

## **Annexure - VI**

### **1.1 The Sixth Schedule to the Constitution (Amendment) Bill, 2003**

The Bill seeks to create an autonomous self-governing body to be known as the Bodoland Territorial Council (BTC) within the State of Assam under Schedule VI of the Constitution of India which shall have legislative, administrative and financial powers in respect of specified subjects. The Bill further seeks to provide for adequate safeguards for the non-tribals in the BTC areas in regard to rights and privileges including land rights presently enjoyed by them at the commencement of BTC.

During his deposition before the Committee on 26 June 2003, the Joint Secretary (NE), Ministry of Home Affairs traced the genesis of the Bill and informed the Committee that the Bodos were the largest recognized plain tribe in Assam comprising 1.2 million people or 5.3% of the total population of Assam of 22.4 million as per 1991 census. They were chiefly inhabitants of Dhubri, Kokrajhar, Bongaigaon, Barpeta, Nalbari, Kamrup and Darrang Districts of Assam.

1. He also apprised the Committee that the Bodo problem primarily arose due to perception of negligence of the Bodo areas by successive Governments in Assam since independence, influx of migrants from other parts of Assam, West Bengal, Bihar and Bangladesh, which led to alienation of tribal land, though prohibited by the Assam Land Revenue (Rules and Regulations) 1886 and search for separate Bodo identity. The proposed BTC areas would also include other tribes living in Deori, Hojai, Kachari including Sonowal, Lalung, Mech, Miri and Rabha.

He further stated that in order to address and solve the Bodo problem, the Government of India signed the Bodo Accord on February 20, 1993 with All Bodo Students Union and Bodo People's Action Committee with the following salient features:

(i) A Bodoland Autonomous Council (BAC) to be formed by an Act of Assam Legislative Assembly;

(ii) The Council to have powers to make by laws, rules and orders for application within the BAC areas on the specified subjects;

(i) The geographical area of the BAC as agreed upon can be changed with the mutual consent of the BAC and the Government of Assam;

(ii) The BAC will have power to regulate trade and commerce within its jurisdiction,

in accordance with the existing laws;

(iii) The Government of Assam will deposit in the BAC fund, revenue collected from the tea gardens falling within the BAC area;

(iv) The BAC would also receive grant-in-aid from time to time within the principles and policies enunciated by the Government of India; and

(v) The Government of Assam and the BAC will jointly ensure that all rights and interests of the non-tribals as on date living in the BAC area in matters pertaining to land as well as their language are protected. In pursuance of the Bodo Accord, the BAC Act was passed by the Legislative Assembly of Assam which came into force on 13 May 1993. The Act provided for the establishment of an administrative authority known as Bodoland Autonomous Council (BAC) and for certain matters incidental and connected thereto.

2. Joint the Secretary further stated that the BAC had, however, failed to achieve the objectives for which it was set up and the Bodo groups were of the view that Bodo Accord had become unworkable due to non-implementation of the Accord in letter and spirit and were making renewed demands for separate State of Bodoland for the following reasons.

(i) No elections could be held to the General Council of BAC so far;

(ii) There was also dispute over the areas to be included in the BAC;

(iii) BAC had no legislative powers; and

(iv) Allocation and transfer of adequate funds for development works to BAC was not assure

Thus, the BAC had failed to achieve the objectives for which it was set up leading to renewed demand for separate State of Bodoland.

3. It was against this backdrop that the Government of India initiated a fresh process

of dialogue with the Bodos in September 1997. In response to the initiative of the Central Government, the Bodo Liberation Tigers (BLT) unilaterally suspended its operations with effect from 14 July 1999. This was followed by a series of tripartite talks between Government of India, Government of Assam and BLT. After twenty one rounds of tripartite talks, a Memorandum of Settlement (MoS) was signed on 10 February 2003. The main terms of agreement inter alia include:

(i) Creation of an Autonomous District to be known as Bodoland Territorial Council (BTC) Areas District within the State of Assam and provision of Constitutional protection under the Sixth Schedule to the Constitution of India.

(ii) The Government of Assam to repeal the BAC Act, 1993 and dissolve the existing Bodoland Autonomous Council (BAC);

(iii) Adequate safeguards to ensure that the non-tribals in the BTC area are not disadvantaged in relation to any rights and privileges including land rights presently enjoyed by them at the commencement of BTC;

(iv) Increasing the number of members for BTC upto 46 out of which 30 will be reserved for Scheduled Tribes, 5 for non-tribal communities, 5 open for all communities and 6 to be nominated by Governor of Assam from the unrepresented communities from BTC area of which at least 2 should be women. Nominated members will have the same rights and privileges as other members, including voting rights. Election for 40 constituencies of the BTC shall be on the basis of adult franchise. The term of the elected members of the BTC shall be for 5 years;

(v) (v) The Council shall have legislative, executive, administrative and financial powers in respect of 40 subjects to be entrusted to it;

(vi) Additional financial assistance of Rs. 100 crore per annum (over and above normal plan assistance to the State of Assam) for next five years for projects to develop the socio-economic infrastructure in BTC areas;

(vii) The Government of India has also agreed to consider favourably the inclusion of Bodo language in Devnagri script in the Eighth Schedule to the Constitution;

(viii) A Centrally funded Central Institute of Technology (CIT) to be set up to impart education in various technologies and vocational disciplines such as information technology, bio-technology, food processing, rural industries, business management, etc. The CIT to be subsequently upgraded to a centrally-funded State University with technical and non-technical disciplines to be run by the BTC; and

(ix) The Government of India to consider sympathetically the inclusion of Boro Kacharis living in Karbi Anglong and North Cachar Hills Autonomous Councils area in the Scheduled Tribes (Hill) List of State of Assam.

2. Here, it may be pertinent to compare the distinct features of the proposed BTC under the Sixth Schedule to the Constitution and the BAC under the State Act:

a) The BTC will be created under the Sixth Schedule to the Constitution of India whereas the BAC was created under the State Legislation;

b) The number of members for the BTC will be 46, out of which 30 will be reserved for Scheduled Tribes, 5 for non-tribal communities, 5 open for all communities from BTC areas of which at least 2 will be women. On the other hand, the number of members of BAC was 40, of which, 30 seats were reserved for Scheduled Tribes and 10 seats were open seats;

c) BTC will have a defined territory whereas BAC territory was not defined;

d) Elections will be ensured in BTC after every five years, while no elections could take place in BAC in the last ten years;

e) BTC will have legislative powers over specified subjects which was not so with BAC;

f) Adequate safeguards for the non-tribals in regard to rights enjoyed by them including land rights have been provided in the BTC and the existing representation of Scheduled Tribes and non-scheduled tribes from BTC area in the State Assembly is to be kept intact.

Further, while touching upon the earmarked area and population of the proposed BTC, the Joint Secretary stated that 3082 villages were to be included in the BTC area. Besides, a decision was to be taken to add 95 more villages in it. He informed that the total area of BAC as against proposed BTC included 2941 villages and approximately 8300 sq. kms. of land with a population of around 25 lakhs. Out of which total Bodo population was 9.84 lakhs. However, the area as well as population of the proposed BTC may undergo slight change with the increase in number of villages.

5. The Joint Secretary also apprised the Committee of the steps already taken by the Government to implement the Memorandum of Settlement such as repeal of BAC Act, 1993 and dissolution of BAC by the State Government, agreement on 3082 villages to be included in BTC, consideration of proposal for grant of Scheduled Tribe (Hill) status to Boro Kacharis living in North Cachar Hill and Karbi Anglong districts as also the proposal for inclusion of Bodo language in the Eighth Schedule to the Constitution. The allocation of Rs.100 crore per annum to BTC and establishment of centrally funded Central Institute of Technology was also under consideration of the Government.

6. While justifying further the inclusion of proposed BTC in the Sixth Schedule to the Constitution, he drew the attention of the Committee to the recommendation of the National Commission to Review the Working of the Constitution that the Sixth Schedule should be extended to the BAC with protection for non-tribal and non-Bodo groups.

7. Before winding up the presentation, the Home Secretary proposed further additions/amendments in the Bill which was under consideration of the Committee. Explaining the need for additions/amendments in the Bill, the Joint Secretary stated that in the State of Assam, Scheduled Tribes were divided into two categories viz. Scheduled Tribes of Autonomous Districts and Scheduled Tribes of areas other than Autonomous Districts. Bodo Kacharis were at present included in the list of Scheduled Tribes of areas other than Autonomous Districts and were popularly known as Scheduled Tribes (Plains). Consequent upon the formation of BTC Area District and its inclusion in the Sixth Schedule to the Constitution of India, the Bodo Kacharis residing in the plain districts of Assam would stand disqualified from the Scheduled Tribes (Plains) status. In order that Bodo Kacharis continue to enjoy the Scheduled Tribes status, amendments were proposed to be carried out in the Schedule to the Constitution (Scheduled Tribes Order, 1950) in Part-II Assam as under:

i. In item No.I "in the Autonomous Districts" be substituted by "in the Autonomous Districts of Karbi Anglong and North Cachar Hills",

ii. In item No.II for "in the State of Assam excluding the Autonomous Districts" be substituted by "in the State of Assam including the Bodoland Territorial Council Areas District and excluding the Autonomous Districts of Karbi Anglong and North Cachar Hills".

8. He informed the Committee that the proposed additions/amendments would be included in the Bill as "Miscellaneous Provisions".

9. After due deliberations, the Committee expressed its whole hearted support to give a fair trial to the tripartite agreement signed by the Government of India, Government of Assam and the Bodo Liberation Tigers (BLT) on 10 February 2003 by way of the proposed legislation.

10. The Committee then took up clause-by-clause consideration of the Bill.

11. The Committee having adopted the clauses of the Bill without any amendments and having approved the Government amendments to be included as 'Miscellaneous Provisions' in the Bill, recommends that it may be passed.

### **1.2 The Constitution (Ninety-ninth Amendment) Bill, 2003**

This Bill is a natural corollary to the Sixth Schedule to the Constitution (Amendment) Bill, 2003 which has been dealt with in Chapter-I of this Report. Accordingly, this Chapter is devoted to the Constitution (Ninety-ninth Amendment) Bill, 2003. This Bill has also emanated from the Memorandum of Settlement (MoS) signed between the Government of India, Government of Assam and Bodo Liberation Tigers (BLT) on 10 February 2003. It fulfills one of the terms of the agreement which reads as under:

"Provisions of Article 332(6) of the Constitution will be so modified that the existing status of representation of BTC area in the State Assembly is kept intact. After the creation of BTC, the Parliamentary & Assembly Constituencies shall be delimited by the Delimitation Commission in accordance with the provisions of the Constitution."

Thus, this term of the MoS seeks to protect the existing status of representation of proposed BTC area in the State Assembly by way of amending Article 332(6) of the Constitution.

2. Before having a look at the provisions of the proposed Bill, it may be pertinent to delve into Article 332(6) of the Constitution. It stipulates that no person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be

eligible for election to the Legislative Assembly of the State from any constituency of that district.

### **2.1 Thus, Article 332(6) prohibits election of non-tribals to the State Legislative**

Assembly from the constituencies which fall within an autonomous district. Now with the creation of one more autonomous district in the State of Assam, namely, Bodoland Territorial Council Area District, the provision under Article 332(6) will also apply mutatis mutandis to it unless it is amended or modified otherwise. In other words, if the provision under Article 332 (6) is not amended, it will deprive the non-tribals living in BTC area of their representation in the State Assembly. Hence, need for amendment.

3. Against this backdrop, this Bill seeks to insert a proviso in clause 6 of Article 332 of the Constitution which aims at protecting the political rights of the non-tribals by ensuring that the existing representation of scheduled tribes and non-scheduled tribes from the proposed BTC areas in the State Assembly remains intact.

4. The Home Secretary along with other officials made a brief power point presentation on the Bill before the Committee in its meeting held on 26 June 2003.

5. The Committee also took up clause-by-clause consideration of the Bill in the same meeting.

6. The Committee, having adopted the Bill without any amendments, recommends that it may passed.

-----XXXX-----