and placed them under its control.

Thus, one of the arguments against the ADCs is that in a tiny state like Meghalaya the duplicity of rules is irrelevant. For more than forty years, the

condition of development has been lacking, slow, degenerating and does not keep pace with onward march of progress elsewhere. 'The state government of our own can provide all the necessary safeguards and protections to our rights and interests. One simple reason, that we share the same benefit in the same state, suffices to justify the irrelevance of these ADCs' (Tariang 1997:80).

Sixth Schedule Vs. Traditional Institutions

Another aspect of institutional arrangement in Meghalaya is the relationship between the traditional institutions (like the Syiemships, Doloiships, Nokmaship and the Durbars) and the ADCs. Under the Sixth Schedule, the office of the Syiem, Doloi and Nokma in Khasi, Jaintia and Garo Hills respectively are treated as subordinate officials of the ADCs. That means most of their traditional power and functions have either been curtailed or taken away by the ADCs. Under the provisions of paragraph 3(i) (g) of the Sixth Schedule, the ADCs can even regulate the appointment and succession of Chiefs and Headmen. The United Khasi-Jaintia hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, further empowered executive committee of the District Councils to remove and suspend them if in its opinion these incumbents violated the terms and conditions of their appointment. Taking the opportunity, on one pretext or another, the chiefs and headmen face suspension or even dismissal by the district Council on charges like insubordination and mal-practices. The same Act went even to the extent of debarring the Chiefs, Deputy Chiefs and Acting Chiefs in taking any part in politics and elections to the parliament, or State or District Council elections. The important point here is the affect it has on the traditional institutional process and customary laws of the land.

It is therefore obvious that such actions taken by the District Councils created much resentment among the supporters of traditional institutions as they find it as sheer negligence of the traditional institutions.

In the case of the Village Durbars (councils), the Census report of 1961(United Khasi-Jaintia Hills) remarked 'the present powers of the Durbars under the district Councils has greatly been reduced in comparison with its powers under the chiefs' (Gassah1997; 211). If the District Councils could interfere in the village affairs, it was more so in the case of the Durbar Raids. The same Census report was again very clear on this point when it added that the part of the Durbar Raid is played by the District Councils. Precisely, thus, the traditional institutions are under the control of District Councils which is against the interests of the traditional institutes. Therefore, they also demand direct funding from the state.¹⁰

Even a delegation comprising the Federation of Khasi States, the Council of Dolois, and Sirdars submitted a memorandum to the centre seeking its intervention to address, what it claims, the 'Constitutional Anomaly' and the annexation agreement signed between the federation of Khasi States, and the accepted by the government of India on August 17, 1948. The anomaly, according to the delegation, has created 'confusion and conflicts' among the

Khasi people. They demanded that the traditional institutions should be recognised, and their status to function as indigenous institutions be preserved constitutionally (The Meghalayan Guardian, 12 Aug 2004). One significant aspect of this demand by the traditional institution is that once decision makers on all matters in their respective elakas¹¹, these traditional institutions are not given any power under the new system of administration in which for everything these traditional institutions have to depend on the ADCs. It has been even argued that the continuing one-upmanship has resulted in Meghalaya not getting the huge benefits of Panchayati Raj which in just a few years has changed the face of rural India, giving more power to the people by promoting actual local self-governance (Lapang 2004).

The supreme Court in 1960 in the case of disputes between T. Cajee, Chief Executive Member, United Khasi-Jaintia Hills Autonomous District Council Vs U Jormanik Syiem of Myllem observed the position, 'after the coming into force of the Constitution was that the Chiefs lost whatever ruling or administrative powers they had with the merger of these twenty-five (25) States of Assam and the Governance of these States was to be carried on according to the provisions of the Sixth Schedule' (The Sentinel 1 Aug 2004). Paradoxically, this new development is a threat to the traditional institutions and whatever may be the democratic practices of the people.

Clash of Tradition and Modernity: Incompatibility and Anxiety

The imposition of certain power on the people in the form of Sixth Schedule and the failure of these institutions in meeting the purpose of their establishment breed a kind of interface between tradition and modernity. This kind of interface is more clearly seen in issues like land relation. Most tribes in the region run their civil affairs according to their community based customary law but the individual based land law of the country is superimposed on them (Fernandes and Bharali 2008). For instance, the Garos have experienced a changeover to commercial corps and individual ownership that goes particularly against women, and thus, this not only leads to class formation but more gender discrimination. It also exacerbates not the conflict against the 'outsiders', who the local people felt were controlling their economy, alienating their livelihood and damaging their culture but also become a reason of inter-tribal conflict as it creates a condition of contest over limited land and resources. It means that even where the Sixth Schedule recognises community ownership, the administrative system goes by individual values and set in motion processes that can weaken the tribe. This again resulted in shortages. This shortage breeds competition among different tribes for the scarce resources leading to hardened identities and exclusive claims over the resources of an area. Each community rewrites its history to declare itself the original inhabitants of a given region, as such the sole claimants to its resources. The Garos demand formation of Garoland comprising all Garo inhabited areas inside and outside Meghalaya including the areas in the Khasi Hills. This has been the biggest bone of contention between the Khasis and the Garos.

This tradition-modernity interface is also seen in the political arena too. According to the traditional concept of society, leadership patterns are usually rigid and strictly ascriptive. In the case of Khasi and Jaintia Hills, though the society is by tradition a casteless and classless society, the traditional pattern of authority and leadership structure as provided through the traditional institutions was almost the same ascriptive one found elsewhere in India. Thus, in traditional institutions leadership was vested in persons belonging to certain original clan or clans (*kurs*). However, in modern democratic institutions, leadership is provided not by the holders of traditional institutions but by the educated elite of the society. Thus, political modernisation has given rise to the emergence of the new political elite in the Khasi-Jaintia society. But when all is said and done, the fact remains that the Khasi-Jaintia society has neither been able to entirely discard their traditional institutions nor totally absorb new ideas. At most, their society lies somewhere between transitions from tradition to modernity, which may sometimes be called the 'modernity of tradition' (Gassah 1997; 207).

Territoriality, and Promotion of few: casting insecurity over others

Finally, the territorial jurisdiction and composition of the ADCs is something that calls for attention. Each ADC is created for a particular area, no matter how many cultural groups live in the area (provision 1, para 1, Sixth Schedule) (Bakshi 2002). In that sense, its authority is based on territory rather than community. For example, Khasi Hills' Autonomous District Council has authority over any tribal group residing within this particular geographical territory. Though, the Governor of the state is empowered to divide the area into different autonomous regions by demarcating separate areas ((provision 1, para 2, Sixth Schedule), in reality it is virtually impossible to do so as most of districts in the Northeast inhabit large number of communities. It is easier said than done to put all the small groups in different territorial compartments as it will involve development of a complex network of autonomous institutions. In fact, the criteria of territory rather than community led to the disintegration of Khasi-Jaintia Hills Autonomous District Council.

Therefore, it will not be wrong to say that one of the reasons why the present existing provisions cannot address the issue of ethnic diversity is that the arrangements take into account the voice of only few groups who are happen to be majority in the region. The fates of the smaller groups are left undecided. Meghalaya is the home of nearly 21 communities including those of smaller communities; groups, which are broadly included within the larger fold of each major groups viz., the khasi, the Jaintia and the Garo; the immigrant communities, etc (Singh 1994:35). Rabha, Hajong, Koch, Man, Dalu, Banai and Biatte are other important ethnic groups which are different from the three major communities in terms of culture and language in the state. The present institutional system does not say anything about these smaller but distinct tribes, and consequently marginalised in its policy.¹² Even the Garo Hills ADC has the same problem.

Conclusion

The original design of instituting Sixth Schedule was a very innovative concept. The ADCs have been created and entrusted with many roles to safeguard the culture and lives of tribal communities. It is to create a more equitable society in which values of communities with distinct ways of life are given due recognition.

However, there arise many issues surrounding the functioning of this institution. One should not trivialise it. It hasn't been able to protect the economic interest of the tribes. It is also claimed that the very purpose of the Sixth Schedule, the protection of tribal interest, was defeated at the altar of corruption and bribery. These issues of corruption and bribery may be underestimated by giving the onus on the ethics and morality of the personnel running the institution. But there are more serious issues crop up from the system itself. This cannot be played down easily. After many decades of experimenting ADCs it comes to light that it cannot guarantee self-government to the tribal communities. On the one hand it is being seen as some alien power imposed on their traditional way of live. On the other hand arguments are being flaunted that this scheme would only perpetuate the British policy of keeping the tribals isolated from the non-tribals, and create 'tribalstan'. Secondly, selecting the criteria of territory rather than community not only marginalise the smaller communities within the territory but also becomes a base of conflict between ethnic groups. Again, it sets the ground for political and administrative tug-of-war between institutions within the State. Putting fuel to the fire, the interface between the tradition and modernity augments the feeling of uncertainty about the future of their culture and tradition. This feeling of insecurity and uncertainty not only plant a deep sense of revulsion in tribals at the influx of outsiders, it also fuel inter tribal conflict in the State.

Notes

1 Prior to the enforcement of the Constitution, the Khasi and Jaintia Hills and other areas had been administered by Deputy Commissioner who acted on the advice of the Governor of Assam. The Hill areas were never brought under the direct administrative control of the state Government. After the Sixth Schedule of the Constitution coming into force, the Hill Districts were placed under the overall administrative control of the state Government.

2 Bordoloi Sub-Committee was one of the Sub-Committees constituted by an Advisory Committee on Fundamental Rights of Minorities in tribal Areas constituted by the constituent Assembly on May 16, 1946.

3 Indeed, recent surveys of ethno-nationalist conflict around the world show that self government arrangements diminish the likelihood of violent conflict, while refusing or rescinding self government rights is likely to escalate the level of conflict. See (Gurr, 1993, 2000).

⁴ Benami purchases take place to evade law of perpetuity, in false name of another person, who does not pay the consideration but merely lends his name, while the real

title vests in another person who actually purchased the property and he is the beneficial owner.

⁵ Authors' field notes (Nov. 2007).

⁶ Authors' Personal interview with Jinky Gassah, President, Jaintia Youth Front; 29 nov.2007 at Jowai, Jaintia Hills.

⁷ They have power to make laws in matters like utilization and allotment of land for agriculture, grazing or any other purpose likely to promote interest of tribals, management of forest (except reserved forest), canals or water course, jhum cultivation, village and town administration including, police and public health and sanitation, appointment of chiefs and headmen, inheritance of property, marriage, divorce and social customs. Under Para 3, ADCs can establish village councils or courts for trial of suits and cases, among parties all of whom are tribals and can make rules for regulating them (Para 5&6). They have power to manage primary schools (Para 6), assess and collect land revenue and impose taxes (Para 8) issue license or leases for prospecting of minerals, make regulation for control of money lending and trading by non-tribals.

⁸ This paragraph states that if the state and the ADCs make laws on the same subject, the former shall prevail over those of the ADCs. In case any provision of a law made by the ADCs is repugnant to any provision of a law made by the legislature of the state with respect to that matter, then, the law or regulation made by the ADCs shall to the extent of the repugnancy, be void and the law made by the state legislature of Meghalaya shall prevail.

⁹ Author's Personal interview with local residents 14 Nov 2007.

¹⁰ This was expressed in a meeting of traditional Heads of the State in Shillong. See *The Meghalayan Guardian*, 28 August 2004.

¹¹ Elakas are the territorial extent within the jurisdiction of a village head.

12 Groups like the Khasi, Jaintias and Garos are conglomerates of communities. For example, Khasi is a general name given to various tribes and sub tribes that inhabit the Khasi and the Jaintia Hills including Amwis, Lynggams, Bhois, Wars, Khyrnriams, and Pnar or Synteng. See (Singh 1994)

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