Chapter VIII

THE FRAMING OF THE SIXTH SCHEDULE

On 4th March 1948, Sardar Vallabhbhai J. Patel, Chairman of the Advisory Committee on Minorities, Fundamental Rights etc. submitted to the President of the Constituent Assembly the report of the Bardoloi Committee. Sardar Patel indicated that, acting upon the earlier suggestion made by the Advisory Committee on the 7th December 1947, the Drafting Committee of the Constituent Assembly had already incorporated in the Draft Constitution the recommendations of the Bardoloi Committee.

While drafting the Sixth Schedule of the Draft Constitution, the Drafting Committee closely associated itself with the Members of the Bardoloi Committee particularly G.N. Bardoloi, Rev. Nicholas-Roy, Rup Nath Brahma and some other members of the Constituent Assembly from Assam like Kuladhar Chaliha and Rohini Kumar Choudhury. The Sixth Schedule of the Draft Constitution embodied the recommendations of the Bardoloi Committee.

It is curious to note that the recommendations of the Bardoloi Committee did not say a word about the future status and position of the Khasi States. In other words, the Bardoloi Committee did not appear to contemplate to bring the Khasi States within the purview of the Sixth Schedule. Even the Drafting Committee did not contemplate to bring the Khasi States under the framework of the Sixth Schedule. That was the reason why the Drafting Committee did not consult G.S. Guha who was the representative of the Khasi States.
in the Constituent Assembly. Another very strange thing was that
when the Draft Constitution was presented to the Constituent
Assembly the Khasi States were nowhere to be found in any provi-
sion of the Draft Constitution.

The main reason for this fact was that the Khasi States
were still conducting their negotiations directly with the
Ministry of States. After a long protracted negotiation, it was
finally agreed that the future position of the Khasi States under
the new Constitution should be decided by the Khasi States them-
seves, in close association with the Dominion Agent. The Dominion Agent
thereby issued a notification that the Khasi States should have the
Constitution Making Durbar which would consist of all the heads of
the Khasi States and other members to be elected by the people on
the basis of direct adult suffrage. The said Durbar should also
have power to nominate some members. Rules for the election were
framed by the Dominion Agent. The election to the Khasi States
Constitution Making Durbar was held during the month of December, 1948.
This election was fought in nearly all constituencies between the
candidates belonging to the Khasi-Jaintia Federated State Conference
and the candidates belonging to the Khasi States Peoples' Union.

The Constitution Making Durbar consisted of 89 members - 25
heads of state, 56 elected and 8 nominated members. The inaugural
session of the Khasi States Constitution Making Durbar took place
on 29th April 1949 at 11 A.M. The Session was inaugurated by Sri

1. (a) Letter No.1440/C, dated Shillong, the 15th December 1947
from the Adviser to the Governor of Assam to the Secretary
of the Federation of Khasi States.
(b) Letter No.764/90, dated Shillong, the 15th October 1948
from the Dominion Agent, Khasi States to the rulers of
Khasi States.
Prakasa, the Governor of Assam. In his inaugural speech, the Governor thanked the Rulers of the Khasi States for having signed the Instrument of Accession and the Standstill Agreement. He urged upon the members of the Durbar to consider the possibility of including the Khasi States within the purview of the Sixth Schedule of the Draft Constitution. N.N. Phukan, Dominion Agent of the Khasi States also spoke in the meeting. But he did not indicate any line of action to be taken by the Durbar. The second session of the Khasi State Constitution Making Durbar was held on 16th May, 1949. The only business transacted on that day was the voting by the members for the election of nominated members. On the 17th May, 1949, Dr. H. Lyngdoh was elected as Chairman and Prof. R.R. Thomas was elected vice-Chairman. Then the meeting devoted itself to a discussion on the Rules of Procedure and other allied matters. Jormanick Syiem who had already become Secretary of the Federation of the Khasi States was elected Secretary of this Durbar. The Second session continued till 20th May, 1949.

In the meantime, A. Alley sent notice to the Secretary indicating his intention to move the following Resolution in the next Session of the Durbar:

"As the Khasi States are going to be joined under one administration with the District of Khasi and Jaintia Hills (Non-States Areas) and as in the agreement also made between the Government of India and the Province of Assam on the one hand and the Khasi States on the other hand, in Part V of the Agreement regarding legislation, the Khasi States has the option of sending representatives to the Assam Legislative Assembly this Constitution Making Durbar of the Khasi States, in view of this connection with
the Assam Province in various administrative functions earnestly urge the Assam Government to take early steps to allot at least 5 (five) seats for the District of Khasi and Jaintia Hills including the Khasi States, and one additional seat for the Town of Shillong i.e., 6 (six) seats in the Assam Legislative Assembly and, therefore, to take early steps to prepare electoral rolls for the people in the Khasi States also".

But later on A.Alley informed the Secretary that he would not move the Resolution as the Resolution prepared by Rev.Nichols-Roy was, according to him, a better one.

The third session of the Khasi States Constitution Making Durbar lasted from 11th to 21st July, 1949. During the first three days, the Durbar devoted itself mostly to procedural matters. The main issue came up for discussion on 14th July 1949 when Rev.Nichols-Roy was given permission by the Chairman to move the following Resolution:

"This Constitution Making Durbar of the Khasi States consisting of the Heads and elected Representatives of the people of these States realising the urgent need for a United Administration of the 25 Khasi States and the non-State Areas in the District of Khasi and Jaintia Hills, having a large measure of Self-Government and feeling the necessity of being connected with the Government of Assam in higher spheres of administration, and being convinced that such said United Administration and said connection are possible under the provisions of the Draft Constitution of India as to the Administration of the Tribal Areas in Assam relating to the autonomous Districts and Regions (and of the Agreement entered into between the Dominion of India and the Province of Assam on the one hand and the Khasi States on the other hand) with necessary...

modifications or adjustment to suit conditions in the Khasi States do hereby solemnly declare their ardent desire for the formation of the Autonomous Unit of Khasi and Jaintia Hills, comprising the 25 Khasi States and non-States Areas of the District of Khasi and Jaintia Hills, as for having one united administration for the Union of Khasi and Jaintia Hills be so formed under the said provisions of the Draft Constitution of India; and resolve to request the higher Authorities concerned (namely, His Excellency the Governor of Assam as Agent to the States Ministry in India, and the Government of Assam) to take immediate necessary steps to bring about the said Union and United Administration”. The Resolution also contained the suggestion that a Committee of 18 members might be elected by the Durbar to negotiate with the authorities concerned as to the manner in which the above-mentioned United Administration, connection and modification or adjustment might be brought about.

In his long printed speech, Rev. Nichols-Roy advocated for a unified administration for the State and non-State areas of Khasi and Jaintia Hills because of the fact that the people of the District belong to the same Khasi race. He dwelt at length about the advantages that the District might derive from the provisions of the Sixth Schedule of the Draft Constitution.

On 15th July, 1949, the Chairman informed the Durbar that he had received an amendment to the Resolution moved by Rev. Nichols-Roy from Mr. G.G. Swell. The amendment which Swell intended to move runs as follows:

"This constitution Making Durbar of the Khasi States, consisting of the Heads and Elected Representatives of the people of these States, realising the urgent need for maintaining the traditional Democratic Institutions of the Khasi States and for one Administration of the Twentyfive Khasi States and the Non-States Areas in the District of Khasi and Jaintia Hills, having a large measure of self-government and being convinced that such Administration is possible under the framework of the constitution of India and of the Instrument of Accession and the Annexed Agreement entered into between the Dominion of India and the Province of Assam on the one hand and the Khasi States on the other hand, with necessary modifications and for adjustments to suit conditions in the Khasi States, do hereby SOLEMNLY DECLARE their ardent desire for the maintenance of their traditional Democratic Institutions, the formation of the UNION of the Khasi and Jaintia Hills, comprising the twentyfive Khasi States and the Non-States Areas of the District of Khasi and Jaintia Hills, and for having one Administration DIRECTLY CONNECTED with the CENTRE, with a local legislature for the UNION to be so formed under the said provisions - and

RESOLVED: to move the Authorities concerned to take immediate steps to preserve our traditional Democratic Institutions and to bring about the said UNION and Administration."

The amendment also suggested that a committee of 14 members might be elected for the purpose of negotiation. Before the Chairman was about to ask G.G.Swell to move his amendment, A.Alley, stood up to oppose the amendment. According to him the amendment was imperfect
and it was not in accordance with the law or in accordance with any provision of the Draft Constitution. A long debate followed. G.G. Swell made a long speech to justify his proposed amendment. But at the end of the debate, it was decided that Dr. Lyndoh, Prof. Thomas, Rev. Nichols-Roy, Mr. Alley, Syiem Jirang — and G.G. Swell be deputed to seek the clarification from the Governor and the Premier of Assam. This Committee met both the Premier and the Governor of Assam in the same evening.

On 16th July, 1949 the Chairman gave a report about the clarification given by the Premier and the Governor of Assam. The Chairman further said that both the Premier and the Governor were keenly interested in a unified administration. Furthermore the Governor was of the opinion that the Government of India did not want to increase the number of Units. Another long debate took place on this issue.5 The majority of the members belonging to the Khasi-Jaintia Federated States Conference like A. Alley, M. Jahrin and others supported the view of Rev. Nichols-Roy. But the majority of the rulers and the members belonging to the Khasi States people's Union like Miss Mavis Dunn Lyndoh, Rosaiah Nongrem, D. Ropmay and others supported the amendment proposed to be moved by G.G. Swell. In his long speech, Prof. R.R. Thomas pointed out the defects of the Sixth Schedule of the Draft Constitution.6 According to him the word "chiefs" found in the Sixth Schedule did not apply to the Khasi Rulers because whereas the Rulers of the Khasi States had

signed the Instrument of Accession, the Chiefs of the other Tribal Areas did not have such agreement. Rosaiah Nongrem said that "the Sixth Schedule is not the house for the Khasi States". He pointed out that "the Sixth Schedule is the house for the non-State areas". 7

The discussion on the subject continued on the 18th and 19th July 1949. On the 20th July 1949, the Chairman informed the Durbar that he had received notice from Syiem Jirang that he proposed to move an amendment which sought to amend the amendment of G.G.Swell. The Amendment ran as follows:— 8

"This Constitution-Making Durbar Of The Khasi States consisting of the Heads and elected Representatives of the people of these States realizing the urgent need for a United Administration of the 25 Khasi States and the non-State Areas in the District of Khasi and Jaintia Hills, having a large measure of self-government and the necessity of being connected with the Government of Assam in higher spheres of administration, and being convinced that such said Administration and such said connection are possible under the provisions of the Draft Constitution of India as to the Administration of the Tribal Areas in Assam relating to the Autonomous Districts and Regions, (and of the agreements entered into between the Dominion of India and the Province of Assam on the one hand and the Khasi States on the other hand) with necessary modifications or adjustments to suit conditions in the Khasi States, do hereby solemnly declare their ardent desire for the formation of the

7. Ibid. p.37.
8. Ibid. p.72.
Autonomous Unit of Khasi and Jaintia Hills, comprising the 25 Khasi States and the non-State Areas of the District of Khasi and Jaintia Hills, and for having one united administration for the Union of Khasi and Jaintia Hills to be so formed under the said Provisions of the Draft Constitution of India; and Resolve to request the higher authorities (namely His Excellency the Governor of Assam as Agent to the States Ministry in India, and the Government of Assam) to take immediate steps to bring about the said Union and united administration.

This Durbar further resolves that a Committee of the members of the Durbar mentioned herein below (5 of whom to form a quorum) be appointed to negotiate with the said authorities as to the manner in which the above mentioned united Administration connection and modifications or adjustments may be brought about.


Immediately G.G.Swell withdrew his own amendment in favour of the amendment of Siem Jirang. On the 21st July, 1949 the Chairman read out the amendment of Syiem Jirang. Then he read out the original Resolution moved by Rev. J.J.M.Nichols-Roy. Thereafter the Chairman put the first part of Syiem Jirang's amendment to vote and the motion was carried by a majority of 46 to 40. But before the Chairman put the second part of the amendment which contained the personnel of the Negotiating Committee the 40 members refused to participate any further and all the 40 members staged a walk-out.
Then the Durbar appointed the following personnel as members of the Negotiating Committee:-


This Resolution was sent to the Drafting Committee of the constituent Assembly. Thereafter, it appears from the newspaper and pamphlets of the day that there were certain correspondences between the Negotiating Committee and the Ministry of States as well as with the Drafting Committee of the Constituent Assembly. But the contents of those correspondences have not yet been made public. But according to different testimonies, some members of the said Negotiating Committee were attempting to get a separate Schedule in the Constitution for the Khasi and Jaintia Hills.

It is to be observed that it was for the sake of the unity of the Khasis of Khasi and Jaintia Hills that such Resolution had to be adopted. From the constitutional point of view, the Khasi States Constitution Making Durbar could have adopted a Resolution concerning the Khasi States alone. There were no members from the non-State areas in the said Durbar. The said Durbar could have made a demand to get a more favourable provision in the Constitution similar to Article 370 of the Constitution which relates to Jammu and Kashmir. But by trying to bring the non-States areas in the same unified pattern of administration with the State areas, the Drafting Committee thought that the Khasi States were willing to join with the non-State Areas under any pattern of administration.
That was the reason why the Chairman of the Drafting Committee was thinking of bringing an amendment to paragraph 19 of the Sixth Schedule of the Draft Constitution.

THE SIXTH SCHEDULE IN THE SECOND READING

The Sixth Schedule was taken up at the Second reading on 5th September, 1949. The most important issue raised during the discussion was the question of principle whether to have such provision at all in the Constitution. Let us examine this controversy in greater detail. Kuladhar Chaliha was against the very principle of the Sixth Schedule when he said:

"If you see the background of the 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. The ultimate result will be that you will create a Communist. . . . . .

It is said that they are very democratic people, democratic in the way of taking revenge; democratic in the way that they first take the law into their own hands. And it is threatened by some that they are so democratic that they will chop off our heads. . . . . .

There is no need to keep any Tribalstan away from us so that in times of trouble they will be helpful to our enemies."

Brajeswar Prasad was also opposed to the District Council because, according to him "they will lead to the establishment of another Pakistan in this Country". He further said: "to vest wide political powers into the hands of tribals is the surest method of inviting chaos, anarchy and disorder throughout the length and

11. Ibid. p.1009.
breadth of this Country". But it must be said that Prasad did not have any proper knowledge of the North Eastern Area. Further he was a believer in a unitary State. He was opposed even to the division of India into provinces.

Rohini Kumar Choudhury was also opposed to the formation of the District Council. He was one of the greatest protagonists of the policy of assimilation. He openly declared: "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. Why do you want to dissociate them from us by creating these autonomous districts which will remain autonomous? Do you want an assimilation of the tribal and non-tribal people, or do you want to keep them separate? If you want to keep them separate, they will combine with Tibet, they will combine with Burma, they will never combine with the rest of India, you may take it from me".

On the other hand, there were other members who supported the formation of the District Council. Lakshminarayan Sahu, A.V. Thakkar and Jaipal Singh supported the spirit of the Sixth Schedule. Jaipal Singh, a tribal himself said: "I must confess that I have been shocked by the amount of venom that has been poured forth this morning by some of the members against what they imagine the tribal people of Assam are going to do, if this or that is passed by this House. It was after considerable difficulty and negotiations that the tribal people of Assam were persuaded to agree to the recommendations". A.V. Thakkar also said that "The Committee tried its best and put forward the proposal which was

12. Ibid. p.1015.
13. Ibid. p.1017.
acceptable not only to the Committee but also to the various tribes themselves — I mean this system of autonomous districts.¹⁴

Rev. Nichols-Roy strongly supported the spirit of the Sixth Schedule. In the first place, he pointed out that the hill people have better culture and better polity than the people of the plains. Secondly, he said that District Council would satisfy the hill people. "To keep the frontier areas safe, people must be kept in a satisfied condition," Rev. Nichols-Roy claimed. But from the text of his speech, it appears that Rev. Nichols-Roy was not fully satisfied with the limited powers given to the District Councils.¹⁵

Gopinath Bardoloi strongly supported the Sixth Schedule and justified that by constituting the District Councils in the tribal areas, the tribal people would be able to come closer with the people of the rest of the Country.¹⁶

From the above, it is evident that there were some leaders in North East India who wanted to assimilate the hill people even by force if necessary. They displayed an imperialist attitude and superiority complex. They could not see the distinction between integration and assimilation. This is unfortunate. It was this attitude which was responsible for the future disintegration of Assam. According to popular concept, assimilation involves a total loss of cultural identity of a group which is being assimilated and its complete absorption into the dominant group on the terms of the latter. It is this type of attitude of the leaders of the dominant group which generates fear in the mind of the minorities. Usually, its leads, to tensions, antagonism, and increasing alienation.

¹⁴. Ibid. p.1019
¹⁵. Ibid. pp.1020-24
¹⁶. Ibid. pp.1010-12
each from the other. It must be noted that in a democratic country like India, the minority communities usually develop defence mechanism to defend their rights as well as to protect their identities. Such conflicting attitudes on both sides seriously interferes with the building of a nation. Generally, there are certain minimum norms which must be accepted by all to build a strong stable nation. For building up a strong nation, the cultural identities of all groups must be respected and that the cultural identities of the minorities should not be eliminated. In modern concept, it must be borne in mind that the main criterion must be to encourage the feeling of economic interdependence rather than to emphasise cultural differences. Therefore, one should not lay emphasis on assimilation but must encourage integration.

With great authority on the subjects, Dr. Ambedkar strongly refuted and rebutted all the allegations levelled against the spirit of the Sixth Schedule. The arguments advanced by him were so solid, factual and realistic that the Constituent Assembly understood the full justification for the creation of the District Councils. 17

Another very interesting constitutional controversy took place on the 7th September 1949 when the Chairman of the Drafting Committee, Dr. B.R. Ambedkar moved his amendment to paragraph 19 of the Sixth Schedule of the Draft Constitution. The controversial issue was Sub-paragraph (2) which runs as follows: 18 "The united Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this constitution were known as the

Khali States and the Khali and Jaintia Hills District, excluding any areas for the time being comprised within the contonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khali State of Mylliem".

There was discussions on two basic issues. The first issue was the inclusion of the Mylliem State areas falling within the Shillong Municipality. Let us now examine the views expressed by members on this issue. Pandit Hirday Nath Munrzu expressed the view that the Mylliem State areas of the Shillong Municipality should not be included within the framework of the Sixth Schedule. Rohini Kumar Choudhury and Kuladhar Chaliha also expressed the same view.

On the other hand, Gopinath Bardoloi and Rev. Nichols-Roy defended the amendment. Rev. Nichols-Roy said: "I think this House has understood that the Shillong Municipality is composed of two areas which were called before, the British area and the Mylliem State area, and no act of the Provincial Legislature or of Parliament could be applied to this Mylliem State area unless agreed to by the Mylliem State authorities; but for municipal purposes the Mylliem State had given the power to the local Government and that is only for municipal purposes. The land still belongs to the Mylliem State".

B.Das was very critical of the amendment when he said: "I am very sorry that a great liberator like Dr. Ambedkar should introduce such an anachronism in his amendment."

22. Ibid. p.1077.
disenfranchises the civil liberties of people of the Shillong Municipality and makes the people of educated class to depend on primitive people. Sir, I hate the provision of Sixth Schedule whereby you are perpetuating primitive conditions of life. The British spies through the help of British and American Missions and communists are coming through these tribal areas and for that, Reverend Nichols-Roy will be held responsible.

But, Dr. Ambedkar replied to all the charges with calmness. He met all the arguments with full force and great reasoning power. He said that "the part of the Mylliem State which is included in Shillong will form part of the United Khasi-Jaintia Hills District." Further, he pointed out: "It is realised that this part of the Mylliem State is really subject now under the new provisions of paragraph 19 to two separate jurisdictions. It is subject to the territorial jurisdiction of the Municipality of the Shillong Municipality, because by this provision we are not altering the boundaries of the Shillong Municipality. It is recognised that this double jurisdiction, namely the United Khasi-Jaintia Hills District and the Municipality might come in conflict." In order to overcome that difficulty a proviso to sub-clause (2) was added. The effect of the proviso was that there would be no conflict between the two authorities.

The second issue that was raised during the debate was the inclusion of the Khasi States within the purview of the Sixth Schedule.

Pandit H.N. Kunzru said: "I am all in favour of establishing local self-government in areas that were formerly known as partially excluded areas that is, the Khasi and Jaintia Hills district minus

23. Ibid. p. 1077
the Khasi States that were at that time quite distinct from
the British administered portion of the Khasi and Jaintia Hills
district, the Garo Hills district and the Mikir Hills district”. Further he pointed out thus:25 "I know, Sir, that negotiations
are being carried on for the merging of the twenty five Khasi
States in the Khasi and Jaintia Hills District but even when
this amalgamation has taken place, there will be no reason why
the Shillong Municipality should be deprived of any area of any
part of the area that it control now”. It is strange to note that the Khasi States' representative,
G.S. Guha did not speak a word during the course of the discussion.
When the Amendment was put in the form of a motion, it was carried.

Observations on the position of the Khasi States:

First of all, let us examine the implications of the
amendment to paragraph 19 of the Sixth Schedule of the Draft
Constitution which in its final form becomes paragraph 20. This
amendment involves consequential amendment to the first schedule
of the Draft Constitution pertaining to the territory of Assam
which in its final form becomes like this: "The territory of the
State of Assam shall comprise the territories which immediately
before the commencement of this constitution were comprised in the
province of Assam, the Khasi States and the Assam Tribal Areas".26
It is not understood how the Constituent Assembly merged the Khasi
States in Assam despite the fact that the rulers of the Khasi States
had not signed the Instrument of Merger as was done by Cooch Behar

and other States which were merged with their neighbouring States further no notification was issued by Government to that effect. Further again, the Negotiation Committee of the Khasi States Constitution Making Durbar was still pressing for a separate provision for the Khasi States in the Constitution of India.

Secondly, posterity will be left in the dark as to why G.S. Guha remained silent in the Constituent Assembly.

Thirdly, it is not clear what kind of understanding Rev. Nichols-Roy got from the Ministry of States regarding the fact that Mylliem and other Khasi States were willing to be included in the Sixth Schedule? In fact the contents of the "White paper on Indian States" issued by the Ministry of States in 1950 gives a different picture. The Ministry of States classified the acceeding States into five categories: 27 (a) States which were not affected by the process of integration and continued as separate units, (b) Unions of States, (c) Centrally merged States, (d) Provincially-merged States, and (e) the Khasi Hill States Federation.

Further, the Ministry of States admitted that: "The Khasi Hill States on the North east of India were not affected by the process of integration until the inauguration of the new Constitution". 28 Then, how the Khasi States were merged in Assam? To this question, the Ministry of States gave the following explanations:

First, "In practice the administration of the Hill States was in a great measure assimilated to that of the province of Assam partly by the application of the British Indian laws under the Foreign jurisdiction order in council and partly by administrative

28. Ibid. p. 45.
measures adopted with the concurrence of the Khasi Chiefs". The Ministry of States seemed to have ignored the facts that these arrangements were regulated by treaties, agreements, sanads and purwanas executed between the British government on the one hand and the Khasi Rulers on the other hand, and that all these treaties, agreements, had lapsed immediately after India got its independence.

Secondly, the Ministry of States explained thus: "The Khasi Hills States had formed a Federation of their own and had both individually and collectively acceded to the Dominion of India subject to the provisions of an agreement. The Instrument of accession empowered the Dominion Legislatures to make laws for the Khasi States in respect of any matter. The agreement, which formed part of Instrument of Accession provided inter alia for unified legislation on subjects of common interest to Assam and the Khasi Hills States. Constitutionally, therefore, the position of the Khasi Hills States Federation approximated to that of the Chief Commissioner's province". Here also, it appears that the Ministry of States had side-tracked the said agreement. In fact, the said agreement provided that "such power should continue in force until new or modified arrangements have been arrived at between the two authorities concerned". The fact is that none of the Khasi Rulers agreed that the Khasi States should be merged in Assam. Moreover, if the Khasi Hill States Federation was to be considered as a Chief Commissioner's province, a notification to that effect would have been published as it was in the case of Manipur and Tripura.

Thirdly, the Ministry of States pointed out that "One
solution for these areas was to merge them outright with the surrounding province of Assam. It was, however, considered desirable to preserve some of the tribal traditions and customs of the Khasi States. Accordingly, under the constitution of India the Khasi States have been included in the Sixth Schedule along with Assam Tribal Areas. But the question arises how did the Khasi State areas come to be merged with Assam? In all cases of States merged with the neighbouring States, notifications were published by virtue of an order under section 2904 of the Government of India Act, 1935, but, that was not the case with the Khasi States.

Lastly, after the Constitution, was adopted on 26th November 1949 all Unions of States, viz, (1) Patialia and East Punjab States, (2) Saurashtra, (3) Travancore-Cochin, (4) Rajasthan and (5) Madhya Bharat; Hyderabad, Mysore, and Jammu and Kashmir issued a proclamation that they had accepted the Constitution of India. But none of the Khasi States issued such proclamation. On the other hand U Sati Raja, Syiem of Mylliem filed a suit in the Federal Court of India against the Dominion of India and the Province of Assam in December 1949 wherein he claimed that since all treaties, Sanads and agreements had lapsed, Mylliem State should get back all the territories which the British had taken possession.32

Efforts were made for a compromise, and eventually an agreement, was arrived at between Sri Prakasa, the Governor of Assam and U Sati Raja, the Syiem of Mylliem on 31st December, 1949. The following is the full text of the agreement.

"Agreement made this thirtyfirst day of December 1949, between

31. Ibid. p. 46.
32. Case No. V of 1949."
the Governor General of India of the first part and U Sati Raja, Syiem of the State of Mylliem on behalf of himself and of the Durbar of the State of Mylliem of the second part.

Whereas in the best interest of the State of Mylliem as well as of the Dominion of India it is desirable to provide for the administration of the said State by or under the authority of the Dominion government.

It is hereby agreed as follows:-

Article I

The Syiem of Mylliem hereby cedes to the Dominion Government all rights, jurisdiction and sovereignty over his State.

Article II

In conformity with the Khasi laws, customs and usages so far as they apply to the State of Mylliem and subject to the laws of the Constitution in force at that time:-

(1) U Sati Raja, present Syiem of Mylliem shall continue to receive his present monthly allowance of Rs.2,500/- (Rupees two thousand and five hundred) as long as he is recognised as Syiem.

(II) He will be afforded all necessary protection and co-operation in the discharge of his duties.

(III) He will be allowed to fly his flag as long as he continues as such Siem.

(IV) U Baldwin, Adviser to the Siem will receive an allowance of Rs.600/- (Rupees six hundred) per month as long as government are satisfied that his services are in the interest of the people.

Article III

The party of the second part shall withdraw the suit instituted by it in the federal court of India in its original jurisdiction against the Dominion of India and the Province of
Assam, being case No. V of 1949.

**Article IV**

No enquiry shall be made except by or under the authority of the Governor of Assam, and no proceedings shall lie in any court in the Khasi and Jaintia Hills District, against the Siem of Mylliem whether in a personal capacity or otherwise in respect of anything said or admitted to be done by him or under his authority during the period prior to the date of the execution of this agreement.

**Article V**

Except with the previous sanction of the Governor of Assam, no proceeding civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duties as a servant of the State before the date of the execution of this agreement.

In confirmation whereof His Excellency Shri Sri Parakasa, Governor of Assam, has appended his signature on behalf and with the authority of the Governor-General of India, and U Sati Raja, Siem of Mylliem, has appended his signature on behalf of himself and of his Durbar.

Article II of this agreement can be considered as a proclamation that the Siem of Mylliem had accepted the constitution. Such kind of an arrangement in the case of other Khasi States should have been arrived at but that was not done.

The method by which the Khasi States were brought under the frame-work of Sixth Schedule and thereby merged them in Assam was unorthodox. The method employed was not in line with all accepted norms by which the Ministry of States had conducted with the other Indian States.
It is not understood how Rev. Nichols-Roy thanked the Drafting Committee and the Constituent Assembly for having bought the Khasi States under the District Councils. But speaking in the Third Reading of the Draft Constitution on 21st November, 1949 Syed Muhammad Sa'adulla, a member of the Drafting Committee observed thus:33

"Sir, the Khasi Hills have been relegated to the Sixth Schedule for which Rev. Nichols-Roy is very thankful, but there is a constitutional anomaly. Although the Constituent Assembly is not to find a remedy for that, yet I must sound a note of warning that this small district of Khasi Hills embraced 25 Native States most of which have treaty rights with the suzerain power in Delhi. They were asked to join the Indian Dominion in 1947. Instruments of Accession accompanied by an agreement were executed by these Chiefs and they were accepted by the Central Government. But though even this area has been included in the Sixth Schedule, up till now no agreement of settlement has been arrived at between the Constituent Assembly of the Federation of the Khasi States and the Assam government or the Government of India. I do not know what will happen to these areas or people after 26th January 1950. A deputation headed by the President of the Federation of Khasi States came early this month to Delhi to press their grievances before the States Ministry as well as the Drafting Committee. The Drafting Committee met them and they had two simple request to make. They are the most democratic of all democratic people. Their native Chiefs are elected by all the people in their territory by adult franchise. The Chiefs could be removed as well by the people. They want that the system should continue. The second thing which is in

in the heart of all people in that part of the world is that these chiefs are only territorial chiefs. They have no right over the land. The land belongs to the people. Their ancient sacred rights of ownership of land in the territories of their chiefs, they want to preserve, but they are afraid that section 3 of the Sixth Schedule gives a loophole for doing away with that right. They want a simple provision that these two rights may not be disturbed by the District autonomous councils".

Further, Sa'adulla remarked: "some may say that the District Autonomous Council will consist of their own representatives but membership is limited to twentyfour and three-fourth of it only is to be elected, and the rest one-fourth has been left in the air. I do not know whether these seats will be filled up and by what process, whether by nomination and if by nomination by whom, or by any other form of indirect election. I know that these Khasi people are late in the day and nothing can be done at the third reading but I request those honourable members who will continue to be members of the Constituent Assembly even after the 26th January 1950 to see that this wrong of the Khasi people is righted in no time, for the contentment and peace of this area will greatly conduce to the safety and preservation of the boundaries of the Indian Dominion".

On 25th January, 1950 all papers, documents and properties of the Federation of Khasi States were seized by the Officers of the Government of Assam. But even after 26th January 1950, it may be said that they still existed as States. In the Assam Extraordinary Gazette dated 25.1.1950, the Khasi State (Administration of Justice) Order, 1950 signed by the Deputy Adviser to the Governor of Assam for excluded Areas in the State was published.
This order continued to be in operation till it was repealed by the United Khasi-Jaintia Autonomous District (Administration of Justice) Rules, 1953. In fact the Khasi States became reconciled with the provisions of the Sixth Schedule only after the general election on 1952 where people from both the erstwhile states and non-States areas participated fully in electing members to the District Council, the Assam State Legislative Assembly and to the House of the people.

A question may be asked - why the Negotiating Committee of the Khasi States Constitution Making Durbar failed to realise the objectives of the Federation of Khasi States? First, the Federation of Khasi States made a fatal mistake when it handed over the responsibility of negotiation - with the Ministry of States to a Negotiating Committee. Secondly, the resolution passed by the Durbar gave an indirect indication that the Khasi States could reconcile themselves in any provision of the Constitution provided that both the states and non-states areas would have a unified administration. Thirdly, the Negotiating Committee failed to settle with the Ministry of State before the Draft Constitution was taken up at the Second Reading. Fourthly most of the members of the Negotiating Committee depended solely on the advice of a few top Advisers who were no longer active. Although they had long experience in administration or teaching, yet their age would not allow them to be active. The younger leaders were still inexperienced both in administration, constitution-making or practical politics. Fifthly, after the 21st July, 1949 many Rulers of Khasi States left their stand and joined the party headed by Rev. Nichols-Roy. Even the Sirdar of Mawlong resigned his membership from the Negotiating Committee. Sixthly, the most important problem was finance. Most of the Khasi States were
poor, and as such, the Syiem of Mylliem had to bear the maximum amount of expenditure during the period of Negotiation. The resignation of the Syiem of Mylliem from the Negotiating Committee was really a fatal blow. Lastly, the Negotiating Committee treated all correspondence that it had with the Ministry of States as matter of top secret. The Chairman of the Khasi States Constitution Making Durbar did not even summon the session of the Durbar in order that he might take it into confidence. That was the reason why, they were always late to take any follow-up action. Hence the circumstances conspired and compelled the Khasi States to reconcile themselves with the Sixth Schedule.

The decision of the Constituent Assembly on the recommendations of the Bardoloi Committee:

Let us now consider the decision of the Constituent Assembly on the recommendations of the Bardoloi Committee. Classification of Areas: The Bardoloi Committee classified the Hill areas into two categories - autonomous and non-autonomous areas. It recommended that the autonomous Districts might be divided into Autonomous Regions if there are many tribes in such districts.

The Drafting Committee accepted this recommendation in toto. But the Constituent Assembly while accepting the recommendation, brought about a new change in the area of Khasi and Jaintia Hills so as to include the Khasi States including the Mylliem State areas of the town of Shillong within the Khasi and Jaintia Hills Autonomous District, thereby this autonomous district came to be known as the "United Khasi-Jaintia Hills Autonomous District".

34. (a) Draft Constitution.
(b) Report, Bardoloi.
(c) Constituent Assembly Debates - Second Reading.
Administrative Areas: The Bardoloi Committee recommended that the Government of Assam might from time to time, by notification include any non-autonomous area as an autonomous district subject to the approval of the Federal Government. Further, except in pursuance of a resolution passed by the District Council of an autonomous district, the Government of Assam should not notify any autonomous district or part of such district, as ceased to be an autonomous district or a part thereof.

The Drafting Committee accepted the recommendation of the Bardoloi Committee that no autonomous district should be excluded from the list of autonomous districts or diminish the area of an existing autonomous district without the consent of the District Council concerned. Originally, the Drafting Committee was of the opinion that the tribal areas were those included in the table attached to the Sixth Schedule. The Governor was not authorised to define the boundaries of the areas included in the table. But the Constituent Assembly authorised the Governor to include any area in and to exclude any area from Part A of the said table, to create a new autonomous district, to increase or to diminish the area of any autonomous district, to unite two or more autonomous districts into one autonomous district, and to define the boundaries of any autonomous district.

Strength of the District Councils: The Bardoloi Committee recommended that each autonomous District Council should have not less than twenty and not more than forty members of whom not less than three-fourths should be elected by universal adult suffrage. The Drafting Committee accepted this suggestion, but the Constituent Assembly decided not to fix the minimum. It decided that each District Council should not have more than twenty four members, of
whom, not less than three-fourths should be elected by adult suffrage.

Formation of Constituencies: The Bardoloi Committee suggested that the constituencies for the election to the District Council should be so constituted in such a manner that the different tribals or non-tribals should elect a representative from their own tribe or group. It was also suggested that no constituencies should be formed with a total population of less than 500. The Drafting Committee accepted this suggestion. But the Constituent Assembly deleted that sub-paragraph dealing with constituencies, because, in the words of Dr. B.R. Ambedkar, "we propose to leave the delimitation of constituencies to rules rather than provide it in the constitution".

Regional Council: The Bardoloi Committee recommended that Regional Councils might be formed for such area or group of areas which are inhabited by different tribes within an autonomous district. This suggestion was accepted both by the Drafting Committee and by the Constituent Assembly.

Chairmanship of the Council: The Bardoloi Committee recommended that the District or the Regional Council might frame rules regarding the election of the Chairman. But in the case of the Mikir Hills and the North-Cachar Hills, the Deputy Commissioner or the Sub-Divisional Officer as the case might be should be the Chairman ex-officio for a period of six years after the first constitution of the District Council. Both the Drafting Committee and the Constituent Assembly accepted this view.

Powers of the District and Regional Councils: The Bardoloi Committee recommended that the District or the Regional Council should have power to make laws for the area under its jurisdiction.
regarding (a) Allotment, occupation or use for agricultural, residential or other non agricultural purposes, or setting apart of land other than land classed as reserved forest under the Assam Forest Regulation, 1891 or other law on the subject applicable to the district. But land required by the State Government for public purposes should be alloted free of cost if vacant, but if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land, (b) The management of any forest other than a reserved forests, (c) The use of canal or water courses for agriculture, (d) Jhumming, (e) The establishment of village or town committees, (f) All other matters relating to village or town management including village or town police, public health and sanitation.

It should also have power to make laws regarding (a) the appointment or succession of Chiefs or headmen, (b) inheritance of property, (c) Marriage and all other social customs. It should also have power to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and water-ways. In particular, it might prescribe the language and the manner in which primary education should be imparted. Both the Drafting Committee and the Constituent Assembly accepted these recommendations.

Administration of Justice: The Bardoloi Committee recommended that the District or the Regional Council, or a court instituted by it should have all the powers of a final court of appeal in respect of cases between parties belonging to hill tribes. But it should not have power to try cases where non-tribals would be involved. Further it should not have the power to try cases which would involve offences punishable with imprisonment for five years or more, transportation for life, or with death under the Indian Penal Code.
but for cases where in which one or more of the parties would be non-tribals, the State Government might confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case might be on the District or Regional council or courts constituted by them or an officer appointed by the State Government. The State Government might withdraw or modify powers conferred on the Council or any court or officer. The Drafting Committee and the Constituent Assembly accepted the spirit of this recommendation. The only change was that instead of powers being conferred on the State Government it was conferred on the Governor.

**District Fund:** The Bardoloi Committee suggested that a District or Regional Fund should be constituted into which should be credited all moneys received by the Council in the course of its administration or in the discharge of its responsibilities. Rules should be made for the management of the Fund subject to the approval of the Comptroller of Assam. Both the Drafting Committee and the Constituent Assembly accepted this principle. But the Constituent Assembly decided that the approval should be obtained from the Governor and not from Comptroller of Assam.

**Powers to impose Taxes:** The Committee proposed that the Council should have powers of taxation. Subject to the general principles of assessment approved for the rest of Assam, the Council should have power to assess and collect land revenue, poll tax or house tax. It should also have powers to impose taxes on (a) professions, trades or calling, (b) animals, vehicles and boats, (c) toll tax, (d) Market dues, (e) Ferry dues, (f) Cesses for the maintenance of schools, dispensaries or roads. The Council might make rules for the imposition and recovery of taxes with its financial powers. The Drafting Committee and the Constituent Assembly accepted these proposals.
Mines and Minerals: The Committee suggested that the Government of Assam should not grant any licence or lease for the purpose of prospecting or extracting minerals within an Autonomous District without consulting the District Council concerned. All royalties accruing therefrom should be shared between the State Government and the District Council as might be agreed upon by both parties. In default of agreement, such share should be determined by the Governor in his discretion. The Drafting Committee accepted this formula. But the Constituent Assembly did not accept the principle of licences or leases to be issued by the Government of Assam because mines and major minerals had already been made central subjects.

Money lending and trading by non-tribals: The Committee recommended that the District Council might make rules or regulations for the purpose of regulating and controlling the profession of money lending or trading by non-tribals. It might prescribe that no one except the holder of a licence should carry on the business of money lending. It might prescribe the maximum rate of interest. It might provide for the maintenance of accounts and for their inspection by its officials. It might also prescribe that no non-tribal should carry on whole sale or retail business except under a licence issued by the District Council. Rules or regulations could be made only by a majority of not less than three-fourths of the total membership of the District Council. Both the Drafting Committee and the Constituent Assembly accepted this recommendation.

Representation in the Provincial Legislature: The Bardoloi Committee proposed that the number of members representing an autonomous District in the provincial legislature should be in proportion to the population of the District. Further the total
number of representatives allotted to the Autonomous District should be in accordance with the same proportion to the total population. Furthermore, it was suggested that no constituencies, should be formed for the purpose of election to the provincial legislature which might include portion of other Autonomous Districts or other areas nor should any non-tribal be eligible for election except in the constituency which would include the cantonment and Municipality of Shillong. The Constituent Assembly accepted these suggestions. But since election was made a central subject, the Constituent Assembly did not think it proper to include any provision relating to the subject in the Sixth Schedule of the Constitution.

Application of Union and State Legislation: The Bardoloi Committee recommended that the District Council or Regional Council might apply any legislation passed by the Provincial legislature to the area under its jurisdiction, with or without modification. The Drafting Committee went a step further and said that the Governor, by public Notification might direct that any Act of Parliament or of the Legislature of the State should not apply or should apply to any autonomous district or region, subject to such exceptions or notifications as he might think proper with the approval of the council concerned "if the resolution recommending the issue of such direction is passed by such district/ Council, or such Regional Council as the case may be". But the constituent Assembly omitted the second part which dealt with the approval of the District or Regional Council.

Financial Accounts: The Committee was of the opinion that the revenue and expenditure pertaining to an autonomous district which would be credited to or met from the funds of the Government of Assam should be shown separately in the annual financial statement of the province.
Further, it recommended that the Central Government should pay to the provincial Government such capital and recurring sums as might be necessary to meet the average excess of expenditure over the revenue and to meet the cost of development schemes that might be undertaken in such Autonomous Districts and Autonomous Regions.

The Drafting Committee accepted these views. Therefore, the second suggestion was incorporated in Article 275 of the Constitution. But so far as the first suggestion was concerned, the Constituent Assembly made further modification that the estimated receipts and expenditure should "be first placed before the District Council for discussion" and after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State.

Appointment of the Commission: The Bardoloi Committee recommended that the Governor might at any time institute a Commission to examine and report on any matter relating to the administration of any autonomous district or districts on such matters as the provision of education and medical facilities and communications, the need for any new or special legislation, and administration of laws, rules and regulations made by the District and Regional Councils. The report of such Commission with the recommendation of the Governor should be placed before the provincial legislature by a Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken. The Governor might appoint a special Minister for the Autonomous Districts. Both the Drafting Committee and the Constituent Assembly accepted these recommendations.
Application of the Provisions of the Sixth Schedule to Areas specified in Part B of the Table: The Bardoloi Committee recommended that the Provincial Government, with the approval of the central Government, might by notification, apply any provision in the Sixth Schedule to any non-autonomous area specified in part B of the table, or any part thereof, and might also exclude any such area or part thereof from the said part B. Till such notification is issued, the administration of any of these areas should be carried on by the Central Government through the Government of Assam as its agent.

The Drafting Committee authorised the President to issue the notification. Till such notification is issued, the administration of those areas should be carried by the President through the Governor of Assam. The Constituent Assembly further added that "the Governor shall act in his discretion".

Control of the District and Regional Councils: The Bardoloi Committee recommended that if the Governor of Assam was satisfied that any act or resolution of a Regional or District Council was likely to endanger the safety of India, he might "in his discretion" amend or suspend such act or resolution as he might consider necessary. It also suggested that the Governor might dissolve the Council or take over the administration from such Council. The Governor should place the matter before the provincial legislature, as soon as possible, and the legislature might confirm or set aside the decision of the Governor. The Committee also wanted that district officers of Mikir Hills and North-Cachar Hills should have the power to annul or modify or suspend any act or resolution passed by the District Councils. The Drafting Committee, while accepting the suggestions refused to authorise the District officers to exercise such powers. But, it went a step further by
empowering the Governor to supersede the District Councils and assume to himself all or any power of the District Council. The Constituent Assembly accepted this view. But the Constituent Assembly did not agree that the Governor should act "in his own discretion".

Tribal Advisory Council: The Bardoloi Committee suggested that the Governor should carry on the administration as under the 1935 Act till a Council was set up. He should take action to constitute the District Council or Regional Council and to frame rules in consultation with the existing tribal councils or other representative organisations, for the conduct of elections, and to prescribe who should be office bearers and such like matters. The term of the first Council should be for one year. Both the Drafting Committee and the Constituent Assembly accepted these suggestions.

By the month of May 1950, Tribal Advisory Councils were constituted in all the Autonomous Districts except Naga Hills. Although these Tribal Advisory Councils had no statutory basis, yet they were treated as provisional District Councils.

The formation of the District and Regional Councils: In 1952, District Councils were constituted in all the Autonomous Districts except the Naga Hills. On 1st December 1964 the "Jowai Autonomous District Council" was established by diminishing the area of the United Khasi-Jaintia Hills District.