

FIRST N M LAHIRI MEMORIAL LECTURE

Sixth Schedule to the Constitution - The Visionary Perspective of Meghalaya

State Convention Centre, Shillong: 12th November 2022

By Vijay Hansaria, Sr. Advocate, Supreme Court, Author

Preliminary

Hon'ble Mr Justice Sanjib Banerjee, Chief Justice, Meghalaya High Court

Hon'ble Mr Justice H S Thangkhiew, Judge, Meghalaya High Court,

Hon'ble Mr Justice W Diengdoh, Judge, Meghalaya High Court

Professor David R. Syiemlieh, academician, historian and former Chairman UPSC

Mr. Amit Kumar, Advocate General, Meghalaya

Registrar General, High Court of Meghalaya

Law Secretary, Government of Meghalaya

Smti. K.M. Lyngdoh Nongbri, Director, Meghalaya State Judicial Academy

Mr. S. Chakrawarty, President, Meghalaya High Court Bar Association

Family members of Late Shri N.M. Lahiri

My colleagues in the Bar

Judicial Officers

Faculty members and students NEHU and Shillong Law College

Members of the media both print and electronic

Ladies and gentleman present here and also those who are on live telecast

GOOD MORNING

N.M. Lahiri Memorial Lecture

I am privileged and honoured to deliver 1st N.M. Lahiri Memorial Lecture 2022 along with Professor *David R. Syiemlieh* to commemorate 100th birthday of late Shri Lahiri and 50th year of Statehood of Meghalaya. Mr. Lahiri was the first Advocate General of Meghalaya and continued to be so for 30 years, irrespective of whichever Government came to power. He was the longest serving Advocate General in the history of India.

I met Mr. Lahiri for the first time sometime in the year 1981 after I started my practice in the Supreme Court in the year 1980. He was a legendary lawyer in the Gauhati High Court and whenever I met him he gave me sound advice as to how one should prepare cases, be master of facts and go by the first principles of law. I could have never imagined that I would have the privilege and honour to deliver N.M. Lahiri Memorial Lecture; and I am fortunate that today I am amongst you to do the same and that too on a subject, of which he was the master. In fact, while publishing the book of the Sixth Schedule to the Constitution, my father late Justice B.L. Hansaria was inspired by Shri N.M. Lahiri; and Mr. Lahiri was the first person named in the preface of the 1st edition published in 1983. I am thankful to Hon'ble Justice H.S. Thangkhiew for inviting me to come and deliver this lecture to this beautiful place, Shillong, the home of clouds, Meghalaya.

Introduction

The topic of my deliberation today is ***Sixth Schedule to the Constitution - the Visionary Perspective of Meghalaya***. Before we come to the vision, it is necessary to trace the history behind the Sixth Schedule, the making of the Sixth Schedule, its operation and thereafter the vision.

Let's first note the history behind the Sixth Schedule. *Prof David R. Syiemlieh* has told us in detail about the administrative structure, policy and pattern in the Hills of North East India from 1822 till the formation of the States till 1972. I do not wish to repeat the same. However, I wish to briefly talk about the historical position before the Sixth Schedule was framed in 1950.

'Backward Tract', 'Excluded Areas' and 'Partially Excluded Areas'

The Britishers initially came to India for trading purposes and established the East India Company; and thereafter started occupying one area after the other and started ruling India under the British monarch. They had the principal seat of governance at Calcutta in the Presidency of Bengal. The rich natural resources of the North East Frontiers allured the East India Company to venture trading in timber, ivory etc. and they extended their arms in the plains as well as the hills of Assam. Assam at that point of time consisted of small kingdoms in plains as well as in the hills.

The Britishers bracketed certain parts of plains as well as hills as **'Backward Tracts'** and were placed under the special charge of 'Civil Commissioner of North East Rangpur.' The power of the Collector, Magistrate and Judges were centred in the same hand. The people residing in the 'Backward Tract' were *presumed to be primitive* which

is reflected from the preface of Regulation X of 1822 which states that "Little has been done to reclaim or civilise these people."

The expression 'Backward Tract' was substituted as 'excluded areas' and 'partially excluded areas' by the Government of India Act, 1935 and these areas were to be governed by the Governor of Assam at his discretion. The Governor was also empowered to make regulations for 'peace and good governance.'

I have a serious grievance about calling this area a '**backward tract**' or as '**excluded areas**' or '**partially excluded areas**'; as there is no parameter or material as to how the area was 'backward' or why it was called 'excluded' or 'partially excluded' area. In fact, I find that democracy existed in these parts of the country as the administration was run by Syiems and Lyngdohs on the aid and advice of Durbar, who were elected by people; whereas, a large part of the country was ruled by Kings and Princes, as absolute monarchs. The Khasi States and the Syiems or Raja of these States were the symbols of democracy and the rays of democracy was spread to other parts of the country. To call eastern part of the country less civilised or backward or excluded areas by the British Government was wholly *unjustified* and concentration of power in a bureaucrat was *unwarranted*. So everybody must stop the perception that the tribal people of this part of the country are backward or excluded or less developed.

Constituent Assembly

After the Constituent Assembly was formed in 1946, various sub committees were formed. The Advisory Committee on Fundamental Rights, minorities and tribal and excluded areas was headed by *Sardar Vallabhbhai Patel* and a Sub-Committee for the

North East Frontier (Assam) Tribal and Excluded Areas was constituted under the then premier of Assam *Shri Gopinath Bordoloi*. The other prominent member of the Committee was *Reverend JJM Nichols Roy*, a great Khasi social thinker and a political statesman. The Bordoloi Sub Committee suggested a constitution of District Councils that will have legislative, executive as well as judicial powers. The reason for the constitution of the District Council was that in the then greater Assam, different tribes inhabited having different practices personal, social and religious; and a common legislature for the entire Assam may not meet the hopes and aspirations of various sections of people. The report of the Bordoloi Committee was deliberated by the Constituent Assembly on 5th, 6th and 7th September 1949. There were three distinct shades of opinion in the Constituent Assembly.

One point of view, which was put forward by *Shri Brajeswar Prasad* of Bihar was that the provincial Government or the Governor should have nothing to do with the administration of these areas; and it is the President or the Central Government who should be empowered to administer this area. In other words, these areas should be something like Union Territory. This view was taken because Assam being on the border of five or six foreign countries and Infiltration on mass scale was going on. He opposed handing over the administration into the hands of the provincial Government saying "Sir, I love this country more than provincial autonomy."

As against this, some members including *Shri Kuladhar Chaliha* and *Shri Rohini Kumar Chaudhuri* were of the view that too much autonomy to the tribals will keep the tribals away from the non-tribal people. *Shri Chaudhuri* asked: "Do you want an

assimilation of the tribal and non-tribal people or do you want to keep them separate?" He stated: "Have you ever heard that an Act of Parliament cannot be applicable to any people unless they agree to it? Such a thing is impossible and therefore I say that this Schedule has been conceived to keep them away from us"

The third view was of *Shri Gopinath Bordoloi*, who proposed the present Sixth Schedule to the Constituent Assembly. The Bordoloi Committee was confronted with the question whether for the purpose of integration, military forces should be used, or a method should be used in which the willing cooperation of the tribal people can be obtained for the purpose of governing these areas. It was also found that there were certain institutions, among the hill tribals, which were so good that it would have been wrong to destroy them. Mention was made of village administration on democratic basis and of the manner in which disputes were settled.

The Constituent Assembly accepted the Bordoloi Committee report and the Sixth Schedule found its place in the Constitution. Sixth Schedule was made applicable for the entire

- a. State of Meghalaya (which was then United Khasi - Jaintia Hills District and Garo Hills District),
- b. State of Mizoram (which was then Lushai Hills District),
- c. Arunachal Pradesh (which was then North East Frontier Tract or NEFA),
- d. State of Nagaland (which was then Naga Hills District and Naga Tribal areas) and

- e. Mikir Hills and North Cachar Hills which are presently known as Karbi Anglong and Dima Hasao.

The founding father thought that while it is necessary to assimilate people from every part of the country as one nation, it is equally necessary to preserve rich cultural heritage and social practices followed by each of us.

Sixth Schedule is a mini Constitution

The Sixth Schedule is a mini Constitution for all the three organs of the State i.e. legislature, executive and judiciary. All that is lacking in the Sixth Schedule which is Preamble to which I will address little later.

The Sixth Schedule provides for constitution of District and Regional Councils in contrast to the Fifth Schedule applicable for the administration and control of the Scheduled areas and the Scheduled tribes in the rest of the country. It is important to note that many other States in the country have large number Scheduled Tribe population, for example, Chhattisgarh has 30%, Jharkhand has 26%, Orissa has 23%, Sikkim has 33% Scheduled Tribe population; and in terms of number out of total 10 crore tribal population, North East houses only 1.24 crore population. Under the provisions of the Fifth Schedule, there is a Tribal Advisory Council which has advisory jurisdiction as distinguished from District Councils under the Sixth Schedule which have the legislative, executive and judicial power.

District Councils have power to make laws with respect to

- a. allotment, occupation and use of land,
- b. management of forests not being reserved forest,

- c. use of canal for agriculture, regulation of jhoom and other forms of shifting cultivation,
- d. village administration,
- e. public health and sanitation,
- f. appointment of Chiefs and Headmen,
- g. inheritance of property, marriage and divorce and social customs
(Paragraph 3).

The District Councils also have power to assess and collect land revenue and impose taxes on professions, animals, vehicles and boats. It can also impose taxes on entry of goods in a market for sale, toll on passengers and goods carried in ferries, taxes on maintenance of schools and dispensaries and roads and taxes on entertainment and amusements (Paragraph 8).

District Councils have power to make regulations for control of money lending and trading by non tribals. It can prescribe the maximum rate of interest that can be charged by money lenders and provide that the non-tribals are required to obtain a licence for any wholesale or retail business in the tribal area.

Governor Assent & supremacy of State laws

All District Councils laws are required to be placed before the Governor and shall have no effect unless assented by him. It is important to note that the while the Governors of Assam, Mizoram and Tripura, while considering grant of assent, act in their personal discretion vide paragraphs 20BA and 20BB; the Governor of Meghalaya has no

personal discretion and is bound and is required to act on the aid and advice of the Council of Ministers in accordance with Article 163 of the Constitution.

Similarly, laws of the State legislature in respect of matters specified in paragraph 3 of the Sixth Schedule are not applicable to tribal areas in Assam, Mizoram and Tripura, unless the respective District Councils so direct. (Paragraph 12, 12AA and 12B); whereas, in case of Meghalaya, the State laws prevail and the District Council laws, to the extent of repugnancy are void (Paragraph 12A).

I can see no reason to adopt a different scheme for the State of Meghalaya. The District Councils have been given power to make laws on various aspects enumerated in Paragraph 3, 8 and 10 of the Sixth Schedule; however, they are all dependent upon the assent of the Governor, who is required to act on the aid and advice of the Council of Ministers. There are three broad tribes in Meghalaya, namely, Garos, Khasis and Jaintias, and numerous sub tribes who have peculiar customs, laws of inheritance, marriage, land and cultivation, and village administration. The three District Councils can frame laws on these subjects depending on the peculiar need of the area, practices and customs of the respective areas. Thus, I am of the view that the Governor of Meghalaya too should be empowered to exercise personal discretion and not bound by the aid and advice of the Council of Ministers. So also, the District Councils law in Meghalaya should also have primacy over the subjects mentioned in paragraph 3, similar to the District Councils of the other three States.

Of course, we must all remember that any law made by the District Council or State legislature or even by the Parliament must be in consonance with the fundamental

rights of equality and freedom guaranteed by Part III of the Constitution. No one can make law, not even Parliament which is discriminatory only on the basis of race, caste, sex, religion or place of birth, as every person has equal protection of laws within the territory of India. Every citizen of this country residing in any part of India has freedom of speech and expression, right to move freely in any part of India, practise any trade or carry any profession within the territory of India, subject of course to reasonable restrictions.

Duties and Responsibilities of District Council

Another important aspect is that the District Councils have been constituted not only to make laws and govern. It has duties and responsibilities to establish, construct and manage primary schools, dispensaries, markets, ferries, road, road transport etc. Education and health are basic necessities of every human being and every authority must ensure that best education and health care is provided to the people. I am happy to note that as per Census of India, 2011, the female literacy rate in Meghalaya is 72.89% as against all India average of 64.63%; whereas the male literacy rate is 75.95% as against all India average of 80.88%. It is only because the female literacy rate is higher that the overall literacy rate in Meghalaya is 74.43% which is marginally higher than the all India average of 72.98%. I urge that the State of Meghalaya be the State which has a 100% literacy rate and be a role model for the rest of the country.

The State and the District Councils together must strive to provide the best health care to the people specially when nature is with you. The cleanest village of Asea is in Meghalaya namely, *Mawlynnong*. This village has become a tourist attraction. I also

went there and found a lot of homestays available. I would love to stay there, provided vegetarian food is made available. The cleanliness in *Mawlynnong* is seen to be believed, especially when a person like me comes to Delhi, where we have pollution and hills of garbage. In Meghalaya, we have clean air, clean surroundings, then why can't we provide the best health care? We don't lack talent. What we need is to adopt a development model and with the participation of everyone in the country. Meghalaya can become a big health care destination.

On the Human Development Index (HDI), as per UNDP parameters, namely education, health and standard of living, Meghalaya is at rank 17 out of the total 25 States in the country with an index of 0.65, as per a study made by the State Bank of India in 2017. This is not a very satisfactory position after 75 years of independence and 70 years of establishment of the District Councils.

Though we have to maintain our customs and traditions, what today's youth is looking forward to is a good lifestyle, good health care for all, especially children and elderly people, and a decent living. The Sixth Schedule is not only to maintain certain customs and practices, but also to move forward and the State of Meghalaya be a role model in the development of the country. District Councils have a big role to play in the advancement of Human Development Index for the people.

Administration of justice and applicability of CPC and CrPC

Another aspect to which I would like to talk is regarding administration of justice in the tribal areas. The District Council Courts exercise jurisdiction where all the parties to a dispute are Scheduled Tribes within the same District Council. If one of the parties

is not a Scheduled Tribes, the case is tried by a regular Court and not District Council Court. So also, the District Council Courts will not have jurisdiction where one of the parties is a Scheduled Tribes but residing in another District Council area. Thus, a dispute between a Scheduled Tribe residing within Khasi Hills Autonomous District Council and a Scheduled Tribes residing within Garo or Jaintia Hills District Council is to be decided by a regular Court and not a District Council Courts. District Council Courts are guided by the spirits of CPC and CrPC and not by their letter.

It is a perception that CPC and CrPC are technical provisions and the tribal people are too simple to understand the technicalities of law. When we say the tribal people are simple in nature, does it mean that the people of the rest of the country are sophisticated or complex or too smart. According to me, people of Meghalaya have the same intellect, brilliance, talent and ability as people in the other part of the country.

Meghalaya has given great leaders and good administrators to the country. Late *Shri P.A. Sangma* is one of the highest respected speakers of the Lok Sabha. *Shri J.M. Lyngdoh* is remembered as an independent Chief Election Commissioner and we have today with us *Shri Professor David M. Syiemlieh*, former UPSC Chairman. This is a wrong perception and a fallacious impression that people of this part of the country are simple, while others are not.

According to me, CPC and CrPC ensure not only procedural safeguards beneficial to both parties, but also recognise a certain substantive right. For example

- a. section 50A Cr.P.C. requires every police official to give information of arrest of any person to a near relative or friend of the arrested person immediately.
- b. Section 164 Cr.P.C. contain safeguards regarding recording of confessions by the accused persons.
- c. Sections 265A to 265L provides for plea bargaining for certain category of offences.
- d. Section 309 of the Cr.P.C. requires that no Magistrate can remand an accused person to custody for more than 15 days' at a time.
- e. Section 313 mandates that accused be given an opportunity to explain circumstances appearing in evidence against him.
- f. Section 357A makes provision for victim compensation
- g. Section 438 provides for Anticipatory bail

Supreme Court in case of *V.L. Rohlua* (1970) held that the Magistrate can remand for more than 15 days as only the spirit of Cr.P.C. is applicable.

The Meghalaya High Court in the case of *Benedick Marak* (2014) held that District Council Courts have no power to grant anticipatory bail as section 438 Cr.P.C. is not applicable. On appeal by the District Council, the matter is pending consideration in the Hon'ble Supreme Court and the High Court judgement has been stayed.

Recently, one *Brimigstar Mylliem* an accused person was convicted by a District Council Court for 14 years of imprisonment for triple murder on the basis of confession of the accused when he was of unsound mind. The safeguards under section 164 Cr.P.C.

was not applied. Hon'ble *Chief Justice Sanjib Banerjee* set aside the conviction and sent it back for fresh trial. The Hon'ble Chief Justice also highlighted the requirement of training of legal aid lawyers and the District Council Court judges. If Cr.P.C. was to be applied such a conviction may not have taken place.

Similarly, CPC also contain many provisions which are matters of public policy, such as,

- a. Section 11 incorporates the principle of *res judicata*
- b. Order 2 Rule 2 recognises the principle of finality of litigation, namely, a litigant must claim, all the relief he or she is entitled and cannot file another case on same cause of action.

The State of Meghalaya has applied the provisions of C.P.C and Cr.P.C. to all Courts vide notification dated 20.09.2022 subject to the provisions of Sixth Schedule. The provision which grants certain safeguards should not be opposed merely on the presumption that the tribal people are simple people and the rays of civilisation has not reached or that people of the other parts of the country understand all the complexities of law. I would say that substantive rights conferred by C.P.C. and Cr.P.C. should be applied, though certain procedural requirements may not be insisted upon. Both the *Advocate General and the Law Secretary, Government of Meghalaya* are here and they may consider framing of a procedural Code for application to be followed by the District Council Courts which may be framed in consultation with the Autonomous District Councils. National and State Judicial Academics may be requested to give their valuable

inputs for the same, even the law Universities in Meghalaya can take up this issue as a project.

Inner Line Permit

One issue which has always troubled me is the requirement of Inner Line Permit to visit within any part of the country. The Constitution Article 19(1)(d) guarantees every citizen to move freely throughout the country; yet, we are continuing the provisions of Eastern Bengal Frontier Regulation, 1873, commonly known as Inner Line Regulation, under which a citizen of the country, who is not an indigenous person is required to obtain a permit from the Government to visit the States of Arunachal Pradesh, Nagaland and Mizoram and now Manipur as well. In 2020, the Meghalaya Legislative Assembly passed **Meghalaya Residents Safety and Security (Amendment) Act 2020** proposing to insert section 4A requiring every person who intends to stay in the State of Meghalaya for more than 48 hours to furnish information in a prescribed format; and any person violating such provision is liable to be punished with imprisonment. The provisions of the Bill are similar to the requirement of Inner Line Permit, and is presently pending assent by the Governor of Meghalaya.

Whether Inner Line Permit is legally a valid piece of legislation or whether the Meghalaya Residents Safety and Security (Amendment) Act, 2020, if assented to is constitutional or not can be decided by the Courts. The applicability of Inner Line in Manipur is pending consideration in a Writ Petition filed in the Supreme Court. The question which I pose today before you is whether we require any such law for

preventing or regulating the freedom of movement of fellow countrymen to this part of the country.

Is it not a fact that the Britieshers kept this area backward and excluded. Whether such a law will make the people of Meghalaya forward and advance. What is the risk if people from other parts of the country come to this part of the country? Is it not some sort of a visa which a foreigner is required to obtain to travel to a foreign country. In my view, every Indian citizen, who is contributing for the development of the entire country, cannot be asked to take special permission to enter this place. Visualise a converse situation, where reciprocal laws are passed by other States that a resident of a State which have Inner Line Permit Regulation are required to obtain a similar permit for entering the said State. We are one country and any such restriction on the movement of fellow countrymen must be stopped.

India is the biggest example of Unity amongst Diversity. When we come to the North East, it is a *rainbow of seven colours - the Seven States are extraordinarily diverse, mysterious but colourful,; we are one as a bunch of clouds, diverse yet together, we hold hands of each other, we are home of clouds, we are Meghalaya.*

I earnestly request all of you to seriously think if any such provision is required in Meghalaya; stand up, speak and write what you feel.

Epilogue

I have said some things which some of you may agree with, many of you may not agree and still many of you may strongly disagree. There is a saying that there is no purpose of writing anything or speaking on a public platform like this, if you cannot

initiate a new debate, make people think out of the box and raise the eyebrows of some people. I have spoken here freely and frankly as the North East is my home State and I want this part of the country to have a lead role at the national level.

There are a large number of students who are present today and I call upon each one of you to have a vision. As I said the Sixth Schedule which is a mini Constitution; however, there is no Preamble. The vision which I have of the Sixth Schedule as applicable to the tribal areas of Meghalaya is to incorporate a preamble to the Sixth Schedule which reads thus:

"We the people of Meghalaya resolve to achieve 100% literacy rate and ensure 0% child mortality rate within five years.

We further resolve to make Meghalaya the most forward State in the country on all parameters of Human Development Index."

I am thankful to all of you for listening to me patiently. I would like to particularly thank Hon'ble **Chief Justice Mr. Sanjib Banerjee** who has graced this function by his kind presence and agreed to release the 5th edition of the Justice B.L. Hansaria's book on Sixth Schedule.

I also thank **Mr. Vinay Ahuja**, Managing Director, Mohan Law House, for publishing the 5th edition of the book in the shortest possible time while maintaining exceptional and superb quality, which he never compromises. I also thank my junior colleague **Ms. Kavya Jhavar** for assisting me in the publication of the present edition.

In the end, I not only thank **Justice H.S. Thangkhiew** for giving me the opportunity to deliver this address but also admire him for the *guru dakshina* he is

paying today to his Guru late Shri N.M. Lahiri. It is said that parents give birth to a child and make them human beings; but the teacher and guru makes him/her fit to serve the society.

There is a saying by Sant Kabir

“गुरु गोविन्द दोऊ खड़े, काके लागूं पांय।

बलिहारी गुरु अपने, गोविन्द दियो बताय।

Translated in English this means, Teacher and God both are standing before me, whom do I worship. To this Kabir says Guru first because he only told me who God is.

Thanks (Khublai)