

## FRAMING OF THE SIXTH SCHEDULE

Great care had been bestowed when the question of providing a proper — constitutional set up for the tribal areas of North East was debated in the Constituent Assembly'. The desire was to see that the aspirations of the people of the area are met on the one hand, and on the other, these areas are assimilated with the main stream of the country. To assist the Assembly in this purpose, a Sub-Committee was formed to report on the North East Frontier (Assam) Tribal and Excluded Areas. This Sub-Committee was to work under the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded, Areas. The Sub-Committee was to have the then Premier of Assam, Shri Gopinath Bordoloi, as its Chairman. Other persons who acted as full members of the Committee to start with were:

- (1) Shri J.J.M. Nichols Roy,
- (2) Shri Rup Nath Brahma,
- (3) Shri A.V. Thakkar and
- (4) Shri Mayang Nokcha, who was later on replaced by Shri Aliba Imti.

The Committee which was formed on 27<sup>th</sup> February, 1947, extensively toured the Province of Assam, as it then was, which included visits to Lushai Hills District, North Cachar Sub-Division, Mikir Hills and the Naga Hills District. The Committee could not visit the Garo Hills District on account of bad weather and difficult communications. Jowai Sub-Division of Khasi Hills District could not also be visited for the same reason. The Committee noted the anxiety of the hill people about their land and fear of exploitation by more advanced persons, especially the money lenders because of which control of immigration was desired. The unsuitability of normal laws for the simple folk was also felt. The Sub Committee after great deliberations submitted its Report<sup>2</sup> on 28<sup>th</sup> July, 1947 to the Chairman, Advisory Committee on Fundamental Rights, Shri Ballabhbhai Patel. The report has dealt in detail with various aspects relating to administration of the tribal areas. These aspects include thoughts on development, special features of these areas, land, forest, jhumming, courts, finance, control of immigration, mines, legislation, representation, services etc. The Advisory Committee discussed the matter on 7<sup>th</sup> December, 1947 and 24<sup>th</sup> February, 1948; and while forwarding the same to the President of the Constituent Assembly on 4<sup>th</sup> March, 1948, suggested only two amendments. These were:

1. The Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the District Court is without jurisdiction; and
2. The plains portions were to be excluded from Schedule 'B' of the areas which were recommended for inclusion in the Schedule by the Sub-Committee.

Before the Advisory Committee had discussed the report of the Sub Committee, the Constitutional Adviser, *Shri B.N. Rau*, who had prepared the first draft of the Constitution in October, 1947, incorporated the recommendations in the Eighth Schedule of his draft.

The Drafting Committee (whose President was Dr. B.R.Ambedkar) considered this matter on 13<sup>th</sup> February, 1948 and made minor amendments in the draft. The number of the Schedule became Six from Eight because of general revision of numbers etc. of the Schedules. This apart, the three amendments which were made are-

1. In paragraph 1 (2), the words "on representation made in that behalf by such tribes" were omitted;
2. In paragraph 2(7) (c), for the words "entitling persons who vote" the words "for voting" were substituted; and
3. Paragraphs 4(2), and 4(1) were numbered as paragraphs 4(1) and 4(2), respectively.

The Draft of the Schedule with the aforesaid minor amendments was submitted to the President of the Constituent Assembly on 21<sup>st</sup> February, 1948. The Drafting Committee further examined the matter in the light of comments and criticisms of the draft which was circulated to all concerned and decided to sponsor some of the amendments suggested and to recast the language of some paragraphs as appeared in the reprint of the draft which was forwarded on 26<sup>th</sup> October, 1948.

The Constituent Assembly considered the matter on 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> September, 1949 and after extensive debate the draft Constitution was adopted with various amendments.

When the matter was debated in the Constituent Assembly, three distinct shades of opinion came to be expressed. One point of view, which was put forward mainly 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 who should look after them. In other words, these areas should be brought under Central jurisdiction. This view was taken by Shri Prasad because Assam being in the border of five or six foreign countries, he was opposed to handing over of the administration into the hands of provincial Government, specially because, according to him, there was in Assam at the relevant time conflicts between the Ahoms, and the Assamese, the Bengalees and the Muslims and the Mongoloid races. Infiltration on mass scale was going on. He, therefore, asked:

"Is it right, is it safe, is it desirable, is it militarily in the interest of the Government of India, is it politically advisable that the administration of such a vast tract of land should be left in the hands of provincial Government, especially in a province where there is no element of political stability?"

He continued

"Sir, I love this country more than provincial autonomy. I know the problems of Assam are too complicated and are beyond the economic resources of the province to tackled by the Provincial Government of Assam. Therefore, this problem should be left in the hands of the experts, social workers, doctors, engineers, psychologist, professors, philosophers and sociologists and no politicians should be allowed to meddle in this affair.

A little later he said

"I will not jeopardize the interest of India at the altar of the tribals. The principle of self-determination has worked havoc in Europe..... It led to.....the vivisection of India..."

Shri Prasad had tabled amendments of different paragraphs in the light of his above thinking desiring placing of the entire matter in the hands of the Centre and the President, but the Constituent Assembly was not inclined to accept this view of Shri Prasad.

As against this, two Hon'ble Members from Assam, *Shri Kuladhar Chaliha* and *Shri Rohini Kumar Chaidhiiri*, made efforts on a large number of occasions to give greater voice than what was proposed to the State Legislature and the Provincial Government. Shri Chaliha said that giving of too much autonomy to the tribals, would result in creation of "tribalstan" just as Pakistan had been created. Shri Chaudhuri asked:

"Do you want an assimilation of the tribal and non-tribal people or do you want to keep them separate? If you want to keep them separate, they will never join with Tibet, they will join with Burma. They will never join with rest of India. You may take it from me."

Shri Chaliha was very sore about the provision that even an Act of Parliament could not be made applicable unless the tribals consented to it. 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 in a way the background of which is to keep them away from us and to create a Tribalstan. And the result will be that there will be communistan there. The Communists will come and they will have a free hand, as in Manipur one of the Ministers was already a Communist."

Views of the then premier of Assam, *Shri Gopinath Bordoloi*, were given great weight not only because he was the Chairman of the Sub-Committee but because as stated by *Shri Nichols Roy*, Shri Bordoloi was known to be very kind and sympathetic to the hill people, had been respected by the hill tribes and had studied very closely the position of these tribal people. Shri Bordoloi explained to the Constituent Assembly the background in which the draft had been prepared. He referred to the problems of these areas which were entirely excluded areas in the sense that none from the plains could go there and contact the tribal people. Some of the areas were described as war zones and it was stated that during the war the then Rulers and officers developed in the minds of these people a sense of separation and isolation and gave them assurance that at the end of the war they will be independent States managing their affairs in their own way. So, when the investigation began it was found that the people of the area were already immersed with ideas of isolation and separation. The Committee was therefore confronted with the question whether for the purpose of integration "methods of force, the methods of use of Assam Rifles and the military forces, should be used, or a method should be used in which the willing cooperation of these people can be obtained for the purpose of governing these areas."

Then it was 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 and of the manner in which disputes were settled. A point which had presented itself to the Committee was whether they would raise in the tribals a spirit of enmity and hatred by application of force or whether they should bring them up under the broad principles of government by good-will and love and the Sub-Committee felt that the latter course was the one which should be adopted.

*Shri A.V.Thakkar*, who was also a Member of the Sub-Committee, stated that the idea of autonomous district was the only proposal which was found acceptable not only to the Committee but also to the various tribes, though when he had first heard about this proposal he was himself surprised because this had never existed anywhere in any part of India.

According to *Shri Nichols Roy*, the measure of self-Government will make the tribals feel that the whole of India is sympathetic with them and nothing is going to be forced on them to destroy their feeling and culture. He asked why should the tribals not be allowed to develop themselves in their own way. He reminded that to keep the frontier area safe, these people must be kept in a satisfied condition. If force were to be used on them, more harm would be done as no advancement can come through force.

*Shri Jaipal Singh*, himself a tribal leader of repute, stated that of the two solutions, which he described as 'power solution' and 'knowledge solution', the former was no solution at all, as that would bring about a further disintegration of India. He asked not to suspect the intention of the tribals and desired restoration of their confidence and to respect the understanding reached by the Sub-Committee with the tribals.

According to *Dr. Ambedkar* the tribal people of Assam differed from the tribals of other areas. As for the latter, they were more or less Hinduised, more or less assimilated with the civilization and culture of the majority of the people in whose midst they lived. As for the former, their roots were still in their own civilization and their own culture. They had not adopted either the modes or the manners of the Hindus who surrounded them. Their laws of inheritance, their laws of marriage, custom, etc. were quite different from that of Hindus. He felt that the position of the tribals of Assam was somewhat analogous to that of the Red Indians in the United States who are a Republic by themselves in that country, and were regarded as a separate and independent people. He agreed that Regional and District Councils have been created to some extent on the lines which was adopted by the United States for the purpose of the Red Indians.

As the Constituent Assembly debated the draft by taking up each paragraph, it became apparent that the proposals of the Sub-Committee which had been accepted by the drafting Committee were going to be approved. Above all, it was the views of Dr. Ambedkar which carried the greatest weight.

As one amendment after another of Shri Chaliha and Shri Chaudhuri were being negated, they felt disappointed and dejected. Shri Chaliha asked for kindness to be shown to him in accepting his amendment to paragraph 14, after all the unkindness that had been shown. Earlier to that Shri Chaliha had stated that the British had induced belief that the Hindus and men of plains were their greatest enemies and this feeling was being endorsed. Shri Chaudhuri had desired acceptance of his views by saying that if the opinion of the members from Assam counts for anything in regard to the Sixth Schedule which relates primarily to Assam, it must be so done. But these appeals also were not to mellow down the heart of Dr. Ambedkar. This led Shri Chaudhuri to state about the stalwart at one stage:

"What mesmerism had been practiced over him is more than what I can see. I cannot understand a man like him trying to circumscribe the rights of ordinary people like this. I am feeling very much disappointed in him. He has come to a position where he can ridicule an orphan, Oliver Twist or David Copperfield, whatsoever he calls him."

Reference was made about David Copperfield because Dr. Ambedkar had earlier said that he was like hungry David Copperfield asking for more gruel.

This general discussion may be ended by quoting the statement of *Shri B.Das*, which he made towards the concluding stage to show the strong feelings of the members about the provisions of this Schedule. He said:

"Sir, I may be a fool in this house but I just want the house to know that what Rev. Nichols Roy said is only in continuation of the "two nation theory"...I hate the provisions of the Sixth Schedule whereby you are perpetuating primitive conditions of life. I have warned you yesterday and I warn you again. The British spies through help of British and American missions and communists are coming to these tribal areas and for that Reverend Nichols Roy will be held responsible."

During the debate, the draft provisions underwent many amendments, the important among which are the following:

1. A complete departure was made so far as the role of the Governor in the administration of these areas is concerned. Under the scheme of the Government of India Act, 1935, so far as the excluded areas are concerned, the Governor was to act in his discretion [*vide section 93(3)*] and as regards the partially excluded areas, he had a special responsibility to make regulation for peace and good government [*vide section 92(2)*]. When the Constitution was drafted, discretionary power of the Governor was kept intact with respect to certain matters and it is because of this that in paragraphs 15 and 18 (as drafted) had been specifically mentioned that the Governor shall exercise his functions under these paragraphs in his discretion. But during the course of the debate in the Assembly, *Dr. Ambedkar* himself moved for deletion of these provisions from the two paragraphs. The discretion was rather sought to be confined while administering the areas specified in Part B of the Table appended to paragraph 17 (as it was numbered in the draft Constitution, which ultimately became 8). To make this clear, *Dr. Ambedkar* himself moved an amendment as it finds place in sub-paragraph 18(3) now.

This point came up for the first time when the Assembly was dealing with paragraph 1(3), and specially regarding the composition of the Commission on whose report only certain actions were permitted to be taken by the Governor. *Shri Kuladhar Chaliha* had desired that the Commission must have some members of the State legislature in it. *Dr. Ambedkar* in reply stated:

"I think if Mr. Chaliha had only read carefully the wording of the Sixth Schedule he would have seen that in appointing the Commission, the Governor is not going to act in his discretion. There is no discretion left in the Governor. That being so, it is quite obvious that in constituting the Commission and defining its terms of reference, the Governor would be guided by the advice of the local Ministers and, I do not think, therefore, there need be any fears such as the one that he has expressed."

This point came up again when paragraph 2 was being debated. To dispel any doubt on this point, Dr. Ambedkar stated as below:

"The first thing that we have done is this: That we have provided that the executive authority of the Government of Assam shall extend not merely to non-tribal areas in Assam, but also to tribal areas, that is to say, the executive authority of the Assam Government will be exercised even in those areas which are covered by the autonomous districts. This, as will be seen, is a great improvement over the provisions contained in the Government of India Act, 1935. In the provisions contained in that Act, the executive was divided into two categories, one was called the Government of the province and the other executive was called the Governor in his discretion, so far as the tribal areas were concerned. This applied not only to the tribal areas in Assam but also to completely excluded areas in other areas. The executive authority which operated upon those areas was not the executive of province but the Governor in his discretion. We have abolished that distinction so that the whole of the tribal area including those in the autonomous district is now under the authority of the Provincial Government."

While dealing with paragraph 3 also, it was stated by Dr. Ambedkar as below:

"According to my amendment the laws will be approved by the Governor as advised by Ministry of Assam, because in all this scheme we are dropping the words 'in his discretion'. Where ever the word Governor occurs, it means Governor acting on the advice of the Ministry."

When the Assembly was going through draft paragraph 10 which gave power to the District Council to make regulation even to control the trading by non-tribals, to which strong objection was taken by Shri Chaliha and Shri Chaudhury, Dr. Ambedkar stated in reply that the amendment which he had proposed stating that all regulations made under this paragraph shall be submitted to the Governor and until assented to by him shall have no effect, takes care among other safeguards of this apprehension. He clarified that the discretion which was vested in the Governor under the earlier provisions has altogether been taken away and the Governor can now act only subject to the advice of the Ministry.

This point was again made clear when paragraph 12 was being debated. The objection of Shri Chaliha was to the provision in clause (b) that for application of any law approval of the District Council would be necessary. Dr. Ambedkar while conceding to the amendment, stated:

"The Governor by this amendment, is freed from trammels of any resolution that may be passed by the District Council or the Regional Council. He can now act on the advice of the Ministry whether a particular law passed by the Parliament or by the legislature of Assam is to apply to that area or not."

Reference may finally be made in this regard to what was stated by Pt. Hriday Nath Kunjru when paragraph 19 of the draft (which is paragraph 20 now) was being debated. He brought to the attention of the Assembly the distinction in the role of the Governor with reference to excluded and partially excluded area (under the scheme of Government of India Act, 1935) and then stated:

"In other words, while in connection with excluded areas he (i.e., the Governor) was not bound to consult his Ministers at all, in respect of partially excluded areas he was bound to act according to their advice, unless he felt that he must dissent from it. Now this distinction no longer exists because the Governor, practically speaking, is required in all cases to act on the advice of his Ministers.....I have said 'practically speaking'. The only exception is with regard to areas specified in Part II of the table appended to paragraph 19. There he is to act in his discretion because he will act as an agent of the President and obviously the directions given by the President cannot be allowed to be modified by the Provincial Ministers."

2. Sub-paragraph (3) of draft paragraph 15 and clause (c) of draft paragraph 18, both stating that Governor shall exercise his powers under these paragraphs in his discretion, were deleted, to bring the provisions of the Schedule in line with the thinking of the founding fathers about the role, a Governor should play in a free India.

3. Another point on which there was long and heated debates in the Assembly related to the position which Shillong town should occupy. In the draft, which was prepared on the basis of the report of the Sub-Committee, the entire town of Shillong was recommended for exclusion from item 1 of Part A of the Table, that is, from the tribal area falling within Khasi and Jaintia Hills District. But when the matter came before the Assembly, Dr. Ambedkar himself moved an amendment to the effect that part of Municipal area of Shillong which belonged to the State of Myllem would be included in item 1, though for certain purposes this area also would be excluded, vide proviso to paragraph 19(2) of the draft. In the proviso, as proposed by Dr. Ambedkar, there was no mention of clause (d) of sub-paragraph (2) of the paragraph 10, which relates to the taking of licence form the District Council by any non-tribal to carry on wholesale or retail business in any commodity. Shri Chaliha and Shri Chaudhury strongly pleaded not to include any part of Shillong Municipality in the tribal area as that would vitally affect the non-tribals who were in great number. Shri Chaliha stated that it is an injustice to call Khasis as "tribals" as they are so much advanced that there are scholars, principals of Colleges and Ministers amongst them and they have the highest literacy in Assam. Shri Gopinath Bordaloi, however, stated that the basic question was how to maintain the District Council with its powers and at the same time integrate it with the municipal administration of the town of Shillong. It was to reconcile these two views that *so far* as municipal administration was concerned rights was given to the Provincial Government; but as regards the tribal right relating to representation m District Council, that was, however, not taken away. According to Dr-Ambedkar, it was avoid double jurisdiction over the municipality that the proviso had been inserted in sub-paragraph (2). He asked as to how tribals living in Shillong could be subjected to different laws than their brothers so far as the marriage, inheritance, etc. are concerned. It was because of these considerations that for the purpose of municipality the part which was in the Myllem State should be subject to municipality, while for the purpose for which the District Council is constituted it should remain subject to the District Council.

But keeping in view the strong pleas of the Assam Members, clause (d) to sub-paragraph (2) of paragraph 10 was also inserted in the proviso to subparagraph 19(2) which ultimately became paragraph 20(2).

4. The Assam Members had also pleaded to exclude Dimapur Mauza from the territorial limits of the Naga Hills District, but on Shri Bordoloi not supporting the plea because that would give rise to boundary dispute as the Nagas may say that their district would go to a certain point and the Dimapur people may say differently, the amendment was negated by the Assembly.

5. As per the draft proposed, the decisions of the District Council Courts were to be final under paragraph 4. But this was amended at the behest of Dr. Ambedkar himself who proposed for the insertion of sub-paragraph (3) as it finds place now and for substitution of the words "except the High Court and the Supreme Court shall have jurisdiction over such suits or cases" for the words "shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final" in sub-paragraph (2).

6. In the draft finalised by the Drafting Committee, the laws and regulations made by the District Council were not required to be assented to by the Governor before becoming effective. But at the final stage Dr. Ambedkar himself moved amendments to paragraphs 3 and 10 by way of inserting subparagraphs (3) in both the paragraphs, as they find place now. This had been done with a view to see that the District Council and Regional Councils do not make such laws or regulations which may go against the interest of the State or non-tribals.

7. The requirement of approval of the District Council regarding applicability of Central and State laws was deleted from the provisions of paragraph 12 as drafted. This was one of the amendments of Shri Chaliha which had found favour with the Drafting Committee, which had led Shri Chaliha to say:

"Shri Kuladhar Chaliha: I am glad that for once some kind of sense has dawned upon the Drafting Committee. It is fortunate that for the first time sense has dawned on the drafting Committee.

The Hon'ble B.R.Ambedkar: That is because for the first time you have convinced me by your arguments."

8. Paragraph 17 as it finds place now was added in the Schedule. This was proposed by the Drafting Committee itself and the object of the same may be put in the words of the mover, who was none else than Dr. Ambedkar. He stated:

"The object of this is to give the people who are included in the autonomous districts but really who are not part and parcel of the people inhabiting the autonomous districts an opportunity to have a place in the Legislative Assembly by having their own constituencies marked out for them."

As would appear from his speech, this had been done at the instance of the representatives of Assam; and this, according to him, should take care of the difficulties which the non-tribals in some mauzas of Garo Hills and of Dimapur area may face on account of the inclusion of these areas in the Schedule.

9. Paragraph 1 had undergone many amendments. At first Dr. Ambedkar moved an amendment of sub-paragraph (3). The purport of the same was to delete Clause (d) of the draft and to add clauses (f) and (g) as they find place now. The two provisos as in the draft were also recast. Shri Chaliha had felt that there was no necessity of having a Commission. According to him, the power could be given to the Governor which means, of course, the Cabinet. Shri Brajeswar Prasad wanted the following amendment:

"That the following be added at the end of paragraph 1: " functions of the Governor under this paragraph shall be exercised by him as the agent of the President." Or, alternative, "The functions of the Governor under this paragraph shall be exercised by him in his discretion,"

Dr. Ambedkar did not favour any of these amendments and as to Shri Chaliha's plea that even if there be a Commission, the composition of the same should be declared and which according to him must have some members of the Legislative Assembly, the reply of Dr. Ambedkar, as already noted, was that the Governor would be guide in this matter by the advice of the local Ministers.

On the amendment moved by Shri Prasad, the Chairman of the Drafting Committee stated that as the autonomous districts shall form part of the Province of Assam, a part of the Province cannot be allowed to be governed by the Governor and a part to be administered by the Centre, which was the effect of the amendment suggested by Shri Prasad. Dr. Ambedkar also stated that the mover of the amendment had forgotten to take note that while constituting the autonomous areas, for the part which can be called "Frontier Areas", the Governor would be acting under the President. Consequently whatever strategic importance the frontier area may have, the Centre would certainly have ample jurisdiction to see that none of the disturbing factors to which reference was made by Shri Prasad, would find place there.

In view of this stand taken by Dr. Ambedkar, his amendment alone was adopted while those of Shri Prasad were negated. It is, however, interesting to note that towards the close of the proceedings relating to this Schedule, the President of the Constituent Assembly himself suggested to re-open the amendments relating to paragraph 1 and stated that in paragraph 1(3) the following Clause should be inserted:

"(aa) excluding any area from part I of the said Table."

This suggestion was made because many speakers had expressed the feeling during the course of the debate that a need may arise to take out some areas from the Sixth Schedule, say because of its development or desire of its inhabitants, and as such, there should be a specific power to do so, though the power to diminish the area of any autonomous district' may also cover the power to exclude. This amendment was adopted, which shows that areas included in Sixth Schedule were not meant to be permanently kept out from the other parts of the Province, or to be governed by special provisions as they find place in Sixth Schedule.

10. The last amendment of which mention may be made is the one which finds place in paragraph 21 of the Schedule. This amendment was also moved by Dr. Ambedkar. Professor Shibban Lal Saksena objected to the amendment and desired amendment of the Schedule after the whole matter of the tribal areas had been gone into by a Parliamentary Commission. According to him, the entire Schedule could be changed as per the report of the Commission. This was not accepted by the Assembly and the amendment moved by Dr. Ambedkar was adopted.

The Sixth Schedule as it finally emerged and found place in Constitution, as originally adopted, has been included in the Appendix

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Sample Only (KHADGI)