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A STUDY ON THE VALIDITY OF AUTONOMY UNDER THE SIXTH SCHEDULE TO THE CONSTITUTION OF INDIA

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ABSTRACT

The Constitution of India under its Sixth Schedule has provided local autonomy of governance and administration of justice in conformity with the tribal traditions, customs and usages of the North Eastern region. Such autonomy has been legally recognized since the colonial period. However, in contemporary times with the growth of society and exposure of the region to the outside world, such protective Constitutional provisions are challenged as ultra vires fundamental provisions of the Constitution and other enactments of the Parliament. This paper thus endeavours to examine the validity of the Sixth Schedule and the laws enacted by virtue of its provisions in the light of judicial pronouncements and conclude with a balancing test of the Sixth Schedule with fundamental provisions of the Constitution and other laws.

I. INTRODUCTION

The Sixth Schedule to the Constitution of India is a special feature of the Constitution of India depicting the utmost sensitivity of the founding fathers of the Constitution of India towards the special needs of the tribal people of the North Eastern (NE) region. The Sixth Schedule is an exceptional federal feature of the Indian Constitution that gathers to the grassroots of village customary administration bringing the common man to the centre of governance, policy making and administration of justice. The Sixth Schedule provides autonomy in local governance like allotment or occupation of land, social customs, etc., administration of justice, constitution of village councils or courts, trial of cases or suits, establishment of primary schools, collection of revenue and imposition of tax, grant of licences for extraction of minerals and regulations for money landing and trading by non-tribals[1] in accordance with the local practices independent of the technical statutory laws enforced in other parts of the country. It thus provides absolute protection of the tribal customs and usages in all branches of local governance and administration of justice. The autonomy of the NE has been recognized by Constitution of India by constituting Autonomous District Councils (ADCs), Regional Councils, village councils and courts[2] for

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[1] *See* the Sixth Schedule to the Constitution of India, Paragraphs 3, 4, 5, 6, 8, 9 & 10 respectively.

[2] *Ibid* at Paragraphs 1, 2, & 4(1).

governance and administration of justice respectively.[3] The ADCs and Regional Councils have been given the power to collect revenues, make laws and impose taxes as per their respective customs and practices.[4] The NE region though constitutes only about eight percent of the total areas of country; it occupies a significant position in the cultural assets, biological resources and frontier policy of the nation. The colonial administrators to protect these indigenous assets has kept the region under a non-interference policy and enacted laws accordingly keeping the region away from the general laws enforced in other parts of British India. Post the Indian independence, the Constitution Assembly adopted the Sixth Schedule which was akin to the colonial period. A study of the legal, political and socio-cultural history of the region shows the circumstances that led to adoption of this special feature under the Constitution. However, laws enacted by virtue of the powers under the Sixth Schedule may in some cases conflict or appear repugnant to the some fundamental provisions of the Constitution and other laws enacted by the parliament. Thus, this paper endeavours to study the validity of the provisions of the Sixth Schedule and the laws enacted by such autonomous institutions in the light of judicial rulings. To comprehend the validity of the provisions of the Sixth Schedule, an understanding of the colonial enactments and the vision of the framers of the Constitution of India is indispensable. Hence, this paper endeavours to explore and study the history of colonial enactments and the circumstances leading to the adoption of the Sixth Schedule by the Constituent Assembly.

II. A Background Study on The Colonial Legislation

The colonial administration in the NE region for the purpose of a legal study may be broadly classified into three stages. The first stage is the period from where the region was administered from Bengal. The second stage is the period after the formation of the Commissionership of Assam and the third is the period of constitutional reforms.

[3] There are two types of Autonomous District Council (ADC) in the NE region. One constituted under the Sixth Schedule and the other by the respective state legislation. Bodoland Territorial Council, DimaHasao ADC (Cachar), Karbi Anglong ADC, Khasi Hills ADC, Garo Hills ADC, Jaintia Hills ADC, Chakma ADC, Lai ADC, Mara ADC and Tripura Tribal Areas ADC are the ones constituted by the Sixth Schedule. Churachandpur ADC, Chandel ADC, Tamelong ADC, Missing ADC, Deori ADC, SonowalKachari ADC, RabhaHasong ADC, etc. are constituted by the respective state legislation.

[4] The power to make laws in the fields of land, forest (not being reserved forest), water course for agriculture, Jhum cultivation, village councils, town committees, inheritance of property, marriage & divorce, appointment & succession of Chiefs or Headman, social customs, etc. by virtue of clause (1) of Paragraph 3 of the Sixth Schedule. The power to collect revenue and impose tax in the field of taxes on land & buildings, tolls on persons, professions, trades, callings, employments, animals, boats, vehicles, entry of goods, maintenances of roads, schools, dispensaries, etc. by virtue of Paragraph 8 of the Schedule.

First Stage: Administration from Bengal

In the NE region, every tribe was composed of independent villages. The Chief or the Headman ruled the village according to their respective customs and usages. The customs and usages in administration and policy making were diverse. One finds this diversity among the villages of the same tribe. However, after the Dewany of Bengal was handed over to the British by the Mughals[5] the administrative system underwent changes, the footprints of which can be seen in the contemporary legislations. To avoid technical procedures of law in administration of justice, Regulation X of 1822centralized all the powers of government in the Civil Commissioner who was empowered to act independently subject only to the orders and directions of the Governor General in Council. This system of administration was called "Non-Regulated" system. By virtue of the said Regulation[6] a new administrative unit called North-East Rangpur was carved out and placed it under the Civil Commissioner. The reason for giving wide powers to the Civil Commissioner was for administrative convenience of the Britishers to conclude agreements with the Chiefs and Headman of the tribes unhampered by the lengthy technical administrative and legislative procedures unknown to the tribal people. Thus, on one hand such legislation was shown to be simple and friendly to the tribal people, however on the other hand, it was for easy and speedy realization of the colonial ambitions in the NE region. Thus, the Non-Regulated system laid the genesis of a plural system of administration giving autonomy to the local people in internal affairs while the management of external economic, political and foreign affairs were with the Britishers.

Couple of decades post the Non-Regulated system, by virtue of the Government of India Act, 1854 the erstwhile territories of Assam, *viz*., Kamrup, Darrang, Sibsagar, Nowgong, Garo Hills, Lakhimpur, Khasi and Jaintia Hills, Naga Hills, Cachar and Goalpara were brought under the immediate authority and management of the Governor General in Council.[7]However, the legality of law making powers delegated to the Governor General in Council was seriously questioned.[8] Therefore, the Indian Councils Act, 1861 (hereinafter the Act of 1861) was passed to give retrospective effect to enacted laws and supplement the law making power of the Governor General in Council by laying down that for peace and good government in the Non-regulated areas, the Governor of the presidencies was empowered to make laws and regulations and also to amend or repeal any laws and regulations made prior

[5] The Dewany of Bengal was given to the Sir Robert Clive in 1765 by the Shah Alam.
[6] Regulation X of 1822, Rule III.
[7] P. Chakraborty, *Fifth & Sixth Schedule to the Constitution of India* 1 (Capital Law House, Delhi, 2005).
[8] B.L. Hansaria, *Sixth Schedule to the Constitution of India* 2 (Universal Law Publishing, New Delhi, 3rd Edition, 2011).

to the Act of 1861.[9]The purpose of delegating such wide powers was to take executive as well as legislative decision immediately in the exigency of the situation. The vesting of such powers under a single organ was termed by the British Parliament "for peace and good government" an exception to the general principle of separation of powers, which was indispensable for the peaceful and inexpensive administration of the NE region of India.

By virtue of Section 3 of the Garo Hills Act, 1869, (hereinafter referred to as the Act of 1869) the Regulation X of 1822 and its Non-Regulated system were repealed and administration of the Garo Hills and East of Khasi Hills were put under the management of the Lieutenant Governor and its officers. The Act of 1869 removed the application of civil and criminal judicature from the said areas and delegated the powers of administration of justice to officers appointed by the Lieutenant Governor.[10] Thus, disputes were settled in accordance with the customs and usages of the respective tribes. A customary institution subject to the supervision of the British officer was established where revenues were collected by the village Chief and Headman. The disputes between individuals or villages were also settled by the Chiefs and Headman in accordance with customs, however under the watch of the British officer. The practice of involving the Chiefs and Headman in the administration and settlement of disputes made the colonial officers regulate and control the tribal people smoothly. This practice gradually developed into the customary institution of *Gaonburas*[11]and *Dobhasis*[12] in the NE region, which efficiently helped the colonial administration and continued in the present days.

Section 9 of the Act of 1869 empowered the Lieutenant Governor to extend the application of the Act to the Naga Hills and the Jaintia Hills by notification in the Gazette. By a Notification in Gazette of Calcutta[13] the Lieutenant Governor extended the application of the provisions of

[9] The Indian Councils Act, 1861, ss. 25 & 42.
[10] The Garo Hills Act, 1869, s. 4.
[11]Gaonbura is a Hindi-Assamese word. The word "Gaon" in Hindi means village. "Bura" in Assamese means old man. Thus, Gaonbura means old man of the village or village elder. In the villages of the North East, the elderly men are respected by all the villagers for their wisdom and knowledge. The final words in policy making, settlement of disputes or in any matters of the village are with the Gaonbura of the village.
Also *See*, Ngaopunii Trichao Thomas and Poukho Stephen, "The Dynamics And Politics Of Self-Governance Among Poumai Naga In Senapati District" 3(3) *Journal Of Tribal Intellectual Collective India* 66-83 (2016); MoatoshiAo, *A Treatise on Customary and Fundamental Laws of the Nagas in Nagaland* 140-144 (Notion Press, Chennai, 2019); A Handbook on Gaon Buras & Panchayati Raj Leaders, available at: https://www.arunachalpwd.org/pdf/Hand%20Book%20for%20Gaon%20Burahs.pdf (last visited on January 20, 2022).
[12] The word "Dobhasi" originated from Hindi-Assamese word. "Do" means two and "bhasha" means language. Thus, Dobhasi means a person who knows two languages, i.e., the local language and English. The Dobhasis were appointed by the British officers as interpreters to help the communicate with the tribal villagers.
[13] Notification Dated 14th October, 1871.

the Act of 1869 in the Jaintia and Cossyah Hills. The Notification also directed that the Commissioner of the province of Assam would exercise the powers of the High Court in all civil and criminal cases. The delegation of powers under the Act was challenged in *Empress* v. *Burah & Book Singh*[14] as excess delegation of the powers of the Governor General in Council. In this case Mr. Burah and Mr. Book Singh were convicted of murder and sentenced to death by the Deputy Commissioner of Jaintia and Cossyah Hills. On appeal before the Chief Commissioner of Assam, the sentence was commuted to transportation for life. The Calcutta High Court held that such delegation of judicial powers was in excess. The Privy Council reversing the Calcutta High Court judgementheld that:

> "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself."[15]

With the ruling of the Privy Council in *Her Majesty The Queen* v. *Burah*[16]the jurisprudence of application of established law and the separation theory as enforced in other parts of the country was excluded in the NE region by providing the plenary powers of legislation to the Indian legislature. To make administration simple to the understanding of the hill tribes which otherwise would impede the tea business of the British in Assam, the isolation of the region from the general laws as indispensable. To prevent the hill tribes from constant attacks for hunting head of the British subjects in the tea gardens was a humongous task for the British. It was military and financial drain on the British. Thus, to conclude peaceful agreement of not interfering in each other's affairs and territory, the only non-costly solution was to isolate the tribes by leaving them alone in the management of their own affairs.

Notwithstanding, the autonomy given to the hill tribes with a hope to end the headhunting of British subjects, but the savage act of the hill tribes continued, intolerable to the colonial officers. The headhunting was an act of valor to the men of the hill tribes. A man was recognized in the society by the number of heads he hunted.[17] To the men of the hill tribes, the heads were an accolade, every head he hunted adds to his position and popularity. Thus, in the midst of the conflicting civilization, the Britishers were left with no option but to take

[14]ILR (1878) 3 Cal 64.
[15]*Her Majesty The Queen* v. *Burah*, L.R. (1878) 5 I.A. 178; 5 M.I.A. 178.
[16]*Ibid*.
[17] Almost all the hill tribes of the region practiced headhunting.

the whole of Assam and her neighbouring hilly tracts under the control and management of a strong and experienced officer to tame the aggressive and unrelenting tribes. Thus, on the 6th of February, 1874,[18] Assam was taken out from the jurisdiction of the Lt. Governor of Bengal by forming a separate province under the control of a Chief Commissioner. By virtue of Section 3of the Scheduled District Act, 1874 (hereinafter referred to as the Act) the entire territory of the Chief Commissionership of Assam was notified as a scheduled district.[19] By virtue of Section 1 of the Act, the North Lushai Hills, the South Lushai Hills and the Mokokchung sub-division of Naga Hills District were notified[20] that the provisions of the Government of India Act, 1870 (33 Victoria, Chapter 3), section 1, to be applicable. However, in 1898, by a Notification[21] the North Lushai Hills and the South LushaiHills together with Ruttaon Puiya's villages including Demagiri in the Chittahong Hill tracts were placed under the administration of the Chief Commissioner of Assam as a part of scheduled district of Assam under Section 3 of the Act. Thus, the entire NE region was brought under the Act, and by virtue of Sections 3, 5 and 5A the local government were empowered to declare which enactments were to be applied in the district or any part of the district. The Act recognized the diversity of the tribes of the region and their customs and usages. The Chiefs and Headman were given magisterial powers in administration of justice in accordance with their customs. Post the Indian independence, underlining the importance of the Scheduled District Act, 1874 in the legislative history of the NE region, in the case of *State of Nagaland* v. *Ratan Singh*,[22] the Supreme Court observed:

> "We must not forget that the Scheduled Districts Act was passed because the backward tracts were never brought within the operation of all the general Acts and Regulations. particularly the Criminal Procedure Code, and were removed from the operation and jurisdiction of the ordinary courts of Judicature….The local Governments were empowered by the Scheduled Districts Act to appoint officers to administer civil and criminal justice and to regulate the procedure…Regulating procedure, therefore, meant more than framing administrative rules. It meant the control of the procedure for the effective administration of justice."[23]

[18] Government of India, Home Department Proclamation No. 379, dated the 6th February, 1874.
[19] Government of India, Home Department Proclamation No. 380, dated the 6th February, 1874.
[20] These territories were declared by virtue of Resolutions passed by the Secretary of State for India in council under the third paragraph of Section 1 of the Scheduled District Act, 1874. Thus, for the North Lushai Hills and the South Lushai Hills the Resolution took effect from 6th September, 1895 and for the Mokokchung sub-division of Naga Hills District the Resolution took effect from 21st October, 1896.
[21] By Notification No. 591 S.B., dated 1st April, 1898.
[22] AIR 1967 SC 212; 1967 CriLJ 264.
[23] *Ibid* at Para 29.

The Second Stage: Administration during the Commissionership of Assam

The administrative changes introduced by the Scheduled District Act, 1874 could not bring a desired result and therefore the Assam Frontier Tracts Regulation, 1880 was passed to remove the frontier tracts inhabited by barbarous or semi civilized tribes from the operation of enactments enforced therein.[24] The Chief Commissioner of Assam was empowered to remove any law enforce in any part of province unsuitable to the tribal inhabitants.[25] Further, to clarify the doubt as to the extension of the Garo Hills Act, 1869 to Naga Hills, Khasi Hills and Jaintia Hills the Assam Frontier Tracts Regulation, 1880 was amended which empowered the Chief Commissioner to extend the Act (Assam Frontier Tracts Regulation, 1880) to Garo Hills, Khasi Hills, Jaintia Hills, Naga Hills and Nowgong District.[26] The first paragraph read with Section 1(2) of the Assam Frontier Tracts Regulation, 1884 removed the application of the Code of Criminal Procedure (CrPC) from the Garo Hills District, Khasi Hills District, Jaintia Hills District and Naga Hills District and further laid down that the CrPC shall be deemed never been enforced in these districts.

The Third Stage: Constitutional Reforms

The Montagu-Chelmsford Reforms reported in 1918 that "political reforms could not be applied to these areas whose people are primitive and there was no material on which to found political institutions"[27] and therefore suggested that these areas should be administered by the Governor directly. Thus, to incorporate the recommendation of the Montagu-Chelmsford Reforms, the Government of India Act 1915 was amended in 1919. The Government of India Act, 1919 inserted Section 52A in the Government of India Act, 1915. Clause (2) of Section 52A of the Act provided that the Governor General in Council may declare any territory in British India as 'Backward' and no Act of the Indian legislature shall apply to the backward areas or part thereof. Thus, by virtue of the provision[28] the nomenclature of "under-developed tracts" was changed to "Backward Tracts" and nine territories of the NE region were notified as Backward Tracts, namely, the Garo Hills District; the British portions of the Khasi & Jaintia Hills District other than the Shillong

[24] *See* preamble to the Assam Frontier Tracts Regulation, 1880.
[25] By virtue of Sections 1 and 2 of the Assam Frontier Tracts Regulation, 1880 the Chief Commissioner was empowered to remove any enactments from any part of his province by notification in the Local Gazette unsuitable to the tribal people. However, for the European British subjects the criminal jurisdiction of any court would remain unaffected. Thus, two sets of law were enforced, one for the tribes and other for the British subjects.
[26] The Assam Frontier Tracts Regulation, 1884, ss. 1(1)&(2).
[27] *Supra* note 7 at 4.
[28] The Government of India Act, 1919, s. 52A(2).

Municipality and Cantonment; the Mikir Hills (in Nowgong&Sibsagar Districts); the North Cachar Hills (in Cachar District); the Naga Hills District; the Lushai Hills District; the Sadiya Frontier Tract; the Balipara, Frontier Tract, and the Lakhimpur Frontier Tract.[29] These territories post the Indian independence were designated as Tribal Areas under Part-A and Part-B of the table appended to Paragraph 20 of the Sixth Schedule to the Constitution of India (as first enacted).

In the constitutional reforms of 1930-35the Indian Statutory Commission (Simon Commission) recommended that the tribal areas should be excluded from the constitutional reforms and arrangements. The Simon Commission reported "the stage of development reached by the inhabitants of these areas prevents the possibility of applying to the methods of representation adopted elsewhere. They do not ask self-determination but for security of land tenure in the pursuit of their traditional methods of livelihood and the reasonable exercise of their ancestral customs."[30] The Commission also recommended replacing the word "Backward" to "*Excluded Areas* - Excluded and Partially Excluded Areas". To Sir John Simon the word "Backward" was nauseating while to Mr. Cadogan it was "misleading".[31] The Commission recommended that these areas should be the responsibility of the central government and should use non-political offices of the Governor as agents to administer these tribal areas. The recommendations of the Simon Commission were not fully adopted in the constitutional reforms of 1935 (the Government of India Act, 1935). However, in pursuance of the Simon Commission recommendations, a separate chapter (Part-III, Chapter-V) was adopted in the Government of India Act, 1935 dedicating to the backward tracts. The Government of India Act, 1935 (hereinafter the Act of 1935) removed the terminology of "Backward" and replaced with "Excluded and Partially Excluded Areas" and provided that no Act of the Federal Legislature or the Provincial Legislature would apply unless the Governor by a notification so declares.[32] Though declaration of the Excluded and Partially Excluded Areas was vested with His Majesty in Council but the preparation of the draft was with secretary of state.[33] Further, the Governor was given the power to make regulations and to amend or repeal any laws of the Federal Legislature or the Provincial Legislature for the

[29] These nine territories were declared as Backward Tracts vide Notification No. 5-G dated the 3rd January, 1921.
[30] The Indian Statutory Commission, *Report of the Indian Statutory Commission Volume II, Part-III*, His Majesty's Stationery Office, London (1930), Paragraph 128.
[31] *Hansard*HC Deb. Vol. 301, Cols. 1347, 10 May 1935.
[32] The Government of India Act, 1935, s. 92(1).
[33] *Ibid* at s. 91.

peace and good governance.[34] Thus, the executive had strong hand in the declaration of any area as Excluded and Partially Excluded Areas and to make regulations for the administration of the area. By virtue of Section 91(1) of the Act of 1935, His Majesty in Council by an Order[35] on 3rd March, 1936 declared the North-East Frontier (Sadiya, Balipara and Lakhimpur) Tracts, the Naga Hills District, the Lushai Hills District, the North Cachar Hills Sub-division of the Cachar District and the North-West Frontier as Excluded Areas. By the same Order the Garo Hills District, the Mikir Hills (in the Nowgong and Sibsagr District) and the British portion of Khasi and Jaintia Hills District (other than the Shillong Municipality and Cantonment) were declared as Partially Excluded Areas. This arrangement of Excluded and Partially Excluded Areas under the Government of India Act, 1935 continued until the adoption of the Constitution of India. The Governor was given the power to exercise his functions in his discretion in the Excluded Areas by virtue of Section 92(3) of the Act of 1935. Thus, Sadiya, Balipara, Lakhimpur, Naga Hills District, Lushai Hills District, North Cachar Hills and the North-West Frontier were administered by the Governor in his discretion.

The doctrine of peace and good governance introduced by the Government of India Act, 1853 and validated by the Indian Councils Act, 1861 continued until the Government of India Act, 1935. This arrangement of giving wide legislative, executive and judicial powers to the Governor and his subordinate officer in the name of peace and good governance continued until the Sixth Schedule to the Constitution of India was adopted.

III. THE NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE

The Advisory Committee on Fundamental Rights, Minorities, Tribal and Excluded Areas (herein after the Advisory Committee) constituted in pursuance of Paragraph 20 of the Cabinet Mission's Statement of May 16, 1946[36] further constituted a sub-committee called "the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee"[37] (herein after

[34] *Id*., at s. 92(2).
[35] The Government of India (Excluded and Partially Excluded Areas) Order, 1936 at the Court of at Buckingham Palace, the 3rd day of March, 1936.
[36] *Hansard* HL Debates 16 May 1946, vol. 141 cc271-87 *available at*: https://api.parliament.uk/historic-hansard/lords/1946/may/16/india-statement-by-the-cabinet-mission (last visited on January 25, 2022).
[37] The Sub-Committee was composed of Shri Gopinath Bardoloi as the Chairman and Rev. J.J.M. Nichols Roy, Shri Rup Nath Brahma, Shri A.V. Thakkar and Shri AlibaImti were the members. Shri R. K. Ramadhyani, *I.C.S.*

the Sub-Committee) also known as the Bardoloi Committee under the Chairman of Shri Gopinath Bardoloi on 27th February, 1947. The Sub-Committee toured the entire province of Assam and submitted its report to the Advisory Committee on 28th July 1947. The Sub-Committee however could not visit Garo Hills District and Jowai sub-division of the Khasi Hill District due bad weather and difficult communications.[38] The Sub-Committee prepared the Report after visiting the district headquarters where they met representatives of the tribes. The Sub-Committee also met various political organizations and recorded their views. Except AlibaImti[39] the Report was signed by Shri G.N. Bardoloi, Rev. J.J.M. Nichols Roy, Shri Rup Nath Brahma and Shri A.V. Thakkar. Shri Kezeholco-opted member from the Kohima area resigned during the final meeting at Shillong.[40] Some of the important recommendations of the Sub-Committee to the Advisory Committee for the administration of the NE region are:

- To set up District Councils with powers of legislation over occupation or use of land other than reserved forest under the Assam Forest Regulation of 1891.
- Social law and customs to be regulated by the tribes. Cr.P.C not to apply and Civil suits to be disposed by tribal courts and local councils;
- Mineral resources to be managed by Provincial Government with right of District Council to a fair share in revenue. No license to be granted without consultation with District Council;
- Constitution of Regional Councils for tribes;
- Non-tribals not eligible for election except in the Municipality and Cantonment of Shillong;
- A Commission to watch the progress of development plan and examine aspects of the administration;
- Alteration of boundaries to bring the same tribe under a common administration;
- Management of primary schools, dispensaries and other institutions of local-self government by the District Council;
- Selection of non-tribal officials with care if posted to the hills;

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was the Secretary. The Sub-Committee also co-opted two members each from Lushai Hills, Garo Hills, Mikir Hills, Kohima Area, Haflong Area, Khasi and Jaintia Hills.

[38]Gopinath Bardoloi to the Chairman of the Advisory Committee on Fundamental Rights, Minorities, Tribal and Excluded Areas, 28th July, 1947, Constituent Assembly of India, North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee, Vol. 1, Government of India Press, New Delhi (1947), P. 1.

[39]AlibaImti could not sign the Report due to threat from the Naga underground extremists.

[40]*Supra* Note 38.

- Power of the Governor to set aside any Act or Resolution of the Council if safety of the country is prejudiced. Also to dissolve the Council if gross mismanagement is reported by a Commission.[41]

The Sub-Committee in its report also recommended some special features to be considered in the administration of the region. Some of them are:

- Preservation and protection of distinct social customs, tribal organisations, religious beliefs, etc. Eg. the Khasi and Garo matriarchal system, like the youngest daughter inherit mother's property, the hereditary chiefs of Lushai tribe where the youngest son inherit father's property, and the Tatar system of the Ao Naga tribe;
- The continuance of Inner Line Permit due to the fear of exploitation by the people of the plains on account of their superior organisation and experience of business;
- Non-establishment of industries by non-tribals;
- Preservation of ways of life and language, and method of cultivation etc.
- Transfer of government entirely in the hands of Hill people and suitable financial provisions conferred upon the local councils.[42]

Owing to the view of the External Affairs Department that the Lakhimpur Tract need not be considered similar to the problem of the hill tribes, the Sub-Committee also recommended that the tribal areas of Lakhimpur Frontier Tract inhibited FakialsBuddhist villages should be brought under the regular administered area.[43] Similarly, the Saiknoagbat portion of the excluded area south of the Lohitriver and the whole of the Sadiya plains up to the Inner Line should be included in the regular administration.[44] The Sub-Committee also proposed for seat of the Hill tribes in the Federal Legislature in accordance with Section 13 of the Draft Union Constitution.[45]

[41] *See* the Government of India, "Constituent Assembly of India, North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee (Report)" 35-38, (Vol. 1, Government of India Press, New Delhi, 1947).
[42] *Ibid* at 7-19.
[43] *Id.*
[44] *Id.*
[45] *Id.*

IV. THE VISION AND DEBATES OF THE CONSTITUENT ASSEMBLY

The Advisory Committee discussed the Report and Recommendations of the Sub-Committee on 7th December, 1947 and 24th February, 1948. The Advisory Committee on 4th March, 1948 forwarded the draft to the Constituent Assembly with only two amendments.[46] The Constituent Assembly debated the draft of the Sixth Schedule to the Constitution of India for three days (5th, 6th and 7th September, 1949). Many members of the Constituent Assembly opposed the autonomy given to the Hill tribes. On the first day of the introduction of the draft of the Sixth Schedule, Shri Kuladhar Chaliha objected to the constitution of a Commission proposed by the Sub-committee. Requesting to delete the provision, he said, "I do not want a Commission. The Governor would have the power in consultation with his Cabinet to discuss these things and if it is be left to a Commission there will be obvious delay."[47] Shri Brajeshwar Prasad opposed the handing over of the administration of the tribal areas to the provincial government. To him these tribal areas are surrounded by six foreign states and the Government of Assam was unable to tackle the problem of infiltration from East Bengal (Bangladesh) and also the conflict between the tribals and non-tribals, therefore it is a militarily in the interest of the Government and strategically and politically advisable that the administration of the province should be left to the experts and no politicians should be allowed to meddle with its affairs.[48] Further, according to him the matter was too complicated and large beyond the economic resources of the Government of Assam to tackle the problem.

On the second day (6th September, 1949), objecting to the autonomy given to the District Council in administration of the district, Shri Kuladhar Chaliha expressed the fear that the Nagasdoes the old ways doing summary justice and if permitted to run the administration, it would be negation of justice and anarchy would prevail. He thus said, "They have not been able to chop off our heads for the last three thousand years and till 1948 they have not been able to do anything, and we are not afraid that they will chop off our head if they are not given independence of administration... There is no need to keep any Tribalstan away from us

[46] The amendments made by the Advisory Committee 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.
(2) The plains portion were to be excluded from Schedule 'B' of the areas which were recommended for inclusion in the Schedule by the Sub-Committee.

[47] IX, *Constituent Assembly Debates* 1005 (LokSabha Secretariat, New Delhi, Sixth Reprint, 2014).

[48] *Ibid* at 1006.

so that in times of trouble they will be helpful to our enemies."[49] Supporting Shri Chaliha, Shri Brajeshwar Prasad added that he is opposed to division of India into provinces. He opposed to the constitution of District Councils and Regional Councils. To him "it will lead to the creation of another Pakistan."[50] Therefore, he said, "I will not jeopardise the interest of India at the altar of the tribals...It led to the vivisection of India, arson, loot, murder and the worst crimes upon women and children…We are jeopardising the interests of the whole country. This is not a question in which the people of Assam only are concerned. This is a question which affects the whole of India."[51]

Prof. Shibban LalSaksena expressed the fear that if such schemes and provisions are added permanently in the Constitution than some areas of Assam would remain beyond the control of the Parliament forever. He therefore suggested that ten years, fifteen years or a fixed period should be given and added in the Constitution and after which the tribal people would be absorbed and the Scheduled Areas will not be necessary but become part of the normal population in the Province of Assam.[52]

Accusing Shri Gopinath Bardoloi and Rev. J.J.M. Nichols Roy, Shri Rohini Kumar Chaudhury said that even they do not know the tribal people well and have not visited the entire tribal areas; it was the British that kept the tribal people of these areas as primitive as possible.[53] He told the Assembly, "The British wanted the Nagas to remain as they were, they should not clothe themselves properly; they should not live like civilised men."[54] Further, Shri Rohini Kumar Chaudhury challenging the knowledge of Dr. Ambedkar and that this matter should be handled by some other expert, he said:

> "I do most regretfully observe that what Dr. Ambedkar is doing in regard to this Schedule VI is that he is closely, absolutely closely, following, except in some cases, the British method. He is wanting to perpetuate the British method so far as the tribal areas are concerned. This action on his part is due more to ignorance than to intention. I would therefore respectfully submit to this House not to be impatient, to reconsider the whole question in its proper perspective. Let this Constitution about the tribal areas be worked out by persons who have a direct and intimate knowledge of the affairs in the tribal areas. None of these persons, I assert with all the emphasis that I can command, neither my honorable friend Mr. Munshi, neither Dr. Ambedkar, nor my honourable friend the Premier of Assam, have any intimate knowledge of the affairs going on in the tribal areas."[55]

[49] *Id.* at 1009-1010.
[50] *Id.* at 1011.
[51] *Id.* at 1011-1012.
[52] *Id.* at 1015.
[53] *Id.* at 1015-1016.
[54] *Ibid.*
[55] *Id.* at 1016-1017.

Shri Lakshminarayan Sahu who was working for the Kangh tribe of Orissa supported the protection provided in ownership and transfer of lands by stating that "We have got a similar law in Orissa and we wish that none should be able to take away land from the aboriginals since they do not understand their own economic interest."[56] He also agreed with the view expressed by Prof. Shibban Lal Saksena of giving ten or fifteen years. To him by doing so the hill tribes would be able to bring in line with the rest of the nation and after ten years they should not be left aloof but bring them into the main fold. In addition to views of Lakshminarayan and Prof. Shibban and to confront the criticism leveled against the Sub-Committee, Shri Jaipal Singh said it was useless to discuss the motives of the British, for it would serve no purposeas the matter is in the hands of the Constituent Assembly. Further, it does no good to anyone to suspect the intentions of the tribal people of Assam. He thus questioned the Assembly, "Do my friends believe that the Naga is not a man of his word? Do they mean that the people of the Lushai Hills are trying to deceive us? What do they mean? There is the definite understanding between the leaders and the Tribal Sub-Committee that went round the place. Then why this doubt?"[57]

Answering to the fear expressed by the members for giving autonomy to tribal areas, the Sub-Committee member, Shri A.V. Thakkar said that there is no reason to fear, for the autonomous districts were not making states within the states and it was not permanent. He further added that all laws are changeable and can be changed when the time is ripe for it.[58] Rev. J.J.M. Nichols Roy adding to the words of Shri A.V. Thakkar, explained the cultural difference of the Hill tribes stating that they eat both pork and beef and therefore are neither Hindus nor Muslims. Their culture is sharply different from the plains and the social organization is the village, the clan and the tribe. The society is strongly democratic and there is no caste or purdah and child marriage. He questioned the members of the Assembly, "Why should you deprive the people of the thing which they consider to be good and which does not hurt anybody on earth? It does not hurt India. Why do you not want them to develop themselves in their own way? The Gandhian principle is to encourage village panchayats in

[56] *Id.* at 1018.
[57] *Id.* at 1019.
[58] *Id.* at 1022.

the whole of India. Why then should anyone object to the establishment of the district councils demanded by the hills people?"[59]

The debate on the Sixth Schedule went on for longer than anticipated and therefore Shri H.V. Kamath requested to postpone the session to a more propitious day. Upon this, the President of the Constituent Assembly requested Dr. B.R. Ambedkar to reply. First of all, Dr. B.R. Ambedkar stated that the time was wasted on issues not concerned with the Sixth Schedule. Justifying the need of giving a different treatment and scheme of law for the Hill tribes of the NE region, Dr. B.R. Ambedkar addressed the Assembly in these words:

> "The tribal people in areas other than Assam are more or less Hinduised, more or less assimilated with the civilization and culture of the majority of the people in whose midst they live. With regard to the tribals in Assam that is not the case. Their roots are still in their own civilization and their own culture. They have not adopted, mainly or in a large part, either the modes or the manners of the Hindus who surround them. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus."[60]

Further, explaining the Constituent Assembly, the scheme of the Sixth Schedule which is analogous to the federal autonomy given to the Red Indians in the United States of America, Dr. B.R. Ambedkar stated:

> "Now, what did the United States do with regard to the Red Indians? So far as I am aware, what they did was to create what are called Reservations, or Boundaries within which the Red Indians lived. They are a republic by themselves. No doubt, by the law of the United States they are citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that if would be dangerous to bring them at one shot, so to say, within the range of the laws made by the white people for white persons and for the purpose of the white civilization."[61]

To remove the fear expressed by some members that Autonomous District Councils and Regional Councils would divide the nation and pose a threat to the integrity of the nation, Dr. B.R. Ambedkar justified stating, firstly, that the executive authority of Assam shall be exercised in all the areas covered by the Autonomous District Councils and Regional

[59] *Id.* at 1025.
[60] *Id.* at 1027.
[61] *Ibid.*

Councils.[62] Thus, unlike the Government of India Act, 1935, the authority of the Parliament as well as the Assam Legislature would extend over the District and Regional Councils in all matters barring a few functions like management of local government, customary and religious practices, money lending, etc. In other words they are not immune from the authority of the Parliament and the jurisdiction of the High Court of Assam and the Supreme Court. Secondly, the laws made by the Parliament and Assam Legislature will apply to the District and Regional Councils unless the Governor thinks that they ought not to apply.[63] Thus, the burden is with the Governor to show why the Central or the State laws would not apply. In this way, both the Central Government and the State Government would supervise the District and Regional Councils. Dr. B.R. Ambedkar pacified the opposing members of the Assembly by justifying that the scheme of the Sixth Schedule to the Constitution is to provide the tribal people representation in the Central and State Legislature and to bring the them closer in the law making of the nation. He thus stated in the following words:

> "We have provided that the tribal people who will have Regional Councils and District Councils will have enough representation in the Legislature of Assam itself, as well as in Parliament, so that they will play their part in making laws for Assam and also in making laws for the whole of India."[64]

At the third day, after intensive debate on each Paragraph of the draft, the Sixth Schedule was adopted and added to the Constitution of India with a total of twenty one Paragraphs. As a result, the United Khasi-Jaintia Hills, the Lushai Hills, the Garo Hills, the Naga Hills, the Mikir Hills and the North Cachar Hills were declared as tribal areas to be autonomous districts and regions under Paragraph 1 of the Sixth Schedules.[65] The Naga Tribal Area and the North East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abhor Hills and the Misimi Hills were also declared to be tribal areas, however shall not include the plain areas, unless notified by the Governor of Assam with approval of the President of India.[66]

[62] *Id.* at 1028.
[63] *Ibid.*
[64] *Ibid.*
[65] Part-A of the table appended to Paragraph 20 of the Sixth Schedule to the Constitution of India (as first enacted).
[66] Part-B of the table appended to Paragraph 20 of the Sixth Schedule to the Constitution of India (as first enacted).

V. THE AUTONOMY UNDER THE SIXTH SCHEDULE: JUDICIAL EXAMINATION

The Autonomous District Councils and Regional Councils under Sub-Paragraph (1) of Paragraph 4 of the Sixth Schedule to the Constitution of India are empowered to constitute village courts or councils to try suits and cases between parties of whom both the parties are Scheduled Tribes within the area except suits and cases to which the provision of Sub-Paragraph (1) of Paragraph 5[67] shall apply. Sub-Paragraph (4) of Paragraph 4 further provides the power to the District Councils and Regional Councils for making rules for the courts and councils with regard to the constitution, procedures to be followed, enforcement of decisions, etc. In the *State of Meghalaya v. Melvin Sohlangpiaw*[68] the respondent, a Khasi Scheduled Tribe was issued a summon to appear before the Sessions Judge, of the West Khasi Hills District of Meghalaya for trial of offences under Sections 302 and 201 of the Indian Penal Code (IPC). The respondent filed a Writ Petition before the High Court of Meghalaya for transfer of the case from the Session Court to the District Council Court on the ground that both the parties are Scheduled Tribe of the area and therefore Paragraph 4 and 5 of the Sixth Schedule should be given effect. The respondent contented that Paragraph 4 and 5 of the Sixth Schedule read with Notification dated 7th February 2017 issued by the Governor conferring upon the District Council Court for trial of cases and suits as provided in the said Paragraphs should be given effect and therefore the case should be transferred to the District Council Court. The High Court allowed the petition and hence the State appealed to the Supreme Court against the judgment of the High Court. Before the Supreme Court, the State argued that the term '*case*' appearing in Paragraph 4 of the Sixth Schedule precludes criminal cases, because the State is the *de jure* complainant in criminal cases, hence IPC and Criminal Procedure Code (CrPC) should be applicable. Therefore, the Session Judge has the jurisdiction for the trial of the case. The Supreme Court defining the term 'case' and 'suits' observed that:

> "Though the expression "suits and cases" has not been defined in Article 366 of the Constitution, the Code of Criminal Procedure, or the Code of Civil Procedure, in common legal parlance developed over the years, the expression 'suit' is used to connote legal proceedings of a purely civil nature, while the term 'case' is used to connote either a civil suit or a criminal proceeding."[69]

[67]Sub-Paragraph (1) of Paragraph 5 of the Sixth Schedule to the Constitution of India lays down that the Governor may for trial of cases and suits arising out of any law or trial of offences punishable with death, transportation of life, or imprisonment for a term of not less than five years or any other law confer on the District or Regional Councils or any officer appointed in that behalf by the Governor.
[68]AIR 2020 SC 5204; 2021 CriLJ 1546.
[69]*Id.* at Para 9.1.

Upholding the judgment of the High Court and directing the transfer of the case to the District Council Court and accordingly issue summons as per law, the Supreme Court observed that, "a reading of Paragraph 5 in conjunction with Paragraph 4 inevitably leads to the conclusion that all such criminal cases are tribal by the Courts constituted under Paragraph 4 of the Sixth Schedule, irrespective of the fact that de jure Complainant is the State, as long as both the accused and the victim of the offence belong to the same Scheduled Tribe."[70] Thus, the Supreme Court held that a combined reading of the Paragraphs 4 and 5 of the Sixth Schedule confers the District Council Courts the exclusive jurisdiction to entertain such cases.[71]

In *Westarly Dkhar* v. *Shri SehekayaLyngdoh*[72] the High Court in an ex-parte ad-interim injunction matter, allowing a revision petition against an order of the District Council Court held that since the appeal was filed within thirty days of the ad-interim ex-parte order, it would not be maintainable under the Code of Civil Procedure. It was appealed before the Supreme Court that the Code of Civil Procedure do not apply in letters but only the spirit thereof applies in the Autonomous Districts as provided under the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953. The respondent on the other hand argued that an appeal can be entertained only when the Subordinate Court failed to comply with the provisions of Order 39 Rule 3A of the Civil Procedure Code. Thus, an aggrieved party cannot approach the Appellate Court during the pendency of the application for vacation of a temporary injunction. Agreeing with the appellant, Justice Rohinton Fali Nariman observed that Rule 47 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 provided that in civil cases the District Council Court and its subordinate courts shall not be bound by the letter of the Civil Procedure Code but guided by its spirit in matters not covered by customary laws and usages of the District. The court further observed that the said Rules of 1953 were validly enacted under Paragraph 4 of the Sixth Schedule to the Constitution of India.[73]

Justice Jasti Chelameswar, C.J. in *Longsan Khongngain* v. *State of Meghalaya*[74] ruling the exclusion of the customary institutions like Village Courts and District Courts held that:

[70] *Id.* at Para 9.4.
[71] *Id.* at Para 9.6.
[72] 2015(1)SCALE734.
[73] *Id.* at Para 7 and 9.
[74] 2007(4)GLT938.

> "Paragraphs 4 and 5 of the Sixth Schedule deal with the administration of justice in Autonomous Districts and Autonomous Regions referred to in paragraph 2 of the Sixth Schedule…It is further declared in Paragraph 4 that the jurisdiction of such village courts is to the exclusion of any court in the State. In other words, the courts functioning either under the laws of the Parliament or the laws of the State of Meghalaya are ousted of their jurisdiction to try any suit or case between the parties all of whom happen to be tribals residing within the jurisdiction of such Village Court….Therefore, the courts constituted under paragraph 4 of the 6th Schedule either by the District Council or the Regional Council, as the case may be, are not bound by the procedures prescribed under either of the Codes referred to above."[75]

Though the special protection of trade given to the tribal traders against the non-tribals appears to be *ultra vires* Articles 14 and 19(1)(g) of the Constitution, but as recommended by the Sub-Committee and accepted by the Constituent Assembly, the Supreme Court has upheld the validity of such laws enacted under the Sixth Schedule to the Constitution of India. Thus, in *LalaHari Chand Sarda v. Mizo District Council*[76] the Mizo District Council refused to renew the trade license of a non-local business man on the ground that under Section 3 of the Lushai Hills District (Trading by non-Tribals) Regulation, 1963 the maximum number of non-tribal licensee has reached. Before the Supreme Court, it was appealed that the said Regulation of 1963 violates Fundamental Rights granted under Articles 14 and 19(1)(g) of the Constitution. The respondent contented that the said Regulation of 1963 was enacted by virtue powers provided under Paragraph 10(2)(d) of the Sixth Schedule to the Constitution of India. The Supreme Court held that if Paragraph 10 of the Sixth Schedule cannot be regarded as violative of any provision in the Constitution, than, it is impossible to say that Section 3 of the said Regulation of 1963 which is in strict conformity with paragraph 10 is violative of Articles 14 and 19(1)(g) of the Constitution.

Ruling the legal and constitutional justification of such laws enforced in the NE region which are different from the laws enforced in others parts of the nation, the Supreme Court in *State of Nagaland* v. *Ratan Singh*[77] pronounced:

> "Laws of this kind are made with an eye to simplicity. People in backward tracts cannot be expected to make themselves aware of the technicalities of a complex Code. What is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws. Throughout the past century the Criminal Procedure Code has been excluded from this area because it would be too difficult for the local people to

[75] *Ibid* at Para 10 and 13.
[76] 1967 AIR 829; (1967) 1 SCR 1012.
[77] *Supra* note 22.

> understand it. Instead the spirit of the Criminal Procedure Code has been asked to be applied so that justice may not fail because of some technicality."[78]

Similarly, in *Changki Village through Tinnunokcha Ao* v. *TibungbaAo*[79] the Supreme Court upholding the validity of the non-application of the Code of Civil Procedure and Code of Criminal Procedure held that "before we proceed to set out the details of the case and the decision rendered by the High Court, it is relevant to mention that the Civil Procedure Code and the Criminal Procedure Code do not govern the proceedings before the Civil and Criminal Courts in Nagaland and the proceedings are to be governed by Rule 30 of the Rules for the Administration of Justice and police in the Nagaland Hills District."[80] In TekabaAo v. SakumerenAo[81]the Supreme Court held that "the civil rights to the water source and the land in the Hill District of Nagaland….are not governed by any codified law contained in Code of Civil Procedure and the Evidence Act. The parties are governed by customarylaw applicable to the tribal and the rural population of Hill District of Nagaland."[82] Thus, the Supreme Court sustained the non-applicability of the codified technical and procedural laws in dispensation of justice by the formal courts, but the trail of such disputes to be conducted in accordance with the laws enacted as per custom and usages of the tribes.

Notwithstanding the above cited judgements upholding the autonomy in application of laws under the Sixth Schedule, it can be argued that should the Sixth Schedule be interpreted ignoring other provisions of the Constitution. In other words, should be Sixth Schedule be considered as a Constitution within the Constitution. The constitutional bench of the Supreme Court in *Pu Myllai Hlychho*v. *The State of Mizoram*[83] held that Sixth Schedule is a part of the Constitution and other provisions of the Constitution cannot be ignored in interpreting it. In this case it was argued that Sixth Schedule is a Constitution within the Constitution and therefore the powers of the Governor is independent of other provisions of the Constitution and hence not bound by the advice of the council of ministers. The court rejecting the argument observed that complete segregation of the Sixth Schedule from the rest of the

[78] *Id.* at Para 34.
[79] AIR 1990 SC 73.
[80] *Id.* at Para 2.
[81] AIR 2004 SC 3674.
[82] *Id.* at Para 3.
[83] AIR 2005 SC 1537.
See also *Edwingson Bareh v. State of Assam*, AIR 1966 SC 1220

Constitution is impossible and the legislative history of the region is not sufficient for declaring the Sixth Schedule as a Constitution within the Constitution.[84]

VI. CONCLUSION

A perusal of the colonial enactments, the recommendations of the Sub-committee and the debates of the Constituent Assembly reflects the social and political developments introduced by the advent of colonial administration. Thus, it was the social and political developments of the region that entailed the Sub-Committee to place the recommendations that were based on demands of the tribes before the Constituent Assembly. From the beginning of the colonial occupation, the NE region was never brought under the general laws and reforms introduced in other parts of the nation. In other words, it was kept isolated but under the direct supervision of the central government. Though the region was under direct control of the centre, but the tribes were given autonomy in management of their local affairs in all realms of customary law. No prohibition in the customs and usages were issued except the savage practice of head-hunting.

The region was financially dependent on the centre, but the centre chose to retain the territory and bear the burden. In fact, the Inner Line Regulation was introduced by virtue of the Bengal Eastern Frontier Regulation Act, 1873[85] which statutorily isolated the hills. This law was introduced to protect the British and American missionaries and explorers from the head-hunting of the hill tribes, however with time, it turn to protect the naïve tribes from exploitation of the Europeans. Post the Indian independence, the founding fathers of the Constitution recognizing the just and simple customs and usages adopted the Sixth Schedule, thereby constitutionally institutionalizing the customary laws and authorities.

Thus, it may be said that the customary bodies are part of the constitutional machinery forming a basic structure in the federal structure of the Indian union. Though such laws may appear to be discriminatory and violates some fundamental provisions of the Constitution, the Supreme Court has been upholding the laws. Notwithstanding the rulings of the Supreme Court validating the legality of the laws enacted under the Sixth Schedule, it may be

[84] *Ibid* at Para 21.

[85] The Chief Commissioner of Assam (presently the State Government) by virtue of Rule 2 of the Bengal Eastern Frontier Regulation Act, 1873 is empowered to notify a line called the "Inner Line" prohibiting all or any class of citizen or any persons (citizens of India or any class of such citizens) to enter or going beyond such Inner Line without a pass (Inner Line Permit) under the hand and seal of the chief executive officer of the district or any such officer as the state government may authorize.

questioned that such laws are *ultra vires* the fundamental rights and dissect the NE region from the mainstream of the nation.

However, the Sixth Schedule is not a parliamentary enactment but a part of the original Constitution; therefore its essence and basic structure cannot be destroyed by a parliamentary amended. It is a special feature of the federal structure which enriches the beauty of the Constitution and strongly regards the protection of culture as a fundamental right under the Constitution. Irrespective of the preservative view of the Sixth Schedule, a rational view may indicate that inclusive appendage to the traditional institutions may consequent in the backwardness of the region and negativity in integration. Law is a tool of social engineering and unless the contemporary laws are applied, the traditional law would be obsolete to balance the present needs and interests of the society.

Thus, as observed by the Supreme Court in *Pu Myllai Hlychho*v. *the State of Mizoram*[86] the Sixth Schedule is not a Constitution within the Constitution and cannot be isolated from other provisions of the Constitution in all cases. Also, as Shri A.V. Thakkar and Dr. B.R. Ambedkar has said in the Constituent Assembly, the Autonomous District and Regional Councils are not making states within the states and are also not immune to the jurisdiction of the Parliament, the State Legislature, the Supreme Court and the High Court.[87]Further, Paragraphs12, 12A, 12AA, 12B, 14 and 15 of the Sixth Schedule provides which law to apply in the area and the powers of the Governor to annual or suspend any law made by District and Regional Councils which is likely to endanger the safety of India or prejudicial to public order. The Governor also has been empowered to appoint a commission to enquire and examine on matters relating to administration of Autonomous District and Regional Councils. Thus, it can be observed from the judicial rulings, the debates of the Constituent Assembly and the legislative history that the Sixth Schedule is a supplementary and special constitutional protection of the customs, usages, traditions, land and other resources of the indigenous tribes inhabiting the region but does not supplant or overlap with other provisions of the Constitution and other laws.

[86]*Supra* note 83.
[87] See *Supra* notes 58 & 63 respectively.