

A Study of the Sixth Schedule of the Indian Constitution

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Abstract

Tribals in India's northeast has their unique culture, tradition, customs, medicinal system etc. which makes them different from people in mainland India. Administration of tribal areas in North East India has always been a matter of concern. There are various tribal communities have been residing in North East region. Each tribal community has its own district identity, tradition, custom, traditional judicial system and rule of law. Considering this, the Constitution of India has made some special provisions for administering the tribal dominated areas especially from North Eastern states that includes Assam, Tripura, Mizoram and Meghalaya under the Sixth Schedule of the Indian Constitution. Under Sixth Schedule, Autonomous District Councils were created with an interest of protecting economic and cultural interests of the hilly tribes. Main objective of the Sixth Schedule is to provide self- rule to various tribal communities in North Eastern states of the country. Citizen from the other parts of India have to take permits to enter the Sixth Schedule areas. Outsiders can not buy land in the Sixth Schedule areas. The development of tribal areas in terms of education, culture, technology and various other aspects is the main aim of formulating the Sixth Schedule. Implementation of Sixth Schedule in its true letter and spirit will not only support the development of tribal regions but will also contribute towards equal participation of all the states in the cultural and economic growth of the country (Barman). It is in this background the study focuses on understanding the Sixth Schedule of the Indian Constitution. Besides, the study also makes an attempt to examine the powers and functions of Autonomous District Councils under the Sixth Schedule of the Indian Constitution.

Keywords

Sixth Schedule, Indian Constitution, Northeast, Tribals', Administration.

Introduction

Administration of tribal areas in North East India has always been a matter of concern. There are various tribal communities have been residing in North East region. Each tribal community has its own district identity, tradition, custom, traditional judicial system and rule of law. Considering this, the Constitution of India has made some special provisions for administering the tribal dominated areas especially from North Eastern states that includes Assam, Tripura, Mizoram and Meghalaya under the Sixth Schedule of the Indian Constitution. Under Sixth Schedule, Autonomous District Councils were created with an interest of protecting economic and cultural interests of the hilly tribes. Main objective of the Sixth Schedule is to provide self- rule to various tribal communities in North Eastern states of the country. Citizen from the other parts of India have to take permits to enter the Sixth Schedule areas. Outsiders can not buy land in the Sixth Schedule areas. The development of tribal areas in terms of education, culture, technology and various other aspects is the main aim of formulating the Sixth Schedule. Implementation of Sixth Schedule in its true letter and spirit will not only support the development of tribal regions but will also contribute towards equal participation of all the states in the cultural and economic growth of the country (Barman).

Objective of the Study

1. To understand the Sixth Schedule of the Indian Constitution.
2. To examine the powers and functions of Autonomous District Councils under the Sixth Schedule of the Indian Constitution.

Review of Literature

In the subsequent paragraphs an attempt has been made to review the related literature.

(a)**Aniruddha Babar** in his article ‘ **An Interface between Sixth Schedule and Tribal Autonomy: A Constructive Critique on the Working of Sixth Schedule of the Constitution of India** ‘ discusses the working of Sixth Schedule of the Indian Constitution. Author states that Constitution has made some special provisions for administering the tribal areas from North eastern states that includes Assam, Tripura, Mizoram and Meghalaya under the Sixth Schedule of the Constitution (Article 275 and Article 244(2)). Main objective of the Sixth Schedule is to provide self-rule to various tribal communities in North eastern states. Under Sixth Schedule Autonomous District Councils were created. Citizens from other parts of India have to take permits to enter the Sixth Schedule areas. Outsiders can not buy land in the Sixth Schedule areas. Author concludes his article by saying that the development of tribal areas in terms of education, culture, technology and various other aspects is the main aim of formulating the Sixth Schedule of the Constitution (Babar, 2020).

(b)**Aniruddha Kumar Baroin** his article ‘**Sixth Schedule and its Implementation: Understanding the Case of Bodoland (BTAD) in Assam**’ highlights the performance of the Sixth Schedule in the Bodoland area. Sixth Schedule was implemented in Assam, Tripura, Mizoram and Meghalaya to provide autonomy and to initiate development of the region. Sixth Schedule and autonomous structure was amended in 2003 to form Bodoland Territorial Council (BTC) in Assam. Author says that inclusion of Bodoland into the provision of Sixth Schedule has both merits and demerits in the administrative structure. Though the Bodoland has developed its political atmosphere and infrastructure mechanism, it could not develop its economic and social needs of the people. Author concludes by saying that for the development of the region, autonomous council and administration should take care of development issues for education, health issues of the people living in the region (Baro, 2017).

(c) **Tasaduk Ariful Hussain** in his article, ‘**Relative Efficacy of Governance under the Sixth Schedule Provision and 73rd Constitutional Amendment Act of the Constitution of India**’ discusses the Sixth Schedule of the Indian Constitution. The Sixth Schedule was framed to meet the needs of the tribal of North Eastern states of India. Existing Sixth Schedule areas in India are : Assam, Tripura, Mizoram and Meghalaya. Under Sixth Schedule, Autonomous District Councils and Autonomous Regional Councils were created. These councils were authorised to some special powers through the Sixth Schedule. Autonomous Councils have (a) the law making power (b) Judicial power (c) Regulatory power and (d) Executive powers. Author also criticises the Sixth Schedule by saying that Autonomous District or Region does not have more autonomy than the autonomy of the state where it situated. Author further states that the 73rd Constitutional Amendment deals with tribal areas under clause (2) of Article 244. The tribal areas of Article 244(2) are essentially the areas of the North Eastern states that fall under the Sixth Schedule where Autonomous District Councils were formed for the local self-governance (Hussain, 2002).

Methodology

The present study is a secondary one and for collecting data researcher will rely on secondary sources. Secondary sources include books, journals, articles, thesis, and internet sources and so on. To fulfill the objectives researcher will follow historical analysis and descriptive method of analysis.

Sixth Schedule of the Indian Constitution

After independence, there were demands for regional autonomy and better status within the Constitutional framework from the tribals of hill areas of North East. In order to ensure their participation in the decision making and to safeguard their tribal interest, the government of India appointed a sub committee of the Constituent Assembly. The Sixth Schedule of the Indian Constitution is based on the recommendations of the North East Frontier (Assam) Tribal and Excluded Areas Sub-committee popularly known as ‘Bordoloi Subcommittee’ created under the chairmanship of Gopinath Bordoloi, the first Chief Minister of Assam. The Sixth Schedule consists of provisions for the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram, according to Article 244(2) of the Indian Constitution. Passed by the Constituent Assembly in 1949, Sixth Schedule seeks to safeguard the rights of tribal population through the formation of Autonomous District Councils (ADCs) (DEMAND FOR SIXTH SCHEDULE IN MANIPUR, 2010). The main purpose behind the formulation of Sixth Schedule is to facilitate tribal communities with the power of administration of tribal areas within North East. The regions and population under tribal areas are being governed by Autonomous Districts and Regions irrespective of less intervention of state legislatures. However Meghalaya is the state where President has declared that all the areas within the state come under Sixth Schedule area. Sixth Schedule supports developing a framework related to autonomous decentralised governance that includes executive and legislative powers. Such powers effectively resolves the issues related to culture, customs, water, land and soil. Councils are also provided with judicial powers so that issues related to criminal or civil cases can be resolved. Therefore it has been identified that councils within Sixth Schedule are allocated with more powers as compared to local government based on the 73rd and 74th amendment made within the country. It has been identified that

autonomy paradigm has helped to maintain the equilibrium within tribal communities through dispute resolution with the help of customary laws as well as control over facilities like money lending. Autonomous councils within Mizoram, Tripura and Assam holds the power to make decisions on whether there should be involvement of state legislations should be applied to their territories or not. Autonomous district councils possess executive powers and functions which is effective in managing the primary schools, roads, water ponds, administration of villages, forest, land revenue and many areas under the similar aspect under Sixth Schedule (Constitutional Provision). Executive members are mostly selected by the Governor as well as by members of district council. Judicial powers entail the council to involve district and village council courts within autonomous areas to make formal judgement over customary laws with the involvement of both the tribal parties. Legislative powers allocate powers to the district councils to create laws for the occupation, utilisation of land, grazing for various purposes, regulations related to cultivation, use of water sources, money lending and many other such areas (Constitutional Provision).

Formation of Autonomous District Councils under Sixth Schedule

After independence, there were demands for regional autonomy within the Constitutional framework from the tribes of the hill areas of North East. At that time the Bordoloi Sub Committee made an on the spot study of the demands and aspirations of the hill tribes and submitted its recommendations for the formation of Autonomous District Councils in the tribal areas, which were later accepted and incorporated into the Article 244(2) of the Sixth Schedule of the Indian Constitution (Autonomous District Councils, 2019).

In doing so, they were broadly guided by 3 major considerations;

- (1) To protect the tribal peoples' distinct social, economic & political culture and customs and to ensure political autonomy of the tribal people.
- (2) The necessity to prevent their socio-economic exploitation by the more advanced neighbouring people of the plains.
- (3) To allow the tribal people to develop and administer themselves from their own (Introduction).

What is Autonomous District Council?

The Autonomous District Councils (ADCs) are designed to provide a considerable amount of autonomy to the tribal population through their elected representatives in the council. The hill tribes of North East India live a life of their own and do not adopt the life pattern of their neighbours in the plains. Their laws of inheritance, marriage and customs are very much different from the plains people of mainland India. In order to protect the interest and identity of these tribal population, internal autonomy was granted under the Sixth Schedule of the Indian Constitution (Governance in the Sixth Schedule Areas in India's North-East). Autonomous District Councils are based on the Sixth Schedule of the Constitution of India. The idea behind the setting up of the Sixth Schedule of the Constitution of India is to provide the tribal people of the North East India with a simple administrative political set up which can safeguard their customs, tradition, way of life, judicial system etc. and to provide autonomy in the management of their affairs. Article 244(2) of the Indian Constitution provides for the Sixth Schedule which shall apply to the administration of the tribal areas in the states of Assam, Tripura, Mizoram and Meghalaya. Paragraph 20 of the Sixth Schedule provides a list of tribal areas covered by the Sixth Schedule – Part1, Part-2 , Part- 2A and Part-3 (SIXTH SCHEDULE).

Autonomous District Councils under Sixth Schedule

Part-1 (a) the Dima Hasao District Autonomous Council (DHDAC)

(b) The Karbi Anglong Autonomous Council (KAAC), Assam

(c) The Bodoland Territorial Council (BTC), Assam

Part-2 (a) the Khasi Hills Autonomous District Council (KHADC), Meghalaya

(b) The Jaintia Hills Autonomous District Council (JHADC) Meghalaya

(c) The Garo Hills Autonomous District Council (GHADC)

Part-2A (a) Tripura Tribal Areas Autonomous District Council (TTAADC) Tripura

Part-3 (a) the Chakma Autonomous District Council (CADC)

(b) The Mara Autonomous District Council (MADC)

Mizoram

(c) The Lai Autonomous District Council (LADC).

Powers and Functions of Autonomous District Councils under Sixth Schedule

Autonomous District Councils and Autonomous Regional Councils were authorised to some special powers through the Sixth Schedule which is incomparable with the other parts of the country. The powers and functions of the District Councils are enumerated in different paragraphs of the Sixth Schedule of the Indian Constitution. Altogether there are 21 paragraphs, containing various sub paragraphs. Major powers and functions of the District Councils can be in paragraphs 3, 3A, 3B, 4, 5, 6,7,8,9 and 10 of the Sixth Schedule (Constitutional Provision).

Legislative Powers and Functions

- (1) Under Paragraph 3, both the Councils (Regional and District Councils) have powers to make laws with respect to the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other nonagricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town.
- (2) The district councils have the power to make laws related with the management of forest other than reserved forest.
- (3) Autonomous Councils have power to make laws with respect to the use of any canal or watercourse for the purpose of agriculture.
- (4) Councils have the power to make laws with respect to the regulation of the practice of jhum or other forms of shifting cultivation.
- (5) District Councils have the power to make laws regarding the establishment of village or town committees or councils and their powers.
- (6) Autonomous Councils have the power to make laws on any other matter relating to village or town administration, including village or town police and public health and sanitation.
- (7) Councils have the power to make laws regarding the appointment or succession of Chiefs or Headmen.
- (8) Autonomous Councils have the power to make laws on the inheritance of property.
- (9) District Councils have the power to make laws on marriage and divorce and social customs.
- (10) Under Paragraph 3B, additional powers have been given to BTC to make laws on 'Fourty additional Subjects' (Autonomous Councils | Assam State Portal).

Governor's Power in Law Making

The most important thing is that, all laws made by the district council under the provisions of the Sixth Schedule must be submitted to the Governor of the respective state and until assented by him, they have no effect. However the Governor is required to consult with the state Council of Ministers before taking decisions or respective district council, if he thinks it necessary (Sixth Schedule of the Indian Constitution).

Executive Powers and Functions

Under paragraph 6 (1) of the Sixth Schedule both the Councils (Regional and District Councils) have been given large executive powers and functions. These are related with the implementation of laws and policies.

- (1) The district councils have power to establish, construct and manage primary schools and the manner in which the primary education will be provided within the council area.
- (2) The councils have also power to establish and manage dispensaries, markets, cattle ponds, ferries, road transport and waterways within the council area.

(3) The Council has power to regulate and control those above mentioned subjects according to the necessity. However, prior approval of the Governor is necessary for the district council to make regulations on those subjects. In giving approval, the Governor acts in his personal discretion and does not need to consult respect state's Council of Ministers. But in case of Meghalaya the Governor has to act on the aid and advice of the state's Council of Ministers.

(4) In case of executive powers of the council, the Governor may with the consent of the district council or its any officers, entrust any executive functions of the state Government to the District Council (Sixth Schedule and Working of the District Councils in Northeast).

Judicial Powers and Functions

Judicial powers and functions of the district council under the Sixth Schedule, are found in paragraph 4 of the Sixth Schedule of the Indian Constitution

(1) (a) The council has power to constitute 'Village Council Court' (VCC) for trial of suits and cases in which all the parties are members of the schedule tribes.

(b) The appellate powers of the Village Council Courts are vested on the district council.

(c) Except the High Court and the Supreme Court no other court has any jurisdiction over the suits and cases triable by the Village Council Court.

(2) (a) District Council Court has jurisdiction for the trial of suits and cases only to ST members. The state and administrator can not appeal in district council court as they can not be termed as person belonging to ST.

(b) Besides it, all the persons under trial must belong to same district council. It means if two persons belonging to same schedule tribe came from two different areas of district council, district council courts have no jurisdiction over it. Similarly if a party to a suit is the state, district council courts have no jurisdiction, since the state can not be described as a tribal.

(3) In criminal cases,

(a) Firstly both the complainant and the accused must belong to the same district council. If both the complainant and accused belong to different areas, councils court have no jurisdiction.

(b) Secondly, if a complain is filed by a tribal against police about harming government property, the district council court can not trial the case because here the aggrieved party is 'state' who can not be described as a tribal.

(c) If a case filed by a tribal on behalf of a non-tribal against a tribal will not be triable by a district council court, since the aggrieved person, in reality, is a non-tribal (Functioning of Autonomous Councils in the Sixth Schedule Areas of Northeastern States).

Financial Powers and Functions

(1) Under Paragraph 7 the district councils have responsibility to constitute "District Fund" in which all the funds received by the District Council is credited/ deposited.

(2) The accounts will be maintained in the form prescribed by the CAG (Comptroller and Auditor General) of India, who can audit the accounts as per requirement. And the report will be submitted to the Governor who will place it before the district council.

(3) Under Paragraph 8, the district councils have power to levy or collect taxes on land revenue, taxes on lands and buildings, persons and residents, professions, trades, employments, animals, vehicles, taxes on the entry of goods into market for sale, taxes on passengers and goods and taxes for maintenance of school.

(4) The council can make regulations for levy of taxes and every such regulation shall be submitted to the Governor and until assented to by him, they shall have no effect.

(5) In case of any dispute related with sharing royalties, the matter should be submitted to the Governor whose decision will be final. But it is applicable only in Tripura and Mizoram but not in Assam (Constitutional Provision).

Money Lending and Trading by non-tribals

Paragraph 10 empowers the council to make regulations for the control of money lending and trading by non-tribals in the Sixth Schedule area.

- (a) The money lender must hold licence issued by the District Council to carry on his business of money lending in the district.
- (b) The council will prescribe the maximum rate of interest which may be charged or recovered by money lender.
- (c) The money lender must maintain the accounts and for inspection of such accounts, officers will be appointed by the district council.
- (d) The council can prescribe that all the non-tribal residence must obtain licence for carrying on business in the district including money lending (SIXTH SCHEDULE).

Impact of Sixth Schedule on North Eastern States

The Sixth Schedule allows Autonomous District Councils (ADCs) to develop laws that forbid outsiders to buy tribal land and also restrict the entry of outsiders to conduct trade while protecting the custom of population. With the failure of fifth schedule in terms of protecting the land of Indian tribes, Sixth Schedule with amended powers and schedules is considered as more effective for the development of tribal regions or areas within North-eastern states. With the latest amendments in Sixth Schedule, population of 10 million tribes is identified to exit under the umbrella of Sixth Schedule in regions across Meghalaya, Tripura, Mizoram and Assam (CHHAKCHHUAK, 2019).

Meghalaya

Meghalaya is the part of the tribal area and therefore after number of discussions there was formulation of number of Autonomous District Councils within the district of Khasi and Jaintia Hills and also in other hills. Now Meghalaya is the only state that is entirely governed by Autonomous District Councils. There are various tribes with Meghalaya such as the Jaintias that exhibit developed structure in terms of political governance. In this regard it can be said that ADCs in Meghalaya have success in their mottoes to larger extent while managing the rights of tribals (Role of K.H.A.D.C and its Constitutional Mandate).

Assam

The Assam comprises of maximum tribes as compared to North eastern states. The overall implementation of Sixth Schedule was very much appropriate for the growth of Assam tribal population in an effective manner. Considering the facts of Karbi Council, there was greater development observed in terms of education and school facilities (Governance in the Sixth Schedule Areas in India's North-East).

Mizoram

The Autonomous District Councils managed to facilitate the Mizoram with appropriate educational facilities and therefore it is ranked at top position amongst all the North Eastern states. In this context, members of the council urged for allocating the funds direct to the village councils instead of district councils so that development procedure can be undertaken from the roots (Governance in the Sixth Schedule Areas in India's North-East).

Tripura

In Tripura also Autonomous District Council played very important role for the development of the region. Now the Tripura government has decided to elevate the status of the Tripura Tribal Areas Autonomous District Council (TTAADDC) into a 'Territorial Council' to provide more autonomy and financial grants to it (Governance in the Sixth Schedule Areas in India's North-East). Provisions under Sixth Schedule can be considered as an effective tool in terms of governance of tribal regions and can put positive impact for the socio-economic development.

Criticisms of the Sixth Schedule

After the implementation of the Sixth Schedule it is seen that there are frequent conflicts of interest between the District Councils and the state legislature. For example in Meghalaya, despite the formation of the state, the whole of the state continues to be under the Sixth Schedule causing frequent conflicts with the state government (Issues related to sixth schedule areas).

In case of conflict between the District Councils and the State Legislature, the state enjoys the superiority. Moreover, it is alleged that autonomous Councils are mere platform for aspiring politicians who nurture ambitions to contest assembly polls in the future. The Autonomous District Council has to take assent from the governor for making law, so council's power to make laws is limited by the provision of the Sixth Schedule. There are certain issues due to which the Sixth Schedule has ended up creating multiple power centres instead of bringing in a genuine process of democratisation or autonomy in the region such as conflict of power, governor functioning and disparity among autonomous bodies and local bodies (Sixth Schedule of the Indian Constitution). Thus despite autonomy, development benefits have not reached the people of the region.

Conclusion

It can be concluded by saying that the provisions under Sixth Schedule of the Indian Constitution can be considered as an effective tool in terms of governance of tribal regions and can put positive impact upon protecting the cultural rights along with economic and social development. The Sixth Schedule allows Autonomous District Councils (ADCs) to develop laws that forbid outsiders to buy tribal land and also restrict the entry of outsiders to conduct trade while protecting the custom of population. With the failure of Fifth Schedule in terms of protecting the land of Indian tribes, Sixth Schedule with amended powers and schedules is considered as more effective for the development of tribal regions or areas within North-eastern states. With the latest amendments in Sixth Schedule, population of 10 million tribes is identified to exit under the umbrella of Sixth Schedule in regions across Meghalaya, Tripura, Mizoram and Assam. Thus, Sixth Schedule is very much beneficial for the tribal people.

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