CHAPTER VII

FORMATION OF THE LALUNG (TIWA) AUTONOMOUS COUNCIL: LEGAL PLURALISM AT WORK

7.1. Introduction

As already described in chapter I, since the late 1970s and 1980s, the study of legal pluralism became the prime focus of anthropologists interested in the study of customary law and traditional political institutions administering these laws. Following the seminal works by Pospisil and Moore, they became more interested in how several normative regimes may coexist within the same social field.

A study of the customary laws of the Tiwas of Assam in the contemporary setting will be incomplete without looking into the newly constituted Lalung (Tiwa) Autonomous Council— the fruit of a much cherished dream for autonomy of the Tiwa tribe. Its formation can be expected to create a complex legal pluralist regime, composed of customary laws and traditional political institutions in existence in the community since time immemorial, the formal state made laws and those made by the Autonomous Council. In this chapter, an attempt is being made to study the historical background, jurisdiction, the functioning and powers of the newly constituted Autonomous Council, and the place it accords to customary law and traditional institutions and overlaps if any, with existing governance structures. Here, it may be mentioned that the study of the Tiwa Autonomous Council in the context of legal pluralism is based on an inter-disciplinary approach, using both anthropological and legal methods. This part of the research has been accomplished using a number of methods— interviews with executive members of the Council, Tiwa Sahitya Sabha (Tiwa literary organisation), student bodies, etc.
with legal analysis, analysis of many documents like the Constitution of India, official correspondence, Ministerial Reports, etc.

7.2. History of the Lalung (Tiwa) Autonomous Council

Part-X of the Constitution of India deals with the Scheduled and Tribal Areas. Article 244 (1) of the Constitution of India relates to the administration of Scheduled Areas and Tribal Areas, to which the Fifth Schedule of the Constitution applies. According to this article, the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram, and Tripura. Article 244 (2) states that the provisions of the Sixth Schedule shall apply to the administration of tribal areas in the States of Assam, Meghalaya, Mizoram, and Tripura. Para I read with para 20 of the Sixth Schedule specifies the areas, which will be autonomous districts under the Sixth Schedule. Initially, only the two hill districts of Assam, namely Karbi Anglong (formerly known as the Mikir Hills district) and North Cachar Hills district were included under the Sixth Schedule areas.

Therefore, it is clear that in Assam, the areas inhabited by plains tribes have been left out of the purview of both the Fifth and Sixth Schedules of the Constitution of India. Whereas the hill tribes of Assam and the tribal people of Meghalaya, Tripura and Mizoram are included in the Sixth Schedule of the Constitution, tribal areas of the states other than the North-Eastern region are generally included under the Fifth Schedule of the Constitution. The Sixth Schedule, regarded as a ‘mini-constitution within the main constitution’ has been envisaged by the framers of the Constitution, as an instrument to promote tribal self-rule in the North-east, ‘seeking to guarantee political dominance for backward groups, better local governance at the community level, better economic development and ethnic security for those who feel threatened by large scale influx of illegal migrants and even shelters from other parts of India’ (Roy Chaudhury, 2005). The Sixth Schedule provisions trace their genesis to the recommendations of the Bardoloi Committee, under the chairmanship of Shri Gopinath Bardoloi, set up by the Constituent Assembly. The Committee recommended the setting up of Autonomous Districts and
Regional Councils in the interiors of the erstwhile Assam hills, to provide safeguards to the tribals in respect of their land, social customs and usages, language and culture (Barpujari, 1998: 10-11).

According to the Ministerial Sub Committee on Inclusion of Mishing, Rabha and Tiwa Autonomous Councils in the Sixth Schedule of the Constitution of India, 2005, the denial of Sixth Schedule status has led to a great resentment amongst the plains tribes communities of Assam as they have been deprived of the autonomy and other constitutional rights enjoyed by the scheduled tribes in other parts of India and by their counterparts residing in the hills of Assam. This gave birth to movements for autonomy among the Bodos, the Tiwas, the Rabhas, the Mishings, and other plain tribes.

One of the first calls for autonomy by the plains tribes of Assam was launched by the Tiwas, under the aegis of the Lalung Durbar in the 1960s. The Lalung Durbar had its birth in 1967 at a meeting of prominent leaders of the Tiwa community. The Lalung Durbar was created with the objective of forming a Lalung district, and in the words of Shri Narayan Kumar Radu Kakoti, once of the conveners of the meeting, 'to put an end to the oppression and rule of the high-caste population residing in Assam over the Lalung community' (Souvenir of the Tiwa Autonomous Council, undated). The first demand of the Lalung Durbar was for the creation of a 'Lalung Hills Sub-Division', submitted in the form of a memorandum to the then Home Minister of India on July 8th, 1967. The contents of this memorandum are reproduced as follows:

To.
The Home Minister,
Government of India and all Leader's Hills and Plains of Assam
New Delhi

Many tribes of Assam with different tradition, Lalung is very backward Hills tribe. Demanded Lalung Hills sub-division with Council. Within Mikir and N.C. Hills area, Amri Development Block from Mikir Hills, southern hilly side of the river Kopili Nowgong district, Dhawmara Pahar from Kamrup and Lalung area of Khoyrim

1 A broad translation from the Assamese original.
2 The investigator accessed this memorandum at the office of the Tiwa Autonomous District Council located in Morigaon town.
3 Present Karbi Anglong district.
state from Khasi and Garo Hills our rightly demand. We want living with Hills and Plains different traditions as a tribe of Assam.

Indrasing Deori
Gen. Secretary, Lalung Durbar
P.O.-Umpanai, Mikir Hills
Assam
8-7-1967

Following this, two more memorandum were submitted by the Lalung Durbar, one in 1983 and the last one in 1987 to the Prime Minister of India with the same demand. Agitations and movements were on relentlessly during the time, with Tiwa leaders facing arrest and imprisonment on numerous occasions. At about the same time, similar movements for autonomy were being carried out by the Bodos, the Rabhas, and the Koch. The Lalung Durbar formed alliances with these movements to place the demands for autonomy before the government collectively. In November 1988, the Tiwa Autonomous Demand Committee was formed, comprising of representatives of the Lalung Durbar, the Lalung Youth Front and the Lalung Mahila Front, to negotiate on behalf of the Tiwa community with the government. This was a 25 member committee with Giridhar Patar as President, Tulasi Bordoloi as working president, Ananda Bordoloi as vice-president, and Narayan Kumar Radu Rakoti as General Secretary. From then onwards, negotiations with the government took place under the aegis of the Tiwa Autonomous Demand Committee on behalf of the Tiwa community. However, there were certain groups among the Tiwas which were dissatisfied at not being made part of the negotiations such as the Tiwa Sahitya Sabha and the Tiwa Autonomous State Struggle Committee (Rajagopalan, 2008: 21).

The creation of the Bodoland Autonomous Council (BAC) following the Bodo Accord in 1993 fuelled the demands for autonomy by the Tiwas, Mishing and Rabhas. Here, it may be mentioned that the BAC experiment failed to satisfy the Bodos and the All Bodo Students Union (ABSU) launched an agitation denouncing the accord and demanding creation of a separate state. The Bodo Liberation Tigers indulged in acts of violence during this period. All this culminated with the signing of the 2nd Bodo Accord

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in 2003, whereby the BLT gave up its demand for a separate state and settled for the extension of the Sixth Schedule Status to the Bodo areas. Following a Memorandum of Settlement between the Government of India, the Government of Assam and the Bodo Liberation Tigers (BLT), the Bodoland Territorial Areas District (BTAD) was constituted under the Sixth Schedule. This was possible through a constitutional amendment affected through the Sixth Schedule to the Constitution (Amendment) Act, 2003.

Following the creation of the BAC in 1993 (through an Act of the state legislature), the government of Assam decided to accede to the demands of autonomy made by the other plains tribes - the Tiwas, Mishings and Rabhas. According to Verghese (2004: 68), this was a preemptive measure on the part of the state government. The government was criticized by many for this move. The then Chief Minister of Assam Shri Hiteshwar Saikia defended by saying that the offer was intended to curb the trend towards tribal alienation, and that the powers conferred to autonomous councils were similar to those to be handed over to the Zila Parishads under the Panchayati Raj system (Barpujari, op.cit.: 103). Towards this end, series of discussions were held with leaders of the different tribal groups. As a result of the discussions, it was felt expedient to set up Autonomous Administrative Authorities for areas predominantly inhabited by the Tiwa, Mising and Rabha people.

Accordingly, three accords and Memoranda of Settlement were signed by the Government of Assam with the Tiwa (Lalung) Autonomous Demand Committee and Demand Committees of the Rabhas and Mishings respectively in 1995. The main points of these accords are as follows:

(i) Three autonomous administrative authorities under the name and style of Tiwa (Lalung) Autonomous Council, Rabha Hasong Autonomous Council, and Mishing Autonomous Council will be set up under three Acts of the state government of Assam.

(ii) Villages having 50% or more population of the respective communities would be included in these three Councils without having any compact area and definite boundary.
The Autonomous Council areas would be exempted from the purview of the Assam Panchayat Act, 1994 and Assam Municipal Act, 1994. Powers and functions listed in the Eleventh Schedule of the Constitution (which deals with the powers, authority and responsibilities of Panchayats) would be vested with these three Councils (Ministerial Sub Committee, 2005).

However, some organisations of the Tiwas, Mishings and Rabhas opposed the modality and demanded creation of Autonomous Councils under the Sixth schedule of the Constitution with a definite boundary.

Following the memoranda, three state legislations conferring autonomy to the Tiwas, Mishings and Rabhas respectively were enacted. In this manner, the Lalung (Tiwa) Autonomous Council Act, 1995 was enacted by the state legislature and an interim Lalung (Tiwa) Autonomous Council was created. In a public meeting held on 17th July 1995 in Morigaon town, a list of members for the proposed interim council was presented which is as follows:

1. Shri Narayan Kumar Radu Kakoti - Chief Executive Member
2. Shri Kamal Chandra Pator - Executive Member
3. Shri Panindra Bordoloi - Executive Member
4. Shri Basisthamuni Ramde - Executive Member
5. Shri Nadiram Deuri - Member
6. Shri Puheshwar Bordoloi - Member

Under the Eleventh Schedule, the authority of the Panchayat extends to agriculture, including agricultural extension, land improvement, implementation of land reforms, land consolidation and soil conservation, minor irrigation, water management and watershed development, animal husbandry, dairying and poultry, fisheries, social forestry and farm forestry, minor forest produce, small scale industries, including food processing industries, khadi, village and cottage industries, rural housing, drinking water, fuel and fodder, roads, culverts, bridges, ferries, waterways and other means of communication, rural electrification, including distribution of electricity, non-conventional energy sources, poverty alleviation programme, education, including primary and secondary schools, technical training and vocational education, adult and non-formal education, libraries, cultural activities, markets and fairs, health and sanitation, including hospitals, primary health centres and dispensaries, family welfare, women and child development, social welfare, including welfare of the handicapped and mentally retarded, welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes, public distribution system, maintenance of community assets.

List was obtained by the researcher from the Tiwa Autonomous Council office in Morigaon town.
The Governor of Assam in a letter vide T, A, D/S, T/276/94/55 and through a departmental notification T, A, D/S, T/276/94/55 dated 18th July 1995 nominated these members to the Council, which was to be functional with effect from 27th July 1995.

In 1996, a new government led by the Assam Gana Parishad (AGP) came to power, and the interim nominated bodies were replaced by new persons. In 1998, the AGP led government entered into an agreement with the representative organisations of these tribes giving assurance to demarcate boundaries of the Councils and to hold elections. In 2001, another new government was installed at Dispur, which took up the problem afresh for a permanent and amicable settlement. However, till date, the Tiwa Autonomous Council continues to be composed of nominated members, running on an adhoc basis with no elections being held since its constitution in 1995. The main hurdle in this regard is the fact that the area and jurisdiction of the Council is yet to be concretely demarcated and is a very contentious issue. In an interview given to the
researcher, the present Chief Executive Member (CEM) of the Tiwa Autonomous Council (TAC), Ramakanta Deuri said that 'the problem in demarcation and drawing the map of the Council is primarily because of the fact that the Tiwas have been residing in contiguous areas with the Karbis, Bodos and other tribes, who are creating some resistance at their inclusion into the Tiwa Council'.

7.3. Area of Jurisdiction

As seen in the first memorandum submitted by the Lalung Durbar demanding for a Tiwa Autonomous Council, they have been demanding creation of an Autonomous District carved out of all the Tiwa inhabited districts of Assam and Meghalaya. According to Gohain (1993:97), the Autonomous Lalung Hills District which the Lalung Darbar has been demanding for creation covers the Lalung habitat of entire Morigaon, portion of Kamrup and Karbi Anglong districts of Assam as well as a portion of the Khasi Hills district of Meghalaya. The area of the proposed district will cover 2,100 square miles; while the tribe-wise population of the proposed district will be 52% Tiwa or Lalung, 20% Khasi and other tribes, 28% non-tribals (ibid.)

This was reiterated in a memorandum submitted by a number of agitating Tiwa organisations before the Ministerial/ Cabinet Sub-Committee on its visit to Morigaon in June, 2004 to consider the question of Sixth Schedule status (Northeast Vigil, June 9, 2004). They demanded for inclusion of all Tiwa-dominated areas in both Assam and Meghalaya into the proposed Sixth Schedule Tiwa Autonomous Council. The memorandum alleged that Tiwa areas were divided time to time based on political exigencies. The memorandum stated that the first such division was in 1835 when the ancient Gobha State including its tributary principalities namely Khala, Nellie, Topakuchi, Dimoria etc., were annexed into the British Empire. At this time, the Tiwa area was divided into hills and plains. The plains portion was added with Nagaon district while the hills part was retained with Jaintia hills, the memorandum referred. A further division took place at the time of creation of Karbi Anglong Autonomous District. The memorandum demanded that all these divisions should be done away with and one time divided areas (areas of Karbi Anglong and Shari Krai (Saw Raid) of Meghalaya) should
be reunited with the areas in the plains within one administrative setup in the form of an autonomous Council under the Sixth Schedule.

These demands of the Tiwa community for a 'greater' Tiwa district composed of Tiwa inhabited areas in both hills and plains of Assam and in the state of Meghalaya could not be acceded to. It was feasible for the state government to create such a district only in the Tiwa inhabited areas of the plains of Assam. The Government recognized that the Tiwa District could be created only in the plains, where they inhabit an area extending from Sonapur Revenue Circle of Kamrup district eastward upto Raha Circle along the foothills of Meghalaya and Karbi Anglong and southward upto a portion of Lahorighat Circle. They have another concentrated area of habitation in Kathiatali Development Block of Nagaon.

The Ministerial Sub-Committee in its interim report in 2005 has recommended that the area of the Autonomous Council should be notified on the basis of the Core Area and Satellite Area formula. It has recommended that the Core Area and Satellite Area are to be defined as follows:

(i) Core Area shall consist of compact and contiguous areas predominantly inhabited by Tiwa people having more than 50% Scheduled Tribe population as a whole in the area and not necessarily in individual villages.

(ii) Satellite Area or Areas consisting of non-contiguous cluster of villages predominantly inhabited by Tiwa people, having more than 50% Scheduled Tribe population as a whole in the cluster and not necessarily in individual villages.

The lists of villages submitted by the various Tiwa organisations were sent to the Deputy Commissioners for verifications and then the Assam Institute for Research on Tribals and Scheduled Castes was asked to examine the population figures and carve out Core Areas and Satellite Areas. The AIRTSC had submitted the list of villages for notification by the Government of Assam. The population pattern of the proposed Council is as follows:

| 179 |
Total Villages | 415
---|---
Total population in the proposed TAC Area | 313387
ST population | 164399
ST% in TAC Core Area | 52%

Table 21: Proposed Coverage of the Tiwa Autonomous Council

Source: Ministerial Sub Committee on Inclusion of Mising, Rabha and Tiwa Autonomous Councils in the Sixth Schedule of the Constitution of India, 2005.

However, till date, the Core Area and Satellite Areas of the district are yet to be notified and till that is done, the Autonomous Council will not be properly functional.

7.4. Powers and Functioning

The Lalung (Tiwa) Autonomous Council Act, 1995, in its preamble, recognizes that it is expedient to provide for the establishment of a Lalung (Tiwa) Autonomous Council within the state of Assam with maximum autonomy within the framework of the Constitution, comprising of the satellite areas of village councils formed out of blocks of contiguous revenue villages, each having more than 50% population of Lalung (Tiwa) community, without having any compact area, for social, economic, educational, ethnic and cultural advancement of the Lalung community residing therein.

In section 3, the Act provides that there shall be an autonomous council to be called the Lalung Autonomous Council within the state of Assam, comprising of the areas of the village councils as may be specified by the Government by notification in the Official Gazette. It provides that the Council shall have maximum autonomy within the framework of the Constitution, and is to have a general council and an executive council.

Chapter II of the Act dealing with the composition of the general council provides that it shall consist of 30 members of which 26 shall be directly elected and 4 shall be
nominated by the Government from amongst the groups of communities residing in the Council Area and not otherwise represented in the general council. It further provides that out of 30 seats, 15 seats shall be reserved for the Lalung community and out of 15 reserved seats; atleast 3 seats shall be reserved for women (Section 6 (1)). The Act states that the elected members of the general council shall on the first meeting after the election for the purpose of constitution of the executive council, select from amongst themselves, in the manner prescribed, one member to be the chief executive councillor who shall also be the president of the general council and three executive councillors (section 6(4)). The term of office of the general council shall be for five years from the date of the first meeting as appointed by the government after the election of the members, unless dissolved earlier (section 7(1)).

Chapter III details the powers and functions of the general council. According to section 18 of the Act, the general council shall have executive powers in relation to the Council Area over the following subjects:

1. Cottage industry
2. Animal husbandry and veterinary
3. Forest, other than Reserved Forest
4. Agriculture
5. Rural roads and bridges
6. Sericulture
7. Education
   (a) Adult Education
   (b) Primary Education
   (c) Upto Higher Secondary including vocational training
8. Cultural affairs
9. Soil conservation
10. Co-operation
11. Fisheries
12. Panchayat and rural development
13. Handloom and textile
14. Public health engineering- drinking water
15. Minor irrigation
16. Social welfare
17. Flood control schemes for protection of villages
18. Sports and youth welfare
19. Weights and measures
20. Library services
21. Museum and archaeology
22. Urban development, town and country planning
23. Tribal research
24. Land and land revenue
25. Publicity and public relation
26. Tourism
27. Transport
28. Any other matter connected with development
29. Municipal boards, improvement trust, district and local self- government of villages
30. Tribal welfare
31. Market and fairs
32. Lotteries, theatres, dramatic performance, and cinema
33. Vital statistics including registration of births and deaths
34. Food and civil supplies.

The general council is also empowered under section 19 to formulate integrated development plans for the Council Area, implement schemes and programmes for the development of the Council Area, to appoint Class III and Class IV staff within the Council Area and to regulate trade and commerce within its jurisdiction. Section 23 empowers the General Council to make bye-laws to be applicable within the Council area with respect to all or any of the matters enumerated in the Act for regulation, control and administration thereof.
7.5. Village Councils under the Tiwa Autonomous Council

Section 4(1) of the Lalung Autonomous Council Act, 1995 states that there shall be a village council for each block of villages, each village having 50% or more Lalung population. According to section 4(2), each village council area shall consist of approximately 6000 to 8000 population. On April 6th, 1996, the Governor of Assam constituted 44 Lalung village councils (L.V.C.s) under the Tiwa (Lalung) Autonomous Council in exercise of powers under section 4(3) of the Act.

Chapter V of the Act provides that the village council shall consist of 10 members of which 5 seats shall be reserved for the Lalung community out of which at least one shall be a woman. The members shall elect from among themselves a president and vice-president. Chapter VI details the powers and functions of the village council. According to section 43 of the Act, the village council has the executive power in relation to the village council area over the following subjects:

1. Agriculture including agricultural extension
2. Animal husbandry, dairy development and poultry
3. Fisheries
4. Social and farm forestry/ minor forest produce, fuel and fodder
5. Khadi, village and cottage industries
6. Rural housing
7. Drinking water
8. Roads, buildings, culverts, bridges, tunnels, waterways, and other means of communication
9. Rural electrification
10. Non-conventional energy sources
11. Poverty alleviation programme
12. Education including primary schools
13. Adult and non-formal education
14. Libraries
15. Cultural activities
16. Markets and fairs
17. Rural sanitation
18. Public health and family welfare
19. Women and child development
20. Social welfare including welfare of handicapped and mentally retarded
21. Welfare of weaker section and in particular that of Scheduled Castes and Scheduled Tribes
22. Public distribution system
23. Maintenance of community assets
24. Construction and maintenance of dharamsalas and similar institutions
25. Construction and maintenance of cattle sheds, pounds and cart stands
26. Maintenance of public parks and play grounds
27. Construction and maintenance of slaughter houses
28. Maintenance and regulation of manure
29. Such other functions as may be entrusted by the government from time to time.

According to section 44 of the Act, the village council has been vested with some other powers and functions as well such as formulating integrated development plans for the area, implementing schemes and programmes for the development of the area, regulating trade and commerce and also the power to collect certain taxes within the village council area.

Though already notified on paper, the village councils are yet to exist on the ground. According to Jitu Das, a prominent member of the Tiwa community residing in Morigaon town and employed as an engineer with the TAC, 'the soul of the concept of the autonomy envisaged under the TAC is the village councils, which have not been made operational yet as there are numerous problems with delimiting the territories'. In his view, these conflicts will need to be resolved expeditiously if a proper Council is to be set up, deriving its authority from the community.
7.6. Elections

Elections to the Autonomous Council and the village councils under it are supposed to take place according to the procedure set up under the legislation. Section 80 of the Act provides that the government shall as soon as possible take steps for the constitution of an Interim Lalung (Tiwa) Executive Council by nomination until the general council is constituted under this Act. The interim executive council shall, in addition, ‘look after the duties of the village councils till the same are constituted under this Act. Unfortunately, as already mentioned earlier, this state of affairs has continued with no elections being held till date.

Chapter VII of the Act deals with the procedure of election. Section 48 is the section dealing with delimitation. Section 48 (1) provides that there shall be ten constituencies in a village council area for electing members to the village council. Each such constituency shall be a single member constituency and shall be territorial. Section 48(2) says that there shall be 26 constituencies covering the council area for electing members to the general council. Each constituency shall be a single member constituency and territorial. Section 48 (3) provides that the government, shall, by order published in the Official Gazette, determine the territorial limits of the constituencies into which the village council area or the council area shall be delimited for the purpose of election of members to the village council and the general council.

7.6. Recognition of Customary Law and Traditional Administration

Customary laws of the Tiwa community and traditional political institutions administering them find legal sanction; with sections 19 (iv) and 44 (v) expressly providing that the general council and the village councils respectively are to guide custom and traditions and social justice of the Lalung community according to the traditional laws. The most enabling section in favour of customary laws is section 70. Section 70 expressly provides that the government shall consult and give due regard to the views of the General Council before any law is made and implemented in the Council Area on the following subject namely-
From this section, it can be interpreted that the Tiwa Autonomous Council is under a legal obligation to uphold the customary laws and procedures of the Tiwas and there is an equal obligation upon the state government to respect these.

Recognition to customary laws and customary courts is also expressly provided in the Lalung (Tiwa) Accord of 1995 signed between the Government of Assam and the Tiwa Autonomous Demand Committee. According to the terms of this Accord, while making laws in respect of socio-religious and customary practices and procedures, and also with respect to ownership and transfer of land within the Council area, the State Government will give primacy to the views of the Autonomous Council. The Accord also provides that the State Government will set up customary courts within the Council area to facilitate the administration of justice according to the age-old customs and traditions of the community (which has not happened till date).

In the words of Ramakanta Deuri, CEM, 'the Council exists at the will of the community and the community leadership, vested in its traditional village councils and gaonburhas, on whom is vested the authority to administer the age-old traditions and customary laws. The Council cannot interfere in the functioning of the traditional village councils, as under Tiwa customary laws, only the Tiwa raja can interfere in the workings of the village councils and that too, in extreme cases'. Further, according to Deuri, 'as we have new village councils constituted under the Tiwa Autonomous Council, we will have to find some way of adapting this new system to our old power structures. As we reconcile new governance structures with traditional ones, we will have to ensure that the new structures give equal importance to the traditions of our forefathers and the customs and prescriptions they have laid down for us. We will have to ensure a careful balance, as a community which does not respect its traditions can have no future. The Council is not only legally but morally obliged to give recognition and preference to the customary laws of the community.'

6 Translated from the Assamese original.
However, he points out that the Tiwa Autonomous Council is severally constrained by the fact that it is a Council given by the State Government, enjoyed at its will. Thus, it does not having much law-making powers. According to him, ‘it would have been a different matter if the Council had derived its powers under the Constitution as in case of the Karbi Anglong District Council. There is even fear in the Tiwa community that the state government can even withdraw the powers given to the Council’.

Vis-à-vis the Tiwa Autonomous Council, which has only executive powers in respect of a number of departments, the Karbi Anglong District Council, which derives its powers from the Constitution, has elaborate powers in the following fields:

(i) Legislative functions

The Karbi Anglong Autonomous Council have powers to make laws for allotment, occupation, use of land, other than reserved forests for purposes of agriculture, grazing and other residential and non-residential purposes; management of unreserved forests, use of water courses and canals for agriculture purpose, regulation of shifting cultivation, establishment of village councils and town committees, administration of village policy, public health and sanitation. It also has law-making powers with respect to appointment and succession of chiefs or headmen, inheritance of property, marriage, divorce and social customs, money lending and trading by non-tribals within the autonomous districts. The TAC does not have any such powers, which severely restrict its capacity to contribute towards upholding the customary laws of the Tiwa community and practice self-governance in a meaningful manner.
(ii) Executive Functions

The District Council under the Sixth Schedule has the executive powers to construct or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways. It also prescribes the medium of instruction and manner of education in primary schools within its jurisdiction. The District Council has no legislative or regulatory power over the latter subjects. The Tiwa Autonomous Council too does have some executive powers.

(iii) Judicial Functions

Most important in the context of upholding the customary laws of the community are judicial powers to the Autonomous Council. Unfortunately, according to Ramakanta Deuri, judicial powers have not been conferred on the Tiwa Autonomous Council (TAC). According to him, in sharp contrast are the immense powers conferred on the Karbi Anglong District Council in this regard. Para 4 of the Sixth Schedule, which determines the powers of the latter, entitles the Council to constitute village and district council courts in the autonomous areas to adjudicate or try cases on the basis of customary laws in which both the parties are tribals. But no case involving offences punishable by death, transportation of life or imprisonment for not less than five years are heard or adjudicated by these courts. The district council court and the regional council court are courts of appeal in respect of all suits and cases tried by the village council courts and the subordinate district council courts. No other court except the High Court and the Supreme Court of India have jurisdiction over suits and cases decided by the council courts. This ensures considerable freedom to the courts constituted by the Council and gives legal backing to the decisions emanating from such council courts based on customary laws.

(iv) Financial Functions

The District Council under the Sixth Schedule is responsible for framing rules for the management of finances with the approval of the Governor. They are also given mutually exclusive powers to collect land revenues, levy and collect taxes on lands, holdings, shops, entry of goods into market and tolls etc within their respective jurisdictions. The District Council also has the concurrent power on the professions,
trade, callings, employments, animals, vehicles and huts, tolls on passengers, and goods carried in ferries and maintenance of schools, dispensaries or roads. Under para 9 of the Sixth Schedule, the royalty on the licenses or leases for the extraction of minerals in the autonomous districts goes to the District Council. As regards the tax on motor vehicles, it is assigned and collected by the State Government on behalf of the District Council. Grants-in-aid, loans and advances etc from the state government, constitute other sources of income of the Councils.

From the above, it is clear that in comparison to the TAC (Tiwa Autonomous Council) constituted by an Act of the State Legislature, a District Council constituted under the Sixth Schedule such as the KAAC (Karbi Anglong Autonomous Council) enjoy wide-ranging powers, especially law making powers and powers to constitute courts to try cases in accordance with customary laws. Also, the Acts of the Parliament and the state legislatures on the subject under them do not normally apply to the autonomous districts. They may be extended there with such exceptions and modifications as are considered necessary by the District Council concerned.

According to Ramakanta Deuri, 'despite having the will, the Tiwa Council is rendered toothless by the state government's authority over the Council'. In his view, 'the Council will be able to afford better protection to the customary practices of the tribe and its traditional institutions only when it gets Sixth Schedule status under the Constitution'. Limitation to the power of the Council is found in the provisions of the Tiwa Autonomous Council Act itself. Section 78 clearly lays down that if any provision of the bye-law made by the general council is repugnant to any provision of the law made by the legislature of the state of Assam, then the law made by the legislature shall prevail over the bye-law made by the general council. In his view, such a provision will need substantial amendment.

7.7. Demands for Sixth Schedule Status

As already discussed in the previous section, the Tiwa leadership (including the TAC members) is of the opinion that all ails afflicting this exercise in self-autonomy have only one solution- the conferment of Sixth Schedule status. This is a sentiment echoed by
other members of the Tiwa community too, both at an individual and collective level. In recent times, there have been many agitations by several Tiwa organisations, apart from the Tiwa Autonomous Demand Committee, to put pressure on the government to accede to this demand. While the agitations and movements have been more or less peaceful, at times, they have been characterised by some amount of violence and aggression. For instance, during the course of the research, there were many occasions when the researcher could not go to Morigaon town due to bandh calls given by some of these organisations. In fact, the situation turned quite volatile during the month of August 2006 when the office of the Tiwa Autonomous Council itself was vandalized by an angry mob, led by the All Tiwa Students Union. According to an Executive Member of the Council who did not wish to be named, ‘while their demands were justified and had the collective backing of the Tiwa community, their means were not justified and deserve condemnation’. Narrating the events of that fateful day, he said that he and most of the members of the Council were not in office that day and thus, had a lucky escape. The few staff who were there were manhandled by the crowd and their vehicles parked outside the office premises set on fire. While Morigaon town has mostly been at the centre of these agitations and demonstrations, the Tiwa organisations have also arranged them in Dispur, the capital of Assam to attract the attention of the government.

Many prominent members of the Tiwa community have been vocal in their support for sixth schedule status, but stress that this has to be achieved by peaceful means. According to Robert Lumfoi, the General Secretary of the Mathonlai Tokhra (Tiwa Sahitya Sabha,) whom the researcher met at Jagiroad, the Tiwa Sahitya Sabha has provided a platform for all Tiwas to come together and exert collective pressure on the government to heed their demands. In his view, ‘a call for self-autonomy is not enough: overall development of the community has to take place, the people must come forward to take charge of their lives and to regain their self-respect and identity as a distinct tribe. This is possible only when every Tiwa knows his own language and every Tiwa child learns his mother tongue in his school by teachers who are trained enough in it. Without that, dreams for self-governance would be like building castles in the air (aakakhot sang pata)’.
However, though not quite strong; there has been a disturbing trend in the Tiwa demand for self-autonomy in that it has begun to emulate the trajectory taken by similar movements in North-east India in giving birth to militant organisations. The Tiwa National Revolutionary Front (TNRF) was formed in 1996 in the Nagaon district with the objective of setting up an 'independent Tiwa land' by uniting the Tiwa tribes in the State. The outfit aims to fight against the perceived ‘systematic exploitation and repression of the Tiwa community by the Indian state machinery’ (Sahni, 2001). Another news report talks about the creation of the Tiwa Ligeration Tiger Force in 2004 which had modeled itself on the Bodo Liberation Tigers and have adopted its strategy to secure Sixth Schedule status for the Tiwas through violence (Northeast Vigil, 2004).

Nevertheless, the Tiwa movement has remained to a large part peaceful and has been able to attract the attention of the Government. A Cabinet Sub-Committee was constituted by the Government of Assam to study the demand for inclusion of Tiwa, Mishing and Rabha Autonomous Councils into the Sixth Schedule of the Indian Constitution, which visited Morigaon on June 5, 2004. The committee headed by Dr Bhumidhar Barman, Minister for Health and comprising another three Cabinet ministers of the Assam government met several Tiwa organisations, public representatives and examined the demand for sixth schedule status to the Tiwas. As many as six organisations namely – All Tiwa Students' Union (ATSU), Autonomy Demand Struggling Forum (ADSF), Sadou Asom Tiwa Sanmilan, Tiwa Sahitya Sabha, Tiwa Cultural Society and All Tiwa Women Association (ATWA) submitted a memorandum to the Ministerial Sub-Committee demanding the dissolution of the interim body of the Tiwa Autonomous Council and formation of a new autonomous council immediately in consultation with the agitating Tiwa organisations.

The Ministerial Sub-Committee in its interim report in 2005 has recommended that after the BTAD having been granted Sixth Schedule status, there is perhaps no justification for not giving the same status to the other three autonomous councils. It further says that under the above circumstances, the Government of Assam has already agreed, on principle that the three Autonomous Councils-Mishing Autonomous Council, Rabha Hasong Autonomous Council and Tiwa Autonomous
Council should be included into the Sixth Schedule of the Constitution. Robert Lumfoi, the General Secretary of the Tiwa Sahitya Sabha told the researcher that the Chief Minister of Assam, Shri Tarun Gogoi has already made a promise to the Tiwa people to make a strong recommendation to the Centre for Sixth Schedule status to them, in his address to the community at the Tiwa Sahitya Sabha session held in 2004 at Maa Basundhari Kshetra, Amsoi in Nagaon district, Assam.

7.8. Overlapping with Existing Governance Structures and Constitutional Impasse

At the present time, difficulties are being created in the functioning of the Autonomous Council, created by an Act of the state legislature, owing to the overlap and clash of its jurisdiction with Panchayati Raj institutions. Manipur I village is supposed to fall within the jurisdiction of the proposed Manipur L.V.C. (Lalung Village Council) along with 17 other villages, with its powers and functioning based on the Lalung Autonomous Council Act, 1995 and headed by a President and Vice-President. However, at present, this LVC is yet to exist on the ground and the revenue village of Manipur-I falls within the jurisdiction of the Manipur Gaon Panchayat, deriving its existence from the Assam Panchayati Raj Act, 1994. The latter part of 2007 was witness to many bandhs and agitations by several Tiwa organisations due to the move of the state government to holding panchayat elections in the TAC areas. According to an active member of the All Tiwa Students Union, who preferred to remain anonymous, 'this is a diabolic plan on the part of the State government to undermine the Tiwa Autonomous Council, the elections for which the government does not wish to hold, while going ahead with elections for the Panchayats, which have no right to exist in the TAC areas'. According to him, this overlap arises from the mistake of the state government in that it has not done anything to include any provision to keep the areas of the three Councils out of the purview of the Assam Panchayat Act, 1994, despite its promise to do so in sub-clause (A) of Clause 5 of the Memorandum of Understanding signed with the tribal organisations. This, according to him, has led to the existence of two local self governing authorities exercising the same powers and functions and which results in undermining the Tiwa community's right to
govern itself. In 2001 itself, the All Tiwa Students Union in their Writ Petition (Civil) No. 8204 of 2001 in the Gauhati High Court challenged the holding of panchayat elections in the Autonomous Council areas. The Gauhati High Court disposed of the writ petition with directions to the State Government to implement the Memorandum of Settlement in letter and spirit, fulfilling the aspirations of the tribal people.

According to the Ministerial Sub-Committee, this is, however, not possible. As the three Autonomous Council areas are created under an Act of the government of Assam and not exempted from the purview of the 73rd amendment of the Constitution (which lays the ground for panchayati raj in India) under Article 243 M, the state government is not in a position to implement the MOU.

Article 243M of the Constitution exempts the following areas from application of the Constitution (73rd Amendment) Act, 1992:

(i) functions and powers of the Darjeeling Gorkha Hills Council
(ii) States of Nagaland, Meghalaya and Mizoram
(iii) Hill areas in the state of Manipur for which District Councils exist
(iv) Scheduled Areas of Article 244 (1) notified as per Fifth Schedule and tribal areas of Article 244 (2) notified as per Sixth Schedule.

Article 243 M (4)(b) provides that for the Scheduled Areas of the Fifth Schedule and the tribal areas of the Sixth Schedule, Parliament may extend provisions of Article 243 A to Article 243 L (provisions of the 73rd amendment) with such exceptions and modifications that it feels necessary.

Due to the existence of such provisions, the state government is not in a position to affect the change, leading to a constitutional impasse with two local self-governing institutions existing parallelly. To find a solution to this impasse, the Government of India appointed a Committee of MPs and experts to make recommendations on law concerning extension of the provisions of the Constitution (73rd Amendment) Act 1992 to such Areas. This Committee known as the Bhuria Committee submitted its report in 1995. Subsequently, the Parliament passed the Panchayat Extension to Scheduled Areas Act (PESA), 1996 to extend the provisions of the 73rd Constitutional Amendment 1993 to the Schedule V Areas of the country. This Act is quite significant as it accords statutory status to the gram sabhas in Schedule V areas with wide ranging powers and authority.
This vital aspect was missing from the provisions of the 73rd Constitutional Amendment. The Act has recognized the prevailing traditional practices and customary laws besides providing the management and control of all the natural resources – land, water and forest in the hands of people living in the Schedule Areas. The Act empowers people in the tribal areas and ushers them in a new phase of self governance.

However, as observed by the Ministerial Sub-Committee, the same Act is now not applicable to the three Autonomous Councils of Assam as they are included neither in the Fifth or the Sixth Schedule. Requirement now is to get the plains tribal areas of Assam included either in the Fifth or Sixth Schedule for application of any law passed by the Parliament in this regard. It further says that creation of BTC under the Sixth schedule by a constitutional amendment has solved this impasse in the BTAD area. But in the three other Council areas, this impasse is still continuing, which can be solved only by constitutional amendment.

7.9. Impact

As already elucidated in this chapter, though in existence since 1995, the Tiwa Autonomous Council has still not been able to play a meaningful role ‘running on an ad-hoc basis’ (Ministerial Sub-Committee, 2005), owing to failure to arrive at a concrete demarcation of its territory, non-constitution of Village Councils, election to the Council not being held and overlapping with the existing Panchayat system. Disappointment with the way the Council is functioning has been expressed by all- the executive members of the Council, the intellectual, literary and students’ organisations as well as by the people residing in the villages under the jurisdiction of the Council. While most members of the Tiwa community are of the belief that many problems would be overcome through conferment of Sixth Schedule status, critics point out that it is not the anti-dote to all the ills afflicting Tiwa self-autonomy. While not wishing to be named, many villagers allege corruption and siphoning of funds on the part of the members of the Tiwa Autonomous Council. This is corroborated in the observations of Shri T.L. Barua, former Home Commissioner Assam when he observes that the working of the Autonomous Councils in Assam (he also refers particularly to the TAC) invites criticism owing to their misuse of funds. According to him, 'during 2005-06, a sum of Rs 33 crore was provided under the
plan for all the six autonomous councils which had been increased to Rs.93 crore in 2008-09. Fund for the welfare of the community is used by the Chief Executive Members and the executive members at their own discretion without any transparency’ (Barua, 2008).

However, according to informants in Manipur I village, though yet to achieve anything tangible, the formation of the Tiwa Autonomous Council has had at least some impact on the community. According to informant Kamal Pator of Manipur I village, it has led to a trend towards revivalism of their traditional religion and practices among a section of the population. He stressed that a major reason for this could be attributed to the fact that Tiwas all over Assam are trying to assert their ethnic identity and the formation of the Tiwa Autonomous Council has acted as a major unifying factor in this regard. The gaonburha of Manipur I village pointed out that the Tiwa Council has been trying to revive the Tiwa traditional institutions like the dekasang (building them in places where none existed earlier) and also trying to ensure that the gaonburahs get a better allowance for the work they do. Thus, in his views, though fraught with several problems, yet, the experiment in autonomy could hope to contribute to upliftment of the community in the long run. Perhaps, it would be appropriate to conclude this chapter with the following words from Ramakanta Deuri, the present Chief Executive Member of the Tiwa Autonomous Council, ‘self-governance always brings about difficulties, but the Tiwa community is prepared to take on this responsibility as traditionally, we have a history of self-governance and our collective experiences and our village elders, will find some way to overcome these problems and make the Tiwa autonomy a successful experience’.