

TRIBAL STUDIES IN INDIA: INTERDISCIPLINARY PERSPECTIVES AND APPROACHES

Lecture37

Lecture 37: Tribes in Post-Colonial India II: Tribal Administration and Autonomy Provisions III

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Good evening, everyone. Welcome back to this NPTEL online certification course, Tribal Studies in India: Interdisciplinary Perspectives and Approaches. Today, we are going to continue looking at tribal administrative and autonomy provisions. This lecture is more of a continuation of what we covered in the last two lectures. As you already know, the question of autonomy or autonomy provisions is very pertinent when it comes to understanding or studying any tribal communities in India.

So, autonomy provisions, as I mentioned in the last two lectures, were incorporated as part of the Constitution of India to essentially grant some form of self-rule to the tribal communities. Essentially, it also recognizes that these communities already have customs, traditions, and existing political institutions. The autonomy provisions in the Constitution of India work toward recognizing that tribal communities need or should be provided with some provisions in the form of self-rule, enabling them to govern themselves. That is the spirit behind the Sixth Schedule and the Fifth Schedule. The Fifth Schedule essentially applies to mainland India, while the Sixth Schedule applies to the northeastern part of India.

These schedules have significantly contributed to the integration of tribal communities within the larger Indian political system. Since their implementation—since the 1950s, for instance—the Sixth Schedule was applied

mostly in Meghalaya and Mizoram. Today, you will see that many tribal areas in northeast India are covered under the Sixth Schedule. Today, we have many tribal communities, such as the Bodos and Karbis in Assam, as well as tribal communities in Tripura. There are different kinds of provisions within the states of northeast India, such as in Manipur, where different structures of autonomy provisions are being instituted by the state governments.

Now, these institutions are definitely very important, but they are not without their challenges; they are not without their limitations. So, in this lecture, we will specifically try to look at, you know, what are some of the limitations and challenges when it comes to the Autonomous District Council. And what are the kinds of contestations that emerge by which we see a lot of tussle within tribal communities. Now, a very important work that I have also briefly discussed was the work of David Stuligross, a very renowned political scientist. He actually tries to look at the implementation of Autonomous District Councils, particularly in the context of northeast India or the Sixth Schedule regions, by linking the theory and the practice, in a sense that these provisions are definitely written in law.

But then he wanted to understand, you know, how they are being executed. Do they actually fulfill the kind of, you know, promises that they grant to the tribal communities in terms of enabling them certain forms of self-rule? Now, in analyzing the extent of autonomy provisions in ensuring development, Stuligross finds that there is a very weak link in terms of the autonomy provisions that are being granted under the autonomous district councils... and they have not been fully exploited or they did not contribute to the social, economic, and political advancement of the region and communities that came under the Sixth Schedule. Now, this is a very important observation.

Now, if you go back and look at the Sixth Schedule, it has already been implemented for the last 60 to 70 years. Since the time of the coming of the Indian Constitution, the Sixth Schedule was already enforced in many parts of Northeastern India. Now, the question that Stuligross was asking when his work came out in the late 1990s, to an extent, is very much still relevant in terms of trying to really understand how far these autonomous district councils have fulfilled their promises, not only in terms of ensuring political or ensuring decentralization of power, but also in terms of bringing about positive change socially, economically, and politically. So, one of the significant drawbacks with

these autonomous district councils is that the budget allocation, in the sense that they have very limited financial autonomy in matters pertaining to, say, law, essentially the judiciary or the executive authority. To a very large extent, you know, these Athanmasa Joshi Councils have a lot of power.

But when it comes to, you know, the financial autonomy, that is, you know, one of the drawbacks that Autonomous District Councils have because the funding which comes from the central government is still routed to the state governments. Now, the state governments continue to have some kind of grip on these institutions. So that is to say that the state has overriding powers over budget preparation and grants in need for small developmental projects. Now, in some states like Mizoram also, you will see that the northern part of Mizoram, particularly where the Dominant Mizo communities reside, is always mostly in contestation with the southern part of Mizoram, which has three distinct autonomous councils. Now, one of the biggest complaints, or one of the tensions between the dominant communities like the Mizo communities and communities belonging to the Chakma, the Loi, the Mara, essentially is that on the question of financial autonomy.

Now, definitely now there are talks about this, you know, direct funding of ADCs, from the central government, that the funding should directly go to them. Now, this is an issue that is always very contested. But one the functioning of the Autonomous District Council, you will see that the significant drawback essentially comes largely from the lack of financial autonomy. So, more importantly, the district and regional councils, although delegated with developmental functions, such as constructing roads and schools, to name a few, neither the state nor the central government is obligated to provide funding to the same. One of the major sources of funds for the Autonomous Leadership Councils come from the tax collection in the sixth schedule regions.

However, the tax collection also falls short for the development projects, as the majority of the tax comes from the forest royalties and non-tribal residents. Now, so the question of financial autonomy is the tussle between state governments and existing ADCs. So, I have taken the example of Mizoram. Now, if you look at Assam, if you look at Meghalaya also, there are always these contestations between the state and the ADCs. Essentially, because the Autonomous District

Councils, you know, have very little say in terms of fund utilization and disbursement.

Now, as we proceed, we will try to delve a little bit deeper as to why this is happening. So, in the aspect of social development, the ADCs in Khasi and Meghalaya, for instance, have codified customary laws along with laws that are quite inconsistent with tribal customs. This codification was envisioned to make the customary laws more comprehensible to the Indian courts and meant to preserve the traditional rules of tribal governance. However, there are many instances where the interpretation of laws is not congruent with traditional customs. Now, one of the reasons why we have this need for separate autonomous district councils for the tribes is essentially to protect and preserve their customs and traditions.

Now, we already know that many tribal societies, whether in the northeastern part of India or the mainland, are largely oral cultures. This is not to say that they remain very much an oral culture today. But you will see that, you know, much of the customs and traditions are deeply rooted in the oral culture of the communities. Hence, one of the primary agendas of these ADCs is also to codify their customary laws. Now, for example, communities like the Khasis are one of the communities who were among the first to codify their customary laws.

Now, many tribal communities today try to codify their customary laws. Now, in the Khasi Hills in Meghalaya, what we see is that there is inconsistency in the way customary laws are being codified. Sometimes, it also results in tension between existing laws—the so-called modern laws and the customary laws—in terms of how much power the customary laws should be given and how much the modern laws should be implemented in the context of tribal communities. So, these are, in one sense, the kind of limitations. But on the other hand, these are also the kind of tensions and contestations that we see when it comes to autonomous district councils.

Now, to continue with this, for instance, in one such bill promulgated by the ADC, there was an attempt to weaken the maternal system by enabling men to inherit self-acquired property, although these bills were not later consented to by the Governor. Now, we know that the Khasis, or primarily the majority of the tribal communities in Meghalaya, follow the matrilineal system. Now, in the sense that

inheritance also passes through, you know, from the mother or from the female side. Now, but if you look at who is essentially in the autonomous district councils, these are mostly men again. Now, there is a kind of contradiction that we see in the functioning of the autonomous district councils in states such as Meghalaya.

So, when we see that there was an attempt actually to change the customs in favor of men. Now, although this law actually was not consented to by the Governor and is not enforced. But we see that it can be used against existing customs and traditions. Now, in terms of judicial powers, the ADCs are empowered to adjudicate over criminal cases, including capital offenses, as well as through district councils, village councils, and courts. However, this judicial power is not extended to most of the ADCs to try major crimes.

Moreover, the ADCs are increasingly becoming politically motivated institutions, with national and regional parties showing interest in capturing power positions within ADCs. Now, this is one of the reasons why there is always a tussle between state governments and autonomous district councils. Essentially because of the politicization of autonomous district councils in Northeast India, particularly in states like Mizoram, Meghalaya, Tripura. Now, for instance, if the ruling party in Mizoram at the state level is a different party, is a national party or regional party, and if autonomous district councils are ruled by a different political party, then the tension, then the tussle between these two political parties also significantly widens, which further affects the proper working and functioning of the autonomous district councils. Now, this is one of the reasons why we see a lot of contestations and a lot of tussle, essentially because of the politicization of the ADCs in the northeastern part of India.

Now, the district councils all over are definitely endowed with significant powers, but their jurisdiction often overlaps with the state government, which leads to disagreement. For instance, even after Meghalaya became a state in 1972, it remained fully under restriction, leading to repeated clashes between the district councils and the state government. Now, like I said, the autonomous district councils under the constitution of India. They are endowed with, you know, a lot of power. They are endowed with a lot of responsibilities.

They can do so many things. They can, you know, work towards the socioeconomic development of the region. But what we see is that there is always this tussle in terms of power between state governments, tussle of power between states, district administration and the Autonomous District Council. Now, this does not only happen in areas that are under strict schedule. It is also very common even in states like Manipur, where tribal communities have their own autonomous district councils.

Essentially, the line that separates the power and functions of the district commissioner and the members of the autonomous district councils always collides. And there is always tension; there is always a power tussle between these two sets of institutions. Now, in the case of Meghalaya, it becomes far more unique because when Meghalaya was upgraded to a state in 1972, it continued to retain the Sixth Schedule status. Now, it means that, on one hand, there is the institution of the state, and on the other hand, within that, you have different kinds of political structures in the form of the Sixth Schedule. Now, some other states, like Mizoram, are a different story.

The entire state of Mizoram today was previously under the Sixth Schedule, but after Mizoram attained statehood in 1987, the Sixth Schedule was no longer retained, particularly in the northern parts of Mizoram. However, since it was retained in the southern part of Mizoram, you see the kind of tussle between the government of Mizoram and the autonomous district councils within Mizoram. Now, in the case of Meghalaya, it is unique because Meghalaya was upgraded to statehood but chose to retain the Sixth Schedule status. Now, we have, on one hand, the MLAs, for instance, the members of legislative assemblies, and on the other hand, you have members of the autonomous district councils who sometimes clash, essentially because of the blurring of boundaries between these two institutions. Now, according to Paragraph 12A of the Sixth Schedule, when such conflicts happen, the laws made by the state legislature take priority.

So, which means that despite the fact that the Sixth Schedule promised to a certain extent a degree of autonomy to the tribal communities, at the end of the day, what we see is that it is the state or the government that can override in these kinds of conflicts. So, therefore, the state or the government essentially is the one that has higher authority when it comes to autonomous district councils. Now, scholars like Datta and Bhuyan also note that in these situations, the state

holds the upper hand. This often creates obstacles in the council's functioning and weakens the power given to them by the constitution. Another major issue is the overlapping responsibilities between district councils and local bodies created under the 73rd and 74th constitutional amendments, such as the panchayats and municipal bodies.

Now, one of the tensions and contestations that we talk about is between the district administration, state governments, and the ADCs. And within that, there is also another institution, which is the traditional institutions. The irony is that, despite the fact that the Sixth Schedule was essentially meant to empower and recognize that tribal communities have their own political institutions, what the Sixth Schedule actually did was create new institutions within the communities. Now, we have, at times, three different institutions working at the same time. So, for example, in Meghalaya, we have the Durbar Shnong, then the ADCs, and then the government of Meghalaya.

Now, these three institutions definitely work towards the welfare of the communities, but at times, they run into contestations and conflicts, essentially because of the blurring of boundaries in terms of their power and responsibilities. Now, another major issue that we cannot ignore is the institutions that came—local bodies that emerged after the 73rd and 74th constitutional amendments. These amendments actually try to decentralize power, not only in the context of villages or rural India but also in urban areas. Now, it adds a new layer in terms of the complexities of governing urban areas as well as rural areas. So, post the 73rd and 74th Amendment—that is, post the 1993 period—what we see is that in many parts of northeast India, in many tribal areas, there are new institutions that are emerging.

So, apart from the already existing institutions that these communities have, we continue to see more and more institutions essentially springing up, primarily because of the new kinds of laws and legislation being passed. So, the 73rd and 74th constitutional amendments also added new layers to the complexities. Now, within the 73rd and 74th amendments, although the panchayats do not have lawmaking powers, they function in the same areas as autonomous councils, leading to confusion and duplication of roles. Now, this is something that was very common even before the passing of the 73rd and 74th Constitutional Amendments. What we see today is that these different bodies, wherever they

are, most of the time, end up doing the same kind of work, the same kind of thing, and are bestowed or endowed with the same kind of powers and responsibilities.

So, therefore, many times, people—communities, local people—are also very confused about where to go, whom to approach for grievances, whom to talk to, whom to complain to, or whom to meet to address the kind of local issues they face. So, we have a whole plethora of institutions which are operational in tribal areas today. For example, the responsibilities given to the panchayats in Part 9 and those given to the municipalities in Part 9 can sometimes clash with the powers of the district councils. Now, according to the 2001 report by the National Commission to Review the Working of the Constitution, some council officials misuse their powers or act arbitrarily. So, therefore, you see that there is a lot of collision in terms of power and responsibilities on one hand between the government, between the state governments and the autonomous district councils post the 73rd and 74th amendments.

What we see is that with the coming of—with the granting of decentralization of power essentially to urban areas as well as to municipal bodies and also to rural areas in terms of panchayats. You see that new institutions springing up, and what it does is that it ends up in terms of duplication of roles, it ends in terms of confusion. As to what these different institutions should do or the kind of boundaries between these different institutions become very, very blurred. Another major challenge that these institutions essentially face is the issue of corruption. Overall, one of the strongest accusations or one of the reasons why many state governments also refuse to give direct funding or refuse to support the issue of direct funding to autonomous district councils is essentially because of the issue of corruption.

Now, for instance, a study by Triveni Goswami on the Dima Hasao Autonomous District Council in Assam highlights cases of serious corruption and poor management. Now, the Dima Hasao in Assam, which is very rich in terms of natural resources and has received substantial funding from the central government, development has been slow due to the misuse of funds by different departments. Now, even in the context of Manipur or Mizoram, many times what you see is that while the benefits of autonomous district councils are definitely there, we also see that there is a concentration of power and wealth within the

local communities. So, it means that to a very large extent, the benefits of autonomous district councils are very restrictive, very limited, and sometimes end up only reinforcing existing socio-economic inequities within tribal societies. And this becomes more evident when we have a lot of issues pertaining to corruption and poor management of funds.

Another major issue when one talks about autonomous district councils is the question of land and natural resources. Now, there is an important case in the district council of United Khasi and Jaintia Hills versus Sitimon Sawian, where the Supreme Court of India ruled that the district council did not have the authority to make a law allowing the transfer of land to non-tribal people. Now, this is again very paradoxical. The question of granting the Sixth Schedule to tribal communities is essentially to enable them some form of self-rule and also to govern the natural resources out of which land, water, and forests are very pertinent. Now, in this case, what we see is that the Supreme Court made the ruling that the district councils in Meghalaya do not have the power and authority to come up with a law that will allow the transfer of land to non-tribal people.

Now, in the last lectures, when we talked about the question of displacement and dispossession, we already said that one of the reasons why there is a lot of tribal unrest, one of the reasons why there is a lot of poverty among tribal communities, essentially, is because of land alienation. So, basically, tribal lands are being transferred to non-tribal areas. But here, in the context of Meghalaya, the irony is that tribal land protection in terms of land transfer from tribal to non-tribal is something that is very weak, and the district council in Meghalaya cannot do anything about it. So, in that context, the court made it very clear that the Sixth Schedule only gives district councils the power to manage land use, occupation, and allotment, but not to authorize land transfers. Basically, the argument of the court is that institutions under the Sixth Schedule only have the right to manage land use in terms of zoning, in terms of distributing how land should be utilized in terms of the land use pattern, in terms of the kind of crops or the kind of land use cultivation that communities should take up, in terms of allotting land to families for their zones, and so on.

But what the court says is that these district councils have no power to authorize land transfer, which is one of the most, or one of the key issues when it comes to the question of land in tribal society. Likewise, there was another case which had

to do with the question of forests and natural resources. In the District Council of the Jowai Autonomous District versus Dwet Singh Rymbai, the Supreme Court held that although district councils have the right to collect taxes on buildings and lands under the Sixth Schedule, they do not have the power to collect royalties from timber taken from private forests within their area. So, you will see that, on the one hand, the Sixth Schedule institutions, such as the autonomous district councils, are granted a lot of power and responsibilities. But on the other hand, they are also clipped in terms of the kind of powers that they can actually perform in terms of governing natural resources, in terms of protecting the interests of the communities.

Now, the first part of the lecture essentially has more to do with the strict schedule area. Now, so today one has to really think that the question before us is how far the Sixth Schedule actually grants tribal self-rule or how far the Sixth Schedule is effective in terms of granting tribal autonomy when it comes to the management of resources, be it land, water, or forest. Now, past experience has shown that these issues are still very deeply contested. These are also very politicized issues. But as far as experience goes, you can see that much of the powers of the autonomous district councils are very restrictive and they can always be overridden.

Now, let us look at the limitations and challenges within the Tribal Advisory Council. Now, we already know that this Tribal Advisory Council is mostly formed under the fifth schedule, which is in the mainland parts of India. However, before I delve into the kind of challenges, I just wanted to also say that the kind of institutional structures prevalent in the sixth schedule areas are far better when one looks at the kind of institutional structures in the fifth schedule areas. Now, at least in the sixth schedule areas, institutions are being created where tribal communities actually elect their representatives, allowing them political participation and giving them some say in the everyday affairs and governance of their institutions. But when it comes to the Tribal Advisory Council in the fifth schedule areas, that is not the case.

So, the sixth schedule, in principle and theory, is an institution that is very powerful and can do a lot for tribal communities. But when it comes to the fifth schedule areas, you will essentially see that the provisions under the fifth schedule are far weaker when compared to the sixth schedule areas. Now, what

are some of the major limitations and challenges with the Tribal Advisory Council? So, to start with, a detailed review of the meetings held by the Tribes Advisory Councils, conducted by the Asian Indigenous and Tribal Peoples Network in 2012, shows that important tribal issues like land loss are hardly ever discussed. Now, these advisory councils, also going by the name, are supposed to give advice on socio-economic issues pertaining to tribal communities.

Now, as I said, when one talks about tribal communities, one cannot ignore the question of autonomy. Now, within autonomy, one cannot ignore the question of resources—that is, land, water, and forest. Now, in the larger tribal politics, you will see that, slogans like Jal, Jungle, Jameen. That is how central resources are in the political imagination of tribal communities. Now, this is particularly important because much of the land dispossession, much of the land alienation, has happened extensively in mainland parts of India.

Now, the irony is that in a meeting organized by the Asian Indigenous and Tribal People Network in 2012, it was shown that one of the most important tribal issues—land loss or alienation—is hardly discussed in the Tribal Advisory Council. Now, further to this, even when the councils make decisions or suggestions, there is little follow-up in later meetings and no independent checks to track progress or targets. Moreover, while three-quarters of the members are supposed to be tribal MLAs from the state, the rest are usually government officials and political leaders like the chief ministers, who often chair the council. So, now you can see that in the case of the Sixth Schedule, the autonomous councils and district councils have members from within the communities who are democratically elected. Now, in the case of the Tribal Advisory Council, the structure is very different.

These members should also come from the tribal communities themselves. But then you have many non-tribals in the form of government officials and political leaders, including the Chief Minister of the state. So, many times what you see is that there are many restrictions in terms of how much the TAC can do to work for the betterment of the communities. So, therefore, ultimately, it raises the question that, you know, how far the TACs truly represent the tribal interests. Another issue that is very important is that, if you look at the fifth schedule areas, you will see that at least 11 to 13 states in mainland India are under the fifth schedule.

Now, one issue is that these different states have their own rules for appointing members, but these rules are not clear about how the members of the councils are elected or chosen. In most cases, the state government decides how the councils will work. Now, you can actually see what I meant by saying that the institutions of governance in the sixth schedule area are very, very clear. And it also actually allows, you know, the community themselves to elect their representatives who will be part of the autonomous district councils. Now, if you look at the Fifth Schedule areas, the Tribal Advisory Council, you will see that it does not really specify how the members of the council should be elected or should be chosen.

There is no specific criterion laid out as to how the members will be inducted or made part of the TACs. Many a time, the state governments decide how the councils will work. As a result, political parties in power often control who sits on the council and what topics are discussed. For example, the Gujarat TAC rule says that only topics listed in a meeting notice can be talked about. In Jharkhand, only matters referred by the Governor can be discussed.

Now, like I said, in the northeastern part of India, you will essentially see that there is this politicization of autonomous district councils in the sense that political parties compete to rule and govern the ADCs, right? Now, in the context of TAC also, essentially, the ruling power, the ruling government, controls who will be members of the TACs and what kind of topics are to be discussed. So, in many ways, it constrains the kind of issues that are to be addressed under the TACs. So, TAC members also have limited power to raise their own issues. In Chhattisgarh, for example, unless the topic is listed in the meeting notice or approved by the chairperson, it cannot be brought up during the meeting.

Therefore, the Bhuria Commission report (2002–2004) shared complaints from council members who felt that the state governments were not giving them important matters to advise on. As per the report, over the years, TACs have rarely made strong or meaningful suggestions on tribal development or policy. Now, you see that the state government, the ruling government in any state, has a grip on the TACs. In the context of the Sixth Schedule also, to a very large extent, the state government does have power and is hierarchically at the top when it comes to governance. But you will see that members of the ruling party

within the Autonomous District Councils cannot be stopped or asked not to raise any kind of issues.

But in the case of TACs, what we essentially see is that many times, members of the TACs themselves are constrained because of the limited powers they have. So, this is one of the observations which came very strongly in the Bhuria Commission report also, which notes that many of the council members also feel that they were not given a chance to raise. Real issues pertaining to tribal communities—no, they were not also many times in a position to give recommendations and policy suggestions for the betterment of the community. Now, when some issues do come up, the councils do not usually follow through. Between 2000 and 2005 and 2011, for instance, none of the TAC discussions addressed tribal land alienation, a major concern.

Now, we are coming back to some of the most pertinent issues, some of the most contested issues when it comes to tribal communities, that is on the question of land. Now, so you can see that, for six long years, between 2005 and 2011, there was no discussion about the question of tribal land in the nation. Which is one of the most pressing concerns when it comes to tribal communities. In Himachal Pradesh, the council meetings covered many topics, but they were rushed through with little depth. For example, in three meetings held between 2006 and 2010, 88 to 104 items were discussed in each session.

So, therefore, you know, the TAC's definitely, you know, have done significant benefits for the communities. But then there is still a long way to go in terms of really addressing some of the most important concerns pertaining to tribal communities. So, in short, what one can really understand in the context of the Sixth Schedule in the northeastern part of India and the Fifth Schedule in the mainland part of India is that these provisions are definitely very, very powerful. These provisions aim toward building or granting a kind of political autonomy to tribal communities. Also, at the same time, ensure that the welfare provisions and the socio-economic development of tribal communities happen in line with any other communities in India.

But in terms of their functioning, in terms of the kind of powers and responsibilities that are granted to them, as in the case of the Sixth Schedule areas, you will see that there is a lot of contestation because there are too many

layers at times. And the powers and responsibilities that are being granted to the ADCs, to the state administrators, or the district administrators, to the respective state governments, are very blurred. And beneath this, there are also these traditional institutions, which are also operating at the community level. So, you have these multiple layers of institutions within Sixth Schedule areas. Likewise, in the context of the Fifth Schedule areas, what we essentially see is that there is a system in place.

There is an institutional structure that is being formed under the Fifth Schedule areas in the form of tribal advisory councils. Now, the experience essentially is that the tribal advisory councils, in many ways, have significantly contributed to the betterment of tribal communities. But many times, some of the most pressing issues and concerns of the communities remain unaddressed. In the context of the Sixth Schedule, we can see that there can be debates happening, there can be different kinds of discontentment, there can be different kinds of resentment happening, and representations have been made, not only at the state level but even at the national level. But in the context of Fifth Schedule areas, because of the kind of governance structure that is put in place, these things at times hardly come up.

So, in many ways, the overall understanding that we can draw from this lecture essentially is that while the Sixth Schedule and the Fifth Schedule have granted significant autonomy to the tribal communities in India, there is still a long way to go in terms of really assessing how much these institutions, how much these provisions have worked for the betterment of tribal communities in India. Thank you so much.