

# THE SIXTH SCHEDULE TO THE CONSTITUTION - AN ANALYSIS

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As regards the administration of the Tribal areas, particularly Hill Districts of Assam, certain measures were adopted under the Govt. of India Act, 1919 and 1935 by the Britishers; but the measures incorporated in the Acts were not at all satisfactory for fulfilling the political aspirations of the tribal people of these Hill districts (Khasi & Jaintia Hills, Garo Hills Mikir Hills, North Cachar and Mizo Hill). An analysis of these Acts shows the Britishers adopted an isolationist policy by which they wanted to keep the people of Hill Areas of Assam aloof from their plains brethren with a view to preventing the spread of national freedom movement in the Hill Areas. It was, thus, the Britishers, to some extent, responsible for the pollution of the social air between the Hills and the Plains. By differentiating between the Hills and the Plains, they planted mutual distrust, doubts and unhealthy political rivalry in a united family which are still helping creation of insurgent policies among the people of these sensitive areas of North East India. And as such a variety of complicated problems relating to political autonomy and economic uplift of the sensitive areas, have really become a challenge to the Government and assumed far reaching significance. The reason behind this insurgency since the British rule was only the pursuance of isolationist policy under the Acts 1912 and 1935 which failed to provide autonomous administration or political autonomy for the Hill people to manage their local affairs according to their own genius and ability.

But through different periods and stages of history, efforts have always been made to accommodate the varied communities and groups, inhabiting the North Eastern Areas inside the main political orbit. As a result a new scheme of Administration of the Hill Districts based on the recommendation of the North East Frontier Tribal

and excluded Areas, sub-Committee of the Constituent Assembly, known as the Bardoloi Committee was incorporated in the Part 'A' of the Sixth Schedule of Indian Constitution. This scheme was conceived with a view to building up autonomous administration in these areas (particularly Assam) so that the Tribal people could continue to follow their traditional way of life with such changes as they themselves might like to introduce.

As regards the broad features of the schedule, these are as under: The District Councils/Regional Council have been set up under the article 244 (2) of the Sixth Schedule of the constitution with 24 members, of whom three fourths to be elected directly and one fourth to be nominated by the Governor on the advice of the Chief Executive Member in order to meet the special needs of the Tribal areas in Assam and to develop the tribal village communities in all spheres of life. With the setting up of the District Councils, these Hill Districts have a certain amount of autonomy in the administration of the District concerned. Only certain cases of laws made by the Parliament and Assam Legislative Assembly are automatically applicable to these Districts. In accordance with the provisions of the Sixth Schedule to the Indian Constitution the Civil Administration, the Hill Districts of Assam are placed with two authorities viz, the Deputy Commissioner, representing the State Government of Assam and the Chief Executive Member, heading the District Council. There is thus, dual form of administration.

The members of the District Councils are popularly known as MDCs. There is a provision of Chairman and Deputy Chairman who normally preside over the Council-in-Session. They act like the Speaker and Deputy Speaker of a Legislature. The Executive Committee of three

M.D.C.s generally perform the Executive function of the District Council. These member of the Executive Committee are known as the Executive Members (E.M.) and the leader is known as the Chief Executive Member (C.E.M.). Thus the Executive Committee is like a Cabinet and the C.E.M. and E.Ms are similar to the Chief Minister and the Cabinet Ministers respectively. The District Councils, thus, may be called, 'Miniature Governments' on the District Level.

Apart from the Legislative and Executive functions, the District Councils also perform judicial functions. The Judiciary consists of the District Council Court, Subordinate District Council Courts (the lowest Law courts). The subordinate District Council Courts have original jurisdiction in certain cases. They also function as courts where the village Courts refer cases where the sentences, the Village Courts are empowered to decide, are considered inadequate in the circumstances. There is the District Council Court, sitting in a bench of three Judicial Officers (normally) presided over by the president of the District Council Court. This is the Court of appeal from decisions made by S.D.C.s (see para 4 of the sixth Schedule to Indian Constitution). The cases between tribals and non-tribals are only heard and adjudicated by these Courts on customary Laws. For other business (particularly legislative function) of the District Councils, there is a provision of full time paid secretary who is normally deputed by the State Government.

But their position is unique in so far as their powers and detailed functioning have been prescribed in the constitution. As per the provisions of the Sixth Schedule, the Councils have been given extensive legislative powers relating to the administration of land, management of forests, regulation of the practice of 'JHUM' or other forms of shifting cultivation,

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and matters relating to village and town administration. The District Councils are also authorised to constitute Courts for the trial of suits and cases between the the parties, all of whom belong to the Scheduled Tribes. They also have powers to control money - lending, levying and collection of taxes. In accordance with clause 6 of the Sixth Schedule, the District Councils may also abolish, construct or manage primary Schools, dispensaries, markets, cattle pounds, roads and in particular, may prescribe the language and the manner in which Primary Education shall be imparted in the District. Thus all law with respect to the matters enumerated in the Sixth Schedule of the Indian Constitution framed by the District Councils are put up before the Governor of State for his consent or signature and then become valid and are applicable to the tribal people. Not only this but the Governor as per the provisions of the sixth Schedule, has extensive powers to organise District Councils and Regional Councils, which are contrary to the provisions of the Sixth Schedule, thus the Sixth Schedule, makes Governor as the head of the Autonomous District Councils. The District Council enjoys so much autonomy that the Acts of State Legislature on the above subjects do not normally apply to Autonomous Hill Districts. They may be extended with such exceptions and modifications as are considered necessary by the District or Regional Council concerned.

Regarding the administration of justice, District and Regional Councils have authority. No other Court except the high Court and the Supreme Court has jurisdiction over suits or cases decided by the Regional Council Courts. As per the Schedule, the District Council, apart from its source of income, receives grants from the State Government for its administration and also for certain development schemes going on within the autonomous Hill Districts which are inauditable.

So far as the functions of the Autonomous District Councils are concerned, they are expected to uplift the village tribal communities, in the domains of primary education, culture, economic, agriculture, health, village communication, sanitation and rural development. But the

**Sixth Schedule for the Hill Areas of Assam failed to satisfy their aspirations and meet their requirements fully. The refusal of the Nagas (for whom the Sixth Schedule was mainly provided) to work it and the subsequent dissatisfaction of the Khasis, the Jaintias, the Garos and Mizos with it, sealed its fate. There are many reasons or draw backs for the rejection of the Sixth Schedule by the tribal people of the North Eastern Region, which are as under:-**

The Sixth Schedule makes elaborate provision for creation and functioning of Autonomous District Councils Regional and Council. So far as its provisions are concerned, they suffer from certain shortcomings and defects. Because there is no provision at all for co-ordination of the activities of the District Councils and the State Government. So the State Government does not have power to review and assess the working of the District Councils. They are independent in their functions. Due to lack of the provision of co-ordination, the District Councils do not have expert officials, legal experts and technical experts especially for development schemes going on within the Hill Districts. So the District Councils have not been able to do anything of standard in the interest of the Hill masses because the District Council leaders are not taking interest in plan formulation schemes, village production schemes, and Five Year Plans.

In addition, the District Councils have control over the administration of justice in autonomous Districts, no doubt, but they do not have legal experts, who can give advice to the District/Regional Council Courts in the matter of trial of cases/disputes. This is against the principle of Judicial Administrations. Not only this much but the District Councils, due to lack of co-ordination, cannot also utilise the administrative and technical experience of the Government officials of the State or even the experience of the Deputy Commissioner in the administration of the District. Clause 6 of the Sixth Schedule, however, seems to be out of tune with the entire Schedule in as much as it provides that the District Council may establish Primary Schools and prescribe their medium of instruction in the autonomous District, even within the jurisdiction

of the Regional Council. Unlike in other clauses, the Regional Council has not been mentioned in Clause 6. And as such, the powers of autonomous organ suffer considerably owing to its exclusion from this important provision. That is why, the Regional Council has no such power at all to impart primary education. So the minor tribes of the jurisdiction of the Regional Council, do not have freedom to read and write in their own dialects and languages which is nothing but against civil rights or right to language, dialects and culture. Similarly unlike, the District Council, the Regional Council does not have power to make regulations for the control of money-lending and trading by non-tribals. As such, the minor tribes are not satisfied with the existing provisions of the Schedule.

Another defect is that the District Council as per sub-clause 3 of clause 8 of Schedule has power to impose or levy taxes on professions, trades, entry of goods into market, vehicles and tolls on person, even within the area of the Regional Council. The Regional Council has no such power except collection of house taxes. Even the Chief Executive Member of the Regional Council is subject to the levy of professional tax by the District Council. Thus income from such taxes, collected from the areas falling within the jurisdiction of the Regional Council goes to the District Council that is absolutely unfair and against economic autonomy.

Another feature of the Schedule is that royalties from licenses or leases for the extraction of minerals granted by the State Govt. in respect of any area within the autonomous District or even within the area of the Regional Council are shared by the Government and the District Council on certain agreed ratio. The Regional Council has no share in it which is against the principle of economic equality.

The provision of the Sixth Schedule is un-democratic in this sense that the accounts of the District Councils and the Regional Council are neither auditable by the Accountant General nor their offices supervised, instructed and guided by the Commissioner of Hills. As it is obvious, grants sanctioned to the District Council/ Regional Council

by the State Government are public finance or public money. So it must be voted or subject to audit, or otherwise, there is cent percent possibility of misappropriation of accounts or misuse of public money. And as a result, it may also lead the officials of the District Councils/Regional Council (Elected and appointed) to social, political, economic corruptions which may in the long run breeds misery, hate and frustration among the tribal masses. For instance, corruption, nepotism and favouritism prevalent in the administration of the Mizo District Council and the Pawi-Lakher Regional Council were also one of the causes responsible for the M. N. F. insurgency in 1966 in Mizo Hills (Now Mizoram). It is well known fact that in democracy, audit is a check on the misuse of public money or misappropriation of accounts by officials and insures a healthy administration by proper expenditure on the Development Schemes. But experience shows, due to lack of provision of audit of accounts under the Sixth Schedule, the District Councils have failed to develop the autonomous districts in the domain of jhuming, construction and maintenance of roads, dispensaries and markets. Not only this but it is often heard or experienced about the irregular payment to the employees of the District Councils, despite getting sizeable grants from the State Government. So, here the possibility of the misuse of public money not lies in the organisation of the District Council but in the provisions of the Sixth Schedule. Apart from these features, experience shows that the entire structure of the Autonomous District Council or the provision of the Sixth Schedule is cracking. These autonomous District Councils have really become a major financial and administrative headache to the State Government. The powers delegated to these autonomous District Councils under the Sixth Schedule, are misused by those in authority and corruption, favouritism, nepotism and bunglings are said to be rampant. The net result is that no benefits have reached the poor people and their conditions have not improved much. There is hardly any indication of social change in the tribal areas.

So mainly because of the defective provision of the Sixth Schedule, there was consistent and persistent demand of the Khasi, Jaintias and

the Garos for fuller autonomy which compelled the Government to seek a more satisfactory constitutional solution. After months and years of discussions and dialogues, a solution based on a consensus emerged. Under it, the bill 1969 for the creation of "An Autonomous State" within Assam was passed by both Houses of Parliament by amending the provisions of the Sixth Schedule. Under this Act, a wide extensive legislative and executive powers were been given to the autonomous State. In addition, another land mark in the working of the District Councils was reached with the amendment of Sixth Schedule of the constitution by Section 74 of the Assam Re-organisation Act, 1969. The amended Sixth Schedule of the constitution provides that the Governor of Assam may with the consent of the District Councils, entrust them functions relating to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive powers of the State extend. Accordingly, the Mikir Hills and the North Cachar Hills District Councils have been entrusted with developmental functions in 1970 including the control of Tribal Development Blocks. But the Mizo District Council refused the provision and instead the Mizo demanded for separate political status.

With these provisions, the new Autonomous State of Meghalaya and the Mikir Hills District Council and the North Cachar Hills District Council might facilitate the fulfilment of most of the aspirations at least for the time being. But the people of these sensitive areas did not have patience to experiment the amended provisions of the Sixth Schedule of the Indian Constitution. Ultimately, the persistent demand of the people of this North Eastern Region compelled the Government of India to create Meghalaya, Manipur and Tripura, as full-fledged States and Mizoram and Arunachal as Union Territories under the North Eastern Areas ( Re-organisation Act 1971 ) so that the masses of this sensitive region may be able to fulfil their political, social and economic aspirations.

Here I must mention the amended provision of paragraph 20 of the

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Sixth Schedule to the Indian Constitution with special reference to Mizoram. The Mizo District Council has been substituted by the Union Territory of Mizoram in accordance with the North Eastern Areas (Re-Organisation) Act 1971 and the Government of Union Territories (ammendment) Act 1971. In order to remove the gulf of power or autonomy between the District Council and the Regional Council, paragraph 20 of the Sixth Schedule to the Constitution has been ammended in 1971 and consequently the Pawi-Lakher Regional Council has been established. And the Government of Union Territories (ammendment) Act 1971 has provided three autonomous Regional Councils in Mizoram for major tribes such as Pawis, Lakhers and Chakmas. As a result, under section 4 (1) of the Pawi Lakhers autonmous Region (Re organisation) order 1972, the Pawi Regional Council, the Lakher Regional Council and the Chakma Regional Council have been created by the Administrator of Mozoram so that these tribes may be able to develop their customs, culture and dialects according to their own genius and ability. As already enshrined in the North Eastern Areas (Re organisatin) (Mizoram) Adoption of Laws, Order 1972, these three regional Councils have been elevated to the status of the District Council such as the Pawi District Council, The Lakher District Council and the Chakma District Council with a view to having more autonomy in managing their own local affairs. This was enforced by the Govt of Mizoram vide letter No LTD 8/72/53 dated 29th April '72. But these District Councils in Mizoram have their headquarters at Lawngtlai ( P. D. C. ) Saiha L. D. C. and Borapansuri ( C. D. C. ) which are not actually District Headquarters as the District Headquarters of Councils in Assam were generally located in the Hills Districts. But it is expected that the consistant and par-sistent demands of the people of these areas will compel the Government of Mizoram the in long run to convert these places into District Headquarters as there is generai talk in this regard among the Pawis and the Lakhers.

Regarding their powers and functions, these District Councils have power to make laws with respect to the subject enumerated in the Sixth Schedule to the Constitution.

But in order to re-vitalise the working of the District Council in the interest of the tribal people and to have co-ordination and guidance especially in the development schemes or social welfare, no amendments have been made under the Sixth Schedule to bring these District Councils closer to the State Administration. No steps have been taken under the amended provision of the Sixth Schedule to have the financial control of the State Government over the accounts of these District Councils, in the absence of which, corruption, nepotism and favouritism are bound to be rampant in the administration of these District Councils. As experience shows, the Sixth Schedule of the Indian Constitution, had no doubt, provided a fair degree of autonomy to the tribal people living in Garo, Khasi, Jaintia, Mizo and Mikir Hills of Assam. Although the people of these Hills Districts (except Nagas) accepted the arrangement and worked the provisions of the Sixth Schedule, the tribal people of these autonomous Districts began to boycott the provisions gradually and demand for separation from Assam and more autonomy due to inherent defects of the earlier provisions of the Sixth Schedule. Under the earlier arrangement there was no formal association or linking of the District Councils with Tribal Development Blocks. There is no such provision under the Sixth Schedule by which the District Councils can be brought to participate in the developmental schemes or social welfare to the largest extent possible especially in the fields of economic and social uplift. Thus the District Council have failed to evoke the local initiative and people's participation in the developmental activities to the desired extent.

With these provisions, the New District Councils in Mizoram will facilitate the fulfilment of most of the aspirations of the Pawis, the Lakhers and the Chakmas. Given the good-will and cooperation of all concerned, it can usher in a new chapter in the developing pattern of the Union Territory of Mizoram. In order to mobilise the initiative and participation of the tribal population in the developmental activities or social welfare, there must be association or linking of these District Councils with the Tribal Development Blocks in Mizoram. This arrangement will offer

an opportunity to the District Councils and through them to the tribal population to mould the development agency in the entire development programme in the manner best suited to their genius and requirement. It is expected that under this arrangement, the District Councils in Mizoram will play a significant and important role in giving the sense of purpose and direction to the tribal development movement.

#### Notes and References

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2. Dr. V. Venkata Rao: A hundred years of local self Government in Assam.
3. The North Eastern Areas (Re-organisation) Act 1971.
4. The Govt of Union Territories (amendment) Act 1971.
5. The Pawi-Lakher Autonomous (Re-organisation) order, 1972.
6. The Mizoram Gazette Aizawl, Friday, April 21, 1972.
7. Mizoram Gazette, Aizawl, Friday, May 5, 1972.
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9. Amit Kumar Nag: On the Political Structure of North East India, Published in the Journal of Assam Political Science Association, 1970-71.
- 10 The Brochure on the Mizo District Council, 1965.

## The Place Of Chakmas In Mizo Society

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There is no visible mark of their traditional dance. Dancing is not encouraged in the society except by small children. With the close contact of the plain people they have developed the basic technique of dance which are very popular with them. They are very much fond of 'JATRA' and 'DRAMA'. The games of popular nature among the Chakmas are 'GHILA-CHELA', 'NADENG-KHELA' and 'PATTI-KHELA' which are still played with love and enthusiasm by the younger people.

The advent of the new year (1st Vaishak) is lavishly celebrated in pomp and pleasure by them. They celebrate consecutively for three days and their festive mood comes just two days ahead of the actual new year. These three days are known as 'PHOOL-BIJU', 'MUL BIJU' and 'GARJA-PARJA'. On the biju day the younger generation give bath to the elderly people by fetching water from river in the early morning and receive their blessings. People in groups start visiting the neighbouring houses and they are entertained by the house owner by offering sweets, rice cakes and liquor beer prepared out of rice. The last day of the festival is known as the day of rest.

Now the future of these people rests in the hands of the Autonomous Chakma District Council and with the Government of Mizoram as their custodian.

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