CHAPTER II

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The Historical Background of the Indian Constitution.

The political destiny of India should be determined by the Indians themselves was the desire of Mahatma Gandhi. Many Acts which were passed by the British Government from time to time are noteworthy. The Government of India Act 1858, Indian Councils Act of 1861, Indian Councils Act of 1892, Indian Councils Act 1909, and Government of India Act 1919 made considerable requests in this regard. The enactment of the Government of India Act 1935 put forward for a constitution. And the Crips Mission also recognized for a constitution for an autonomous India. For that they put forward certain conditions. The Indian Independence Act, we can say is one of the milestones in this regard. Now we shall explain them in brief.

The very fact that the constitution of the Indian Republic is the product not of a political revolution but of the research and deliberations of a body of eminent representatives of the people, who sought to improve upon the existing system of administration, makes a retrospect of the constitutional development indispensable for a proper understanding of this Constitution.¹

The Constitution of India, as opted by the Constituent Assembly in 1949, was not something absolutely new. It was, to a great extent, influenced by the Government of India Act of 1935 that was passed by the British Parliament. In order

to understand and appreciate the Constitution, it is necessary to glance at the constitutional development during the British rule in India.²

Practically the only respect in which the Constitution of 1949 differs from the constitutional documents of the preceding two centuries is that while the latter was imposed by an imperial power, the Republican Constitution was made by the people themselves, through representatives assembled in a sovereign Constituent Assembly. That explains the majesty and ethical value of this new instrument and also significance of those of its provisions which have been engrafted upon the pre-existing system.³

**Government of India Act, 1858.**

The Parliament enacted the first statute for the governance of India under the direct rule of the British Government, the government of India Act 1858. The First War of Independence of 1857 brought the era of the East India Company to an end. In 1858 the British Crown took over the rights of the Companies Government in India in its own hands. The Act brought about substantial changes in the constitutional set up.⁴ Some of the important changes were; the powers of the crown were to be exercised by the Secretary of State for India, assisted by the Council of fifteen members. The Council was composed exclusively of people from England, some of whom were nominees of the Crown while and others were the representatives of the Directors of the East India Company. The Secretary of State, who was responsible to the British Parliament, governed India through the Governor

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Indian Councils Act 1861

This Act introduced many important changes in Indian administration. It introduced representative institutions in the country for the first time and associated the Indians with legislative work. It enlarged the Council of the Governor-General by providing not less than six and not more than twelve additional members. At least, half of the members were to be non-official members and could hold office for two years. The legislative Council was given the power to enact laws and regulations for all persons, places and things and public servants inside and outside British India. However, the Council could not enact measures relating to public debt or public revenue, religious, military and naval matters without the prior approval of the Governor General. 6

Indian Councils Act of 1892

The Indian Councils Act 1861, suffered from several shortcomings which were sought to be rectified by the Indian Councils Act, 1892. The Indian National Congress also exerted pressure for further reforms and concessions.

The main features of the Act were as follows- the strength of the central and provincial legislative councils was expanded by adding 8-20 new members. Two fifth of these additional members were to be non-officials. The Governor-General-in-council was authorized to make rules subject to the sanction of the Secretary of

5 Basu D.D, Introduction to the Constitution of India 19th Edition P.3-4
state-in- Council, for discussion of final financial statements and for asking
questions.\textsuperscript{7}

**Indian Councils Act, 1909**

In view of the dissatisfaction of the Indians with Indian Councils Act, 1892
and the growing threat of the extremists, the British Government decided to make
certain concessions with a view to win over the moderates and enacted the Morely-
Minto Reform Act in 1909. It increased the strength of the additional members of
the Imperial Legislative Council from 16 to 60 but, it still retained official majority.
The strength of the Provincial Legislative Council was increased to 50 and they were
to have non-official majority. The Act also enlarged the functions of the Imperial as
well as the Provincial Legislative Councils. The Members of the Imperial
Legislative Councils were permitted to discuss resolutions on matters of General
Public interest but, these recommendations were not binding upon the Government.
Further, the President of the Council could deny the members to right to discuss any
matter or resolution on the ground that it was not desirable to do so in public interest.
The members also did not enjoy any right to vote on grants, or move a vote, or no
confidence against the Government. That also increased the size of the Provincial
Executive Councils.\textsuperscript{8}

**Government of India Act 1919**

The Montague-Chelmsford Reform Act, popularly known as the Government
of India Act 1919 introduced important changes into the home Government, at the
centre, as well as in the Provinces. The Act considerably weakened the position of

\textsuperscript{7} Garg B.L (2004) Indian Constitution and Administration, Published by National council of
educational Research and Training, P.3

\textsuperscript{8} Ibid, P. 332
the secretary of State in England by transferring some of his functions to the High Commissioner for India and delegating some of his powers to the Governor General-in-Council. The Act reduced the strength of the Indian Council and also reduced its term from seven to five years.⁹

The Act provided a bi-cameral legislature at the Centre consisting of the Council of States and the Central Legislative Assembly. The Council of State consisted of 60 members and its members were to hold office for a term of five years. On the other hand the Legislative Assembly was to consist of 143 members and its members were to hold office for a term of three years. The members of both the houses were directly elected, even though on the basis of a very restricted franchise. The central Legislature was given quite extensive powers and it was authorized to legislate for the whole of British India both with the regard to the Indian subjects and the servants of the Government. In financial matters, however the legislature was not permitted to discuss certain items. Even on some of the items which were subjected to the vote of the assembly, the Governor could sanction a grant which had been refused or reduced by the assembly. Thus the legislature was virtually powerless before the executive. The most important achievement of the Act was the introduction of the system of Dyarchy in the provinces with a view to train the Indians the art of self Government.¹⁰

Simon Commission

The Simon Commission suggested some special measures for the administration of the area. The Commission stated:

⁹ Ibid, P.332
¹⁰ Ibid, p. 332
"The stage of development reached by the inhabitants of these areas prevents the possibility of applying to them methods of representation adopted elsewhere. They do not ask for self-determination, but for security of land tenure, freedom in the pursuit of the traditional methods of livelihood and the reasonable exercise of their ancestral customs."\(^{11}\)

**The Government of India Act 1935.**

It was the Government of India Act, 1935 which introduced real representative Governments at least in the Provinces. It also gave first time the foundation of Federal Government in India. An option was also given to the India State to join the Indian Federal system. Clear cut division of powers between the centre and the State was made. This time there was no system of delegation of powers from the centre to the State. Rather the States were given real autonomies. Secondly, the Governor of the State was to act not as an agent or delegate of the Governor-General, but on behalf of the Crown. Establishing the Parliamentary system of the Government, the ministers were made responsible to the Legislature and they were allowed to discuss and deliberate public matters in the Legislature freely. Diarchy which was introduced by the Act of 1919 was withdrawn, but it was introduced at centre. The Governor-General was given the discretionary power with which he could nullify any move of the Central legislature. The Legislative powers of both the central and Provincial Legislatures were subjected to several reservations with the result that they could not act independently. There were three types of powers, namely-Federal List, Provincial List and Concurrent List. On the subject mentioned in the

Concurrent List, both the centre and the State Legislature had the authority to legislate, but the centre had final authority in case of any controversy or conflict in this regard. Besides these, there were several provisions in the Government of India Act, 1935, which served as the basis of the Indian Constitution after Independence.¹²

**Tribal Situation in Post Independent Period**

India got Independence in the year 1947. The base of the Indian culture, i.e., “Unity in diversity” once again got its due importance. Social reformers, politicians, and administrators were well informed about the vast socio-economic gaps between the tribal groups on the one hand and the rest of the Indian mass on the other. From the past experiences, the administrators also realized that the solution to the problem of backward area and people, lay in lack of integration not in isolation. No doubt, the policy and approach toward the tribals after independence was influenced by Pandit Nehru to a great extent. He strongly believed in the co-existence of numerous diverse cultures and felt that the tribal groups can become a part of integrated India like the non tribal groups, who inspite of maintaining their distinct culture identities are an integral part of the Indian Nation. The approaches to the tribal problems and development, as conceived by Nehru, are clearly stated in his Foreward to Elwin’s Philosophy of NEFA(²nd Ed.), which really formed the basis of the national policy towards tribal development(1959). He stated five fundamental principles, which are popularly known as “Panchsheel”.¹³ The Principles are:

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(a) People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their own traditional arts and culture.

(b) Tribal rights to lands and forests should be respected.

(c) We should try to train and build up a team of their own people to do the work of the administration and development. Some technical personnel from outside will no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.

(d) We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through, and not in rivalry to their socio-cultural institutions.

(e) We should judge results, not by statistics or the amount of money spent but by the quality of human character that evolved.\(^{14}\)

The strong desire of the national leaders to uplift the tribal people is reflected in the Indian Constitution especially during Constituent Assembly debates on the sixth Schedule to the Constitution.

**Constituent Assembly: A Sovereign body of the People**

Though the Constituent Assembly, which came into being in July 1946, claimed itself as the actual representative body of the people, it was a Congress dominated body. In fact, it was undemocratic in the sense that no separate elections were held for the constitution of the Constituent Assembly on the basis of Universal Adult Franchise. It consisted of two types of members—elected and nominated. The Provincial Legislative Assemblies were given authority to elect the members for the

\(^{14}\) Ibid, P. 25.
Constituent Assembly while the representatives from Princely States were nominated by their respective rulers. Out of total 1585 seats in the Provincial Assemblies, the Congress Party had captured 925 seats (58%) in the elections held in 1945 for the Legislative Assemblies. Hence it enabled the congress Party to gain a thumping victory in the indirect election of the Constituent Assembly which was held in July 1946. The Congress bagged 203 seats out of 212 general seats. Again it succeeded in securing 5 more seats from the reserved quota-4 from the Muslims and one from the Sikhs. Thus the Congress achieved altogether 208 seats out of total 296 seats allotted to the Provincial Legislative Assemblies. The Muslim League won all the seven of the seats reserved for the Muslims. Out of the remaining 16 seats, 3 went to the Sikhs of Punjab, 3 to the Unionists of Punjab, one to the Communists and 8 to Independents. The Princely States nominated 83 members out of which 50% candidates represented the interests of the princes and rulers.15

After the partition of the country, the majority of the Congress Party in the Constituent Assembly jumped to 82% because the members of the Muslim League led by Jinnah vacated their seats. Consequently, there was no viable opposition in the Assembly. But 28 members of the Muslim League from the Non-Pakistan Provinces who joined the Assembly lacked leadership. Their basic objective was to safeguard the interests of the Muslims who had declared themselves as loyal and law-abiding citizens of India. In the absence of dynamic leadership the Muslim members of the Constituent Assembly looked at the congress for the protection and interest of their community. Thus the steering of the Constituent Assembly remained

The Constituent Assembly comprised top-ranking leaders of the Congress Party and the Muslim League of India, statesmen, seasonal administrators and eminent jurists of the country who accepted the tremendous task to complete it within the shortest time. Moreover, these members represented various groups and sections of the Indian people belonging to the different aspects of life, both the rich and the poor and political parties such as Socialist Party, Congress Party, Communist Party and other minority groups. Each and every section of the people were conscious to place their viewpoints before the Constituent Assembly and to see and ensure that their interests had nicely been protected.  

The task before the Constituent Assembly was vital. They had to frame constitutional laws for 400 millions of the people who differed in their faiths, religions, languages, cultures, ethics, customs etc. They had to protect the interests of 40 million untouchable, numerous other minority groups and backward tribal people living in hills and mountains. More upsetting problem was to protect the integrity of the nation by making satisfactory provisions for more than 560 Indian States that had been given “option to follow the course of their own choice”, according to the declaration of the lapse of British Paramountcy on transfer of Political power.

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16 Ibid, P.88  
The Constituent Assembly of India formed several Committees such as, Union Constitution Committee, Union Powers Committee and Committee on Fundamental Rights. Later some more Sub-Committees were formed to study different problems and suggest the ways and means. The members of Sub-Committees toured different parts of the country to have real knowledge of the problems and suggest ways and means to resolve them. A Drafting Committee under the chairmanship of Dr. Bhim Rao Ambedkar was also formed to draft the Constitution of India.19

While discussing about the goal and objectives of the constitution of India, Pandit Jawaharlal Nehru said to the members of the Assembly that “the real and the spendous task before them was to feed the starving people and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his need.” Moving the resolution for basic aims and objectives of the constitution. Nehru further said that the word ‘socialism’ was not used in the resolutions only because to avoid misunderstanding and controversy. But it contained the elements of socialism. Assuring the socialist members, he said that “I stand for socialism, the whole world goes that way.” Lastly he appealed to the members for “cooperation in a great endeavor of building the noble mansion of free India where all her children may dwell.”20

20 Ibid, P. 18
Basic Aims and Objectives of the Constitution

The Constituent Assembly passed the Objectives of the Resolutions on 22nd January, 1947 which became the foundation of the Indian constitutional structure. The following were the text of the main objectives of the resolutions passed by the Assembly:

"This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future Government a Constitution:

(b) wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(c) wherein shall be guaranteed and secured to all the people of India justice-social, economic and political, equality of status, of opportunity and before law; freedom of thought, expression, belief, faith of worship, vocation, association and action subject to law and public morality; and

(d) wherein adequate safeguards shall be provided for minorities, backward and tribal areas; and

(e) whereby shall be maintained the integrity of territory of the Republic and its sovereign rights on land, sea and air according to justice and law of the civilized nations; and

(f) this ancient land attains its rightful and honoured place in the world, makes its full and willing contribution to the promotion of world-peace and the welfare of mankind."
In the words of Nehru, the aforesaid Resolution was "something more than a resolution. It is a declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication".  

The Preamble

It will be seen that the ideal is embodied in the above Resolution is faithfully reflected in the Preamble to the Constitution, which as amended 1976, summarises the aims and objectives of the Constitution:

"WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation:

IN OUR CONSTITUENT ASSEMBLY this twenty six day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

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21 Ibid., P. 19
Dr. Ambedkar's Contribution to Indian Constitution

The Indian constitution is the supreme law of the land. In a popular political sense, the Indian people, as a whole, are the supreme masters who made the Constitution for the governance of the nation. In fact, the Constituent Assembly, which functioned from 1946 to the end of 1949, enacted this great instrument. Loosely, we call the dominant figures that shaped the Constitution as the founding fathers. While towering personalities such as Jawaharlal Nehru, Sardar Patel, Rajendra Prasad, Rajagopalachari, Alladi Krishnaswamy Ayyar and a galaxy of jurists, statesmen and leaders of various sections of people moulded the Founding Deed, Bhim Ramji Ambedkar was the Chairman of the Drafting Committee. The collective labours of the Assembly resulted in that remarkable product, the Constitution. The enactment was completed on 26th November 1949 and came into force on 26th January 1950. The Democratic Republic of India thus sprang into existence on 26th January 1950 and we observe that day every year as Republic Day. But while Mahatma Gandhi is rightly revered as the father of the nation, is Ambedkar, justly considered the father of the Indian Constitution.23

The most creative contribution made by Dr. Ambedkar was as an uncompromising fighter for Indian humanity; particularly the humblest (usually described as the dalits or scheduled castes and scheduled tribes). There is a common impression in the minds of the post Independence generation that Gandhiji was the principal savior of the untouchable pariahs of India. But when we consider the

stature and achievement of Ambedkar as an intrepid warrior for social-economic
liberation of the lowliest, the lost and the last, especially the dalits and the exploited
tribals, there is no doubt that without diminishing the tremendous conscientisation of
the Hindu community by Gandhiji Vis-à-vis untouchability and Harijan debasement,
Ambedkar’s ceaseless war on behalf of the panchama proletariat, in its widest
connotation, is incomparable.\(^{24}\)

To go against Gandhi, to fight the National Congress, to demand equal share
of power for the Depressed Classes, to draft legislations for womanhood’s equality
needed the courage of an iconoclast, and Ambedkar was just that.\(^{25}\)

He had been selected by the Constituent Assembly on account of his
administrative competence and political influence. They demonstrate that election
to the helm of the Drafting Committee was the result of one his first intervention in
the Constitution Assembly, in 1946. After Nehru spelled out before the assembly the
objectives of the Constitution, another member, Jayakar, suggested that such a
resolution could not be on as long as one ignored whether such a resolution could not
be voted on as long as one ignored whether representatives of the Muslim League
who still wavered between demands for Pakistan and loyalty to India would or
would not join the Assembly. In a very balanced speech, which impressed many
Congressmen by its moderation and the perfect command of law that it
demonstrated, Ambedkar proposed a compromise solution. For the Verna’s,
therefore, it was only by virtue of his competence that Ambedkar was appointed head
of the Drafting Committee.\(^{26}\)

\(^{24}\) Ibid, P. 33
\(^{25}\) Ibid, P. 35
\(^{26}\) Jaffrelot Christophe (2005) *Dr. Ambedkar and Untouchability*, Permanent Black, Delhi, P.107
Moreover, we must also re-assess the role of the Drafting Committee which, while not responsible for drafting the primary texts, had to knock these into shape on the basis of articles proposed by committees, before submitting them to the Constituent Assembly. The Assembly read several drafts and, each time, Drafting Committee members more often than not its chairman, Ambedkar-guided and channeled the discussion. Ambedkar was also one of the few members of the Constituent Assembly who belonged, besides the Drafting Committee, to more than one of the fifteen Committees. Hence he could follow closely all the debates on articles as vital as those concerning the rights of the minorities. Above all, as President of the Drafting Committee he was sent all the propositions of the various committees. These editorial task also rested largely on his shoulders because of the chronic absenteeism that plagued the Drafting committee suffered. One of its members, T.T. Krishnamachai, declared subsequently, in November 1948, before the Constituent Assembly:

'The House is perhaps aware that of the seven members nominated by you (to the drafting Committee), one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs and there was a void to that extent. One or two people were far away from Delhi and perhaps for reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this Constitution fell on Dr. Ambedkar and I no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable.'

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Ibid. P. 107-108.
Ibid. P. 108
If Ambedkar was not the author of the Constitution, he was always at hand throughout its formulation. Not only did he alter the committee’s propositions; he also followed them through to the bitter end, in the plenary sessions, defending one formulation rather than another, repeatedly shaping the debates and so on. Ambedkar therefore played a determining role in the shaping of India’s Constitution.29

**Nehru and the Indian Tribes**

Nehru keenly appreciated tribal culture. He was greatly impressed by its democratic ethos and sense of discipline. He observed, “They are an extremely disciplined people, often much more democratic than most others in India. Without a Constitution they function democratically and carry out the decisions made by their elders or their own representatives almost without exceptions.” He advised all to approach, “this simple folk in a spirit of comradeship and not like some one aloof who had come to look at them, examine them, or make them conform to another way of life”.30 He also strongly felt it a wrong approach “to call some people primitive and to think of ourselves as highly civilized.” Nehru was very much concerned with the tribal policy and tribal development, and consistently opposed any type of imposition or interference with their way of life. He felt that “if you approach the tribal people with affection, go to them as a liberating force and as a friend so that they may feel you have come not to take away something from them but to give them something.... But, if they feel you have come to try to change their methods of living,
then it is all completely wrong.” He strongly felt that the main problem is not to provide facilities to the tribals, but to understand “these people make them understand us and create a bond of affection and understanding between us.” In order to preserve their traditional way of life and culture, he considered the language as an important factor and made it perfectly and absolutely clear that Government would encourage the tribal language “to encourage and help them to flourish.” Though Nehru was anxious for educational and economic development of the tribals, he strongly expressed the desire that “there would be no attempt to impose other ways of life on them in a hurry.” “Let the change come gradually and be worked out by the tribals themselves.”

Nehru’s Tribal Policy with Reference to Nagaland.

The Prime Minister Nehru made one visit to Nagaland (Kohima) on March 30, 1953. The meeting of that day was boycotted by all non-official Naga public, because their representatives were not allowed to meet the Prime Minister to hand over a memorandum due to a refusal by some officials. This might have humiliated Nehru even more because the visit was with the Burmese Prime Minister Thakin Nu.

Jawaharlal Nehru gave the country a comprehensive policy on ‘Protection and advancement’ of tribal people even before the dawn of Independence. Our constitution, while dealing with tribal people bears the stamp of Nehru’s humanism. He had a very clear idea of the problems of the tribal people against the historical, political and geographical background. The solution he found for them was based on

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31 Ibid. p.xxiv-xxv
32 Ibid, P. xxiv-xxv
his deep study of history and literature, his personal experience of human behavior, and an awareness of tribal heritage.  

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The first detailed policy statement is available in a letter written in reply to two Naga leaders, Sakhrie and Sashimeran, on 1 August 1964. Nehru opened up his mind on the future of Naga people. Simultaneously indicating India’s policy towards the tribal people in general. This is perhaps the earliest and most comprehensive policy statement on the Nagas by any Indian leader.

The letter to the Naga students continues, ‘The people of Naga Hills should not be exploited by others and their right to own and work on the soil should remain with them.’ This is repeated in his Panchsheel as ‘tribal rights in land and forests should be respected’. Nehru’s opinion was that the tribal people should not be swamped by people from other parts of the country who might go there to exploit them to their advantage’ which he explained further in 1958. We should try to train and build up a team of their own people to do the work of administration and development... We should avoid sending too many outsiders into tribal territory.’

Regarding the judicial system, Nehru’s opinion as explained in the letter was, I see no reason whatever why an extraneous judicial system should be enforced upon the Naga Hills. They should have perfect freedom to continue their village panchayats, tribal courts etc. according to their own wishes and this basic idea is incorporated in the Constitution as well. The sixth schedule of the Constitution gives powers to the district Councils, to constitute village councils or course for the tribal suits and cases between the scheduled tribes of that area. Today some of the states of the

erstwhile Sixth Schedule districts have codified and legalized the traditional tribal laws of the area. Nehru in his letter also indicated that ‘in an independent India there would be a special department in the Centre and the Provinces concerned for the protection and advancement of tribal areas’.  

On 30th April 1947, intervening in the debate in the Constituent Assembly on the interim report of the Committee on Fundamental Rights, Nehru observed:

“Every care should be taken in protecting the tribal areas, those unfortunate brethren of ours who are backward, through, no fault of theirs. It is our intention and it is our fixed desire to help them as much as possible, in as efficient a way as possible; to protect them possibly from their rapacious neighbors and to make them advance. I think it is bound to be the policy of my Government of India, because that is likely to be an accepted principle of Indian policy today.”  

**Political Ideas of Ambedkar**

Ambedkar defended in the Constituent Assembly values and political models that he had imbibed in his youth while studying abroad. He believed in liberal democracy. He opposed the left, which wanted to redefine the Indian Republic, from the first article of the Constitution onwards, as ‘socialist’. He thought this would have had the effect ‘simply of destroying democracy’, because it was for the government designated by the people to choose the best form of social organization, as he explained on November 19, 1948:

“The reason why we have established in this Constitution a political democracy is because we do not install by means whatsoever, a perpetual dictatorship of any particular body of
people. While we have established political democracy it is also the desire that we should lay down as our ideal economic democracy. There are various ways in which people believe in individualism as the best form of economic democracy; there are those who believe in having socialistic state as the best form of economic democracy; there are those who believe in the communistic ideas as the most perfect form of economic democracy. In these conditions we have deliberately introduced a language that we have used, in the Directive Principles, something which is not fixed or rigid. We have left enough room for people of different ways of thinking with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy.”

Faithful to this line of argument, Ambedkar opposed a constitutional amendment to nationalize natural resources— it was eventually not put to the vote, another sign of Ambedkar’s ‘constituent power’, as if he had the moral authority to dictate whether an amendment could be considered or not. Another indication of his attachment to liberal democracy was manifest in his proposing an amendment in the plenary session—a rare occurrence because his principal role was to defend the text of the Drafting Committee—in favour of a strict separation of executive power and the Judiciary. Some representatives opposed it in the name of the authority of the State, by arguing that too strict a legal control would weaken it. Nehru participated in the debate even though his responsibilities as Prime Minister allowed him little time, because he wanted to support Ambedkar’s amendment. Ultimately it was adopted and became Article 50 of the Directive Principles. Ambedkar later defended the

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38 Ibid, P.109
setting up of a judicial system of British inspiration; in his view, separation of powers would on no account weaken the State.\(^{39}\)

Ambedkar was in any case a supporter of a strong Centre, on the grounds that too much federalism would hamper the uniform application of the constitution across the entire territory of India. He argued, for example, that the article abolishing Untouchability would not be evenly enforced if the states enjoyed too much autonomy.\(^{40}\)

Another amendment concerning Article 31 was proposed a few days later by a Tamil representative. It read: “the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to function as units of self government”\(^ {41}\). Ambedkar immediately accepted this amendment, to the great relief of the top rank Congress leaders, such as Rajendra Prasad (the President of the Assembly) and Seth Govind Das. Gandhians were delighted, loudly citing idealized evocations of ancient India and of the villages which were the repository of this tradition; they quoted the Mahatma and thanked Ambedkar. Their speeches were ample evidence of the central role played by the latter in getting these amendments passed.\(^ {42}\)

T. Bhargava admitted that the amendment owed much to Ambedkar, and even acknowledged that it was his work. Consequently he commended it as an agreed amendment. This is a clear indication that once approved by Ambedkar, an amendment was almost certain to be accepted.\(^ {43}\)
Ambedkar was clearly one of the principal architects of the Indian Constitution along with men such as B.N.Rau. While it is undeniable that the constitution drew a great deal on the 1935 Government of India Act and the 1928, Nehru Report, Ambedkars influence throughout its preparation was considerable.44

"On January 26th 1950 (the date when the constitution would be proclaimed), we are going to enter into a life of contradictions. In politics we will have equality and in the social and economic life we will have inequality. We must remove these contradictions at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has laboriously built."45

He declared also that political democracy would have no meaning if it did not go hand in hand with social democracy, a remark that amply demonstrated that Ambedkar was not seduced by the practical efficacy of the constitution to which he had devoted so much energy.46

While clarifying the need to have separate provisions for the tribals of the north-east Ambedkar said:

"I am speaking for Assam and other areas for the moment. The difference seems to be this. 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 tribals of Assam, is not the case. Their roots are still in their own civilization and their own culture. They have not adopted mainly or in large part, either the modes of the manners of the Hindus who surrounded 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

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44 Ibid, P.114
45 Ibid, P.114
46 Ibid, P.114
distinction that influenced us to have a different sort of scheme for Assam from the one we have provided for other territories.\footnote{47}

In 1948, Nehru entrusted the drafting of the new code to a sub-committee of the Assembly and nominated Ambedkar as its head.\footnote{48} All this shows that Dr. Ambedkar was an able leader and a constitutionalist who contributed much for the constitution of India. It is right and fitting to call him the father of the Constitution.

**Constitution of India and the Tribals**

The main objective of Indian Constitution regarding the tribal folk is not to disrupt the harmony of tribal life but to work for its advancement, not to impose anything on them but to work for their integration in the national democratic set up. In the new federal structure of Independent India, a special place was assigned to the tribal areas. The founding fathers of the nation appreciated their unique social economic situation which was simple and which may require a complete different dispensation during the period of transition.\footnote{49}

Tribal development or administration of tribal areas was not formally assigned to the provisions made in the constitution. But these areas were brought under two schedules (Fifth and Sixth), for which special provisions were made. The “partially excluded” areas and some of the tribal area in the erstwhile Indian states were included in the Fifth Schedule. The excluded” areas were put under the Sixth Schedule. The Governor was given almost unlimited power in the Fifth Schedule to make Regulations for the scheduled areas. This regulation negates or


\footnote{48} Jaffer elo Christophe (2005), *Dr. Ambedkar and Untouchability*, Permanent Black, Delhi, P.115

modifies any law passed by parliament or State Legislature in its application to the entire fifth Schedule area or a part thereof. Special regulations can also be made for these areas under the same provision. Under the Fifth Schedule the Constitution also provided for establishment of tribes Advisory Council who are consulted by the Governor in relation to his regulation-making power. It shall be the duty of tribes Advisory Council to advice on such matter pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.\(^5\)

Article 244 makes applicable the provisions of the Fifth Schedule to the administration and control of the Scheduled Areas and Scheduled Tribes in any State specified in Part A and Part B of the Fifth Schedule, other than the State of Assam. It also mentions that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the state of Assam.\(^5\)

**Distinction between Fifth Schedule and Sixth Schedule.**

The fifth Schedule applies to the Scheduled Areas which have been specified in eight states and the Sixth Schedule applies to tribal areas which have been specified in four states. Under the Fifth Schedule laws passed by Parliament or by the State Legislature apply automatically to the Scheduled Areas unless the Governor declares it otherwise in respect of law or part thereof. Under the Sixth Schedule the position is quite different. The law made by the Parliament or State Legislature for Tribal Areas shall not apply unless the Governor extends that law to such areas. In

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\(^5\) Ibid, P.27
\(^5\) Ibid, P.28
one case, it applies unless excluded and in the other, it does not apply unless extended.\textsuperscript{52}

The Fifth Schedule confers substantial powers on the Governor which in practice are exercisable with aid and advice of the Council of Ministers. He can make laws by Notification or by Regulation. The Governor may exclude in the application an Act of Parliament or State Act in a Scheduled Area or may direct that it will be applicable subject to such expansion or modification as may be specified in his Notification. But so long as the Governor does not make any such notification, the general Acts of Parliament or of the State Legislature shall apply to the areas referres to in the Fifth Schedule. The Governor has been vested with Regulation-making powers for peace and good government and in particular, for prohibiting or restricting the transfer of land, by or among the members of the Scheduled Tribes, regulating the allotment of land and carrying on the business of money - lending in Scheduled Area. This power of the Governor extends to all the entries in the three lists that is, the Union List, the State List and the Concurrent List of the Seventh Schedule. The Only restriction to the exercise of this power is that Regulation must be made after prior consultation with the Tribes Advisory Council and approved by the President.\textsuperscript{53}

The Sixth Schedule envisages a special administrative mechanism of self government to the tribals inhabiting the tribal areas. The laws made by the Parliament or State Legislature do not run automatically in these areas unless applied

\textsuperscript{52} Verma R.C (1990). \textit{Indian Tribes Through the Ages}, by the Ministry of Information and Broadcasting Government of India, P. 151.

\textsuperscript{53} Ibid, P. 151
by a Notification of the Governor. The laws are either made by the District Councils or are applied by them.\textsuperscript{54}

The Administration of justice is achieved by District and Regional Councils through their own agencies. The Jurisdiction of the High Court and the Supreme Court over the District and Regional Councils is not barred. The power of High Court to entertain suits or cases of tribal areas is subjected to regulation by an order of the Governor.\textsuperscript{55}

The District and regional councils have their own funds. They enjoy power of taxation and establishment of certain local institutions and run primary schools, dispensaries etc.. They have complete autonomy so far as the powers and Jurisdiction are concerned. The veto is, however, exercised by the Governor who can annul or revoke their Acts or Resolutions or dissolve them and take over their administration.\textsuperscript{56}

In short, while the Fifth Schedule is paternalistic, the Sixth Schedule is participative. This mechanism ensures autonomy and effective participation of the tribals in the administration of their own affairs. In the case of Fifth Schedule, although the Governor has been vested with certain powers for ensuring their protection and better administration, there is no mechanism by which these provisions can be made operational. The exercise of powers under the Fifth Schedule has been left to the Governor or, in practice to the State Government.\textsuperscript{57}
Making of the Indian Constitution

The Constitution of India was adopted on 26th November, 1949 and promulgated on 26 January, 1950. It was the product of research and deliberations of the eminent persons representing the people of India. It is called as a borrowed constitution. The credit lies in the makers of the constitution by assimilating all the best in other countries constitutions.

In India the demand for a Constituent Assembly was implied in the demand for national freedom in December 1918. The 33rd session of the Indian National Congress, held at Delhi, unanimously adopted a resolution demanding that the principles of self-determination should be applied to India. The three round Table conferences held in London during 1930-32, the British Government had drafted its own proposals for constitutional reforms in India. Nehru’s proposal of a constitutional assembly was formally accepted by the Congress on 18th June, 1934 for the first time.

The demand for a representative constituent assembly for framing a Constitution, “Without any interference by a foreign authority” was repeated at the Haripura Session of the Congress (1938). The demand for a Constituent Assembly was for the first time officially conceded by the British government, though in an indirect and much reluctant way in the August Offer of 1940. The Cripps proposal (1942) envisaged the creation of a new Indian Union, which shall constitute a Dominion in no subordinate to any aspect of its domestic or external affairs “and outlined a concrete scheme for giving effect to the demand for a Constituent Assembly. Quit India Resolution, on 8th August said that the provisional
Government of free India would evolve a scheme of a constituent assembly which would prepare a constitution acceptable to all sections of the people of India.\textsuperscript{58}

\textbf{Composition of the Constituent Assembly}

In all, the Constituent Assembly was to have 389 members. As many as 296 of them were to be elected from British India and 93 were to be representatives of the native states. The Muslim League boycotted the Assembly and out of 296 members, only 211 attended its first meeting on December 9, 1946. The Constituent Assembly was opened on the 9\textsuperscript{th} of December 1946. During its first four sittings, it was involved with matters like the presentation of credentials and signing of the register, electing the permanent chairman, constituting a committee for Rules of Procedure, etc. On August 29, the Assembly adopted a resolution for setting up a Drafting Committee to prepare a constitution in accordance with the decisions taken by it on the reports of various committees. Ambedkar was appointed as the chairman of this committee. After nearly three years, the Assembly finally adopted the constitution on 26 November, 1949. In all, it held 11 sessions, covering 965 days about of which 114 days were devoted to consideration of the draft constitution.\textsuperscript{59}

\textbf{The Committees of the Constituent Assembly}

The Constituent Assembly had a total of more than fifteen committees with a membership of more than eighty individuals. Seven of them, such as the House and Staff committee have minor functions. The major committees were the Union powers Committee, the Union Constitution Committee, the Advisory Committee on Minorities and Fundamental Rights, the Committee on Chief Commissioners


\textsuperscript{59} Ibid, P. 336-337
Provinces, the Committee on Financial provisions of the Union Constitution and the Advisory Committee on Tribal areas. These Committees submitted their reports between April-August 1947, which were considered by the Constituent Assembly. On the basis of these conclusions, the final shape and form were given by Ambedkar and his colleagues in the Drafting Committee.60

The Drafting Committee

The Constituent Assembly appointed a drafting committee on 29th August 1947, to consider the draft Constitution. Ambedkar was appointed as the chairman of the drafting committee and it had six other members namely, Sir Krishnaswami Ayyangar, N.Gopalaswami Ayyangar, K.M.Manshi, Sayyed Mohammed Sadulla, Sir B.L. Mittar and D.P. Khaitan. After the first meeting, Sir B.L.Mittar ceased to be a member and in his place N.Madhava Rao was nominated by the President on 5th December, 1947. The drafting committee embodied the decision of the assembly with alternative and additional proposals in the form of a “Draft Constitution of India,” which was published in February 1948. It took less than six months to prepare its draft. It sat only for 141 days.61

60 Ibid, P.337
61 Ibid, P. 337
Tribal development was the concern of every Indian ruler from the time immemorial. Every Act which was passed by the British, for the development of India had a portion of it as the tribal welfare measures. While making the Indian Constitution, the framers took great care to provide proper constitutional measures for the tribal areas of North East and debated in the Constituent Assembly. To assist the Assembly in this purpose, a Sub-Committee was formed to report on the North East Frontier (Assam) Tribal and Excluded Areas. This Sub-Committee was to work under the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas. The Sub Committee was to have the then premier of Assam, Shri Gopinath Bordoloi, as its Chairman. Other persons who acted as full members of the Committee to start with were:

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

The Committee which was formed on 27th February, 1947, extensively toured the Province of Assam, as it then included visits to Lushai Hills Districts, North Cachar Sub-Division, Mikir Hills and the Naga Hills district. The Committee could not visit the Garo Hills district on account of bad weather and difficult communications. Jowai Sub-Division of Khasi Hills district could not also be visited for the same reason. The committee also noted the anxiety of the hill people about their land and fear of exploitation by more advanced persons, especially the money
lenders because of which control of immigration was desired. The Sub-Committee after great deliberations submitted its Report on 28th July, 1947 to Shri Ballabh bhai Patel the Chairman, Advisory Committee on fundamental Rights. The report dealt in detail with various aspects relating to administration of tribal areas. These aspects included thoughts on development, special features of these areas, land, forest, jhumming, courts, finance, control of immigration, mines, legislation, representation, services etc. The Advisory Committee discussed the matter on 7th December, 1947 and 24th February, 1948. The Draft of the Schedule was submitted to the President. The Draft Committee further examined the matter in the light of comments and criticisms of the draft which was circulated to all concerned and decided to sponsor some of the amendments suggested and to recast the language of some paragraphs as appeared in the reprint of the draft which was forwarded on 26th October, 1948.

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

When the matter was debated in the Constituent Assembly, mainly three different shades of opinion came to be expressed. Shri Brajeswar Prasad was of the opinion that Assam was near to other six countries. So it should be the responsibility of the president to see the administration of Assam. He was against having Provincial autonomy. He said that he prefer central administration for these areas.

This will be the best form of Government for Assam.

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62 Justice Hansari B.L.(2005), Sixth Schedule to the Constitution, Revised by Vijay Hansaria, Universal Law Publishing Co., P. 8-9
63 Ibid, P.10
So he said “I am thoroughly opposed to paragraph 2. I am opposed to the division of India into Provinces. I can never be a party to dividing Assam into a large number of sub-provinces. This is exactly what Sub-Paragraph (4) of paragraph (2) does. I am opposed to the District councils and Regional Councils because they will lead to the establishment of another Pakistan in this country”.

Again he continued “I will not jeopardize the interest of India at the altar of the tribals. The principle of self-determination has worked havoc in Europe. It has been responsible for two world wars in my life-time. 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. I do not find myself equal to the task of supporting the formation of these district and Regional Councils on the ground that the principle of self-determination must be supported by all. Let those who believe in political shibboleths support the provisions of paragraph 2. I am strongly opposed to it.

Shri Kuladhar Chaliha spoke on the same telling that too much autonomy to the tribals would result in creation of “tribalstan just as you have created a Pakistan”. According to him the ultimate result will be that “you will create a Communistan”. His view is that we need not keep the tribals away from us so that in times of trouble they will be helpful to us.

Shri Chaliha was very - sore about the provision that even an Act of Parliament could not be made applicable unless the tribals consented to it. He stated:

“Have you ever heard that an Act of Parliament cannot be applicable to any people unless they agree to it? Such a thing is impossible and therefore I say that this Schedule has been conceived in a way the background of which is to keep them away from us and to create

65 Ibid, P.3
a Tribalstan. And the result will be that there will be a Communistan there. The Communist will come and they will have a free hand, as in Manipur one of the Ministers was already a Communist. Your Governor will not be able to act; your Parliament will not be able to act. If you go on like this we will have no government there. The whole schedule is conceived in a way which is a negation of government".66

Shri Rohini Kumar Chaudhuri: After hearing the speeches made by others members on the floor of the House on the question of protection of the interests of the tribal people he gave his views on the subject. According to him India lost lot of the prosperous areas on account of the policy of appeasement. On the same way if we give autonomy to the tribal areas it is quite sure that India is going to loose the entire tribal areas with people. He asked the Constituent Assembly to make 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”67 He also pointed out specially two persons from Assam Mr.Nichols Roy and Mr.Bardoloi the Premier of Assam who wanted autonomous District. Shri Rohini Kumar Chaudhuri was completely against giving autonomy to tribals.

Shri A.V.Thakkar the member of the Sub-Committee stated that the idea of Autonomus district was something new for him. But he said, because of the persuasion of his friends he came to know that this is the only possible solution. He stated that: “the system of autonomous districts should be kept there for future modifications when the proper time comes for the same. There is no reason why we should fear this autonomus districts business and should not make the most of it, as if it were giving away or making States within States for or permanent period. It is not

65 Ibid, P.2
67 Ibid, P.8
for a permanent period. All constitutions are changeable, all laws are changeable and we can change the law, change the constitution, when you think the time is ripe for it". Mean time he requested every one to study as best as one could about the tribals and their situation.68

Shri Gopinath Bardoloi the Premier of Assam who did not want to join the debate found that it was necessary to speak on this occasion. He explained to the Constituent Assembly the background in which the draft had been prepared. His views are expressed here.

"It is not unknown to you that the rule of the British Government and the activities of the foreign Missions always went together. These areas were formerly entirely excluded areas in the sense that none from the plains could go there and contact them. That was the position till 15th August 1947, when India became independent. The foreign rulers till then had in these areas power to send out of the place any one they desired within 24 hours. Again Sir, some of these areas were war zones. During the war, the then rulers and officers developed in minds of these tribal people a sense of separation and isolation and gave them assurances that at the end of the war they will be independent States managing their affairs in their own way. They were led to believe that the entire hill areas would be constituted into a province and put under some irresponsible Governor. You might have read in the papers that plans were hatched in England in which the ex governors of Assam evidently took part, to create a sort of a Kingdom over there." 69 This is the background in which they had started their investigation in these regions.

Sir it is necessary to mention here that there are certain institutions among these hill tribals which, in my opinion, are so good that, if we wanted to destroy

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68 Ibid, P.14
69 Ibid, P.4-5
He stated: "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 way of living have not been abolished and another kind of culture thrust upon them by force. That is why the sub-committee though the best way to satisfy these people is towards tribals. The tribals loved him and respected him for his honesty and simplicity towards them. He visited the tribal areas and had the knowledge about their culture and traditions which was prevailing in the hill areas.

Shri J.J.M. Nichols Roy: He was also a member of the Sub-Committee. He himself being a Hillman he felt the need of the tribals and spoke for them. He pleaded for Autonomous districts for the tribals in Assam. He stood for Universal brotherhood and said that the advancement can come only by assimilation of the higher culture, higher mode of thinking and not by force. According to him self-Government will make the tribals feel that the whole of India is sympathetic to them and nothing is going to be forced on them destroy their feeling and culture. He reminded that for the smooth functioning of the frontier area tribals should be kept in a satisfied manner. If force is used no advancement can come there.

Now with that background the draft was prepared and was placed before you. In the meantime, great changes have come in the structure of the Government of India. Lore powers are being vested in the Centre today than it was contemplated then. Therefore those powers at present have to be put in the appropriate place".  

It is also worth mentioning that Mr. Bardolai was known for his kindness towards tribals. The tribals loved him and respected him for his honesty and simplicity towards them. He visited the tribal areas and had the knowledge about their culture and traditions which was prevailing in the hill areas.
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.”

Shri Jaipal Singh. A tribal leader himself, he said, “I wish people would talk with Knowledge”. He gave two solutions for tackling these tribal situations in the frontier Area: One that is power solution and the other is knowledge solution. He also said that we should not suspect the intentions of the tribal people of Assam. “Now the British are gone and it is for us to handle the situation. We must inspire confidence in our fellow citizens, in the hearts of the tribals of those hills. Let us do that and let us do it genuinely and sincerely, and not try to run them down and think of them as though they were hostile to the Indian Union.”

Dr. B.R. Ambedkar: He is of the view that the tribals of Assam differed from the tribals of other states. The latter have assimilated the culture and civilization of the people in whose midst they live. But the tribals of Assam are not that. Their roots are still in their own culture and civilization. Their laws of inheritance, their laws of marriage, custom, etc are quite different from that of the Hindus. This influenced them to have a different sort of scheme for Assam, from the one they have been provided for other states. He stated that the population of Assam is cut up into two water-tight compartments namely tribals and non tribals. One can learn from each other, influence each other, and can come politically together. He pointed out that the misunderstandings between the leaders are because of the ignorance of the Schedule and of the inadequate reading of the same.

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72 Ibid, P.16
73 Ibid, P.11
Further Ambedkar stated: “I was rather surprised at the attitude taken by my Friend, Mr. Chaliah, in moving his amendment, also at the attitude of my Friend, Mr. Rohini Kumar Chaudhuri. I feel that they are not now a happy and united family. What is the cause of it I do not understand, but I can say that, when these amendments were made, they were made with the consent of Mr. Chaliah, they were made with the consent of the Premier of Assam, and also with the consent of my Friend Mr. Nichols Roy, who is a principal party concerned in this. I see they are now indulging in criticizing each other because of factors which lie outside this Schedule. I can not find any other reason for this dissonance, for this open dissonance and hostility which has been exhibited by one against the other, and I do not wish therefore to enter into what is a purely domestic quarrel.”

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

Indian constitution is not the product of one day or two days work. It has got a long history behind. All the Acts which were passed by the British Government is one of the aspects which helped the constitution makers to draft this constitution. Especially starting from the Regulating Act of 1773, Pitt,s India Act of 1784 charter Act of 1813, Charter Act of 1833, Revolt of 1857, Indian Councils Act of 1861, Indian Councils Act, 1892, Minto-Morley reforms1909, Montague-Chelmsford Reform Act, 1919 and Government of India Act 1935. And the Indian Independence act 1947.

74 Ibid, P.20
When we come closer to the Constitution we can understand that many people have sacrificed their time and talents for this cause. The Constitution makers had taken more than three years to complete this constitution. One of the most important person who sacrificed his life for this cause is Dr.B.R.Ambedkar. Without him our constitution could have been incomplete. As we go through the Constituent Assembly Debates we see the role played by Dr.Ambedkar. The service he rendered for the upliftment of the untouchables, Scheduled Caste and Scheduled Tribes is note worthy. The outcome of Ambedkars political carrier was definitely mixed. He obtained major concessions from the British by collaborating with them and his politics made an impact during the constitutional debates when he gained more concessions for the Scheduled Caste and the Scheduled Tribes.

The tribes constitute a small but important element in India’s population. The Constitutional debate which had taken place in the constituent Assembly for the welfare of the Scheduled Caste and the Scheduled Tribes is well appreciated by the People of North East. Especially the stand taken by the Premier of Assem Mr.Gopinath Bardolai and J.J.M.Nichols Roy who stood for autonomy for the tribal areas. And for some place they wanted autonomous districts and district councils. If something was granted to the Assam and for the tribals it was because of their effort.