



Political and Constitutional Development of North East India: A Legal History and Judicial Investigation

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Abstract : The grant of Dewany of Bengal to the British by the Mughal Empire and the subsequent annexation of Assam compelled the Britishers to take over the administration of the hills tribes on the frontier tracts to protect their subjects in Assam from the head-hunting hill tribes. Consequently, to administer the NE region in accordance with the tribal ways of custom and usages various enactments were passed by the British parliament and reforms introduced. Post the Indian independence, the Sixth Schedule to the Constitution of India was adopted exclusively for the NE region to establish Autonomous District Councils in the tribal areas with a view to provide customary freedom in the governance of the region and in administration of civil and criminal justice without being interfered by the technical laws applied in other parts of the country. However, despite such arrangements at the commencement of the Constitution, the political developments in the region resulted in the bifurcation of Assam and insertion of various Articles in the Constitution providing special status to the new states. This paper thus investigates into the legal history of the NE region during the colonial period and post independence that led to the adoption of the Sixth Schedule and the amendments to the Constitution with regard to the North Eastern states. With the help of judicial pronouncements the paper further studies the legality of the Rules and Regulation passed in pursuance of the Sixth Schedule and other special Constitutional provisions. The paper concludes with the progress that has been achieved as envisaged by the framers of the Constitution despite political and legal challenges in the region.

Key words – Customary law, Sixth Schedule to the Constitution of India, civil and criminal justice.

I. Introduction

The North Eastern region of India, popularly known as North East (NE) consisted of seven sister states, namely, Assam, Nagaland, Manipur, Meghalaya, Mizoram, Arunachal Pradesh and Tripura. In the year 2002 by virtue of the North Eastern Council (Amendment) Act, 2002¹ the state of Sikkim was included in North Eastern Council. Thus, at present the NE consists of eight sister states. There are more than one hundred and fifty tribes and sub-tribes in the region with diverse culture, traditions, dialects and customs. The region has rich biological diversity and contributes about one fourth of the total forest cover in India. The NE shares international borders with Bangladesh, China, Bhutan, Nepal and Myanmar of about 5182 km.² Before the advent of the British administration, each village was independent and were ruled by Chieftains and Headmen according to their respective customs and usages. In the midst of these tribal territories there also existed some powerful kingdoms like the Meiteis (Manipur), Twipra (Tripura) and Ahoms (Assam), however these kingdoms maintained peaceful relations with their tribal neighbours and never interfered in the independent tribal way of life and culture. Thus, the NE region though was secluded from the influence of western civilization; the tribal civilization was in a class of its own incomparably unique but just and simple. However, with the annexation of Assam, the tribal

¹ Section 2 of the North Eastern Council (Amendment) Act, 2002, No.68 of 2002, 20th December, 2002.

² J.K. Gogoi et al., *Project Report on Problems of Border Areas in North East India : Implications for the Thirteenth Finance Commission* (Department of Economics, Dibrugarh University 2009), p. 1.

territories were gradually annexed to the British Empire not for any commercial gains but to protect Her Majesty's subjects working in the tea gardens of Assam from the head-hunting Hill Tribes. Hence, the Britishers followed a non-interference policy while taking over the administration of the Hill Tribes which ultimately led to statutory enactments providing autonomy in internal administration and governance in accordance with their customs and traditions. Post the Indian independence, a similar autonomy was given to the NE region by the Sixth Schedule to the Constitution of India. However, with the growth of political consciousness of the people, the state of Assam was bifurcated and special Constitutional status was accorded to the newly created states. In the light of this background, the paper investigates into the different stages of political and constitutional developments of the tribal dominated NE region. The paper further investigates into the judicial pronouncements of the Supreme Court and the High Court in administration of justice in the light of the Sixth Schedule to the Constitution of India and the special constitutional status accorded to the NE states.

II. The Non-Regulated System

The East India Company acquired Goalpara and Sylhet when the Dewany of Bengal was secured by Robert Clive³ from the Mughal emperor Shah Alam in 1765. The East India Company delegated the collection of revenue to the Zamindars which caused internal quarrels among them. Thus, the authorities at Fort William appointed David Scot, the Magistrate of Rangpur to settle the disputes among the Zamindars. In August 1816, he submitted an elaborate report and the Governor General in Council accepting his recommendations separated Gwalpara, Kurreebaree and Dhoobree from Rangpur and placed under a Civil Commissioner called the Civil Commissioner of North-East Rangpur. This political change eventually led to the enactment of Regulation X of 1822 hereinafter referred to as the Regulation. Rule 1 of the Regulation recognized the people of the region are entirely distinct and the general regulation is wholly inapplicable and to promote the people to the habits of civilized life, it was necessary to have a special administration of justice according to their customs. The rules of civil and criminal justice enforced in other parts of the country were suspended and a Commissioner was appointed with full powers to conclude any arrangements with the Chiefs and Headman of the tribes.⁴ The Commissioner exercised his powers independently subject only to the orders and directions as he may receive directly from the Governor General in Council.⁵ The Regulation thus established a system of administration in the NE known as the "Non-Regulated System" by which all the powers of administration of civil and criminal justice, police, revenue collection and all branches of the government were centered with the Commissioner. The Non-Regulated System thus gave the tribes of North-Eastern Frontier an administration where all the legislative, executive and judicial powers were with a single authority (Commissioner); which according to the colonial rulers was necessary to bring the administration within the reach of the people through simple and personal procedure in consonance with the customs and usages of the tribes.

III. The Government of India Act, 1853 and the Indian Councils Act, 1861

The issue on annexation of the tribal territories and taking complete control was debated among the British military officers and political agents. However, Lord Dalhousie, the Governor General of India was not in agreement for a complete occupation of the hill territories and thus he ordered to withdraw forces from the hills for the reasons that the possession of these territories would be unproductive and costly for the empire. He thus stated in his order, "I dissent entirely from the policy which is recommended of what is called obtaining a control, that is to say, taking possession of these hills, and of establishing our sovereignty over their savage inhabitants. Our possession could bring no profit to us, and would be as costly to us as it would be unproductive."⁶ This policy of Lord Dalhousie was known as "Non-interference Policy."⁷ With this policy being adopted for the NE, when the Government of India Act, 1853 (hereinafter the Act of 1853) was enacted, it provided the Governor General in Council to make laws directly for the areas which were under the control of the East India Company. However, when the legality of laws issued under the Act of 1853 Act questioned, the Indian Councils Act, 1861 (hereinafter the Act of 1861) was enacted to remedy the situation. Section 25 of the Act of 1861 provided that

³ Commander-in-Chief of the British Army.

⁴ Rule I of Regulation X of 1822.

⁵ Ibid.

⁶ Full Minutes of the Governor General of India, 20th February 1851. See, Alexander Mackenzie, *The North East Frontier of India*, Mittal Publications, New Delhi, 2013. P. 113.

⁷ Under this policy, the British did not interfere with the political and social life of the tribes but kept an external control over their activities in the plains of Assam. The tribes were allowed to travel to plains of Assam for trade so long as they were peaceful with the British and her subjects. This policy marked the end of military expeditions to the hills.

no rule, regulation or law made by the Governor General or Governor General in Council or any other authorities in the Non-regulated areas shall be deemed to be invalid only by reason of not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament. Section 42 further empowered the Governor of each of the Presidencies in Council for making laws and regulations for the peace and good government of the Presidency and for that purpose to repeal and amend any laws and regulations. Thus, Government of India Act, 1853 and the Indian Councils Act, 1861 appended the powers of the Commissioner bestowed by Regulation X of 1822.

The power of the Governor to make laws and regulation for the peace and good government continued in future enactments of India and upon being challenged its legal validity, Lord Halsbury held that under Section 92 of the Government of India Act, 1935, the extent of the legislative power given to the Governor for making laws and regulations for the peace and good government of any area is “an utmost discretion of enactment for the attainment of the objects pointed to.”⁸ Post the independence of India, upholding Lord Halsbury’s judgement, the Supreme Court observed that the Bihar Regulation I of 1951 is a valid piece of legislation that emanated from the legislative authority of the Governor under Sub-paragraph 2 of Paragraph 5 of the Fifth Schedule to the Constitution of India.⁹ In the case of the NE, post the independence the power of the Governor to make laws and regulations as well as to repeal and amend any Act of the Parliament or the state legislature is provided under Paragraph 19(1)(b) of the Sixth Schedule to the Constitution of India. Though this colonial concept appears to be violative of the separation of power, the political and administrative exigencies in the NE necessitates delegation of such powers to the Governor and therefore adopted in the Constitution of India and upheld by the Supreme Court.

IV. The Garo Hills Act, 1869

To remove the Garo Hills from the jurisdiction of the Civil, Criminal and Revenue Courts and revenue offices established under the Regulations of the Bengal Code¹⁰ the Garo Hills Act, 1869 was passed. By virtue of Section 1 of the Act, the Bengal Regulation X of 1822 was repealed from the Khasi Hills. By virtue of Section of the Act the Lieutenant-Governor was empowered to appoint officers for the administration of civil and criminal justice and superintendence of the settlement and realization of the public revenue in Garo Hills. Section 9 further empowered the Lieutenant-Governor to extend the Act to Jaintia and Naga Hills, and to British portion of Khasi Hills by a notification in the Calcutta Gazette. The validity of Section 9 of the Garo Hills Act, 1869 was challenged on the ground that the authority conferred on the Lieutenant Governor to extend the Act and exclude the jurisdiction of the High Court in areas provided under the Section and was in excess of the powers of the Governor General in Council. Justice Selborne of the Privy Council upholding that the powers of the Lieutenant Governor under the Garo Hills Act, 1869 is a valid piece of delegated legislation observed that “But, when acting within these 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.”¹¹ The Garo Hills Act, 1869 thus removed the application of technical civil and criminal laws applied in other parts of the country and introduced administration of civil and criminal justice, revenue collection and superintendence of police according to the tribal usages and customs.

V. Scheduled District Act, 1874

On 6th February 1874, Assam was declared as a province by taking away its management from the jurisdiction of Lt. Governor of Bengal and placed it under a Chief Commissioner. On the same day by a proclamation issued by the Government of India¹² the Garo Hills, the Khasi & Jaintia Hills, the Naga Hills and the Cachar and Goalpara were placed under the jurisdiction of Chief Commissioner of Assam. The same year in the month of April, the Scheduled District Act, 1874 was passed and the province of Assam was declared as a Scheduled District. For the first time the Scheduled District Act, 1874 recognized that the under-developed tracts like the North Eastern Frontier region needs to be treated differently with regard to the enforcement of procedural laws applied in other parts of British India. By virtue of Sections 3, 5 and 5A of the Act, the local governments were empowered to declare what laws should be applied in the Scheduled District including the laws made British parliament. Thus, the Act enabled the application of customary laws in the internal

⁸ L.R. 10 A.C. 657 at 658.

⁹ *Ram Kirpal Bhagat v. State of Bihar*, 1970 SCR (3) 233; 1970 AIR 951.

¹⁰ See the Preamble and Section 4 of the Garo Hills Act, 1869.

¹¹ *Burah v. Queen*, (1878) 3 AC 889.

¹² Government of India, Home Department proclamation No.379, dated the 6th February, 1874. See, the Gazette of India, 7th February 1874, Part-I, P. 53.

administration giving magisterial powers to the Chiefs and Headman in the administration of civil and criminal justice, however, the management external affairs, legislative enactments, economy and taxation remained with the colonial authorities. These systems of administration lead to legal pluralism in the NE region.

Post independence, the Constitutional Bench of the Supreme Court dealing with the significance of the Scheduled District Act, 1874 observed in *Ratan Singh* case¹³ “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.”¹⁴

VI. Assam Frontier Tracts Regulation, 1880 & 1884

In the province of Assam, a need was felt to provide a separate treatment to the backward tracts inhabited by the tribes. Thus, to provide exclusive powers to the Chief Commissioner of Assam to remove any part of the province from the coverage or extend of the laws in force that are unsuitable to the tribal inhabited hill tracts, the Assam Frontier Tracts Regulation, 1880 was enacted. Further, the Assam Frontier Tracts Regulation, 1880 was amended in 1884 (the Assam Frontier Tracts Regulation, 1884) to remove the application of Criminal Procedure Code in the Naga Hills. For administrative convenience and to bring the administration closer to the tribal people, the Chief Commissioner of Assam under the powers provided in the Assam Frontier Tracts Regulation, 1880 introduced the institution of *Gaonburas* (GB) and *Dobhasis* (DB) in the region based on the local customs and traditions.

VII. The Government of India Act, 1915-19

In 1918, the Montagu-Chelmsford Reforms reported 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.”¹⁵ The Montagu-Chelmsford Reforms therefore recommended that the Governor should directly administer the backward tracts. To implement this recommendation, the Government of India Act, 1919 was enacted which insert Section 52A in the Government of India Act, 1915. The Governor General in Council was empowered by Section 52A to declare any territory in British India to be a ‘backward tract’. The Section also exempted the application of any Act of the Indian Legislature in the backward tracts subject to exceptions or modifications as may be deemed fit by the Governor General in Council. Further, the terminology of “under-developed tracts” was changed to “backward tracts” by the Government of India Act, 1915-19. By virtue of Section 52A nine territories were declared as backward tracts¹⁶ namely:

- 1) The Garo Hills District;
- 2) The British portions of the Khasi & Jaintia Hills Dist. other than the Shillong Municipality and Cantonment;
- 3) The Mikir Hills (in Now-gong & Sibsagar Districts)
- 4) The North Cachar Hills (in Cachar District)
- 5) The Naga Hills District;
- 6) The Lushai Hills District;
- 7) The Sadiya Frontier Tract;
- 8) The Balipara, Frontier Tract, and
- 9) The Lakhimpur Frontier Tract.¹⁷

¹³ *State of Nagaland v. Ratan Singh*, AIR 1967 SC 212; 1967 CriLJ 264.

¹⁴ *Ibid* at Para 29.

¹⁵ B.L. Hansaria, *Sixth Schedule to the Constitution of India*, (Universal Law Publishing, New Delhi, 3rd Edition, 2011), P. 4.

¹⁶ Vide Notification No. 5-G dated the 3rd January, 1921.

¹⁷ See the Schedule to Notification No. 5-G dated the 3rd January, 1921.

VIII. The Government of India Act, 1935

In 1930, the Simon Commission (Indian Statutory Commission) was entrusted by the British government to study the limitations of exclusion of the backward tracts. The Commission reported that “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.”¹⁸ The Commission therefore recommended that the tribal areas should be excluded from the Constitutional arrangements and should be administered directly by the central government as the provincial government could not bear the expenditure of the hill tracts. The Commission also proposed the terminology of “Backward Tracts”¹⁹ be replaced by “*Excluded areas*” – Excluded and Partially Excluded Areas.” As a result of the Simon Commission recommendations, Part III, Chapter-V was dedicated to the backward tracts in the Government of India Act, 1935. Section 91 of the Government of India Act, 1935 removed the terminology of “Backward tracts” and replaced with Excluded Areas and Partially Excluded Areas. Section 92 empowered the Governor to administer in his discretion²⁰ and to make regulations for the peace and good government of the Excluded Areas and Partially Excluded Areas. Clause (2) of Section 92 further provided that any regulations so made may amend or repeal any Act of the Federal or Provisional Legislature or any existing Indian law. Section 92 Clause (1) also provided that no Act of the Federal Legislature or the Provincial Legislature shall apply to an excluded area or partially excluded area, unless the Governor by public notification so directs. On 3rd March, 1936 under Section 91(1) of the Government of India Act, 1935, His Majesty in Council issued the Government of India (Excluded and Partially Excluded Areas) Order, 1936 by which the following areas were declared as Excluded Areas, namely, (1) the North-East Frontier (Sadiya, Balipara and Lakhimpur) Tracts, (2) the Naga Hills District, (3) the Lushai Hills District, (4) the North Cachar Hills Sub-division of the Cachar District and (5) the North-West Frontier. The Partially Excluded Areas were, namely, (1) the Garo Hills District, (2) the Mikir Hills (in the Nowgong and Sibsagr District) and (3) the British portion of Khasi and Jaintia Hills District (other than the Shillong Municipality and Cantonment). This arrangement of Excluded and Partially Excluded Areas under the Government of India Act, 1935 continued until the adoption of the Constitution of India.

IX. The Constituent Assembly: Adoption of the Sixth Schedule to the Constitution of India

As suggested by the Cabinet Mission the Constituent Assembly appointed the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas (hereinafter the Advisory Committee) under the Chairmanship of Sardar Vallabhbhai Patel with representation from all tribal and excluded areas. The Advisory Committee further constituted a Sub-committee on the NE region under the Chairmanship of Gopinath Bordoloi called the North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee (hereinafter Bordoloi Committee) on 27th February, 1947. The Bordoloi Committee submitted its report on 28th July, 1947 to the Advisory Committee; however the Garo Hills District and Jowai Sub-division of Khasi Hills could not be visited. Among many others, the Bordoloi Committee recommended to set up District Councils with powers of legislation, social law and customs to be regulated by the tribes, non application of Cr.P.C and civil suits to be disposed by tribal courts and local councils, management of mineral resources by Provincial Govt. with right of District Council to a fair share in revenue and the license to be granted only with consultation with District Council, constitution of Regional Councils for tribes, non-tribals not eligible for election except in the Municipality and Cantonment of Shillong, constitution of 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 govt. by the District Council, selection of non-tribal officials with care if posted to the hills, and the power of the Governor to set aside any act or resolution of the council if safety of the country is prejudiced.²¹ The Bordoloi Committee also placed some special features to be considered, like the fear of exploitation by the people of the plains on account of their superior organisation and experience of business and

¹⁸ Indian Statutory Commission, *Report of the Indian Statutory Commission Volume II, Part III*, Paragraph 128, Published by His Majesty's Stationery Office, London, 1930.

¹⁹ The word “backward” was termed by Sir John Simon as ‘*nauseating*’ and Mr. Cadgan described it as ‘*misleading*’ in the House of Commons.

²⁰ By virtue of Section 92(3) of the Government of India Act, 1935.

²¹ See Constituent Assembly of India, North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee, Vol. 1, Govt. of India Press, New Delhi, 1947.

hence continuance of Inner Line Permit, transfer of government entirely in the hands of the tribal people and preservation of ways of life, language and civilization, etc.²²

The report and recommendations of the Bordoloi Committee was discussed by the Advisory Committee on 7th December, 1947 and 24th February, 1948 and forwarded the draft of the Sixth Schedule to the Constituent Assembly with only two amendments. Firstly, in cases where there is failure of justice or where the District Court exercised authority without jurisdiction, the Assam High Court shall have power of revision. Secondly, the plains areas were recommended to be excluded from the Schedule 'B' of the draft. Before the Constituent Assembly, there were numerous criticism and disapproval from various members on the draft of the Sixth Schedule to the Constitution of India. Shri Kuladhar Chalia vehemently opposing to the autonomy given to the tribe of the hills, said:

“The Nagas are a very primitive and simple people and they have not forgotten their old ways of doing summary justice when they have a grievance against anyone. If you allow them to rule us or run the administration it will be a negation of justice or administration and it will be something like anarchy.....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 so that in times of trouble they will be helpful to our enemies.”²³

Shri Brajeshwar Prasad opposing to the establishment of District and Regional Councils and giving tribal freedom in management of their affairs would jeopardize the interest of the country, stated that:

“I am opposed to the District Councils and Regional Councils because they will lead to the establishment of another Pakistan in this country....I will not jeopardise 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, arson, loot, murder and the worst crimes upon women, and children. It led to the assassination of Mahatma Gandhi...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. This question affects the defence of the country as a whole.”²⁴

Despite the opposition, Dr. B.R. Ambedkar pacified the house with the rich knowledge he had not only in India but across the world. To him the hill tribes of Assam stand in a different position as compared to other parts of India. Describing the difference of the hill tribes of the NE region, he said:

“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.”²⁵

Dr. B.R. Ambedkar providing a practical solution and thereby pacifying the opposing members with example of the Constitutional arrangements in the United States between the Indians and the white people, said:

“In other words, the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the Red Indians in the United States as against the white emigrants there. 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 of 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....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 it 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.”²⁶

²² Ibid.

²³ 9 CAD 9.133.10 -12.

²⁴ 9 CAD 9.133.20-25.

²⁵ 9 CAD 9.133.103-105

²⁶ 9 CAD 9.133.105.

With these words and explanation of Dr. B.R. Ambedkar the other members were convinced that the culture, traditions, customs and other ways of life of the hill tribes of the NE stood on a different position and the laws and procedures enforced in other parts of the country were totally foreign to them. Besides, during the British India, they have been given autonomy similar to the draft to the Sixth Schedule. A sudden and complete change would have drastic consequence and therefore require gradual change which would lead to a smooth assimilation with the rest of the nation. After an extensive debate of three days, i.e. 5th, 6th, and 7th September, 1949 the Sixth Schedule to the Constitution of India was adopted with twenty paragraphs placing the United Khasi-Jaintia Hills, the Garo Hills, the Lushai Hills, the Naga Hills, the North Cachar Hills and the Mikir Hills in Part-A of the table appended to Paragraph 20 to be tribal areas of Assam.²⁷ While the Naga Tribal Area and the North East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abhor Hills and the Misimi Hills in Part-B of the table appended to Paragraph 20 to be tribal areas of Assam.²⁸

X. The Seven Sisters Vis-à-Vis the Sixth Schedule to the Constitution of India

Paragraph 1 read with Part-A of the table appended to Paragraph 20 (as first enacted) though described the tribal areas which shall be an autonomous district and where the District and Regional Councils shall be constituted²⁹ however, the picture was different in ground. By virtue of paragraph 18(1) of the Sixth Schedule (as first enacted) the tribal areas falling under Part-B of the table appended to paragraph 20 was left to the discretion of the Governor to apply the provisions of Sixth Schedule by issuing a notification with the previous approval of the President of India. The territorial demarcation of tribes which has been an issue since the colonial administration, however, could not be settled by the Sixth Schedule and thus the North-East Frontier Areas (Administration) Regulation, 1954 was passed to re-adjust the administrative units specified in Part-B of the table appended to the Sixth Schedule. Thus, the Balipara Frontier Tract, the Tirap Frontier Tract, the Abor Hills District, the Mishmi Hills District and the Naga Tribal Area collectively known as the North-East Frontier Agency (NEFA) were placed under the administration of the Governor as an agent of the President by virtue of Article 243 of the Constitution read with Paragraph 18(2) of the Sixth Schedule.³⁰ Further, the Balipara Frontier Tract was divided into Subansiri and Kameng Frontier Division³¹ and the Naga Tribal Area named as Tuensang Frontier Division.³² Thus, the areas of present state of Nagaland and Arunachal Pradesh which were listed under Part-B of the Table appended to Paragraph 20 (as first enacted) were re-adjusted by the said Regulation of 1954. However, since no Notification was issued as provided under Paragraph 18(1), the provisions of Sixth Schedule were never extended to these areas and the Governor continued to administer these areas as an agent of the President until the 16-Point Agreement was signed between the Government of India and the Naga People's Convention (NPC) on 26th July 1960 and consequently the Naga Hills District and the Naga Hills-Tuensang Area (under NEFA) were unified and given statehood on 1st December, 1963 as the state of Nagaland and inserted Article 371A in the Constitution of India giving special status to the state. In 1971 by virtue of the North East Areas (Reorganisation) Act, 1971 the Arunachal areas specified in Part-B of the table appended to Paragraph 20 of the Sixth Schedule and the remaining NEFA were declared Union Territory of Arunachal Pradesh on 20th January 1972 and later attained statehood on 20th February 1987 and inserted Article 371H providing special status to the state of Arunachal Pradesh.

In the present state of Manipur and Tripura the Sixth Schedule (as originally enacted) were not applied being both Part C states (appearing in item 9 and 10 respectively) in the First Schedule to the Constitution. Both Manipur and Tripura by virtue of Sections 3 and 4 the North East Areas (Reorganisation) Act, 1971 respectively attained statehood on 21st January 1972 and inserted Article 371C for Manipur and Article 244(2) for Tripura in the Constitution of India. Thus, by virtue of Article 371C the Hill Areas of Manipur have been accorded special administrative status with the Governor as an agent of the President. For the state of Tripura, the Sixth Schedule is applied by virtue of Article 244(2) of the Constitution.

²⁷ See Paragraph 1 and 20 of the Sixth Schedule to the Constitution of India as first enacted.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Section 2(a) of the North-East Frontier Areas (Administration) Regulation, 1954.

³¹ Ibid at Section 2(b).

³² Ibid at Section 2(c).

In the present state of Mizoram, at the commencement of the Constitution the Sixth Schedule to the Constitution of India was applied in the entire area. On 21st January 1972, by virtue of the North East Areas (Reorganisation) Act, 1971³³ the Mizo District was declared as a Union Territory. On 30th June 1986, the Mizo Accord was signed between the Government of India and the Mizo National Front (MNF) and later Mizoram attained statehood on 20th February 1987 and inserted Article 371G in the Constitution of India giving a similar special status like the state of Nagaland. In the present state of Meghalaya, at the Commencement of the Constitution, the Sixth Schedule to the Constitution of India was applied in the entire area (except the Municipality of Shillong and the Cantonment). In 1969, by the Assam Reorganisation (Meghalaya) Act, 1969 the United Khasi-Jaintia Hills District (as described in Paragraph 20(2) of the Sixth Schedule) and the Garo Hills District (as specified in Part-A of the table appended to Paragraph 20 of the Sixth Schedule) were declared as an autonomous State of Meghalaya. Later, by virtue of the North East Areas (Reorganisation) Act, 1971³⁴ on 21st January 1972 the Meghalaya attained statehood.

As discussed above, the state of Assam was bifurcated into seven states with special Constitutional status accorded to the states in customary law and procedure, transfer and ownership of property, religious and social practices, administration of civil and criminal justice, etc. leaving only two hill districts, namely, North Chachar Hills District and Mikir Hills District (karbi Anglong) within the state of Assam as tribal areas under the Sixth Schedule to the Constitution of India. However, the Autonomous District Council (ADC) as prescribed the Sixth Schedule to the Constitution of India still continues to function efficiently in the States of Assam,³⁵ Meghalaya,³⁶ Mizoram³⁷ and Tripura.³⁸ Besides the ADCs prescribed by the Constitution, in the states of Assam and Manipur there are ADCs established by the respective state legislature, viz., Churachandpur ADC, Chandel ADC, Senapiti ADC, Tamenlong ADC, Ukhrul ADC, Sadar Hills ADC in the state of Manipur and Missing ADC, Rabha Hasong ADC, Lalung ADC, Deori ADC, Thengal Kachar ADC, and Sonowal Kachari ADC in the state of Assam.

XI. Judicial Pronouncements on the autonomy of the Customary Authorities and Courts

In *Lala Hari Chand Sarda v. Mizo District Council*³⁹ a non-local business man was refused to renew his trade license by the Mizo District Council on the ground that the number of non-tribal licensee had reached the maximum level as provided under Section 3 of the Lushai Hills District (Trading by non-Tribals) Regulation, 1963. The appellant contented that the said provision of the Lushai Hills District (Trading by non-Tribals) Regulation, 1963 is violative of Articles 14 and 19(1)(g) of the Constitution of India. It was argued that paragraph 10(2)(d) of the Sixth Schedule to the Constitution of India empowers the District Council to make regulations for non-tribal resident for carrying out business in any commodity and the said Regulation of 1963 was passed in pursuance of the said Paragraph 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, hence, 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.

Upholding the Rules for the Administration of Justice and Police in the Naga Hills District, 1937 as a valid piece of legislation, the Supreme Court in the *State of Nagaland v. Ratan Singh*⁴⁰ observed that:

“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

³³ Section 6 of the North East Areas (Reorganisation) Act, 1971,

³⁴ Ibid at Section 6.

³⁵ Bodoland Territorial Council, Dima Hasao ADC (Cachar) and Karbi Anglong ADC are the Autonomous District Councils functioning in the state of Assam under the Sixth Schedule to the Constitution of India.

³⁶ Khasi Hills ADC, Garo Hills ADC and Jaintia Hills ADC are the Autonomous District Councils functioning in the state of Meghalaya under the Sixth Schedule to the Constitution of India.

³⁷ Chakma ADC, Lai ADC and Mara ADC are the Autonomous District Councils functioning in the state of Mizoram under the Sixth Schedule to the Constitution of India.

³⁸ Tripura Tribal Areas Autonomous District Council is the Autonomous District Councils functioning in the state of Tripura under the Sixth Schedule to the Constitution of India.

³⁹ 1967 AIR 829; [1967] 1 SCR 1012.

⁴⁰ AIR 1967 SC 212.

difficult for the local people to 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.”⁴¹

The Supreme Court in *Changki Village through Tinnunokcha Ao v. Tibungba Ao*⁴² reminding the non application of the technical procedural laws observed 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.”⁴³ Similarly, the Supreme Court upholding the settlement of disputes in accordance with the customs and usages observed in *Tekaba Ao v. Sakumeren Ao*,⁴⁴ “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 customary law applicable to the tribal and the rural population of Hill District of Nagaland.”⁴⁵

Pronouncing the autonomy of the customary village courts and the exemption of the applicability of technical procedural laws, Justice Jasti Chelameswar, C.J. in *Longsan Khongngain v. State of Meghalaya*⁴⁶ held that “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.”⁴⁷ The Court further held that “A similar declaration is contained under Section 1 of the Code of Civil Procedure also. 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.”⁴⁸

In *Westarly Dkhar v. Shri Sehekaya Lyngdoh*⁴⁹ the issue was whether the provision of Code of Civil Procedure applies in the District Courts under United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953. Justice Rohinton Fali Nariman observed that the said Rules of 1953 have been validly enacted under Paragraph 4 of the Sixth Schedule to the Constitution of India and Rule 47 of the said Rules of 1953 lays down that in civil cases, the courts shall be guided by the spirit of the Code of Civil Procedure in all matters not covered by customary laws, therefore the District Courts are not bound by the Code of Civil Procedure in letter.⁵⁰

XII. Conclusion

The NE region as can be seen from the discussion of the legal and political history and judicial pronouncements discussed hereinabove has been administered in accordance with the tribal customs and usages. The various enactments of the British Parliaments from Regulation X of 1822 to the Government of India Act, 1935 has recognized the simplicity of the tribal people and therefore have given them the autonomy of administration in civil and criminal justice in accordance with their customs and traditions. Similarly, after the Indian independence, the Constitution of India accorded special Constitutional status in management of the affairs of the tribal population ranging from social ways of life to the ownership of land and its resources in accordance with their respective customs and usages. Thus, the aims of cooperative federalism as envisaged by the framers of the Constitution of India has been achieved by the adoption of Sixth Scheduled to the Constitution of India and insertion of Articles 371A, 371B, 371C, 371F, 371G, 371H and amendment to 244(2) of the Constitution. The various constitutional provisions and the Rules and Regulations passed in pursuance of the constitutional provisions by the states and the customary bodies have also been upheld by the Supreme Court. However, the region is distinctly diverse with innumerable tribes and sub-tribes, and with the growth of political consciousness coupled with unemployment and lack of infrastructural developments, the region is faced with many legal, political and social

⁴¹ Ibid at para 34.

⁴² AIR 1990 SC 73.

⁴³ Ibid at para 2.

⁴⁴ AIR 2004 SC 3674.

⁴⁵ Ibid at para 3.

⁴⁶ 2007(4)GLT938

⁴⁷ Ibid at para 10.

⁴⁸ Ibid at para 13.

⁴⁹ 2015(1)SCALE734

⁵⁰ Ibid at paras 7 & 9.

challenges. A favourable resolution of these challenges lies in the policy of the government and the constitutional limits of a federation. Being said that, the NE region because of its topography has been a consumerist region since the colonial period. Therefore, any productive development is a costly affair on the exchequer and perhaps because of this reason the British adopted a pluralist policy in the region. Post the independence, the Government of India has adopted various special policies exclusively for the NE region which has showed a positive development in the approach of the people as well as in infrastructural developments. Thus, as envisaged by the framers of the Constitution the assimilation of the region with the rest of the nation is progressing in consonance with the Constitution protecting the liberties and traditional rights of the hill tribes along with infrastructural development at par with other states.

