

B.L. HANSARIA'S SIXTH SCHEDULE TO THE CONSTITUTION (3<sup>rd</sup> ed., 2010) by Vijay Hansaria. Universal Law Publishing Co. Pvt. Ltd., C-FF-IA, Dilkkush Industrial Estate, G.T. Karnal Road, Delhi-1100033. Pp. xxix+648. Price: Rs. 795/-.

PART X of the Constitution of India consisting of articles 244 and 244-A deals with 'the Scheduled and Tribal areas'. There are, however, several specific provisions in the Constitution which concern either tribal areas or tribal population inhabiting different parts of the country.<sup>1</sup> The areas to which part X applies have been treated differently from other areas of the country because of their peculiar socio-economic and political conditions.<sup>2</sup> Bardoli committee had reported to the Constituent Assembly that "the general proposals for the administration of these areas must be based upon the distinct social customs and tribal organizations of the different peoples, their religious beliefs... the fear of exploitation by the people of the plains..."<sup>3</sup> The conditions in tribal areas of Assam, Meghalaya, Tripura and Mizoram are quite different from those in the other tribal areas. Administration of tribal areas in these states, therefore, have been dealt with separately under article 244A, clause (2) read with sixth schedule to the Constitution. The importance of the subject matter can be appreciated by the fact that sixth schedule is the largest in terms of number of words. A perusal of this schedule brings out three prominent features: status of local bodies, position of governor and administration of justice. These features have great importance not only for local people but also for Indian 'Union' and the conception of 'federalism', nationalism

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1. The constitution contains several special/separate provisions in respect of north-eastern regions or tribal areas/population in other parts of the country, *viz.* articles 164, 243M, 243C, 275, 342, 371, 371A- 371C, 371F,371G, 371H, 366(25), *etc.*

2. M.P. Jain, *Indian Constitutional Law* (5<sup>th</sup> ed., 2003).

3. B. Shiva Rao, 5 *Framing of India's Constitution: A Study* 569 (2<sup>nd</sup> ed., 2004). The Tribal and Excluded Areas Sub-Committee was one of the three sub-committees of the Constitution Advisory Committee. The report of this sub-committee forms the basis of the provisions of part X and sixth schedule of the Constitution.

and sub-nationalism. Any academic work will have to be evaluated on the basis of its capacity to contribute in the above respect.

The present, third edition of the book under review,<sup>4</sup> authored by B.L. Hansaria, J. and revised by Vijay Hansaria, a senior advocate of the Supreme Court of India, is a 'comprehensive compendium' of information related to sixth schedule, giving an in-depth analysis of the constitutional provisions with reference to the recent decided cases on the subject. The claim of the author that the book is a must for all those concerned with the working of the sixth schedule specially the lawyers, judges, government and district councils is fully justified by his endeavors. It is an important addition to the subject which fills the vacuum in this branch of law.

The book is divided into eight chapters spread over 189 pages along with sixty-eight appendices running into 446 pages. Chapters I and II of the book are very interesting, giving a detailed insight into the reasons behind the introduction of the sixth schedule to the Constitution. Chapter III deals with the amendments of the sixth schedule. A total of ten amendments have taken place, with the latest one in 2003, forming the Bodoland territorial council. In this third edition, a new chapter has been added titled 'Constitutional Provisions relevant to North Eastern States'.<sup>5</sup> This chapter provides an analysis of all the relevant constitutional provisions at one place, easily accessible to the readers. The author through the medium of RTI<sup>6</sup> has provided up-to-date information about the working of the constitutional provisions for the tribal areas under consideration.

Chapter V captioned 'Analysis of Paragraphs' is the most important part of the book.<sup>7</sup> It contains analysis of all the 21 operative paragraphs of the sixth schedule. Paragraphs 1 to 19 confer powers on the district councils to administer, legislate and decide disputes in the tribal areas of Assam, Meghalaya, Mizoram and Tripura. These provisions also confer discretionary powers on the governors of Assam, Mizoram and Tripura on certain matters mentioned in paragraphs 20BA and 20BB. There are no special provisions, however (like paragraphs 20 BA and 20BB) so far as the mode of exercise of powers by the governor of Meghalaya is concerned. Thus, the governor of Meghalaya is required to act on the aid

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4. Vijay Hansaria, *B.L. Hansaria's Sixth Schedule to the Constitution* (3<sup>rd</sup> ed., 2010).

5. *Id.*, at 29.

6. *Id.*, at 31.

7. *Id.*, at 34.

and advice of the council of ministers in accordance with article 163 of the Constitution except for the limited purpose of settling dispute between District Councils and state government in the matter of sharing royalties for the extraction of minerals within the autonomous regions.<sup>8</sup>

In the present edition, the author has given a fuller treatment to the chapter on 'Analysis of Paragraphs'<sup>9</sup> by discussing threadbare important paragraphs like 2, 3, 4, 5 and 12, with abundant clarity and substantiating the same with recent cases. For instance, the jurisdiction of regional and district council courts under paragraphs 4 and 5 of the sixth schedule was examined at length by Ansari, J. in *Richard Lyndoh*.<sup>10</sup> In this regard, efforts made in the present edition are worth appreciation. Chapter VI captioned "Role of the Governor, President and State Legislature"<sup>11</sup> brings out very well the harmonious working of the constitutional bodies at the centre, state and tribal areas level. The discretionary powers of the governor<sup>12</sup> and the autonomy given to the district councils are so finely balanced that, in spite of special provisions for the Tribal Areas, there is a sense of assimilation not alienation, cooperation not triumphantly right consciousness. The original author an acclaimed judge of Supreme Court has expressed views as follows:<sup>13</sup>

The Sixth Schedule cannot be completely insulated from the rest of the Constitution and it is as much a part of the Constitution as in any other Schedule or provision.

The book also contains elements to tickle the mind of the readers. This element has been incorporated in the form of general and state-wise recommendation made by the national commission to review the working of the Constitution. Suggestion like implementation of centrally funded projects should be entrusted to the autonomous district council with the audit by CAG and anti-defection law should be made applicable to all

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8. The Constitution of India, para. 9(2) of the sixth schedule,.

9. *Supra* note 4 at 34.

10. *State of Meghalya v. Richard Lyndoh* (2006) 2 Gau LR 328.

11. *Supra* note 4 at 143.

12. *Shamsber Singh v. State of Punjab* (1974) 2 SCC 831, wherein the Supreme Court, while trying to find out the true position of a governor in the constitutional set up, had noted provisions of sixth schedule; *Satyoeswar Daolagupu v. Secretary to the Government of Assam*, AIR 1974 Gau. 20.

13. *Supra* note 4 at 148.

the sixth schedule areas.<sup>14</sup>

Before concluding, it may be pointed out that except for a few lacunae mentioned herein, the author's claim in the prefatory note of this edition is well supported. It is suggested that a book of this genre should have a foreword by an eminent person, authenticating its credibility and significance. This aspect should not have been overlooked. The price of the work is on a higher side especially for students.

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14. *Supra* note 4 at 589; *Report of National Commission to Review the Working of the Constitution* (2002), paras. 9.23-9.32.

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