

The Constituent Assembly Debates on the Sixth Schedule: An Overview of the Core Issues

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Abstract

At the basis of the Constituent Assembly Debates on the Sixth Schedule provisions lies the concern of the framers of the Constitution for the welfare of the tribal people in the Northeastern Region, namely Assam, Meghalaya, Tripura, and Mizoram. Various issues were debated and discussed, which are crucial for understanding the purpose behind the Sixth Schedule. While the majority of the Constituent Assembly members supported the Sixth Schedule, there were a few of them who were apprehensive of including such a provision in the Constitution. They were concerned that the autonomy for the tribal areas in Assam could bring about disintegration and weaken the nation's unity. In this short article, the core issues of the Constituent Assembly Debates on the Sixth Schedule will be studied with the objective of building on the knowledge and understanding of this important provision of the Constitution.

Keywords: Constituent Assembly Debates, Sixth Schedule, Constitution, Tribals.

1. Introduction:

At the basis of the Constituent Assembly Debates on the Sixth Schedule provisions lies the concern of the framers of the Constitution for the welfare of the tribal people in the Northeastern Region, namely Assam, Meghalaya, Tripura and Mizoram. Various issues were debated and discussed, which are crucial for understanding the purpose behind the Sixth Schedule. While the majority of the Constituent Assembly members supported the Sixth Schedule, there were a few of them who were apprehensive of including such a provision in the Constitution. They were concerned that the autonomy for the tribal areas in Assam could bring about disintegration and weaken the Nation's unity. In this short article, the core issues of the Constituent Assembly Debates on the Sixth Schedule will be studied with the objective of building on the knowledge and understanding of this important provision of the Constitution.

The Constitution of India, vide Article 244 (2), lays down that Tribal Areas in the States of Assam, Meghalaya, Tripura, and Mizoram shall be administered per the provisions of the Sixth Schedule¹. The Sixth Schedule, often referred to as a charter for autonomy of wide magnitude,² is a scheme for governing the tribal areas in these states where legislative, executive, judicial and financial functions are conferred upon Regional or District Councils as the case may be.

To better understand the Sixth Schedule, we must go back to the British rule itself, where special provisions similar to what is now under the Sixth Schedule were made. Regulation X of 1822 laid down the system of administration for the tribal areas of North-East India, wherein the powers of the collector,

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¹ The Constitution of India, art. 244 (2).

² Singh, B. (2007). The Sixth Schedule: Its Concept and Praxis. *Indian Journal of Public Administration*, 53(2), 151-169.

judge and magistrate were given to one person to bring administration within easy reach of the people.³ Then came the Garo Hills Act of 1869, which removed the Garo Hills from the jurisdiction of the Courts of Civil and Criminal Judicature and from the control of the offices of revenue constituted by the Regulations of the Bengal Code.⁴ The Lieutenant Governor was empowered to extend the Act to Jaintia Hills, Naga Hills and such portion of Khasi Hills that formed part of British India. The administration of Civil and Criminal justice was vested in such officers as the Lieutenant Governor may appoint from time to time.⁵

The closest in time to the system of administration under the Sixth Schedule provisions was the Government of India Act, 1935, wherein a different system of administration was designed for areas classified as 'excluded areas' and 'partially excluded areas'. The 'excluded areas' were those areas inhabited by a compact tribal population. These areas included the North-East Frontier (Sadiya, Balipara and Lakhimpur) Tracts, the Naga Hills District, the Lushai Hills District and the North Cachar Hills Subdivision of Cachar District. The 'partially excluded areas' were those with substantial tribal populations but mixed up with other communities. These included the Garo Hills District, the Mikir Hills (Nowgong and Sibsagar Districts), the British portion of the Khasi and Jaintia Hills District, other than the Shillong Municipality and Cantonment. As per Section 92 of the Government of India Act, 1935, no Act of the Federal Legislature or the Provincial Legislature was to apply to such an area unless the Governor so directed. The governor could make regulations for peace and good government in these areas. The governor was to exercise discretion in considering the application of any act or regulation to such areas.⁶

After Independence, the Constituent Assembly undertook to study the future course of administration of these areas. In fact, one of the proposals of the Cabinet Mission Plan was the setting up of an Advisory Committee on the 'rights of citizens, Minorities and Tribal and Excluded Areas'.⁷ A sub-committee, North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee, hereafter 'the sub-committee' was set up by the Advisory Committee on Minorities Fundamental Rights. The sub-committee carried out its task under the chairmanship of Shri. G. N. Bardoloi.⁸

The members of the sub-committee made an extensive tour of the province after which a report was drawn up and submitted to the Advisory Committee on Minorities Fundamental Rights. The sub-committee pointed out a few important issues that should be taken into account for the future administration of these areas namely the distinctiveness of tribals' customs, ways of life, and organisations, as well as their religious beliefs; their fear of being exploited by the people of the plains who are more advanced socially and economically, fear of losing their lands to them unless suitable provisions are made to prevent that from happening; their apprehension that when establishing financial arrangements for the local councils,

³ S. K. Agnihotri, District Councils under Sixth Schedule, *Journal of the Indian Law Institute*, January-March 1994, Vol. 36, No. 1 (January-March 1994), pp. 80-89 available at: <http://www.jstor.com/stable/43951515> (last visited on June 20, 2025)

⁴ The Garo Hills Act of 1869, s. 4, available at: <https://www.indiacode.nic.in/repealedfileopen?rfilename=A1869-22.pdf> (last visited on 9.06.2025)

⁵ *Id.*, s.5.

⁶ Government of India Act, 1935, s. 92, available at: https://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf (last visited on 9.06.2025)

⁷ Cabinet Mission Plan, 1946, available at: <https://www.constitutionofindia.net/historical-constitution/cabinet-mission-plan-cabinet-mission-1946/> (last visited on 11.03.2025)

⁸ Constituent Assembly Debates Official Report, Vol.VII, available at https://eparlib.nic.in/bitstream/123456789/762996/1/cad_04-11-1948.pdf (last visited on 11.03.2025)

without empowering them through suitable provisions, they may not benefit from it for reason that the provincial government may not allocate sufficient funds under the likely influence of the people from the plains.⁹ The sub-committee thought it very essential to provide statutory safeguards for the protection of the tribals, their lands, the mainstay of economic life, their customs and institutions. The report of the sub-committee was substantially incorporated in the Draft Constitution by the Drafting Committee, paving the way for the inclusion of the Sixth Schedule in the Constitution.

2. Core issues of the Constituent Assembly debates on the Sixth Schedule

The Constituent Assembly Debates on the provisions of the Sixth Schedule highlight the wisdom of the framers of the Constitution in dealing with the tribal communities from the Northeastern Region. The core issues of discussion and debates of the Constituent Assembly are briefly analysed herein.

2.1 Tribal autonomy, a unifying force or a divisive factor

One of the core issues of the Constituent Assembly debates revolved around the autonomy of the tribal areas of then Assam. Whether there should be district councils and regional councils for the tribals living in Assam? In other words, should they be given some autonomy and to what extent? The majority of the members were in favour of granting some limited autonomy, but a few others were against such proposal. Those members who opposed the Sixth Schedule believed that granting autonomy to the tribal people would lead to the further division of India because autonomy can bring about separatist tendencies among the tribals. Shri Brajeshwar Prasad stated his point when he said, “I am opposed to the District Councils and Regional Councils because they will lead to the establishment of another Pakistan in this country.”¹⁰ According to him granting them autonomy would jeopardise the interests of the whole country and that this matter would affect the defence of the country as a whole. He believed in the doctrine of political centralisation and was convinced that decentralisation is a symptom of a classless society. Another member, Shri Kuladhar Chaliha, shared this opinion and stated thus, “If you see the background of this Schedule you will find that the British mind is still there. There is the old separatist tendency and you want to keep them away from us. You will thus be creating a Tribalstan just as you have created a Pakistan.”¹¹ Some members opposed the Sixth Schedule due to the misconception that it would place tribal areas beyond the effective control of the Parliament and the Assam Legislature. Several members expressed their concerns that the Sixth Schedule would impede the process of assimilation of the tribal people into the broader Indian society. Shri Rohini Kumar Chaudhuri, a staunch opponent of the Sixth Schedule said, “We want to assimilate the tribal people. We were not given that opportunity so far. The tribal people, however much they liked, had not the opportunity of assimilation.”¹² To support his point he cited an example of how he had no right to purchase any property in the tribal areas without the permission of the Deputy Commissioner or the Chief of the State. If this Constitution is adopted, those disabilities continue. He also questioned the competency of those who drafted this part of the Constitution for lack of direct and intimate knowledge of the affairs in the tribal areas.

Among those who supported the Sixth Schedule included the Honourable Dr. B. R. Ambedkar himself, the Chairman of the Drafting Committee. In dealing with the question of whether there should be district councils and regional councils for the tribals living in Assam, he expressed his unhappiness about the lack

⁹ *Ibid.*

¹⁰ Constituent Assembly Debates on September 6, 1949 available at: <https://www.constitutionofindia.net/debates/06-sep-1949/> (last visited on June 20, 2025)

¹¹ *Ibid.*

¹² *Ibid.*

of understanding of the Sixth Schedule. Referring to those opponents of the Sixth Schedule, he commented that had they studied it properly they wouldn't have concluded that it would create a kind of segregated population. He pointed out that the position of the tribals in Assam stood on a somewhat different footing from the position of the tribals in other parts of India. He observed:

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. I think that is the main distinction which influenced us to have a different sort of scheme for Assam from the one we have provided for other territories.¹³

Assuaging the fear of disintegration of India that the Schedule could bring about, Dr. Ambedkar referred to those provisions where the laws made by Parliament and the laws made by the Legislature of Assam will automatically apply to the tribal areas unless the Governor thinks they ought not to apply. He also pointed out that there will be representations of tribals both in the Parliament and the Legislature, which would act as a unifying force. Expressing his unmistakable support for the Sixth Schedule, he stated:

the Regional Councils and the District Councils have been given certain autonomy for certain purposes and at the same time they have been bound together in the life of the province and in the life of the country as a whole. If these circumstances, which are of a unifying character, do not bind, do not bring the tribal people with the rest of the plains people in Assam and in the country, then the cause for such an unfortunate event must be found in something else.¹⁴

Honourable Rev. J. J. M. Nichols Roy, who was a very important member of the North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee came up with a convincing argument on the question of granting autonomy to the tribal people of Assam. Firstly he disagreed that autonomy would put the security of India at risk along the borders with Assam. According to him the security of the frontiers would be safe if the wishes of the tribal people regarding administration were taken into consideration. That using force was not an option as that would not generate goodwill and would rather make them rebellious. He stressed thus:

If you want to win them over for the good of India you will have to create a feeling of friendliness and unity among them so that they may feel that their culture and ways of living have not been abolished and another kind of culture thrust upon them by force. That is why the sub-committee thought that the best way to satisfy these people is to give them a certain measure of self-government so that they may develop themselves according to their own genius and culture. That will satisfy them and they will feel that India is their home and they will not think of joining Tibet or Burma.¹⁵

The Honourable Shri Gopinath Bardoloi, Chairman of the sub-committee, expressed regret that many members of the Constituent Assembly were unaware of the tribal situation in Assam and were unable to appreciate the context of the recommendations of the Constituent Assembly's sub-committee established to investigate the tribal situation in Assam. He recalled that at the beginning of the work of the sub-committee one immediate concern was whether for integration the methods of force, should be used, or a process should be used in which the willing cooperation of these people could be obtained to govern these

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

areas. Referring to the recommendations of the sub-committee he submitted that nothing that had been proposed was not in line with the pattern and the structure of the Constitution which we are framing for the whole of India.¹⁶

2.2 Powers of District Councils and Regional Councils

Under the Sixth Schedule, District Councils and Regional Councils have Legislative, Executive, Judicial and Financial powers. At the time of the Constituent Assembly debates, there were differing opinions regarding the powers to be granted to the District Councils. Some members were strongly opposed to granting wide political powers to the tribals through District and Regional Councils. Shri Brajeshwar Prasad, who though supported the social, educational and cultural advancement of the tribal people of Assam, strongly opposed the granting of political power to them. He saw them as incompetent and thus, according to him, “the responsibilities of parliamentary life can be shouldered by those who are competent, wise, just and literate. To vest wide political powers into the hands of tribals is the surest method of inviting chaos, anarchy and disorder throughout the length and breadth of this country.”¹⁷

Some members, like Shri Kuladhar Chaliha, felt that the powers granted to the District Councils and Regional Councils by the Sixth Schedule were too wide and could hardly be imagined. He cited legislative powers concerning the management of any forest not being a reserved forest, the use of any canal or watercourse for agriculture, marriage and social customs. He contended that such powers could negatively affect the rights of non-tribal people.¹⁸

One of the arguments against the Sixth Schedule is the taxing powers granted to the regional and district councils. It was pointed out that in paragraph 8, powers have been given more than what has been given to the district boards of Assam. According to the said paragraph the District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes on professions, trades, callings and employments; taxes on animals, vehicles and boats; taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries etc. It was argued that the power of assessment and collection of land revenue should remain with the Government.

Another point of contention against the Sixth Schedule related to the power of regulation by District Councils under paragraph 10. Under this paragraph, power is given to the District Council to make regulations for the control of money-lending and trading by non-tribals. It was argued that such power is discriminatory against people of other parts of India from carrying on business in these areas. Shri Rohini Kumar Chaudhuri cited the case of Shillong, where a large number of non-tribal people were carrying on retail business. It was argued that the position that the tribals living in the town of Shillong will require no licence, but non-tribals will require a licence, was discriminatory and that nobody should support such discrimination.¹⁹ In this regard, Honourable Dr. B. R. Ambedkar pointed out that safeguards have been provided in paragraph 10 itself. Firstly, such regulations may be made if they are passed by a majority of not less than three-fourths of the total membership of the District Council. Secondly, such regulations could not affect the rights of the money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations. Thirdly, all regulations made under this paragraph shall not have effect without the assent of the governor.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

2.3 The Role of the Governor in relation to the Autonomous Districts or Regions

A very important issue at the Constituent Assembly debates on the Sixth Schedule was the role of the Governor concerning the district councils. The discussions revolved around the extent of the Governor's powers and responsibilities concerning these autonomous bodies. There was a deep apprehension among some members about the powers of the district councils and therefore expressed their desire that the governor be given an extensive supervisory role over the administration of the autonomous districts. The debates about paragraph 3 of the Sixth Schedule, which deals with the powers of the district councils and regional councils to make laws, reflected a very heated discussion. After much discussion sub-paragraph (3) was added to paragraph 2 giving the Governor the power of assent. It states that all the laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.²⁰

It is interesting to note that there are members who were not confident in the role of the governor regarding the legislative function of the district councils. Shri Brajeshwar Prasad suggested that "in the proposed new sub-paragraph (3) of paragraph 3, for the word 'Governor' the word 'President' be substituted." According to him if the Governor is vested with the power to veto laws passed by the District Councils, then there will be conflict. That it will create bitterness and ill-will between the Provincial Government and the District and Regional Councils. It will negatively affect the provincial autonomy. Therefore, he strongly recommended that this power should be vested in the hands of the President. Additionally, he was apprehensive that the Governor may not be in a position to carry out his responsibilities well because parliamentary democracy and narrow considerations of provincialism may stand in the way.

Another very important issue at the Constituent Assembly debates about the Sixth Schedule was the nature of control that the Governor would exercise over the autonomous districts. The Honourable Dr. B. R. Ambedkar clarified that the governor's control is not based on personal prerogative but on the advice given to him by the elected state government. In stating that the laws passed by the District Council will have to be assented to by the Governor to become effective, it meant that the Governor would act as advised by the Ministry of Assam. He noted that under sub-paragraph (3), the discretion of the Governor had been done away, a power that existed under the Government of India Act, 1935, concerning excluded areas. Thus, he concluded that wherever the word Governor occurs, it meant the Governor acting on the advice of the Ministry.

The Governor's role in money-lending and trading regulations was debated too. Some desired that the activities of money-lending and trading in tribal areas should be regulated by the Governor directly instead of the District Councils. As per paragraph 10, the power is given to the District Council to make regulations for the control of money-lending and trading by non-tribals. Among other things, it provided that "no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued on that behalf by the District Council."²¹ This part of paragraph 10 was seen as directly infringing on the right of the non-tribals to carry on the business of money-lending and trading in tribal areas. Therefore, among those who opposed it urged that it should be the Governor and not the District Council who should have the power to make such regulations. Dr. Ambedkar clarified that enough safeguards had been provided in the provision itself including the requirement of the Governor's assent for a regulation to have effect.

²⁰ *Supra* note 1, vi sch. para 2 (3).

²¹ *Supra* note 1, vi sch. para 10 (2) (d).

Another role of the governor that was debated upon was the administration of justice in autonomous areas. Paragraph 5 of the Sixth Schedule empowers the governor to confer on the district or regional council or courts constituted by them, certain powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure.²²

2.4 Administration of Justice in the Autonomous Districts and Regions

The administration of justice in the autonomous districts and regions was one of the core issues in the Constituent Assembly debates on the Sixth Schedule. One of the purposes behind granting autonomy to the tribal areas was to protect and preserve their tribal ways of life, including their existing dispute resolution mechanism. The Honourable Rev. J. J. M. Nichols Roy brought to the notice of the members that the tribals believed that their village councils were much more suitable to them than the regular courts and the High Court of Assam, whose proceedings were expensive. So, among the tribals, village courts were preferred over regular state courts.²³ The Honourable Shri Gopinath Bardoloi expressed his strong support for certain institutions among these hill tribals, especially their mode of settlement of disputes. He cited examples of cases that would have been cases of murder according to the Penal Code were being settled by the tribals by the barest method of Panchayats' decision, and by payment only of compensation.²⁴ Paragraph 4 of the Sixth Schedule grants the Regional Councils and District Councils the power to constitute village councils or courts for the trial of certain suits and cases, between tribals, excluding cases covered by paragraph 5(1). The District Councils and Regional Councils can appoint suitable persons to be members of such village councils or presiding officers of such courts.²⁵ Thus, the judicial power of the District and Regional Councils is derived directly from the Constitution.

One of the points debated revolved around the administration of justice when one of the parties in a dispute is a non-tribal. Shri Rohini Kumar Chaudhuri brought up a question of jurisdiction in a situation where the dispute would be between a non-tribal and a tribal, whether the courts constituted by the district or regional councils would have jurisdiction or regular state courts. Likewise, he brought up the question of appellate jurisdiction in such a situation, whether the High Court or the District Court would have jurisdiction. Another issue raised was whether in proceedings before courts under the Sixth Schedule, the parties to a dispute will have the right to be represented by a lawyer or not.

The Honourable Dr. B. R. Ambedkar clarified that the jurisdiction of the ordinary court is ousted only to the extent provided for in paragraph 4. In other words, the jurisdiction of the ordinary courts of the State would continue in all matters not specifically excluded by paragraph 4. Concerning the question of appeals from the decisions of the courts created under this paragraph he clarified that the Governor or the Provincial Ministry may either constitute a new court of appeal or may declare the District Judge's Court as a court of appeal and from there the appeal can go further to either to the High Court or to the Supreme Court. And regarding the question of representation of a lawyer in autonomous districts Dr. B.R Ambedkar clarified that the Provincial Government would have the power to make laws in that respect.²⁶

One of the members, Shri Kuladhar Chaliha, wanted the power to constitute courts to be given to the Governor and such courts should follow as nearly as possible the Criminal and Civil Procedure Codes of India. It was also felt that the District Court had been deprived of the jurisdiction which it should have. It was pointed out that there could be a situation where the judgments of the courts under the Sixth Schedule

²² The current applicable law is the Bharatiya Nagarik Suraksha Sanhita, 2023.

²³ *Supra* note 10.

²⁴ *Supra* note 10.

²⁵ *Supra* note 10.

²⁶ *Supra* note 10.

were dealing with very elementary issues. And so in such a situation, the appeal should go to the District Court rather than the High Court. However, the amendment moved to that end had not been adopted by the House.²⁷

Shri Lakshminarayan Sahu, another member, proposed an amendment to paragraph 5 wherein a trial between tribals and non-tribals, proceedings should be as per the Civil Procedure Code, 1908, and Criminal Procedure Code, 1890. He was apprehensive of the kind of justice delivered if the procedures are per the traditional practices of the tribal people.²⁸ However, this amendment was also not adopted, showing that the Constituent Assembly did not want the automatic application of these procedural laws. As per paragraph 5, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, do not apply to the trial of any suits, cases or offences in an autonomous district or any autonomous region except as provided in the paragraph.

3. Conclusion

In conclusion, the debates and discussions about the Sixth Schedule demonstrated the earnest endeavours of the Constituent Assembly members to reconcile the desires for self-governance among the tribal communities with the imperative of national unity. Although certain members strongly opposed the provision for autonomy due to concerns of disintegration, the members, led by Dr. Ambedkar and supported by tribal leaders and other members, devised a middle path that allowed for the coexistence of tribal aspirations and national goals. While the tribal communities are granted a degree of autonomy in governance, some regulatory mechanisms exist to preserve national unity within the country. The apprehensions of certain members, I believe, were not due to any bad will toward the tribal people but the compulsion of a historic moment, where a nascent Nation needed to stay united as it began to embark on the road of a newly acquired freedom.

²⁷ *Supra* note 10.

²⁸ *Supra* note 10.