

House will be Dr. Ambedkar's proposition namely amendment No. 121.

Shri Ramnath Goenka : Will there not be a consequential amendment in List II? In the State List certain powers are given to the State for taxes on sale as well as on advertisement. If this is transferred to List I, then the consequential amendment of which we have given notice...

Mr. President : The notice is that it be included in List I. If it is taken in List I then it goes out.

Shri Ramnath Goenka : But the exception will have to be provided for in List II in the entry; sale of goods excepting newspapers.

Mr. President : It is not necessary.

The Honourable Dr. B. R. Ambedkar : It is not a consequential amendment at all. Both the amendments are quite independent. One amendment is that the entry should be expanded by the addition of a new entry to be called 88-A. Then there is another amendment which is amendment to my amendment to entry 58 in List II dealing with sales tax. That amendment says that the word "goods" should be so qualified as to exclude newspapers. That will be dealt with on its own merits. The immediate question we have to deal with is whether List I is to be expanded, by the addition of entry 88-A in terms as moved here.

Shri Ramnath Goenka : The position is this. We have proposed an entry in List I that taxes on newspapers including advertisements therein, should be transferred to List I and that the Provinces should not have the authority to levy and taxes on newspapers. Therefore the amendment No. 57 is a consequential amendment to the amendment No. 122 in entry 58 in List II. So both these amendments will have to be taken together. Yesterday when this question of entry 58 in List II came before us, you put it off until you gave a ruling and said a decision could be taken together on these entries.

The Honourable Dr. B. R. Ambedkar : Take them one by one. Let both the amendments be put one after the other.

Shri Ramnath Goenka : May I suggest, Sir, that we put entry 58 in List II first and then 88-A?

The Honourable Dr. B. R. Ambedkar : You can have it in any way you like, but I want to tell you that voting in a particular manner on the second amendment would be inconsistent with voting on the first in another manner. It will be open to the House to accept the one and reject the other.

Shri Ramnath Goenka : I would like to have your ruling on this matter. If you transfer the taxes on newspapers to List I then it cannot have any place in List II also. If it has a place in List I then it necessarily goes out from List II.

The Honourable Dr. B. R. Ambedkar : It will go out of List II only so far as taxes are concerned. But so far as the sale of goods is concerned it would remain. You want to get that out also? Your object, if I understand, is two fold, namely, that the newspapers should not be liable to any duty and should not be liable to any tax under the Sales Tax Act also. I am not prepared to give you both the advantages, to be quite frank.

Shri Ramnath Goenka : May I request you, Sir, to hold this matter over till Monday morning so that we can put our heads together and come to you, because whatever the interpretation, what is said, is the object of our amendment. If that object is not carried we will have to put in other amendments. But that is our intention. We are only laymen and we will be guided by Dr. Ambedkar. The entire taxation should be taken away from the Provinces to the Centre. If that purpose is not being carried out I am afraid some other amendment will have to be moved which will have the effect of carrying out our intentions. These are our intentions.

Mr. President : Dr. Ambedkar, will you object if the matter is held over?

The Honourable Dr. B. R. Ambedkar : I will be quite frank about it. I have a mandate to accept entry 88A. I am prepared to follow that mandate and accept entry 88A. I have no such mandate with regard to the other thing (amendment No. 122). I am sure that it will be difficult to accept it. To have a complete exemption from any kind of taxation on newspapers is to me an impossible proposition.

Shri Ramnath Goenka : It is not so. I want taxation to be left to the Centre and not the Provinces. If I may tell Dr. Ambedkar, the mandate was that it should be taken away from the Provinces.

The Honourable Dr. B. R. Ambedkar : You are not to interpret the mandate for me. I know what it is. It is quite clear to me.

Shri Ramnath Goenka : As it is, I am interpreting it to you. (Interruption).

Shri Deshbandhu Gupta : Since Dr. Ambedkar has referred to the mandate I may make it clear that when this question was taken

up with the authority which gave the mandate, it was absolutely clear that the two amendments went together. We wanted this tax to remain a Central tax and not a Central as well as a provincial tax.

The Honourable Dr. B. R. Ambedkar : It is not right to refer here to matters discussed elsewhere. But, as I said, I am quite prepared to abide by that mandate. The other matter was brought in surreptitiously by our friends after they heard what I said in another place as to what a mess they had made by bringing in this amendment.

Shri Ramnath Goenka : As Dr. Ambedkar suggests that we have made a mess we want a way out of the mess.

(Interruption)

Mr. President : I find there is a much feeling in the matter. So we had better take it up on some other day when the feelings are a bit cooler....

FIFTH SCHEDULE

***Mr. President :** We will take up the Fifth Schedule.

The Honourable Dr. B. R. Ambedkar : (Bombay : General): Sir, I move:

That for the Fifth Schedule, the following Schedule be substituted :—

“FIFTH SCHEDULE

[Article 215-A(a) and 215-B(1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

PART I

GENERAL

1. *Interpretation.*—In this Schedule, unless the context otherwise requires, the expression “State” means a State for the time being specified in Part I or Part III of the First Schedule.
2. *Executive power of a State in scheduled areas.*—Subject to the provisions of this Schedule, the executive power of a State extends to the scheduled areas therein.
3. *Report by the Governor or Ruler to the Government of India regarding the administration of the Scheduled areas.*—The Governor or Ruler of each State having scheduled areas therein shall annually, or whenever so required by the Government of India, make a report to that Government regarding the administration of the scheduled areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

*CAD, Vol. IX, 5th September 1949, pp. 965-967.

PART II

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND
SCHEDULED TRIBES

4. *Tribes Advisory Council.*—(1) There shall be established in each State having scheduled areas therein and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom as nearly as may be, three-fourths shall be the representatives of the scheduled tribes in the Legislative Assembly of the State :
 'Provided that if the number of representatives of the scheduled tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.
- (2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the scheduled tribes in the State as may be referred to them by the Governor or Ruler, as the case may be.
- (3) The Governor or Ruler may make rules prescribing or regulating as the case may be—
 - (a) the number of members of the Council, the mode of their appointment and the appointment of its Chairman and of the officers and servants thereof;
 - (b) the conduct of its meetings and its procedure in general; and
 - (c) all other incidental matters.
5. *Law Applicable to scheduled areas.*—(1) Notwithstanding anything contained in this Constitution the Governor or Ruler, as the case may be, may by public notification direct that any particular Act of Parliament of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.
- (2) Governor or Ruler as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a scheduled area.
 In particular and without prejudice to the generality of the foregoing power, such regulations may—
 - (a) prohibit or restrict the transfer of land by or among members of the scheduled tribes in any such area;
 - (b) regulate the allotment of land to members of the scheduled tribes in such areas;
 - (c) regulate the carrying on of business as money-lender by persons who lend money to members of the scheduled tribes in such areas;
- (3) In making any regulation as is referred to in sub-paragraph (2) of this paragraph the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
- (4) All regulations made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.
- (5) No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART III

SCHEDULED AREAS

6. *Scheduled Areas.*—(1) In this Constitution, the expression “scheduled areas” means such areas as the President may by order declare to be scheduled areas.

(2) The President may at any time by order—

- (a) direct that the whole or any specified part of a scheduled area shall cease to be a scheduled area or a part of such area;
- (b) alter, but only by way of rectification of boundaries, any scheduled area;
- (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of a scheduled area, and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART IV

AMENDMENT OF THE SCHEDULE

7. *Amendment of the Schedule.*—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended any reference to this schedule in this Constitution shall be construed as a reference to such schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof.”

I would like very briefly to explain the principal changes which have been made in the Fifth Schedule as amended and put forward before the House. The first important change is in paragraph 4 which deals with the creation of the Tribes Advisory Council. As the paragraph originally stood in the Draft Constitution, it was obligatory to have a Tribes Advisory Council in every state where there were scheduled areas or scheduled tribes. It was felt that there was no necessity by the Constitution to create an Advisory Council for a State where there were some members of the Scheduled tribes living in some part of the State but which had no scheduled area. It was felt that if there was a necessity for creating an Advisory Council for the purposes of the scheduled tribes who are not living in a scheduled area, it would be better to leave that matter to the President whether or not to create an Advisory Council. Consequently the words “and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council”. In the case of scheduled areas there is an obligation to create an Advisory Council. In the case of scheduled tribes it is not obligatory by the Constitution to create an Advisory Council but it is left to the discretion of the President.

The other paragraph which has undergone an important change is paragraph 5. Paragraph 5 deals with the applicability of the laws made by Parliament and by the local Legislature to the scheduled areas. Paragraph 5, as it originally stood, required that if the Tribes Advisory Council directed that the law made by Parliament or made by the local Legislature should be made applicable to the scheduled areas in a modified form, then the Governor was bound to carry out the order or the decision of the Tribes Advisory Council. It was felt that it would be much better to let the Governor have the discretion in the matter of the application of the laws made by Parliament or by the local Legislature to the scheduled areas and that his discretion should not be controlled absolutely, as it was proposed to be done by the original provision contained in paragraph 5.

The other important thing to which I should like to call the attention of honourable Members is to paragraph 6. Paragraph 6, as originally drafted, set out a scheduled of what are to be scheduled areas. This provision has become necessary particularly because it is not possible at this stage to know what are going to be the scheduled areas in States in Part III. It is felt that both for meeting the difficulty to which I have referred as well as to make the provisions elastic, it would be much better to leave the power with the President rather than to have a definite part dealing with the scheduled areas.

Another important amendment to which I should like to draw attention is paragraph 7 which is included in Part IV and which deals with the Amendment of the Fifth Schedule. Originally, as the paragraph stood, there was no provision for the amendment of the Fifth Schedule. It is now provided that Parliament may amend this Schedule and I think it is desirable that Parliament should have the power to amend this Schedule. It is no use of creating a sort of a State within a State and it is not desirable that this kind of special provision under which certain tribes would be excluded from the general operation of the law made by the legislature as well as Parliament and the provision contained in sub-paragraph (2) of paragraph 5, where, so to say, 'the Governor is constituted a law-making body for making regulations of certain character which are mentioned in (a), (b) and (c) and which are to have over-riding powers in so far as they relate to these matters over any law made by Parliament or by the legislature, should not be stereotyped for all times and that it should be open to Parliament to make such changes as time and circumstances may require. Consequently, it has been provided in the new Paragraph 7 of Part

IV that Parliament shall have such power to make such amendments as it finds necessary and any such amendment of the Schedule shall not be deemed to be an amendment of the Constitution, but shall be made by the ordinary process of law.

I may mention that the Drafting Committee in putting forth this new Schedule had discussed the matter with the representatives of the provinces who are concerned with this particular matter, namely of scheduled areas and scheduled tribes. We had also taken into consideration the opinion of my honourable Friend, Mr. Thakkar, who knows a great deal about this matter and I may say without contradiction that this new schedule has the approval of all the parties who are concerned in this matter, and I hope that the House will have no difficulty in accepting the new Schedule in place of the old one.

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***Mr. President :** So far as I can see, there is no other amendment to the Fifth Schedule as now proposed.

Prof. Shibban Lal Saksena : I have some amendments.

Mr. President : Coming at the last moment, these amendments have not been circulated to Members. They came in at 8.58 this morning.

The Honourable Dr. B. R. Ambedkar : I have no idea about them. These should not be allowed.

Mr. President : If you have any amendments, you may make your observations. I may tell the House that I have a set of new amendments sent in by Prof. Shibban Lal Saksena and Dr. Deshmukh.

The Honourable Dr. B. R. Ambedkar : We have no copies. We do not know what they are talking about.

Mr. President : Dr. Deshmukh's amendment came in at 9.20 in the morning. Prof. Saksena's came in at 8.58 in the morning. Technically you are just before the commencement of the session but I think it is very inconvenient to the other Members.

Dr. P. S. Deshmukh (C. P. & Berar: General): My amendments are of a drafting nature.

Mr. President : Very well, they will be handed over to the Drafting Committee. I do not think there is any substance in any of your amendments, Prof. Saksena ?

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***Mr. President :** I wish to close the discussion now. Does Dr. Ambedkar wish to say anything?

The Honourable Dr. B. R. Ambedkar : Mr. Munshi has said everything that was needed to be said and I do not think I can usefully add anything.

Mr. President : Then I shall put the amendments to vote now.

Mr. Naziruddin Ahmad : My amendments need not be put to vote, but they could be considered by the Drafting Committee.

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Paragraph 3 was added to the Fifth Schedule.

SIXTH SCHEDULE

†Mr. President : We now go to the Sixth Schedule.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

“That in sub-paragraph (1) of paragraph 1, before the words, ‘The tribal areas’ the words ‘Subject to the provisions of this paragraph’ be inserted.”

Originally, the draft merely said that the Tribal areas were those which were included in the table attached to this Schedule. There was no power given to define the boundaries of those areas included in the Table. It is felt that it is necessary to give the Governor the power to define the boundaries of those areas, included in the Table. In order to provide for this power for the Governor, it is necessary to add the words which are contained in this amendment.

Mr. President : Amendment number 99 also relates to paragraph 1.

The Honourable Dr. B. R. Ambedkar : May I move that?

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

“That for sub-paragraph (3) of paragraph 1, the following sub-paragraph be substituted :—

‘(3) The Governor may, by public notification—

- (a) include any area in Part I of the said Table,
- (b) create a new autonomous district,
- (c) increase the area of any autonomous district,
- (d) diminish the area of any autonomous district,
- (e) unite two or more autonomous districts or parts thereof so as to form one autonomous district,
- (f) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses (b), (c), (d) and (e) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule.’”

*CAD, Vol. IX, 3rd September 1949, p. 999.

†*Ibid.*, pp. 1001-1002.

In this amendment, the new things to which attention must be drawn are included in sub-clauses (e) and (f) of sub-paragraph (3). As necessary because it may be required, in any particular state of affairs, that two or more autonomous districts may be united together. The power contained in sub-clause (f) is also necessary because it may be desirable to define the boundaries in case there is any particular dispute between the different tribes.

The proviso introduces a change. By comparing the proviso with the original provisos, it will be seen that there were to provisos to subparagraph (3). In the first proviso, the Governor could act under clause (b) or clause (c) on the recommendation of a Commission. But, if he wanted to act under clauses (d) or (e) he was required to have a resolution of the District Councils of the Autonomous Districts concerned. It is felt that this distinction made by the two provisos for the different parts of sub-paragraph (3) is not necessary. It is better to make it uniform by requiring the Governor to act after consideration of the report of a Commission which is proposed to be appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

Mr. President : As regards this Schedule, as the Schedule as a whole has not been changed but only certain amendments to some of the paragraphs have been suggested, I propose to take this paragraph by paragraph. Regarding the first para, these are the two amendments which have been moved on behalf of the Drafting Committee. I will now take the other amendments of which notice has been given. There are some printed in the second volume of the list of amendments.

(Amendments 3489, 3490 and 3491 were not moved)

There is one amendment that paragraph 1 to 16 be deleted. I do not know whether to take it.

The Honourable Dr. B. R. Ambedkar : That need not be taken.

***Mr. President :** ...Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Sir, there are just two points which have been raised in the course of the remarks made on these amendments which call for reply. The first question is the one, which was raised by Mr. Chaliha. I must say I was somewhat surprised at the amendment tabled by Mr. Chaliha, because like the Fifth Schedule the Sixth Schedule also has arisen, so to say, out of an agreement between the Drafting Committee and the Premier of Assam, my Friend,

*CAD, Vol. IX, 5th September 1949, pp. 1004-1005.

Mr. Nichols Roy and at which conference Mr. Chaliha also was present, and he accepted the new schedule as amended by the Drafting Committee. However, it cannot take long to dispel the doubt he has in his mind as to who would constitute this Commission, who would be its members, and all matters relating to the Commission. I think if Mr. Chaliha had only read carefully the wording of the Sixth Schedule he would have seen that in appointing the Commission the Governor is not going to act in his discretion. There is no discretion left in the Governor. That being so, it is quite obvious that in consulting the Commission, and defining its terms of reference, the Governor would be guided by the advice of the local ministers, and I do not think, therefore, there need be any fears such as the one that he has expressed.

Now, with regard to the amendment of my Friend, Mr. Brajeshwar Prasad, this is the one amendment I think in which so far as I am concerned, I feel that he has urged some serious argument. He says that the whole of the tribal area should be lifted from the Province of Assam and should be made a Centrally administered area, because there cannot be any other effect of the amendment which he has put forward except the one which I have suggested. It means practically constituting the area as a Centrally administered area. But he seems to have forgotten two things. The first is this. Although we have constituted autonomous districts for the purpose of the satisfaction of the tribal people living in those areas that they will have, at any rate for the first ten years, autonomy in the matter of the government of their areas, we have now here provided that the autonomous districts shall not constitute part of the province of Assam. That being so, it is very difficult to leave part of the province to be governed by the Governor of the province and part of the province to be administered as a Centrally administered area.

The second point he has forgotten is this. He has forgotten to take note : of the fact that even in constituting the autonomous areas, the Drafting Committee has not forgotten that there are what are called certain "frontier areas", bordering on the autonomous districts. It has been provided in this Schedule that so far as the administration of these frontier areas of Assam is concerned, the Governor would be acting under the President. Consequently whatever strategic importance, the frontier areas may have, the Centre would certainly have ample jurisdiction to see that none of the disturbing factors to which he has made reference will find any place there. I therefore, think that all these amendments are unnecessary and out of place.

Shri Kuladhar Chaliha : Is amendment No. 139 accepted?

The Honourable Dr. B. R. Ambedkar : I cannot say off-hand now. I am only dealing with your amendment and the amendment of Mr. Brajeshwar Prasad, and I think they are unnecessary.

Mr. President : And amendment No. 139 has not been moved at all. It deals with paragraph 14.

The Honourable Dr. B. R. Ambedkar : We shall deal with it when we reach paragraph 14.

[Amendment of Dr. Ambedkar as mentioned above was adopted. Others were rejected. Paragraph 1, as amended, was added to the Sixth Schedule.]

SIXTH SCHEDULE—(contd.)

(Paragraph 2)

***The Honourable Dr. B. R. Ambedkar :** (Bombay : General): Sir, I beg to move :

“That in sub-paragraph (1) of paragraph 2, for the words ‘not less than twenty and not more than forty members’ the words ‘not more than twenty-four members’ be substituted.”

This amendment is introduced because it was felt that the original number forty might be too large.

Sir, I move:

“That sub-paragraph (2) of paragraph 2 be deleted.”

The reason why the deletion is made is because we propose to leave the delimitation of constituencies to rules rather than provide it in the Constitution itself.

Sir, I move:

“That after clause (d) of sub-paragraph (7) of paragraph 2, the following clause be added :—

‘(dd) the term of office of members of such Councils.’ ”

This was omitted from the rule-making powers.

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†The Honourable Dr. B. R. Ambedkar : If you like, Sir, I would make a few observations at this stage and then probably many people may not find it necessary to speak and all these doubts, I think, would have been dispelled.

Prof. Shibban Lal Saksena : I only wanted to say that if this scheme of things is going to be put in a permanent Constitution that will mean that some areas of Assam shall remain beyond the control of Parliament for ever....

*CAD, Vol. IX, 6th September 1949, p. 1007.

†*Ibid.*, p. 1013.

Mr. President : Power is given to the Parliament under the paragraph 20 to repeal the whole of the Schedule, if it thinks necessary. What more do you want?

Prof. Shibban Lal Saksena : Sir, I have referred to this fact in my speech.

Mr. President: Does Dr. Ambedkar like to say anything at this stage?

The Honourable Dr. B. R. Ambedkar : If you like, Sir, now that honourable Members want to speak, let them speak.

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***Mr. President:** I will call upon Dr. Ambedkar to reply. I think, we had better finish this now. We have had enough discussion.

The Honourable Dr. B. R. Ambedkar : We have debated this question for two hours and I think the debate was mostly on points that are really not concerned with the Schedule. It is time that we attended to the Schedule itself, unless any particular Member has something very new to say, we need not continue the debate.

Mr. President : I have already called upon you to reply.

The Honourable Dr. B. R. Ambedkar : I am very much obliged to you. Sir, we have two amendments before us and I propose to deal with them before I reply to the general debate.

The first amendment is No. 100 moved by Mr. Chaliha. With regard to this, I do not see how it is appropriate in sub-paragraph (5) of paragraph 2. Sub-paragraph (5) merely deals with the jurisdiction of the Regional and District Councils. It has nothing to do with any directions that may be given by the Governor or the legislature of the State. We are simply creating a District Council and a Regional Council. If the honourable Member wanted to move any such amendment he ought to do to the appropriate provision. This Schedule deals with the subject matter with which the District Council and the Regional Council will be concerned. So I fail to understand altogether the appropriateness of the amendment at this particular place.

With regard to amendment No. 257 whereby the honourable Member seeks to limit the number on the Council to fifteen, it seems to me, again, quite unnecessary, because my own amendment says, 'not more than twenty-four'. Twenty-four is the maximum. Consequently, if it was necessary to have a Council of less than fifteen, even then my

*CAD, Vol. IX, 6th September 1949, pp. 1024-1028.

†*Ibid.*

amendment should suffice. I therefore say that amendment number 257 is quite unnecessary.

Now, having disposed of these amendments, I will turn to the general debate on the question whether there should be Regional and District Councils for the purpose of the tribals living in Assam. Sir, in dealing with this matter, I am sorry to say, many Members who took part in the debate did not properly study the provisions contained in this Sixth Schedule. I am sure about it that if they had properly studied the provisions of this schedule they would not have raised the point which they raised that by creating these Regional and District Councils we were creating a kind of segregated population. It does nothing of the kind.

Now, the position of the tribals in Assam stands on a somewhat different footing from the position of the tribals in other parts of India.

Shri A. V. Thakkar : Hill tribals please.

The Honourable Dr. B. R. Ambedkar : I am not concerned with the terminology. I am speaking of 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 civilisation and culture of the majority of the people in whose midst they live. With regard to the tribals in Assam that is not the case. Their roots are still in their own civilization and their own culture. They have not adopted, mainly or in a large part, either the modes or the manners of the Hindus who surround them. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus. I think that is the main distinction which influenced us to have a different sort of scheme for Assam from the one we have provided for other territories. In other words, the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the red Indians in the United States as against the white emigrants there. Now, what did the United States do with regard to the Red Indians? So far as I am aware, what they did was to create what are called Reservations or Boundaries within which the Red Indians lived. They are a republic by themselves. No doubt, by the law of the United States they are citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that it would be dangerous to bring them at one shot, so

to say, within the range of the laws made by the white people for white persons and for the purpose of the white civilization.

I agree that we have been creating Regional and District Councils to some extent on the lines which were adopted by the United States for the purpose of the Red Indians. But my point is that those who have based their criticism of this Schedule on this fact, namely that we are creating Regional and District Councils, have altogether failed to understand the binding factors which we have introduced in this Constitution. I should therefore like to refer to some of the provisions which nullify this segregation, so to say.

The first thing that we have done is this: That we have provided that the executive authority of the Government of Assam shall extend not merely to non-tribal areas in Assam, but also to the tribal areas, that is to say, the executive authority of the Assam Government will be exercised even in those areas which are covered by the autonomous districts. This, as will be seen, is a great improvement over the provisions contained in the Government of India Act, 1935. In the provisions contained in that Act, the executive was divided into two categories, one was called the Government of the province and the other executive was called the Governor in his discretion, so far as the tribal areas were concerned. This applied not only to the tribal areas in Assam, but also to completely excluded areas in other areas. The executive authority which operated upon those areas was not the executive of the province, but the Governor in his discretion. We have abolished that distinction so that the whole of the tribal area including those in the autonomous districts is now under the authority of the provincial Government. The thing which is a binding thing, to which honourable Members have paid no attention is this. That, barring such functions as law-making in certain specified fields such as money-lending, land and so on, and barring certain judicial functions which are to be exercised in the village panchayats or the Regional Councils or the District Councils, the authority of Parliament as well as the authority of the Assam Legislature extends over the Regional Councils and the District Councils. They are not immune from the authority of Parliament in the matter of lawmaking, nor are they immune—and that is the aim of the new amendment—from the jurisdiction of the High Court or the Supreme Court. This, I submit, is one binding influence.

The other binding influence is this : that the laws made by Parliament and the laws made by the Legislature of Assam will automatically apply

to these Regional Councils and to the District Councils unless the Governor thinks that they ought not to apply. In other words, the burden is thrown upon the Governor to show why the law which is made by the Legislature of Assam or by the Parliament should not apply. Generally, the laws made by the local Legislature and the laws made by Parliament will also be applicable to these areas. I say that this is another unifying influence. Yet another unifying influence to which I must make reference is this. We are not saying that the political authority or power we have given to the tribal people through the constitution of the Regional Councils or the district Councils is all the sphere of influence to which they will be entitled. On the other hand, we have provided that the tribal people who will have Regional Councils and District Councils will have enough representation in the Legislature of Assam itself, as well as in Parliament, so that they will play their part in making laws for Assam and also in making laws for the whole of India. Now, if these cycles of participation, if I may say so, to which I have referred, *viz.*, representation in the legislature of Assam and representation in Parliament, the application of the laws made by Parliament and the application of the laws made by the Assam legislature are not binding forces, I would like to know what greater binding forces we can provide for the purpose of unifying the Regional Councils and the district Councils with the political life of the province as a whole.

I do not therefore agree that in creating the Regional Councils and the district Councils, we have cut up the population of Assam into two water-tight compartments, *viz.*, tribals and non-tribals. On the other hand, we have provided, as I have stated, many cycles of participation in which both can politically come together, influence each other, associate themselves with each other, and learn something from one another. I am sure about it that the argument which has been urged against the provision of Regional Councils and District Councils is entirely based upon a misunderstanding and inadequate reading of the other provisions contained in this Schedule.

Sir, I was rather surprised at the attitude taken by my Friend, Mr. Chaliha, in moving his amendment, also at the attitude of my Friend, Mr. Rohini Kumar Chaudhari. 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. Chaliha, 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 criticising each other because of factors which lie outside this Schedule. I cannot find any other reason for this dissension, for this open dissension and hostility which has been exhibited by one against the other, and I do not wish therefore to enter into what I regard is a purely domestic quarrel.

Shri Rohini Kumar Chaudhari : Is the Honourable Dr. Ambedkar entitled to make the insinuations against us?

The Honourable Dr. B. R. Ambedkar : I am not making any insinuations; I was only saying, Sir, that it was a domestic quarrel into which I would not enter. My own view is that we have made the best provision...*

Shri Kuladhar Chaliha : I object to Dr. Ambedkar imputing motives for honest opinion expressed.

The Honourable Dr. B. R. Ambedkar : I am not imputing any motives. Mr. Chaliha was a party to every change that has been made in this Schedule. I would like him to deny that fact. Can he deny it?

Shri Kuladhar Chaliha : Yes, I deny. I told Mr. Bardoloi that I did not agree with some things.

The Honourable Dr. B. R. Ambedkar : He might have whispered in the ears of Mr. Bardoloi. He did not say a single word against these changes in the Drafting Committee. I did not get his signature as I did in certain other cases, because I do not want any Member to go back upon his word. However, what I was saying was that the Regional Councils and the District Councils have been given certain autonomy for certain purposes and at the same time they have been bound together in the life of the province and in the life of the country as a whole. If these circumstances which are of a unifying character, do not bind, do not bring the tribal people with the rest of the plains people in Assam and in the country, then the cause for such an unfortunate event must be found in something else. My friend, Mr. Rohini Kumar Chaudhari, stated that if you create the Regional Councils, the tribal areas will go the way of Tibet and go the way of some other area. I do not know that that prophecy could be confined only to the tribal areas. I fear that Assam itself might go. For that we cannot make any provision in the Constitution. I am sure about it.

Shri B. Das (Orissa : General) : May I ask Dr. Ambedkar if he is aware that British agents are still working on the Assam—Burma border and that they have been responsible for the troubles between the Karens and the Burmans, and whether those same British agents are not still working in the tribal areas of Assam? After hearing the speech of my Friend, Rev.

*Dots indicate interruption.

Nichols Roy, I think that he wants the tribal areas to be a separate entity so that British influence could permeate these tribals areas. As a Member of the Government, Dr. Ambedkar knows well—and I have known something—about these tribal areas.

The Honourable Dr. B. R. Ambedkar : All I can say is that it is perfectly possible to devise some means by which we can eliminate this foreign influence altogether.

Shri B. Das: The Drafting Committee...

The Honourable Dr. B. R. Ambedkar : The Drafting Committee has nothing to do with eliminating this foreign influence. It is the function of some other body but I can assure my friend that it would not be difficult to get rid of this foreign influence.

[Paragraph 2, as amended was added to the Schedule.]

(Paragraph 3)

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***Shri Kuladhar Chaliha :** ...In fact this amendment is the same as mine and therefore Dr. Ambedkar should have accepted mine than by adding like this and watering down and making a fuss of making laws. It is better to accept by amendment No. 113 than the amendment of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : The honourable Member has already moved it for me. If you will take it as if moved by me, it will save time.

Mr. President : I take it that he has moved.

The Honourable Dr. B. R. Ambedkar : Shall I move it formally?

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That after sub-paragraph (2) of paragraph 3, the following sub-paragraph be added :—

‘(3) All laws made under this paragraph shall be submitted forthwith to the Governor and until assented to by him shall have no effect.’ ”

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I beg to move:

“That in amendment No. 114 of List I (Seventh Week), for the proposed sub-paragraph (3) of paragraph 3, the following be substituted :—

‘(3) All laws made under this paragraph shall be submitted to the Governor who shall forthwith place them before the legislature of the State and until agreed to by the Legislature and assented to by the Governor such laws shall have no effect.’ ”

The amendment was negatived

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***Mr. President:** Dr. Ambedkar, do you wish to say anything? I do not think there is anything in this to discuss.

The honourable Dr. B. R. Ambedkar : Sir, with regard to my Friend Mr. Chaliha's amendment No. 113, I really do not understand what it means. It says: "The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State legislature may approve." I cannot understand what it means. I am therefore unable to say that I accept it.

With regard to my amendment and the amendment moved by my honourable Friend Mr. Rohini Kumar Chaudhari, there is hardly any difference except a failure to understand on the part of my honourable Friend as to what the word 'Governor' means. He says that the laws shall be approved by the legislature of Assams. According to my amendment, the laws will be approved by the Governor as advised by the Ministry of Assam, because in all this scheme we are dropping the words 'in his discretion'. Wherever the word Governor occurs, it means Governor acting on the advice of the Ministry. I should like to ask him whether he really thinks there is very serious difference between a law being approved by the Governor acting on the advice of the Ministry and a law being approved by the legislature of Assam itself. I think my scheme is much more consistent with the originals of the scheme, namely, that the tribal people themselves should have a certain inherent right given by the constitution to make laws in certain respects. That being so, my paragraph (3) is much more consistent with the scheme and gives the Assam Ministry some power to advice the Governor as to whether he should accept or not accept any law. The intervention of the legislature is quite unnecessary.

Shri Rohini Kumar Chaudhari : If I have understood the Honourable Dr. Ambedkar aright, I would be prepared to withdraw my amendment. I mean, if the Governor is to be advised by the Ministry and the Ministry takes the opinion of the legislature, then, I have no objection. If the advice of the Ministry means that the Ministry will take no such action until the house has had an opportunity of discussing it, then, I think it is the same thing which I want and which Dr. Ambedkar wants. In that case, I shall withdraw.

The Honourable dr. B. R. Ambedkar : I think he is understanding more than what I have said. I am not prepared to give him that assurance at all.

[Amendment was negatived. Paragraph 3, as amended, was added to the Schedule.]

(Paragraph 4)

***The Honourable Dr. B. R. Ambedkar:** Sir, I move :

“That in sub-paragraph (1) of paragraph 4, the words and figures ‘or those arising out of any law made under paragraph 3 of this Schedule’ be deleted.”

They are unnecessary.

Sir, I also move:

“That in sub-paragraph (2) of paragraph 4, for the words ‘shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final’ the words ‘except the High Court and the Supreme Court shall have jurisdiction over such suits or cases’ be substituted.”

Sir, I also move:

“That after sub-paragraph (2) of paragraph 4 the following sub-paragraph be added :—

(3) the High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply, as the Governor may from time to time by order specify.”

This amendment makes an important change. Originally under sub-paragraph (2) of Paragraph 4 the decision of the District Court was final. Now we have provided that they shall be subject to appellate jurisdiction of the High Court and the Supreme Court which was a necessary provision.

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†**The Honourable Dr. B. R. Ambedkar:** Sir, I must say that I was somewhat surprised by my honourable Friend’s putting me these questions. I think he could have answered them himself. But I will now answer them as he has put them to me.

With regard to the first question of whether lawyers will be allowed to appear in courts established in the tribal area, the answer is very simple. In the first place, the Provincial Government will have the power, under the entry in List III dealing with professions, to make any law with regard to the legal profession; and if under that law they provide that lawyers shall be entitled to appear in the courts in the districts which are known as autonomous districts, then that law will apply unless the governor thinks that that law should not apply. Therefore, that matter is quite clear.

With regard to the question of appeals from the decisions of the tribunals which are created under this paragraph, the answer again is quite simple. The paragraph first provides that a court of appeal may be

*CAD, Vol. IX, 6th September 1949, p. 1033.

†*Ibid.*, pp. 1035-1036.

constituted there. Now the Governor or the Provincial Ministry may either constitute a new court of appeal in which case appeals will go to that court, or may declare the District Judge's Court as a court of appeal which will hear appeals from decisions made by the village panchayats and other courts. Therefore, there again there is a provision for appeal. According to my amendment now, there may be a further appeal from the District Court of appeal either to the High Court or to the Supreme Court.

Shri Rohini Kumar Chaudhari : I particularly read out these lines of sub-paragraph (2):—

“...the Regional council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes...”

What would happen when one of the parties is not a member of a scheduled tribe?

The Honourable Dr. B. R. Ambedkar : If the parties are such that one is a tribal and the other a non-tribal, then the ordinary law will apply.

Shri Rohini Kumar Chaudhari : Where have you provided it?

The Honourable Dr. B. R. Ambedkar : It follows from it. Even now it says, “where the parties are...”*. I do not think there is any difficulty and I hope my friend has understood it.

Shri Rohini Kumar Chaudhari : There is no provision made anywhere, Sir.

The Honourable Dr. B. R. Ambedkar : The jurisdiction of the ordinary court is ousted only to the extent provided for in paragraph 4. Otherwise the jurisdiction of the ordinary courts continues. These will not be the only courts in this area; there will be other courts established by the Provincial Government for the purpose of administration of the general law of the Province.

[Paragraph 4, as amended, was added to the Schedule.]

(Paragraph 9)

†**The Honourable Dr. B. R. Ambedkar :** Sir, I move:

“That sub-paragraph (1) of paragraph 9 be deleted.”

The paragraph refers to licence or lease granted by the Government of Assam for the prospecting for or the extraction of minerals. That matter now is with the Central Government and therefore it is unnecessary to have this sub-paragraph here.

*Dots indicate interruption.

†CAD, Vol. IX, 6th September 1949, p. 1039.