



Funding Pattern of Autonomous District Council (ADC) in Mizoram

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Abstract

The main source of power and functions of the Autonomous District Council (ADC) under the provision of the Sixth Schedule are found in Article 244 (2) and 275 (1) of the Constitution of India. Funding pattern of the Autonomous District Council is constitutionally based upon the provisions, provided in Article 275 (1) of the Constitution of India. This provision vividly signifies that ADCs get their funding from the Consolidated Fund of India through the State Government. The funding pattern and financial powers for the District Council and Regional Council areas are also found in Paragraphs 7 & 8 of the Sixth Schedule to the Constitution of India. This paper therefore highlights the administrative set up of the ADC's in Mizoram. It also covers funding pattern which is found in the Constitution of India as well as funding rules of Autonomous District Council (ADC), financed by the State Government.

Keywords: *ADC, Constitution, Funding, Financial, Government.*

Introduction

In the pre-independent era, Mizoram was a district under Assam with one sub-division, namely Lunglei Sub-Division which was headed by Sub-Divisional Officer (SDO). The Pawi-Lakher Region, dominated by the Pawis and Lakheres was under the administrative control of the Sub-Divisional Officer (SDO), Lunglei. With the attainment of independence by India in 1947, the administration of the Lushai Hills experienced a dramatic change which was designed to meet the desires and aspirations of the Mizo people and to safeguard their cultures and traditions. Under the provision of the Sixth Schedule to the Constitution of India,

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autonomous constitutional set up known as Autonomous District Council (ADC) was created for the Lushai hills and other hills districts of Assam.

The Lushai Hills Autonomous District Council was constituted under the provisions of Paragraph 1 sub-paragraph (3) (c) of the Sixth Schedule to the Constitution of India on 26th April, 1952 (Bakshi, 2006). With the coming into being of the Lushai Hills Autonomous District Council which was facilitated with constitutional autonomy, certain subjects enshrined in Sixth Schedule to the constitution of India were exercised by the Lushai Hills Autonomous District council but the Deputy Commissioner could not intervene in the jurisdiction of Autonomous District Council as enshrined in the Sixth Schedule to the Constitution of India (Thanhranga, 2007). The Sixth Schedule area of Mizoram happened to be the domain of the Lai chiefs and the Mara chiefs since pre-British period and the area was accorded a Regional Council under the provision of Paragraph 1, Sub-Paragraph 2 of the Sixth Schedule to the Constitution of India. It is worth noting that the Pawi-Lakher Regional Council which had been in existence from 1953 till 1972 was the only Regional Council, established under the provision of Sixth Schedule to the Constitution of India (Doungel, 2015).

After separation of the erstwhile Lushai Hills (Mizo District) from Assam and formation of the Union Territory of Mizoram in 1972, Mizo District Council was abolished. However, the Pawi-Lakher Regional Council (PLRC) was trifurcated into three Regional Councils; namely, Pawi Regional Council (PRC), Lakher Regional Council (LRC) and Chakma Regional Council (CRC) on 2nd April, 1972 and the three Regional Councils were subsequently upgraded to the status of full-fledged Autonomous District Councils on 29th April, 1972. Despite trifurcation of the erstwhile PLRC area into three Regional Council later on three Autonomous District Councils, namely, the Lai Autonomous District Council (LADC), Mara Autonomous District Council (MADC) and Chakma Autonomous District Council (CADC), the whole area was under the administrative jurisdiction of Chhimituipui administrative district till August 1998 (Doungel, 2010).

Then, the Chhimituipui District was bifurcated into two new districts, namely, Chhimituipui West District with Headquarters at Lawngtlai and Chhimituipui East District with headquarters at Saiha. Later on, Chhimituipui West District came to be known as Lawngtlai District and Chhimituipui East District came to be known as Saiha District later on Siaha District. Siaha District covers the geographical area of the MADC whereas Lawngtlai District covers the whole geographical area of both LADC and CADC. In strict sense of the term, Lawngtlai District and Saiha District are now the only two administrative districts where the provisions of the Sixth Schedule to the constitutions of India has been enforced in Mizoram now (Doungel, 2010).

Administrative Setup of the Three Autonomous District Council (ADC) in Mizoram

According to subparagraph 6, Paragraph 2 of the Sixth Schedule to the Constitution of India, the Administrator of Mizoram had enacted the Mizoram Autonomous District Council (Constitution and Conduct of Business of the District Council) Rules, 1974 which then

become the guiding principle of governance for the three ADCs of Mizoram. A separate department known as District Council Affairs (DCA) which later was changed to District Council and Minority Affairs Department (DCMA) was created by the Government of Mizoram to look after the affairs of the ADC and funds for the ADC are channelized through this department with the approval of the state finance department. Thus, the DCMA department becomes the main controlling authority with regards to the affairs of the ADC of the state (Doungel, 2008).

As provided in the Mizoram Autonomous District Council (Constitution and Conduct of Business of the District Council) Rules, 1974, every District Council, unless sooner dissolved shall continue for 5 years from the date appointed for its first meeting. Qualifications for membership of the District Council are; 1) Citizen of India 2) Not less than 25 years of age) and 3)entitled to vote at the election of Members of District Council (MDC) of the Autonomous District. The Chairman and the Deputy Chairman are elected from amongst the MDC themselves and they are similar to the Speaker and Deputy Speaker of the State Legislative Assembly. The quorum for convening the session of the District Council shall be 4 members or one third of the total number of such Councils, whichever is greater. The ADC also has an Executive Committee whose function is similar to the Cabinet of the state Government. The Chief Executive Member (CEM) is the leader of the majority party in the legislature of the ADC and he is the leader of the house. The CEM is the head of the Executive Committee and is elected by the MDC's from among them (Mizoram Gazette Extraordinary, Sept. 1989).

The CEM also usually recommends certain MDCs for appointment as Executive Members (EM) to the Governor of Mizoram for his approval. The post of CEM and EM are similar to the Chief Minister and Cabinet Minister of the State Government respectively. Each ADC has two secretaries, one for the Executive Committee who is designed as Executive Secretary and the other for Legislature who is designated as Legislative Secretary. The post of Executive Secretary is similar to the Chief Secretary of the State Government or Cabinet Secretary of the Union Government whereas the Legislative Secretary is similar to Secretary, Assembly Secretariat of the State Government or Secretary General of the Lok Sabha as Secretary General of the Rajya Sabha of the Union Government. Each Autonomous District Council also has the Court President and Recorder who is the replica of the Chief Justice of the high Court or the Supreme Court (Doungel, 2008).

Funding Pattern of the Autonomous District Council in the Constitution of India

The emergence of ADC in the Constitution of India could be traced back to its inclusion in the Sixth Schedule Provisions and in Article 244 (2) and 275 (1). The main source of power and functions of the ADC under the provision of the Sixth Schedule are found in Article 244 (2) and 275 (1) of the Constitution of India. The provisions of the Sixth Schedule have been created so that it would facilitate the tribal of the Excluded and Partially Excluded Area of the then undivided Assam to enable them to preserve their custom, culture, ethnicity, tradition, land and language. Therefore, a constitutional body has been created for them so that they could govern themselves according to the law of the land. Paragraphs 20 of

the Sixth Schedule to the Constitution of India clearly incorporates Tribal Areas which are enshrined in Paragraph 20 of the Sixth Schedule. Article 244 (2) originally states about the application of the provision of the Sixth Schedule to the Constitution of India in the Tribal areas of Assam and Article 275 (1) provided for the funding pattern (Bakshi, 2006).

The Tribal Areas in Article 244 (2) were listed in Part A and Part B in Paragraph 20 of the Sixth Schedule in the original constitution. Part A listed six Tribal Areas which are facilitated with ADC such as United Khasi-Jantia Hills, Garo Hills, Lushai Hills, Mikir Hills, North Cachar Hills and Naga Hills. The two Tribal Areas which were listed in Part B were North East Frontier Tracts and Naga Tribal Areas. North East Frontier Tract is now Arunachal Pradesh and Naga Tribal Area was also known as Tuensang Area which now comprises of five districts of Eastern Nagaland, namely, Tuensang, Mon, Kiphire, Longleng and Noklak. Whereas, even in Part A, ADC could not be formed in Naga Hills due to boycott of election and insurgency spearheaded by the Naga National Council (NNC) under the leadership of A.Z Phizo. Tribal Areas in Part A were constitutionally provided with autonomy and power of self-government. Whereas, the two tribal areas in Part B were under the discretionary rule of the Governor of Assam. Article 275 (1) mentions about the funding pattern of the ADC where funding of the ADCs should be released to the ADC through the State Government from the Consolidated Fund of India (Hansiari, 1983). Article 244 (2) is also automatically amended which now reads as, “The provision of the Sixth Schedule shall apply to the administration of the tribal areas in the state of Assam, Meghalaya, Tripura and Mizoram” (Bakshi, 2006). Thus, Article 244 (2) can be stated as the solid constitutional background for the establishment of the Autonomous District Council and other Council under provision of the Sixth Schedule to the Constitution of India.

Article 244 is about the administration of the Scheduled Areas and tribal areas in which it is divided into two clauses. The first subparagraph deals with the administration and control of Scheduled Areas and Scheduled Tribes in any State other than the States of Assam and Meghalaya under the provisions of the Fifth Schedule to the Constitution of India. The second clause shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram under the provision of the Sixth Schedule to the Constitution of India. It should also be noted that only tribal inhabited areas which are under the provisions of the Sixth Schedule to the Constitution of India are identified as Tribal Areas whereas the tribal inhabited areas under the provisions of the Fifth Schedule are known as Scheduled Areas but not Tribal Areas (Bakshi, 2006).

Article 244(2) has been enshrined to enable the activation of the administrative functioning of the ADCs under the provision of the Sixth Scheduled to the Constitution of India. As a governmental set up, administrative functioning cannot be effectively carried into action without financial resources; therefore, the provision for financial assistance of the Tribal Areas is provided in Article 275 (1) of the Constitution of India. Article 275 (1) can also be stated as the solid background through which the ADCs obtain grants-in-aid from the Consolidated Fund of India through the concerned State Government. Article 275 (1) reads as “ Such sums as Parliament may by law provide shall be charged on the consolidated fund of

India in each year as grants-in-aid of the revenues of such states as Parliament may determine to be in the need of assistance and different sums may be fixed for different states: Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenue of a state such capital and recurring sums as may be necessary to enable that state to meet the cost of such schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the scheduled areas therein to that of the administration of the rest of the areas of the state” (Bakshi, 2006).

Provided further that there shall be paid out of the Consolidated Fund of India as grant-in aid of the revenue of Assam sums, capital and recurring, equivalent to-
“(a) the average excess of expenditure over the revenues during two years immediately preceding the commencement of this constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and
(b) the cost of such schemes of development as may be undertaken by that state with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of the state” (Bakshi, 2006).

Article 275(1) therefore provided for the funding pattern of the states from the Consolidated Fund of India by the Parliament. It is laid down that funds shall be released from the Consolidated Fund of India by the Government of India to the States as grant-in-aid so as to enable the State Government to meet the expenditure for the works, undertaken by them. The provision for providing the Consolidated Fund of India as grants-in-aid of the revenue of the State Government to the ADCs has also been incorporated in Article 275 (1). It is clearly laid down in Article 275 (1) that the financial requirement of the ADC may be sanctioned from the Consolidated Fund of India through the State Government. Thus, the ADCs are not authorized to receive fund directly from the Central Government. As a matter of fact, the ADC cannot receive funds directly from the Central Government by bypassing the State Government because it is clearly stated in this provision (Doungel, 2010). Therefore, the slogan which is regularly raised by some leaders of the Sixth Schedule Area of Mizoram particularly by the BJP leaders of the area is a day dreaming fantasy which is full of imagination and it is far from real politics and governance. The reason being, Article 275 (1) of the Constitution of India clearly states that ADCs should get their funds in the form of Grant-in-aid from the Consolidated Fund of India through the State Government. Therefore, there is no constitutional provision where the ADCs can bypass the State Government in receiving funds and financial assistance from the Centre Government. So, Direct Funding slogan is a day dreaming slogan which is full of imagination and is really far from practical governance.

Funding Rules of Autonomous District Council (ADC), Financed by the State Government

The Constitution of India has clearly mentioned the funding pattern and financial powers for the District Council and Regional Council areas in Paragraph 7 and Paragraph 8 of the Sixth Schedule to the Constitution of India. It is written in Paragraph 7 that District

Fund shall be constituted for District Council and Regional Fund shall be constituted for Regional Council and all funds received by the District Council and the Regional Council shall be credited in the District Fund and the Regional Fund respectively. The Governor shall make the rules for the management of District Fund and Regional Fund and the procedure to be followed in respect of payment of money into the said fund, the withdrawal of moneys there from, the custody of money therein and any other matter connected with or ancillary to the matters aforesaid (Doungel, 2010).

The account of the District Council and the Regional Council are to be maintained as prescribed by the Comptroller and Auditor General of India with the approval of the President of India. The Comptroller and Auditor General of India shall cause the accounts of the District Council and the Regional Council to be audited in such a manner as he may think fit and the reports of the Comptroller and Auditor General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council. All revenue and income which District Council and Regional Council earned are deposited in the District Fund and the Regional Fund respectively. Whereas, the estimated receipts and expenditure pertaining to an Autonomous District Council which are to be credited to, or is to be made from the Consolidated Fund of the State shall be first placed before the Autonomous District Council for discussion and then after such discussion, it shall be shown separately in the annual financial statement of the State which is to be laid before the Legislature of the state under Article 202 (Doungel, 2010).

In pursuance of Paragraph 7 (2) of the Sixth Schedule to the Constitution of India, the Governor of Mizoram approved the Mizoram Autonomous District Council Fund Rules, 2018 and it was published in the Mizoram Gazette on 23. 10. 2018. The funds which the Autonomous District Council (ADC) got from the Central Government through the State Government and the funds which are mobilized by the Autonomous District Council are to be spent according to the guidelines as listed in the said rules. The District Council Fund is constituted under Paragraph 7 sub-paragraph 1 of the Sixth Schedule to the Constitution of India, to which all funds received by the District Council shall be credited in accordance with the provisions of the Constitution of India. The fund shall accordingly comprise of the receipts realized by the District Council including Grant-in-Aid received from the Government and taxes levied or other revenues or receipts realized under the law, rules or regulations framed by the District Council under Paragraphs 3, 4, 6, 8, 9 and 10 of the Sixth Schedule to the Constitution of India.

Further, the fund shall also include any liquid assets, surplus revenue, customary receipts, cash balance or bank balance etc. acquired by the District Council from the previous administrators of the locality or area revenue or receipts accruing to the administration for the constitution of the District Council shall be realized thereafter. Any matter which is not covered by or under these rules shall be referred to the Governor and his decision thereon shall be final (The Mizoram Gazette, Extra Ordinary, 2018). The annual account of the Councils (Autonomous District Council) shall record all transactions which take place during a financial year running from 1st April of a year to 31st March of the next year. The accounts

of every year may be kept open up to 20th of June in the following year for completion of the various accounting process. Adjustments may also be made after the closure of the year owing to misappropriation and misclassification coming to be noticed after the 31st March should not however be treated as pertaining to the previous financial year even though the accounts for that year may be kept open for the purpose mentioned above. The accounts of the ADCs shall be kept in two parts in which Part I deals with District Fund of the Council and Part II deals with Deposit Fund. In Part I of the Accounts, there shall be two main divisions namely;

(a) Revenue Accounts: Revenue Receipts Heads (Revenue Accounts) and Expenditure Heads (Revenue Account). The first division, viz, 'Revenue Account' shall deal with the proceed of taxation and other receipts classed as revenue, and expenditure met there from. It shall also include the grants and contributions received from the Government, and also grants and contributions made by the Council.

(b) Capital Account: Public Debt, Loans consisting of section for receipts heads (Capital Account) and expenditure heads (Capital Account) and Public Debt, Loans and Advances. The second division shall deal with expenditures met usually from borrowed funds with the objects either of increasing concrete assets of a material and permanent character or reducing recurring liabilities. It also include receipts of the capital nature intended to be applied as a set off to capital expenditure. The section of "Public Debt" and "Loans and Advances etc" shall comprise Loans received and their repayments by the Council and Loan and Advances made (and their recoveries) by the Council (The Mizoram Gazette, Extra Ordinary, 2018).

In Part II of the Accounts, the transaction relating to Deposit including contributory Provident Fund and other Fund and Advances shall be recorded. The transactions under 'Debt', 'Deposits' and 'Advances' in this part as such, in respect of which the Council incurs a liability to repay the money received or has a claim to recover the amount paid, together with the repayment of the former (Deposit) and the recoveries of the latter (Advance) (The Mizoram Gazette, Extra Ordinary, 2018). All funds pertaining to the District Council shall be held in the Treasury in the Personal accounts of the ADC. All dues of the ADC shall be paid into the District Fund held in the Treasury through the District Council office. All money of account of the District Fund shall be remitted in full with the least possible delay into the treasury and shall on no account be appropriated towards any expenditure. It is also provided in the rules that no money shall be withdrawn from the District Fund except by cheque on the Treasury signed by the Secretary.

All corrections and alterations in cheques shall be attested by the Drawing Officer with his full signature with date. All claims for grant-in-aid, contributions etc. to local bodies, customary, charitable, or educational institutions and other non-Council bodies or person as sanctioned by the Council shall be presented to the Secretary. Thus, the detailed rules regulating the payment or grant-in-aid shall be prescribed by the Member-in-charge of Financial Affairs in consultation with the Accountant General (Accounts & Entitlement) and with the approval of the Governor. No person except the Secretary is authorized to draw the Council Fund without special orders of the ADC. The Secretary or Executive Secretary of the ADC shall also be responsible not only for the financial regularity of the transaction of the

ADC but also for the maintenance of accounts of the transaction correctly and in accordance with the rules in force. The Executive Secretary may entrust the immediate control of the accounts of the ADC and the District Fund to the Finance and Accounts Officer but may not be divested himself of the administrative control (The Mizoram Gazette, Extra Ordinary, 2018).

The term “Contingent Charges” or “Contingencies” includes all incidental and other expenses which are incurred for the management of an office as an office or for the technical working of a department. The Secretary shall exercise the same vigilance in respect of contingent expenditure as a person of ordinary prudence may be expected to exercise in spending his own money. All charges actually incurred must be paid and drawn at one, and under no circumstances may they be allowed to stand over to be paid from the grant of another year. However, no money shall be drawn from the Treasury unless it is required for immediate disbursement. The rules also further laid down that no payment can be made to a contractor, except for the work actually done or supplies actually received (Doungel, 2015).

The rules laid down that all financial powers in respect of expenditure shall be exercised by the Executive Committee of the District Council. The District Council shall then prescribe the cases, if any, where the powers delegated to the Chief Executive Member shall be exercised with the concurrence of the Financial Affairs of the Council. In preparing the budget, care should be taken to see that the grants/contributions received from the Government of India are utilized only for the purpose for which these were given by the Government. Any deviation considered necessary would require prior approval of the Governments. So, any unspent balance not utilized within the financial year of its sanction, the Grant by the Government must be surrendered. The Accounts of the District Council will be subject to audit by the Accountant General (Audit) on behalf of the Comptroller and Auditor General of India and by the Examiner of Local Accounts (Doungel, 2015).

The financial provisions which are accorded to the ADC as per the provisions of the Sixth Schedule to the Constitution of India are highlighted above and the ADCs are also empowered to mobilize their own resources by enacting appropriate legislations. The Mizoram District Council Fund Rule, 2018 was published in 13.12.2018. It is divided into Part VIII in which each Part consists of several chapters. All the three ADCs of Mizoram are using this Fund Rules as a guideline for their financial transaction with the State Government and for the financial governance within their jurisdiction. The Autonomous District Council receives fund from the Consolidated Fund of India through the State Government as incorporated in Article 275 (1) of the Constitution of India. Paragraph 7 of the Sixth Schedule to the Constitution of India provided a provision for District Funds where all funds received by the ADC, shall be deposited.

In pursuance of Paragraph 7 sub-paragraph (2) of the Sixth Schedule to the Constitution of India, the Governor of Mizoram enforced the Mizoram District Council Fund Rules, 2018. Besides these, Paragraph 8 of the Sixth Schedule to the Constitution of India gives wide powers to the ADCs to assess and collect land revenue and to impose taxes. In this

regard, the ADC can levy and collect (a) taxes on profession, taxes, callings and employment (b) taxes on animals, vehicles and boats (c) taxes on the entry of goods into a market for sale therein, and taxes on passenger and goods carried in ferries and (d) taxes on the maintenance of schools, dispensaries or roads. Over and above that, Paragraph 13 of the Sixth Schedule to the Constitution of India provides that estimated receipts and expenditure of the ADCs shall be shown and approved in the annual financial statement of the State Legislative Assembly as incorporated in Article 202 of the Constitution of India (Bakshi, 2006).

Conclusion

Funding pattern of the Autonomous District Council is constitutionally based upon the provisions, provided in Article 275 (1) of the Constitution of India. This provision vividly signifies that ADCs get their funding from the Consolidated Fund of India through the State Government. Therefore, there is no diversion or no scope of getting fund directly from the Central Government bypassing the State Government for the ADCs. Over and above that, Paragraph 7 of the Sixth Schedule to the Constitution of India provides for District Fund where all monies received by the ADCs shall be deposited. The ADCs are also facilitated with sources of income where taxes can be levied on different items in Paragraph 8 of the Sixth Schedule to the Constitution of India, but this very provision seem to be not effectively exercise by the ADCs.

In fact, the ADCs are required to be strong in law-making in order to effectively exercise the power of collecting revenue and taxes. The ADCs are also facilitated where their estimated receipts and expenditure which will be passed in State Legislative Assembly as enshrined in Paragraph 13 of the Sixth Schedule of the Sixth Schedule to the Constitution of India which has been further laid down as funding pattern in the Mizoram Autonomous District Council Fund rules. In fact, if these rules are effectively adhered, there seem to be no chance of mismanagement and mis-utilization of fund. Thus, the funding pattern and funding rules should be strictly enforced so as to create favourable atmosphere for effective functioning of the Autonomous District Council.

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