

## CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

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Thursday, the 4th November 1948

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The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

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### PRESENTATION OF CREDENTIALS AND SIGNING THE REGISTER.

The following Members presented their credentials and signed the Register:

- (1) Shri H. Siddaveerappa (Mysore State);
- (2) Mr. K. A. Mohammed (Travancore State);
- (3) Shri R. Sankar (Travancore State);
- (4) Shri Amritlal Vithaldas Thakkar [United State of Kathiawar (Saurashtra)];
- (5) Shri Kaluram Virulkar [United State of Gwalior, Indore, Malwa (Madhya Bharat)];
- (6) Shri Radhavallabh Vijayavargiya [United State of Gwalior, Indore Malwa (Madhya Bharat)];
- (7) Shri Ram Chandra Upadhyaya (United State of Matsya);
- (8) Shri Raj Bahadur (United State of Matsya);
- (9) Thakar Krishna Singh (Residuary States);
- (10) Shri V. Ramaiah (Madras State);
- (11) Dr. Y. S. Parmar (Himachal Pradesh).

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### TAKING - THE PLEDGE

The following Member, took the pledge.

Shri Syamanandan Sahaya.

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## HOMAGE TO THE FATHER OF THE NATION

**Mr. President :** Honourable Members, before we take up the items on the Order Paper, I bid you to rise in your places to pay our tribute of homage and reverence to the Father of the Nation who breathed life into our dead flesh and bones, who lifted us out of darkness of despondency and despair to the light and sunshine of hope and achievement and who led us from slavery to freedom. May his spirit continue to guide us. May his life and teaching be the torchlight to take us further on to our goal.

(All the Members stood up in silence.)

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## CONDOLENCE ON THE DEATHS OF QUAID- E-AZAM MOHAMMED ALI JINNAH, SHRI D. P. KHAITAN AND SHRI D. S. GURUNG

**Mr. President :** I ask you, Members, to stand in your places to pay our tribute of respect to Quaid-e-Azam Mohammed Ali Jinnah, who by his grim determination and steadfast devotion was able to carve out and found Pakistan and whose passing away at this moment is an irreparable loss to all. We send our heartfelt sympathies to our brethren across the frontier.

(The Members stood up in silence.)

**Mr. President:** Two Members have died since the Constituent Assembly met in its constitution-making function. They are Shri Debi Prasad Khaitan and Shri Damber Singh Gurung from Darjeeling. They represented their constituencies very faithfully and were of considerable help in our deliberations. I ask you to rise in your places to show our respect to their memory.

(The Members stood up in silence.)

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## AMENDMENTS TO CONSTITUENT ASSEMBLY RULES 5-A & 5-B

**Mr. President:** We shall now proceed to take up the items on the Order Paper. The first item is a motion by Mr. Govinda Menon and also by Shrimati Durgabai, of which notice has been given. I would ask Shrimati Durgabai to move it.

**Shrimati G. Durgabai** (Madras : General): Sir, I beg to move:

That the provisions mentioned in the Constituent Assembly Notification No. CA/43/Ser/48-I, dated the 2nd August 1948, be made part of the Constituent Assembly Rules, as shown in the amendments below, with effect from the 2nd August, 1948: -

(i) Rules 5-A and 5-B -

For Rules 5-A and 5-B substitute the following Rule: -

"5-A. When a vacancy occurs by reason of death, resignation or otherwise in the office of a member of the Assembly representing an Indian State or more than one Indian State specified in column 1 of the Annexure to the Schedule to these rules, the President shall notify the vacancy and make a request in writing to the authority specified in the corresponding entry in column 3 of that Annexure to proceed to fill the vacancy as soon as may reasonably be practicable by election or by nomination, as the case may be, in the case of the States specified in Part I of the said Annexure, and

by election in the case of the States specified in Part II of that Annexure:

Provided that in the case of the States specified in Part I of the said Annexure, where the seat was filled previously by nomination, the vacancy may be filled by election:

Provided further that in making a request to fill a vacancy by election under this rule the President may also request that the election be completed within such time as may be specified by him."

(ii) In Rule 51 -

"(b) 'Returned candidate' means a candidate whose name has been published in the appropriate Official Gazette as a duly elected member of the Assembly and includes a candidate whose name has been reported to the President in the manner provided in paragraph 5 of the Schedule to these rules as a duly chosen representative of any Indian State or States specified in column 1 of the Annexure to that Schedule."

(iii) In the Schedule -

For paragraphs 3, 4, 5 and 6, substitute the following paragraphs:

"3.(1) When the representation allotted to the States, individual or grouped in the Assembly, or the grouping of the States for the purpose of such representation is altered by an order made under paragraph 2, or by an amendment of the Annexure to this Schedule, the President may, by order -

(a) re-assign members representing a State or States to such State or States as may be specified in the order;

(b) declare the seat or seats of any member or members of the Assembly representing any State or States affected by an order under paragraph 2 or an amendment of the Annexure to this Schedule, as the case may be, to be vacant.

(2) Any member who has been re-assigned to a State or States by an order made under clause (a) of sub-paragraph (1) and whose seat has not been declared vacant under clause (b) of that sub-paragraph shall as from the date of the order be deemed to be a duly chosen representative of such State or States.

(3) A member whose seat is declared vacant by an order made under clause (b) of sub-paragraph (1) shall, if it is so specified in the order, continue to hold office as member of the Assembly until his successor has been duly elected and has taken his seat in the Assembly.

"4. (1) Not less than fifty per cent of the total representatives of the States specified in column 1 of Part I of the Annexure to this Schedule in the Assembly shall be elected by the elected members of the legislatures of the States concerned, or where such legislatures do not exist, by the members of electoral colleges constituted in accordance with the provisions made in this behalf by the authorities specified in the corresponding entries in column 3 of that Part.

(2) All vacancies in the seats in the Assembly allotted to the States specified in column 1 of Part II of the Annexure to this Schedule shall be filled by election and the representatives of such States to be chosen to fill such seats shall be elected by the elected members of the legislatures of the States concerned, or where such legislatures do not exist, by the members of electoral colleges constituted in accordance with the provisions made in this behalf by the authorities specified in the corresponding entries in column 3 of that Part.

5. On the completion of the election or nomination, as the case may be, of the representative or representatives of any State or States specified in column 1 of the Annexure to this Schedule in the Constituent Assembly, the authority mentioned in the corresponding entry in column 3 of that Annexure shall make a notification under his signature and the seal of his office stating the name or names of the person or persons so elected or nominated and cause it to be communicated to the President of the Assembly."

Sir, before I commend my motion to the House for its acceptance, I wish to say a few words of explanation as to why and how these amendments to the rules have become necessary.

Sir, Rules 5-A and 5-B of the Constituent Assembly Rules lay down the procedure for filling a casual vacancy in the office of a member representing an Indian State or more than one Indian State and the

Schedule to the Rules prescribes the allocation of seats in the various States or groups of States and the manner of choosing the States representatives and also the method of appointing conveners for purposes of conducting election. These Rules 5-A and 5-B were based on conclusions reached by the two Negotiating Committees set up by the Chamber of Princes and also by The Constituent Assembly.

Sir, since then, as it is common knowledge, many changes of a far-reaching character have taken place and these changes have taken place both in the constitutional as well as in the administrative set up of these states. For example, certain States have formed themselves into Unions and certain others have merged into neighbouring provinces and still certain others have been constituted into Centrally Administered Areas.

Sir, these changes in their turn affected radically in the case of some the existing scheme of representation in the Constituent Assembly. Consequently, it became necessary to re-group these several States and to re-allocate seats among them and also change the conveners for the purpose of conducting elections and also make necessary changes in the rules of the Constituent Assembly. All these matters were considered at a meeting of the Honourable the President and of the Honourable the Minister of States and also the Rajpramukhs and the Premiers of the Union and the States concerned and also the Premiers of various provinces affected by these changes and also of the officials of the Secretariat of the Constituent Assembly and of the States Ministry; and the decisions reached at that Conference are now embodied in these provisions which are now sought to be incorporated in the Constituent Assembly Rules.

Now, Sir, the most important feature of these changes in the provisions is that in the case of newly formed group or Union of the States - Cutch and Junagarh, which have been given separate representation in the Assembly - all the vacancies in the seats are to be filled by election by the elected members of the Legislatures of the States or where such legislatures do not exist, by any other Electoral College which is set up for that purpose.

Under the old Rules some of them could be filled by nomination. Sir, as you have already noted the various changes, I do not think that I need elaborate these points. I commend my motion to the House for its acceptance. Sir, I move.

**Mr. President:** I have received notice of certain amendments to this motion. Mr. Kamath.

**Shri H. V. Kamath :** (C. P. & Berar: General): Mr. President, Sir, I move:

"That in sub-para, (1) of the proposed paragraph 3 of the Schedule, for the words 'to the States, individual or grouped in the Assembly' the words 'in the Assembly to the States, individual or grouped' be substituted."

That is to say, if the amendment is accepted, it will read thus: Now it reads, "When the representation allotted to the States, individual or grouped in the Assembly". In the place of this, it will read, "When the representation allotted in the Assembly to the States, individual or grouped....." I do not think I need speak much on this amendment. It is self evident and the meaning that is sought to be conveyed by the paragraph is as represented in my amendment. Certainly, the States individual or grouped as they are, is not for Assembly purposes. Therefore, it should be "representation allotted in the Assembly to the States, individual or grouped." This is the first amendment.

Sir, the second amendment runs thus:

"That in sub-para. (3) of the proposed paragraph 3 of the Schedule, for the words 'is declared vacant' the words 'has been declared vacant' be substituted."

This is purely, if I may say so, a linguistic amendment. I think it refers to the state of affairs arising after a seat has been declared vacant. The wording "when a seat has been declared vacant" is more correct and more accurate.

I therefore commend these amendments of mine for the acceptance of the House. Sir, I wish to speak on the motion. May I speak?

**Mr. President:** Yes.

**Shri H. V. Kamath:** Sir, I seek some clarification on certain points that have arisen from the motion moved by my honourable friend Shrimati Durgabai. Sir, the potential strength of this Assembly is 324. I am given to understand that the actual strength today is 303. Twenty one members who are to represent Hyderabad, Kashmir and Bhopal are not present with us. Even as regards the remaining 303, the papers yesterday brought us the news that the Patiala and East Punjab States Union have not elected their representatives to this Assembly. I do not know why these States or Union of States or groups of States should continue to be unrepresented in this last and most important session of the Constituent Assembly. As regards Kashmir I agree there are difficulties. As regards Hyderabad which now forms one of the States specified in Part I of the Annexure, it takes top rank among the States. I do not see why we should not call upon the Ruler of Hyderabad or to elect or to elect and nominate as the case may be in accordance with the provisions of this resolution, and send representatives to take their place in this Session as early as possible. In view of the recent events that have taken place, a happy denouement - I hope the House is in agreement with me that we have had a happy termination of the Hyderabad episode - we wish to welcome our friends, our colleagues from Hyderabad as soon as possible in this Assembly. As regards Bhopal, I do not know what difficulties stand in the way, what stumbling block there is in the way, what obstacle has to be surmounted, so far as the participation of Bhopal in this Assembly is concerned. I would plead with you and I would request that the Bhopal authorities should also be called upon at once to send their members to this Assembly with the least possible delay.

Then, Sir, the report which appeared in the press yesterday as regards Patiala and East Punjab States Union was not very clear. It alleged all sorts of things against the administration and against the Ruler; but, whatever it may be, I think it is high time that this Union of Patiala and East Punjab States should be called upon to send their representatives to this last session of the Constituent Assembly.

There is another point which I would like to draw your attention to. In the Rules that have been framed by us during the previous sessions. We have stated-I refer to Rule 5 sub-rule (2)- "Upon the occurrence of a vacancy, the President shall ordinarily make a request in writing to the Speaker of the Provincial Legislative Assembly concerned, or as the case may be, to the President of the Coorg Legislative Council, for the election of a person, for the purpose of filling the vacancy as soon as may reasonably be practicable." Here, now that in some of the States mentioned in Part I of the Annexure-I am sorry I cannot say off hand which States have got elected legislature functioning-take for instance, Mysore; it is a big State and it has already sent its representatives to this Assembly-so far as such States are concerned, I see no reason why in future, instead of the Ruler, the Speaker or President of the Assembly should not be requested to fill the vacancies that may arise. It may be argued against this that the Rule as it stands, 5-A provides for the Ruler being the authority in this case. But, as we are amending the Rules, why not amend certain provisions of these Rules so as to make them more in conformity with democratic practice and democratic traditions? Therefore, I would ask my honourable friend Shrimati Durgabai to explain why, in the case of those states where we have got Assemblies functioning, the Speaker or the President should not be the authority instead of the Ruler. On this point, I would ask some more light from the mover of the motion.

Sir, before I resume my seat, I commend my two amendments to this motion for the acceptance of

the House. Thank you, Sir.

**Mr. President:** Mr. Sidhwa.

**Shri R. K. Sidhwa** (C. P. & Berar: General): Mr. President, Sir, my amendment was -

"That in sub- para. (1) of the proposed paragraph 4 of the Schedule, delete the words 'Not less than fifty per cent' of and for the words 'the total representatives' the words 'The total number of representatives' be substituted."

The object of my amendment was that while we have done away with the nomination system in our Constitution, it would not be fair to allow the States, particularly the Rulers to nominate the 50 per cent. I therefore, with that object in view and just in conformity with our decision for abolishing the nominations, suggested the abolishment of this also. I however understand that an arrangement has been arrived at between the Rulers and the people of the State and the States people have agreed to this arrangement being continued and I am also told that although this is there, the representatives are all elected by the people themselves. If that is so as I understand it is so, I do not propose to move this amendment.

**Mr. President:** Do you move the amendment or not?

**Shri R. K. Sidhwa:** I do not move it, Sir.

**Mr. President :** All the amendments of which I have notice, so far as this motion is concerned, have been moved. I have received a complaint from one Member that the agenda and amendments have been circulated here and he did not get them before and so he has not been able to give notice of amendments and he wants that the discussion be adjourned. I understand from the Secretariat that the agenda and other papers were circulated some days ago but they were sent to the addresses that were then known to the office and it is possible that the Members during the course of transit have not been able to get the papers that were sent to them and by way of caution a second copy has been supplied here today. It is not as if the agenda and the papers have not been circulated. Only the second copies have been given today. I do not think there is any ground for adjourning the discussion of this motion particularly because after all it is more or less a motion of a formal nature, because we have already acted upon these Rules and they are not likely to be acted upon in the future when this session of the Assembly is over.

**Shri Mohanlal Gautam** (United Provinces: General): \* [ I have no objection in complying with your order. But I submit that the information supplied to you by the office is incorrect. Many of the Members have not received copies of the agenda. Not I alone but two or three of my colleagues also who are present here have not received it. I am in greater difficulty as my telephone has also been disconnected even though they had already taken from me the subscription for the whole year. Twice I have referred this matter to the Deputy Minister for Communications but telephone connection has not yet been restored. When I came here I telephoned from another place to the Deputy Secretary, Constituent Assembly, and informed him that no copy of the agenda had been received by me and that the telephone connection also had not been restored. This is the situation of the Members and I would like to make my protest against it. Had it been so with me alone, you could have adopted this course. But there are many Members present here who have not received the agenda. The Deputy Minister Shri Khurshed Lal is also one of them. He also denies having received a copy of the agenda. I don't know how it was circulated but even he complains of not having received it. Twice I complained to him that my telephone connection had not been restored even though the subscription money had been realised by them for the whole year. You have reduced us Members to this miserable plight. As for the agenda, I am not the only Member to complain about it. Many Members have not received it. There are important items on the

agenda and as a protest I demand the postponement of its consideration.]\*

**Mr. President:** \*[Copies of the agenda were sent to the Members by the office. Whether it did reach the Members or not is a matter for Shri Khurshed Lal to answer. It is also his responsibility to see whether telephone connections have been provided or not. I do not think that there is any important reason to adjourn the House. If any Member wants to speak on this matter he may do so.]\*

**Mr. Hussain Imam** (Bihar : Muslim): \*[ I would like to suggest that you are empowered to admit the amendments which are, even now, received from Honourable Members. That would leave no room for grumbling.]\*

**Mr. President:** \*[ As I have not received any amendment as yet, the question does not arise.]\*

**Shri Shyamanandan Sahaya** (Bihar : General): \*[ Mr. President, I request that these amendments which have been moved should be considered if they need consideration. But first of all a chance should be given to the mover...]\*

**Mr. President:** \*[ Had I received any amendment I would have allowed it to be moved in the House. But no amendment has been received. Now, you want that this discussion should be postponed so that there might be an opportunity to move an amendment. But as yet I have no amendment before me.]\*

**Shri Shyamanandan Sahaya:** \*[ Mr. President, in this connection, it is submitted that your orders are binding on all. If the copy of the agenda is lost in transit the purpose of sending it-- , and it is that the Members may go through it and may form their opinion—is defeated. Consequently if it could not reach the Member or if there is any delay or error in its despatch from the Assembly office, and thereby if any Member did not receive the agenda, then in my opinion it requires consideration whether the resolution may be taken up for consideration on that day or not. I want to draw your attention to this fact.]\*

**Mr. President:** \*[I do not think it necessary at this stage, for such questions are not before us as require prolonged discussions and postponement of the debate to some other day and stoppage of our proceedings today.]\*

**Dr. P. S. Deshmukh** (C. P. & Berar : General): Mr. President, Sir, I do not have to make the complaint that some of the honourable members of this House have made, although I must say that I did not get the agenda before yesterday, and that is the reason why it was not possible for me--my stenographer not having arrived--to send in my amendment to the various Rules. It is quite clear that the Rules are pretty lengthy and therefore the amendments are also likely to be of a similar nature. I hope therefore that you will kindly pardon my not having sent in my amendments and the few amendments that I propose would be considered by the Honourable Mover of the Motion. The first amendment I would suggest is--

"In the first part of Rule 5-A instead of 'an Indian State or more than one Indian State' substitute the words 'one or more Indian States'."

I personally think it is better English in that way. My second amendment is--

"Instead of the words 'make a request' the word 'direct' be substituted."

It should be possible for you Sir, to direct the authorities specified in the corresponding entry in column 3 of that Annexure. I do not think it is in consonance with the dignity of the office you hold or the position of this Constituent Assembly that it should be necessary to request a petty State or the

Authority existing therein to hold the elections. We, as Members of the Constituent Assembly are summoned by you. I would therefore suggest the adoption of the above amendment.

Similar words are used in the second proviso. There also the word 'request' has been used. That also should be changed to 'direct'.

There is also one more amendment I would suggest so far as the second proviso is concerned. I suggest that-

"The proviso as it stands be substituted by the following, viz. 'Provided further that in directing to proceed to fill a vacancy by election under this Rule the President may also direct that the election be completed by a certain date'."

The change is to replace the words "making a request to fill" by the words "directing to proceed to fill". The word "request" is changed into "direct", and the concluding words-'within such time as may be specified by him'-are proposed to be changed by the words "by a certain date".

The wording in paragraph 3 (1) on page two may read better if it were put as follows:

"When the representation allotted to any States, jointly or individually, in the Assembly or the grouping of the States for the purpose of such representation is altered by an order made under paragraph 2, or by an amendment of the Annexure to this Schedule, the President may by order--....."

The alteration would be to change the word "the" into "any", and to omit the words "individual or grouped in the Assembly", by merely saying "jointly or individually".

This amendment of mine is very similar to the one moved by Mr. Kamath. I think he was somewhat hesitant in suggesting a wholesale alteration of the clause. That is why the suggestion he has made, although it has the same intention, does not express it so correctly as the suggestion made by me. I Hope, Sir, it will be possible for the honourable Mover to consider the various amendments suggested by me, and if possible to accept them.

**Shri Biswanath Das** (Orissa : General): Sir, I have just given notice of an amendment. Before moving it I would like to explain the position as it is today.

In part 1 to the Annexure, Mayurbhanj State has been mentioned with one representatives and the Returning Officer is the Ruler of Mayurbhanj. But it has been decided by the States ministry that the State of Mayurbhanj can not stand singly by itself and it has been agreed that it shall merge into the province of Orissa, along with the twenty-three other States that have already merged.

**Mr. President:** Has the Mayurbhanj State already merged or is it a proposal?

**Shri Biswanath Das:** I believe they have signed a certain agreement and they are going to hand over the State to the Government of India and that an Administrator has been already appointed and that he is going to take charge of the State. Under these circumstances, I believe there is no justification for treating Mayurbhanj State as a separate identity, and again to recognize the Ruler of Mayurbhanj State as the Retuning Officer. I do not know, and I can not say whether the Government of India have actually intimated to the Government of Orissa that Mayurbhanj State is to merge in Orissa. But this much I can assure you, and through you the Honourable Members of the Constituent Assembly that this is expressed view of the Government of India that it shall be merged into the province of Orissa. Therefore, there is absolutely no purpose in bringing in something which will undo what has been already done and decided by the States Ministry with the full concurrence of the State of Mayubhanj, the people

and also the province of Orissa.

Therefore, Sir, I beg to move an amendment, which is (I have given notice of it just now.):

"Omit Mayurbhanj with its representation of one and the Ruler of Mayurbhanj as the Returning Officer from Part 1 of the Annexure."

I further move:

"That the State of Mayurbhanj be added to the Orissa States in Part II of the said Annexure, substituting 24 for 23 and also under the column of representation substituting 5 for 4, including 1 from the State of Mayurbhanj, and the Governor of Orissa to continue as the Returning Officer."

This is the complete amendment that I place before the Honourable Members of the Constituent Assembly and think that it is a necessity.

If you propose to give separate representation and a separate identity to Mayurbhanj, that means you propose to perpetuate the independent existence of smaller States, a policy which has been refuted and not accepted by the States Ministry and the Government of India. Therefore, my amendment is just to give effect to the very idea which has been accepted, adumbrated and followed in principle and in practice by the States Ministry and the Government of India.

**Mr. President:** I may point out to Members that as the States are concerned, the question has been in a state of flux. There have been so many changes going on from day to day that it has been difficult to keep pace with them. The proposal is based upon the recommendation of the States Ministry, and the proposal was reached at a conference at which not only the Prime Ministers of all the provinces concerned but also of the States concerned and Rajpramukhs were present, and there were representatives of the States Ministry as also of the Constituent Assembly, and these proposals are in conformity with recommendations of that Conference. If there has been any change since then, we have no notice of that change. Besides, there will be no difficulty in altering any of the rules subsequently if a change has taken place. So I would suggest to Shri Biswanath Das that he need not apprehend that there is any question of perpetuating smaller States. At the moment we are proceeding upon facts that we know and we are recognizing those facts and making the rules in conformity with those facts. As soon as a change in those facts takes place, and we are informed of that change, we shall change the rules accordingly. So I would suggest to him not to press his amendment at this stage. We can take up the matter as soon as the States Ministry is in a position to tell us that this ought to be changed.

**Shri Biswanath Das:** An officer of the States Ministry is here. These are the salient facts. I do not dispute them but I beg of him not to dispute the facts that I have placed before him.

**Mr. President:** I do not dispute his facts. I only say that I have received no intimation from the States Ministry to that effect and therefore we are proceeding upon what we have from the States Ministry. As soon as we have information, there will be no difficulty in changing the rules. That can be done at any sitting.

**Shri Biswanath Das:** You are going to take charge of the State. The moment newspapers published that the Constituent Assembly has given separate representation to the State I assure you that there will be tremendous trouble to be faced not by me or the people of Orissa but by the very administrator that is going to be appointed by the Government of India. Under these circumstances I appeal to you, knowing as you do the difficulties of the situation and as a person having an intimate knowledge of the areas and the people concerned, not to tread on dangerous ground. I do not want to press my amendment. I have only brought this matter to your notice as also to the notice of the Constituent

Assembly.

**Mr. President:** I think the newspapers will not only publish the fact that Mayurbhanj has been given separate representation but also the statements which I have made and you have made. Along with these statements the information itself will have no effect of the kind that you apprehend and I would therefore suggest to the honourable Member not to press his amendment.

**Shri Ram Sahai** [United State of Gwalior, Indore, Malwa (Madhya Bharat)]: \*[ Mr. President, I would like to know if an amendment which is contrary to the principles accepted by the Negotiating Committee can be moved to the amendment now before us. For example, 50 per cent is fixed in it. Is it possible to move an amendment that instead of 50 per cent. All the members should be elected or that they should be nominated by the Raj Pramukhs or that the members must be elected on the basis of the electoral rolls that had been prepared before in the States? I would like to know whether an amendment can be moved which goes beyond the principles accepted by the Negotiating Committee.]\*

**Mr. President:** I think we have to be very cautious in dealing with the States. We are proceeding on the basis of the agreements entered into with the States and here we should not say or do anything which may have the effect of going back upon any agreement which has been made with the States. All these amendments are based upon agreements which have been made between the States Ministry and the States concerned. The House will remember that originally there was one set of agreements but that has become out of date and therefore we have a second set of agreements. All these amendments are based upon these agreements and I would therefore suggest that nothing should be done to go back upon any of the agreements that have been entered into.

I would ask Mr. Sidhwa not to press his amendment....

**Several Honourable Members:** He has not moved it.

**Shri S. Nagappa** (Madras: General ): Sir, I beg leave of the House to move the amendment of which I have given notice just now. I am in agreement with the original motion but as regards the Annexure Part I, third Column (*viz.* Authority for the purpose of the choosing of representatives in the Constituent Assembly) I propose to move an amendment to the "word" Ruler of Hyderabad, Mysore, Kashmir and so on. I would like to say that the rulers today do not have the real ruling power, as it has been transferred to the people of the State, especially since August 15th 1947. So, Sir, I think the ruler of any State should not be made the authority for the purpose of choosing representatives in the Constituent Assembly, as he has not got the authority to choose. What is the good of calling someone an authority who really has not got that authority? To me it does not look to be in order. I shall be thankful if the Honourable the Mover accepts my amendment:

"That for the word 'Ruler' in column 3 of annexure Part I the word 'people' be substituted."

If you find that this is not in order then for instance, the Speaker of any Assembly, which has been elected by the people of that State, occupies a more important place than that of the Ruler. No doubt the Ruler is there as a nominal figurehead but the real person who rules is either the prime Minister or the Legislative Assembly, wherever there is one. So, Sir, I would request that the Honourable the Mover would accept this simple amendment. I have proposed a simple amendment and I need not explain it further. I hope the House will be good enough to accept it.

**Mr. President:** I might point out that the Honourable member's amendment is wholly misconceived. It is not as if the Ruler is going to nominate the representatives. The Rulers have to be addressed for the purpose of getting the representatives elected by the bodies who have the right to elect them. The Ruler

does not come in in any other way.

**Shri S. Nagappa:** That is exactly my point. You are addressing the Ruler but the Ruler has not got any authority to elect. What is the good of asking a person who does not possess the power? The actual power is not with the Ruler but with the people of the State. So the representatives should be elected by the people of the State--either the Speaker of the Assembly wherever there is an Assembly functioning or the Prime Minister or the Raj Pramukh who has been duly elected. They will be the proper authority. Even for the sake of form it should not be there.

**Mr. President:** I have pointed out the position to the Honourable Member but if he wants to press his amendment.....

**Shri S. Nagappa:** There is no question of pressing the amendment. I have understood , Sir, your point. You have been kind enough to enlighten me that the ruler is only a figurehead and is meant for the purpose of addressing someone. But what I say is, what is the good of addressing a Ruler who has not got the authority and who has transferred his authority to the people of the State?

**Mr. President:** Every order of the Government of India also goes in the name of the Governor-General, although it is the Ministers who pass the orders. The position is exactly similar.

**Shri S. Nagappa:** Sir, I accept your advice and I leave it to you.

**Shrimati G. Durgabai :** Mr. President, I do not think I have much to say by way of replying to the points raised by several Honourable Members of the House and I am thankful to you, Sir, that you had taken upon yourself the task of explaining some of the points raised by the Honourable Members. I would not refer to the points raised by Shri Biswanath Das and Shri Nagappa, because the Honourable President has sufficiently dealt with those points.

With regard to the amendment moved by Dr. P.S. Deshmukh, I think the existing expression, 'make a request in writing' is more happily worded than that suggested by him and is also very courteous, I do not think there is need for a change. His other amendment also I cannot accept for the same reason.

With regard to the point raised by Mr. Kamath in his amendments, I may say that I appreciate it and have great pleasure in accepting his amendments. They are really verbal amendments and I accept them.

He has raised the question of Hyderabad and Kashmir in this connection. I do not think it is for me to say any thing on the points he has raised about those States; but I feel that those points are irrelevant to the motion I have moved here. I commend my motion to the House for its acceptance.

**Shri H. V. Kamath:** Mr. President, I have not moved any amendment and therefore the question of irrelevancy does not arise, I only wanted to know whether Hyderabad, Bhopal and Kashmir would send their representatives to the Assembly. I only wanted some light and clarification on the point.

**Mr. President:** I shall put the amendments to vote. The amendment of Mr. Kamath runs thus:

"That in sub- Para (1) of the proposed paragraph 3 of the Schedule, for the words" 'to the States, individual or grouped in the Assembly', the words 'in the Assembly to the States, individual or grouped' be substituted.

This has been accepted by the Mover.

The amendment was adopted.

**Mr. President:** The other amendment of Mr. Kamath, *viz.*, "That in sub-para. (3) of the proposed paragraph 3 of the Schedule, for the words 'is declared vacant' the words 'has been declared vacant' be substituted" is now for the vote of the House. This has also been accepted by the Mover.

The amendment was adopted.

**Mr. President:** Then there are the amendments of Dr. Deshmukh. So far as the wording of one of them at any rate is concerned, it has been already accepted when Mr. Kamath's amendment was accepted. The other amendment is only a question of taste whether we should make a direction or a request. As Dr. Deshmukh has not withdrawn it, I shall put it to vote. The amendment is:

"In the place of the word 'request' the word 'direct' should be used."

The amendment was negatived.

**Mr. President:** I shall now put the amendment of Dr. Deshmukh to Clause 3(i) of the Schedule to vote.

The amendment was negatived.

The amendment of Mr. Biswanath Das was, by leave of the Assembly withdrawn.

Shri S. Nagappa's amendment was, by leave of the Assembly, withdrawn.

**Mr. President:** The motion, as amended, is for the vote of the House.

**Shri H. V. Kamath:** Would you please tell us whether Hyderabad and Kashmir would send their representatives to this Assembly?

**Mr. President:** I am not in a position to give any information on that point. The Government, if they liked, would have given you the information by now.

The motion as amended, is for the vote of the House.

The motion, as amended, was adopted.

**Mr. President:** Srimati Durgabai may now move her second motion.

### **AMENDMENT TO THE ANNEXURE TO THE SCHEDULE**

**Shrimathi G. Durgabai :** Mr. President I beg to move the following motion :

" That the provisions mentioned in the Constituent Assembly Notification, No. CA/43/Ser/48-II, dated the 3rd August 1948, be made

part of the Constituent Assembly Rules, as shown in the amendments below, with effect from 3rd August 1948."

#### Annexure to the Schedule----

For the Annexure to the Schedule substitute the following Annexure :-

### ANNEXURE

#### Part I

Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of the representatives in the Constituent Assembly
1	2	3
Hyderabad	16	Ruler of Hyderabad
Mysore	7	Ruler of Mysore
Kashmir	4	Ruler of Kashmir
Baroda	3	Ruler of Baroda
Travancore	6	Ruler of Travancore
Cochin	1	Ruler of Cochin
Jodhpur	2	Ruler of Jodhpur
Jaipur	3	Ruler of Jaipur
Bikaner	1	Ruler of Bikaner
Bhopal	1	Ruler of Bhopal
Kolhapur	1	Ruler of Kolhapur
Mayurbhanj	1	Ruler of Mayurbhanj
Sikkim and Cooch Behar	1	Ruler of Cooch Behar
Tripura Manipur Khasi States	1	Ruler of Tripura
Rampur Benares	1	Ruler of Rampur
Total	49	

#### Part II

Name of State or States	1	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of representatives in the Constituent Assembly
		2	3
<b>ORISSA STATES</b>			
Athgarh Athmalik Bamra Baramba Boudh Bonai Daspalla Dhenkanal Gangpur Hindol			
Kalahandi		4	
(23)	Keonjhar Khandpara Narsinghpur Nayagarh Nilgiri Pal Lahara Patna Rairakhol Rampur Sonepur Talcher Tigiria		Governor of Orissa.
<b>Central Provinces and Berar States</b>			
Bastar Changbhakar Chhuikadan Jashpur Kanker Kawardha Khairagarh Korea Nandgaon Raigarh Sakti Sarangarh Surguja Udaipur Makrai			
(15)		3	Governor of Central Provinces and Berar.
<b>MADRAS STATES</b>			
Banganapalle Pudu Khotai		1	Governor of Madras.
<b>BOMBAY STATES</b>			
Rajpipla Palanpur Cambay Dharampur Balasinor Baria Chhota Udepur Sant Lunawada Bansda Sachin Jawahar Danta			

(35)	<p>Janjira Sangli Savantvadi Mudhol Bhor Jamkhandi Miraj (Sr.) Miraj (Jr.) Kurundwad (Sr.) Kurundwad (Jr.) Akalkot Governor of Bombay Phaltan Jath Aundh Ramdrug Idar Radhanpur Sirohi Savanur Wadi Vijaynagar Jambughoda 271 minor states (thanas, etc.)</p>	4	Governor of Bombay.
<b>Himachal Pradesh</b>			
(21)	<p>Bashahr Sirmur Chamba Mandi Suket Baghal Baghat Balsan Bhajji Bija Darkoti Dhami Jubbal Keonthal Kumharsain Kumihar Kuthar Mahlog Mangal Sangri Tharoach United State of Kathiawar (Saurashtra) United State of Matsya United State of Rajasthan United State of Vindhya Pradesh United State of Gwalior, Indore, Malwa (Madhya Bharat) Patiala and East Punjab States Union Cutch Junagadh</p>	1	Chief Commissioner of Himachal Pradesh.
	United State of Kathiawar (Saurashtra)	4	Rajpramukh of the State.
	United State of Matsya	2	Rajpramukh of the State.
	United State of Rajasthan	4	Rajpramukh of the State.
	United State of Vindhya Pradesh	4	Rajpramukh of the State.
	United State of Gwalior, Indore, Malwa (Madhya Bharat)	7	Rajpramukh of the State.
	Patiala and East Punjab States Union	3	Rajpramukh of the State.
	Cutch	1	Chief Commissioner of Cutch
	Junagadh	1	Administrators of Junagadh
<b>RESIDUARY STATES :</b>			
	Jaisalmer Sandur Tehri-Garhwal		

Bilaspur		Chief commissioner
BIHAR STATES		of Himachal
Seraikela		Pradesh.
Kharsavan	1	
EAST PUNJAB STATES		
Loharu		
Pataudi		
Dujana		
Total	40	
GRAND TOTAL OF PARTS I AND PART II	89	

**Shri H. V. Kamath :** Mr. President, the amendment I have given notice of is an extremely simple one and a purely verbal one intended to add the definite article 'the'. It reads:

"That in part II of the proposed Annexure to the Schedule, for the words 'Governor of Central Provinces and Berar' in the 3rd column under the heading 'Central Provinces and Berar States', the words 'Governor of the Central Provinces and Berar' be substituted."

I would invite your attention and the attention of the House to the name by which my province is known in official documents and records. In our draft Constitution, of which we have all got copies in Schedule I, Part I, page 159 where the list of the various provinces has been given, and you will find my province described as the Central Provinces and Berar.

**Mr. President :** I do not want you to adduce arguments in support of this amendment.

**Shri H. V. Kamath :** I move the amendment and commend it for the acceptance of the House.

**Mr. President :** Do you accept that?

**Shrimati G. Durgabai :** I accept that.

**Mr. President :** The amendment is that the word "the" be added before the words "Central Provinces and Berar".

The amendment was adopted.

**Mr. President :** The motion, as amended, is now put to vote.

The motion, as amended, was adopted.

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#### Addition of New Rule-38-V

**Shrimati G. Durgabai :** Sir, I beg to move that the following amendment to the Constituent Assembly Rules be taken into consideration:

After rule 38-U insert the following-

"38-V. When a Bill referred to in Rule 38-A is passed by the Assembly, the President shall authenticate the same by affixing his

signature thereto. When the Bill is so authenticated it shall become an Act and shall be published in the *Gazette of India*."

Sir, before I commend my motion for the acceptance of the House, I consider it my duty to offer a few words of explanation as to why this amendment has become necessary. Sir, I am sure that Honourable Members are aware that during the last session of the Constituent Assembly when it met on the 27th January, certain amendments were proposed and accepted by this House to the rules of the Constituent Assembly, and one of those amendments was to introduce a new rule 38-V laying down the procedure for passing of the Bills referred to in Rule 38-A. Sir, that proposed rule 38-V raised a good deal of controversy and objections were raised by some Honourable Members on the ground that a Bill passed by the Constituent Assembly for amending the Indian Independence Act or the Government of India Act 1935 as adapted by that Act should not be subject to the assent of the Governor-General since such a procedure might detract from the sovereign character of the Assembly. Another objection was raised on the ground that, if that rule was adopted, the consequence would follow that the Governor-General might give or withhold his assent even to a Bill seeking to amend the existing constitution. Another objection was raised on the ground that there should not be any difference between the procedure to be adopted for passing the Draft Constitution and for passing a Bill seeking to amend the existing Act. These objections were discussed and after prolonged discussion, the suggestion made by Mr. Kamath to refer the proposed rule back to the Draft Committee for re-examination in the light of the objections raised, was accepted. This suggestion was accepted by the House and the rule was referred back to the Drafting Committee. The Drafting Committee has considered this rule and their fresh proposal is before the House. Sir, this new rule dispenses with the assent of the Governor-General to any Bill passed by the Constituent Assembly under Rule 38-A. The original rule reads thus:

"When a Bill referred to in Rule 30-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for his assent. When the Bill is assented to by the Governor-General, it shall become an Act and shall be published in the *Gazette of India*".

I think Members have understood the significance of the change proposed and that I need not elaborate this point. I commend my motion for the acceptance of the House.

**Mr. President:** Mr. Kamath has tabled an amendment to this to substitute the words "has been" for the word "is".

**Shri H. V. Kamath :** Mr. President, Sir, I move:

"That in the proposed rule 38-V for the words 'when the Bill is so authenticated' the words 'When the Bill has been so authenticated' be substituted."

This amendment, Sir, is entirely similar to the one which has been accepted by the House with regard to another motion moved by my honourable Friend. Mrs. Durgabai. I think it will be happier and more in consonance with the rules of idiom and usage to substitute the words "has been" for the word "is" so that, if the amendment is accepted, the proposed rule will read:

"When a Bill referred to in rule 38-A is passed by the Assembly, the President shall authenticate the same by affixing his signature thereto. When the Bill has been so authenticated, it shall become an Act . . ." etc.

I commend this amendment for the acceptance of the House.

**Mr. President:** The motion has been moved and also an amendment to that. If any Member wishes to speak on the motion, he may do so now.

**Shrimati G. Durgabai:** I accept the amendment.

**Mr. President:** It seems there is nobody who wishes to speak on the motion. The mover has accepted the amendment. I first put the amendment to vote.

The amendment was adopted.

**Mr. President:** The motion, as amended, is now put to vote.

The motion, as amended, was adopted.

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### **PROGRAMME OF BUSINESS**

**Mr. President :** We will now go on to the next item on the agenda but before doing so, I would like to explain to the House the procedure which I propose to follow in dealing with the Draft Constitution. Members are aware that the Draft Constitution was prepared by a Drafting Committee which was appointed by this House and the Draft was placed in the hands of Members nearly eight months or more ago. Members were asked to send in any suggestions or amendments which they wished to make and a large number of suggestions and amendments were received not only from Members but also from the public and public bodies, provincial governments and so forth. The Drafting Committee has considered all these suggestions and amendments and they have redrafted many of the articles in the light of the suggestions made by either Members or the public. So we have now got not only the Draft as it was originally prepared, but also the re-draft of a number of the Articles which the Drafting Committee had prepared in the light of suggestions received. These have been placed in the hands of Members. What I propose now to do is to take up each Article after we, of course, have passed this motion for consideration and I shall take all these amendments of which notice has been given already as having been given in time, so that Members who have already given notice of amendments need not repeat the notice after the motion for consideration has been adopted. I will also give to Members two days more forgiving notice of any further amendments which they wish to propose to the Articles. And then, I propose not to accept any other amendments, unless they are of such a nature that it becomes necessary to accept them. Of course, there will be amendments which may be consequential and those will have to be accepted. There may also be amendments which for other reasons may be considered by the House to be of such a nature that they should be considered; I will not burke discussion of those amendments; I shall have them also. But ordinarily I would ask the Members to confine themselves to the amendments of which we have already got notice and they are, I believe, about a thousand in number. In this way we might economise time without in any way affecting our efficiency and without in any way putting any check on free discussion of all the Articles of the proposed draft. This is what I propose to do, of course, subject to what the House lays down. I think this is quite reasonable in view of the fact that Members have had such a long time to consider; and that they have considered in detail the draft is apparent from the fact that we have already got notice of about a thousand amendments, and if by any chance any amendment has been overlooked and if any member feels its consideration to be necessary, we shall take it, but ordinarily I will not take any further amendments after this. What I propose is that we discuss the motion, which Dr. Ambedkar will move, for two days, that is, today and tomorrow, when we sit both in the morning and in the afternoon and we give Saturday and Sunday for giving notice of amendments to the members. All the amendments of which we have already received notice and of which we shall have received notice by 5 o'clock on Sunday will be tabulated, printed and placed in the hands of Members by Monday, and then we proceed with the discussion of the amendments from Tuesday. That is the programme which I have outlined in my mind.

There is another thing which I might tell Members. There is a motion of which notice has been given and there is also an amendment of which notice has been given that this House should adjourn discussion of the Constitution altogether and a new House on adult franchise and on non-communal lines

should be elected and that House should deal with the question of framing the Constitution. I do not know if the House will be prepared to throw away all that we have been doing during the last two years, particularly because there is in the Draft an article which gives a somewhat easy method of amending the Constitution during the early years after it comes into force and if there is any lacuna or if there is anything which needs amendment, that could easily be done under the provision to which I have just made reference, and it is, therefore, not necessary that we should hold up the consideration of the entire Constitution until we have adult franchise. The difficulty will be in the first place to form the electorate under adult franchise; we have no such law existing at present. Adult franchise we have contemplated in this Draft Constitution and it will come into force when this Constitution has been passed. So if you want to have adult franchise and if you want to have another Constituent Assembly for the purpose of drafting the amendments, we shall have to pass another law and I do not know which House will have the right to pass that law which will constitute a Constituent Assembly. So I think it would be best to proceed with the draft which we have prepared after much labour and to which so much care and attention has been given by the Drafting Committee and by the Members of this House.

This is the programme which I propose to follow and if there is any other suggestion which any member wishes to make, I shall be glad to consider it. There is only one thing more which I might mention and that is this. I do not wish to curtail discussion. I want to give to members the fullest opportunity for considering every article and every aspect of the Constitutional question, because, after all, it is going to be our Constitution, but at the same time, I do not like that we should spend more time than is absolutely necessary over it by repeating arguments which have already been once advanced by one Member or another or by going over the same ground. For that reason, we may not reconsider many of the decisions which have already been taken. Members know that we had long discussions, and after long discussions we settled the principles of the Constitution and the Draft, the bulk of it, is based upon those decisions which were taken after long discussion by this House. I would not expect that the Members would lightly throw away those decisions and insist upon a reconsideration of those decisions. There may be cases where a reconsideration may be necessary. But ordinarily, we shall proceed upon the decisions which have already once been taken and it is only where no decisions have yet been taken that the House may have to take decisions for the first time. Now there are certain questions on which no decisions have been taken. There were certain committees appointed by the House. The reports of those Committees were not considered. But the Drafting Committee has taken care to place in the draft alternative proposals, one set of proposals representing their own views where they differ from those of those Committees and another set of proposals embodying the recommendations and the decisions of those Committees. So when we come to those particular provisions, the House may consider them on their merits, and after considering them on their merits may accept either the opinion of the Drafting Committee or of the Committee. The House will have the draft ready, so that it will not have to wait for preparing a draft on these questions. When we consider this whole matter from this point of view, I think, after all, the scope for discussion gets very much limited, because most of the amendments will be more or less of a drafting nature, because the decisions have already been taken, and so far as the drafting is concerned, the Drafting Committee has already considered many of these suggestions and amendments and it has accepted them. So, while there may be discussion of principle in regard to some questions which have not been decided, there is not much to discuss so far as principles are concerned, because we have already discussed those principles and we have arrived at certain conclusions. Therefore, what I feel is this, that if we proceeded in a business-like way, it should be possible for us to complete discussion of the whole Constitution by the second anniversary of the day on which we started the work of this Constituent Assembly, that is, by the 9th of December next.

If we succeed in doing that, after that we might have a few days adjournment, when all the amendments which have been accepted by the House will be considered by the Drafting Committee and put in their proper places, when all the re-numbering and re-allocation of the Articles from one Chapter to another and so forth--all that becomes necessary--all that could be done within that interval of say ten or fifteen days. Then, we might meet a second time when we could finally accept the Constitution as it will have emerged. In this second discussion, under the Rules, we shall not go into the merits of any

question; we shall have only to see that the amendments as they were accepted by the House have been incorporated in the final form in which the draft is placed before the House.

This is the proposal which I place before the House and I think this ought to meet with the approval of the members of this House.

**Seth Govind Das** (C. P. & Berar: General): \*[Mr. President, I would like to know whether after adoption of the article relating to the national language, clauses which might have been passed by then in English would be placed before this House for adoption in Hindi.]\*

**Mr. President :** \*[Yes, of course, all the clauses would be reconsidered in that language which may have been adopted as the national language. There would be no discussion at that time on the clauses as such. The only point for consideration would be whether the clause has been correctly translated or not. I, therefore, think that our discussions should be based on the English draft at present, for all those who have given thought to the draft and those who have prepared it, have done so in that language only. And when clause relating to the national language is finally adopted we would put up the translation of the Constitution in that language before you for adoption.]\*

**Pandit Balkrishna Sharma** (United Provinces: General): Sir, I wish to draw your attention to this very important question which my honourable friend Seth Govind Das has raised before the House.

**Shri Mahavir Tyagi** (United Provinces: General): \*[Mr. President, I would like to submit that before we proceed to discuss fundamental questions, it appears desirable that you should decide what the procedure would be for tabling amendments. Shall the old procedure be followed or the one which you have stated now? It is necessary so that we may have some idea of the order in which debate would proceed, and the time we would be allowed for sending in amendments.]\*

**Mr. President:** \*[Both will be decided simultaneously.]\*

**Pandit Balkrishna Sharma :** Sir, I fail to see where the point of order lies. As a matter of fact, I only wanted to draw your attention to one thing. Before you call upon the Honourable Dr. Ambedkar to move that the Draft Constitution be taken into consideration, I should like to draw your attention to the question which has been raised by my friend Seth Govind Das. After the motion which the Honourable Dr. Ambedkar is to move has been carried, we shall certainly consider the Constitution clause by clause. As you know, Sir, I am one of those who had given notice that the National language of India be Hindi and the script the Devnagari script. Naturally, the question will arise when we take into consideration one clause after the other of our Constitution, as to which language will it be in which the Constitution shall be deemed to have been passed. My suggestion, therefore, before you will be that when we consider the clauses of the Constitution, after finishing one Chapter of it, we must revert in Hindi and pass every clause as has been amended by this House and as has been translated in that language by a Sub-Committee of this House. I would therefore request you, Sir, that before you take up the consideration of the Constitution clause by clause, you may be pleased to appoint a Sub-Committee of this House which will keep itself in touch with the clauses and the amendments that the House wishes to make therein and as they are passed, and that Committee should get these clauses translated and these clauses, after finishing one Chapter, may again be brought before the House in Hindi and it could be deemed to have been passed in Hindi also. So that, after some time, when we have ultimately done away with the English language, the original must be considered to have been passed in Hindi, and it should be the ultimate authority, the authentic constitution. If we do not adopt any such course, I think we shall be greatly handicapped at the time when I think article 99 of the Constitution comes before us and we declare our language as Hindi and the script the Devnagari script. I think there is some difficulty before my South Indian friends. They can easily say that "this Constitution at present is in the English language which we all understand, you call upon us to pass every clause in Hindi, and we do not know the

language." I think those of my South Indian friends who do not know Hindi to such an extent may rely on the better sense of their colleagues. Here, in this House, there are friends who do not know English and yet they rely upon your good sense and they do not raise the objection that they do not know the English language and therefore this Constitution is not good. Similarly, they may try to accommodate us in this matter.

**Mr. President :** I think it will cut short discussion on this point if I explain what I propose to do in regard to this matter. There is a motion of which notice has been given that a Committee should be appointed for the purpose of preparing a translation and that translation should be passed Article by Article by this House, and that should be treated as the original. There is something to that effect of which notice has been given. What I propose to do is this. Members are aware that we have got translations prepared: there is a translation in Hindi; there is a translation in Urdu; there is a translation in Hindustani; all these three translations of the Draft Constitution are ready and I believe members have received copies of these translations. As soon as the question is decided as to what will be our language, we shall set up a Committee which will take up that particular translation which is ready and see to it that it conforms literally to the original in English. Whatever our sentiments may dictate, we have to recognise the fact that most of those who have been concerned with the drafting of the constitution can express themselves better in English than they can in Hindi; it is not only a question of expressing in English or Hindi, but the ideas have also been taken from Constitutions of the West. So the expressions which have been used have, many of them, histories of their own and we have taken them bodily from the phraseology of Constitutions of the West in many places. Therefore it could not be helped because of the limitation of those who were charged with drafting that the draft had to be prepared in English. I do not think we have lost anything by that but when once a particular article is finally adopted in this House in the English language, we shall see to it that as correct and perfect a translation is produced as possible and in the language which will be accepted by the Constituent Assembly as the language for our national purposes. So I would ask the Members not to anticipate the discussion which we shall have on the question of language. That will come a little later but I promise this that as soon as that question is settled, we shall have the translation revised or prepared in that particular language which is accepted and we shall put the translated Constitution also before the House for acceptance.

**Seth Govind Das :** \*[Mr. President, you had made a specific commitment that when the constitution would be placed before us, its original would be in our national language. I had also put a question to you at that time and in your reply also you did say that the original draft of the constitution to be placed before us would be in our language. But the draft Constitution placed before us by Dr. Ambedkar is in English. As the constitution now placed before us is in English I would like to know when the constitution originally drafted in our national language and about which you have given us an assurance will be brought before us]\*.

**The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General):** \*[Mr. President, I would like to inquire whether after the adoption of the article relating to the national language, each clause would be taken up in the National Language for adoption just in the same manner as the clauses in the English Draft are taken up for final adoption after these have been duly amended.]\*

**Mr. President:** \*[Every article will be taken up.]\*

**Pandit Balkrishna Sharma :** Sir, I only want to make this suggestion that before taking up the Constitution clause by clause will it not be better if you very graciously permit us to take up the question of national language and have a decision about it. Because if we first take up the question of the national language and decide it, then once for all the hatchet is buried (*Cheers*). You can have the discussions of 10 or 15 clauses in English. The Committee will be getting the translations ready the next day and the whole translation of that part will be before the House which will be called upon to take it into consideration and then it shall be deemed to have been passed by the House. There fore I suggest you

may be pleased to permit this House to take up the question of the national language first before taking up the Constitution clause by clause. The question of national language comes in somewhere in clause 99 of the Constitution which may take long. This question bristles with many difficulties and some of us feel it to be fundamentally embedded with our future. There are other members who do not attach importance to it. Therefore I would request you to take up this question first and give us an opportunity to decide it and afterwards like the Constitution in English clause by clause and then give us opportunity to take them in Hindi as well.

**Mr. President :** May I state that the very reason which he has adduced for taking up the question of language in the beginning has induced me to put it off to a later stage. The reason which he has given is that there are differences of opinion, some people holding very strongly one view and others holding the other view equally strongly. I suggest that it is much better to discuss at any rate the fundamentals of the Constitution in a calm atmosphere before our tempers have got frayed. I therefore suggest that we should go on with the Constitution and discuss each item and when we have done that much--it will not in any way prejudice the question of language - the language question will be decided on its merits by the House and when that decision has been taken, every article will be passed ultimately in that language also. Therefore nothing is lost. Only, we do not lost temper to begin with.

**Shri R. V. Dhulekar** (United Provinces: General): \*[Mr. President, Sir, the proposal that I want to place before you is this. On the first occasion when I delivered my speech in Hindi in this House, I had moved an amendment to the effect that the constitution should be framed in our national language and that the English version should be treated as its translation. Therefore I want to submit that when the discussion on the English version of the Constitution is over and it has been fully passed and when with your permission a decision has also been reached in regard to the national language, I shall place the proposal before you that the constitution in the national language should be considered as the original one. It will be insulting for us to adopt the translation of the English version. No nation has so far done so.

I admit that the Members would speak in English in this debate. I shall also speak in English and in fact want to do so but later I shall speak in Hindi. I wish to inform you that I want to place before you a motion when this discussion is over. It will be to the effect that the English version of the Constitution will be considered the translation of the constitution in the national language and the latter will be taken to be the original one. The English version will be styled as translation. I request that I maybe told as to when I may table that motion before you.]\*

**Mr. President:** \*[This Assembly is entitled to say whether the constitution will be passed in Hindi or Urdu and that version will be taken to be the original one. The other versions will be considered as its translations. You have the power to do so.]\*

**Shri Suresh Chandra Majumdar** (West Bengal: General): Sir, your orders came regarding the translations. Complete translations have been made in certain languages and I have no quarrel with that but in the process of Constitution making it is imperative that the people of our country - whatever may be their spoken language - they should understand it. So in your scheme of translation if you will kindly include, in addition to Hindi and Urdu, other major languages of India, it would be very convenient for everyone to understand and thereby, whatever may be the Rashtrabhasha afterwards, it will not be said that the proceedings were carried on in a language or languages which were not intelligible to all parts of the country. This is my suggestion. I have no disrespect for Hindi nor have I any attachment to English but as the Constitution is a very important thing. I think it should be made intelligible to all the people of the country. So my prayer is you might kindly include in your scheme of translation at least the major languages of India and I don't think it will be difficult for you to arrange that.

**Pandit Hirday Nath Kunzru** (United Provinces: General): Mr. President, you have made an

announcement regarding the procedure you propose to follow in connection with the Bill before us, that will have a very important bearing on the discussions that will take place shortly. You have drawn our attention to two points.

The first point is that as the principles underlying this Bill were accepted by the Assembly a few months back, no amendment should be brought forward which would question any of these principles or would seek to make any alteration in them. Sir, this is a matter.....

**Mr. President:** I qualified that by "ordinarily".

**Pandit Hirday Nath Kunzru:** It all depends on how the Chair will interpret this word. But I remember that when the discussions on the principles embodied in the Bill were going on, it was said several times that we should have a better opportunity for expressing our opinions later when the whole picture was before us. This is a matter that, I venture to think, Sir, deserves your serious attention. We might, a few months back, have accepted certain conclusions, but if, either after studying the Act as a whole, or after further reflection, any of us comes to the conclusion that any of these principles should be modified or completely altered, his right to express his opinion should not be questioned.

**Mr. President:** I may say at once that I do not propose to rule out any discussion. It will be for the House to decide whether it will go back on any of its decisions. As Chairman, I do not propose to rule out any discussion or reconsideration.

**Pandit Hirday Nath Kunzru:** The House will certainly have the right to decide whether it will go back on any of its previous decisions. If it does not approve any change in the principles accepted by it some time ago, it will be open to it to throw out any suggestion for a change made by any Member. But what I have said, is due to the fact that I am under the impression that it was your intention to rule out certain amendments.

**Mr. President:** I am sorry if I left that impression.

**Pandit Hirday Nath Kunzru:** I am very glad to hear from you, Sir, that this is not your intention. It is therefore not necessary for me to discuss this aspect of your pronouncement any more.

I now come to the second point which you asked the House to bear in mind in giving notice of amendments in future. You said that you would allow amendments to be proposed till 5 o'clock on Sunday next, but that thereafter you would not admit any new amendment for discussion, unless it seemed to you to relate to a matter of importance. I think, Sir, we all appreciate the substance of what you have said. As far as possible, our discussion should be canalized in proper channels and should relate to such points only as sought to be considered by the House again. Your advice therefore in regard to the character of the amendments would naturally carry great weight with every Member of this House. But I submit, Sir, that no amendment, no matter when received, ought to be automatically ruled out on the ground that it was not received by 5 o'clock on Sunday afternoon. It is the duty of the Chair to regulate the discussion and I have no doubt that every Member of this House is anxious to help the Chair in its onerous task, particularly as the which every Member of the House ought to be jealous. We have under the rules the right to give notice of amendments at any stage we like, and provided they are received within the time allotted by the rules, our right to put forward new amendments cannot be questioned. It cannot be questioned even by you, Sir.

I therefore suggest that when you consider any amendment that is proposed, to be superfluous, or to relate to a very unimportant matter, you may well advise the Member concerned to save the time of the House by withdrawing it. But should he insist on expressing his view, even on an unimportant matter, I

hope that you, whose duty it is to maintain our rights and privileges unimpaired, will not take away by executive discretion his right to propose his amendment. Sir, this is a matter of great importance. It relates to a question of principle. I do not think that in practice any conflict will arise between the Chair and any member of this House but I am anxious that no right, not even the least, that the rules enable us to enjoy should be taken away from us or whittled down either directly or indirectly. I hope that my observations will receive the attention of the Chair and that my remarks will be taken in the spirit in which they have been made. We all mean to be respectful to you. We listen to whatever you say with great attention and with a desire to act up to your advice but we do earnestly request you not to make any attempt to trench even on the smallest of our privileges. We ask you to stand up for them should anybody attack them and I trust that the discussion will be carried on in such a way as to enable us to feel that you are the guardian of our dignity and privileges and will maintain unimpaired every right that the House enjoys at present under the rules.

**Mr. President:** I hope I have not given any cause so far in this Assembly to any Member to complain that I have acted in such a way as to take away any of his rights and I hope to continue the tradition in the future also.

**Maulana Hasrat Mohani** (United Provinces: Muslim): Sir, I beg to draw your attention to the fact that I have already given notice of a motion to the effect:

"That the consideration of the Draft Constitution of India be postponed till the election of a fresh and competent Constituent Assembly on the basis of Joint Electorates and the formation of political rather than communal parties in India."

I also beg to draw your attention to your ruling when I proposed an amendment to the same effect on the occasion of the presentation of the report on the principles of a Model provincial constitution, viz., that the consideration of the provincial constitution be postponed unless and until we have considered the Union Constitution.....

**Mr. President:** We shall take up your amendment in due course.

**Maulana Hasrat Mohani:** I want to place my motion first.

**Mr. Hussain Imam** (Bihar: Muslim): The motion that the Bill be considered has not been made and therefore the amendment cannot be moved at this stage.

**Mr. President:** That is what I am saying. We shall take it up in due course.

The Assembly then adjourned for Lunch till Three of the Clock.

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The Assembly re-assembled after lunch at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

**Shri Mahavir Tyagi :** Mr. President, before we rose for lunch, the question put before you for your consideration was whether the procedure which you had announced regarding the discussions here held good or whether you will please accede to the request made by my friend Pandit Hirday Nath Kunzru. According to the rules we have the right to give two days' notice of amendments if they are to be considered valid. I need not quote the relevant rule. It is known to everybody. We followed it last time. When the draft of the Constitution was sent to us, I and many others here thought naturally that the same old procedure with regard to discussion will be followed. Now, many of my friends may not have

sent in their amendments in full in the hope that we would discuss these matters here and then give notice of our amendments after a discussion between ourselves. The old arrangement of two days' notice enabled us to meet in groups or parties and discuss and send in amendments. If this practice is to be guillotined and we are not to be permitted to give notice of amendments as we proceed clause by clause, it will not be fair for those who have only just now joined the Assembly. There are many who have signed the Register today and got the papers of the Assembly a few hours ago. The draft Constitution is a huge volume which we want to read and consider. If you accede to the request of my friend Mr. Kunzru and permit the new-comers to study the Draft Constitution as the discussion proceeds it will facilitate them to send their amendments in time and have their say. Otherwise, the new arrivals will not be accommodated at all.

Mr. President, we are the Constituent Assembly and are making the Constitution. An ordinary law which is considered by the Legislative Assembly and passed can be amended once very month or so. But the Constitution is not amended every now and then. We are making a Constitution for centuries to come and it cannot be amended easily, as easily as we can amend a legislative enactment. Therefore, full facilities should be given to the Members of this House to have their say.

Therefore, I repeat the request that you may please consider that the two days' time given in the rules is not taken away and allow amendments subject to their relevancy to the motion under consideration. Amendments may not be moved which have the effect of negating the main motion except as permitted by the Chairman. Notice of amendments to a motion must be given one clear day before the motion is moved in the Assembly. This rule being there, I submit ,unless we change the rules.....

**Mr. President:** The relevant rule is 38-0.

**Shri Mahavir Tyagi:** It says:

"If notice of a proposed amendment has not been given two clear days before the day on which the Constitution or the Bill, as the case may be, is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the President in his discretion allows the amendment to be moved.

Do you mean to interpret this rule 38-0 in such a way that the whole Constitution.....

**Mr. President:** I hope the Honourable Member will not drive me to give a decision on that point today. You had better leave it there. *(Laughter)*.

**Shri H. V. Kamath :** Arising from the pronouncement made by you this morning, may I seek clarification on two points?

**Shri Algu Rai Shastri** (United Provinces: General):\*[Mr. President, I find that Honourable Members stand up to intervene in the debate. I request that I may also be given a chance to speak.]\*

**Shri H. V. Kamath:** May I seek a little clarification of the announcement you made this morning? You were pleased to say that the Assembly would adjourn on 9th December for a few days. Do we adjourn on that day irrespective of whether we complete the consideration of the Constitution or not?

**Mr. President:** Nothing of the sort. I only suggested some sort of time table which I considered to be fair. It is for the House to decide whether they would go on up to 9th of December next year. *(Laughter)*.

**Shri H. V. Kamath:** Are we going to have a recess from 9th December to a date to be specified later?

**Mr. President:** It all depends on the business on hand. I have suggested more than once that I do not want to curtail discussion. As we are considering the Constitution of the country, we shall not do anything in a hurry; but at the same time I do not want waste time.

**Shri H. V. Kamath:** Are we going to adjourn on the 9th December, irrespective of whether we complete the consideration of the Constitution or not?

**Mr. President:** That we shall see.

**Shri H. V. Kamath:** You were pleased to remark in the morning as regards the non-participation of Hyderabad and Bhopal, that it is a matter entirely for the Government to consider. Mr. President, according to our Rules you have power to call upon the rulers of Hyderabad and other States to send representatives to the Constituent Assembly. But, you were pleased to say that it is a matter in the hands of Government. I do not know how the Government comes into this affair. You are fully authorised to call upon the rulers to send their representatives to the Assembly.

**Mr. President:** Sitting in this Assembly, I have no right to compel anybody to do anything. Those who have come in are entitled to participate in the deliberations of this Assembly and those who have not come, we cannot force them to come. It is for the Government to deal with them.

**Shri Algu Rai Shastri :** \* [Mr. President, as far as I remember you had announced in the last session that the Constitution to be presented here would be in Hindi and that it might be translated into English. But the statement you have made today has been a source of disappointment in as much as we learn that we have to discuss the very Draft that has been prepared by the Drafting Committee in English. We have before us its Hindi version also. I do not understand why we should not take into consideration the Hindi version of the Draft when it is before us. We may take up for consideration the Hindi version of the Draft clause by clause and if any portion is found to be translated in rather difficult language. Dr. Ambedkar who himself is a great scholar of the Sanskrit language, may explain such portion from the English Draft to those who are unable to follow the version in Hindi. It is necessary for every county to frame its constitution in its own language. We belong to a country that has its own language. We should therefore discuss it clause by clause in our own language. The Draft prepared in a foreign language should not be presented to this House for discussion.

Sir, perhaps you remember that at the commencement of the first session of the Constituent Assembly I made a request that the discussion in this House should be carried on in a language which is understood by the people of this country. We should not proceed in this House as if it were the British Parliament. The word `Dominion' is entirely foreign in character. I remember a saying of the late Moulana Mohammad Ali. He used to say that the word `Dominion' might be applicable to Africa, South Africa, New Zealand, Australia and Tasmania. These are the dominions where our alien rulers had founded colonies and established cantonments. But India cannot be said to be a cantonment for the British. They went to the countries I have already named and established there their colonies and cantonments; they also carried their language with them and the people of those countries are English speaking. But this cannot be said in our case. We have our own language, our own civilization which has come down to us through hundreds of centuries; so also we have our own literature. Just as the English people can take pride in their literature, in Shakespeare and Milton, we too can be proud of the works of our Kalidas, Tulsidas, Jayasi and Soordas. It will be matter of deep shame for a country which has developed a language of its own, to frame its first free Constitution in a foreign language. Therefore, I would like to entreat you, to pray to you that the Hindi version of the Draft Constitution should be placed before this House as the original Draft of the Constitution. The clauses of the Hindi version should be discussed here and the English Draft should not be presented here for discussion. It should be treated

only as a translation.

The English have quit India. Their cantonments are no longer here. Following your example and the example of your colleagues and other respected leaders who have immortalized their names in our history by eliminating the English rule from our land and whose names have become memorable, we should remove the word `Dominion' from the Draft and I am sure it will be removed. It will, I think be agitated in detail in this House and many Members would express themselves on it. But this is a matter for future discussion. Just now the question before us is whether we have any language of our own and a culture of our own; whether we have a language of our songs, of our poems and for the expression of our thoughts and emotions. We should frame our Constitution in the same language in which we would express our feelings. The Preamble of the Draft says: "We, the people of India . . . . . give to ourselves this Constitution." Here the term "We the people of India "means not the few men who are sitting in this House but the dumb millions of India and on whose behalf we are functioning here. Therefore the Constitution that is being presented here must be in the language we understand. It is a matter of regret that many of our veteran leaders have begun to say that the problem of language has not yet been solved; that our language has not been reformed and that English has to stay. Such things are said sometimes. I do not want here to mention the names of those leaders. But since they say that we have no language of our own, I want to tell them that ours is a developed language, a rich language which is capable of expressing high thoughts and sentiments. It has a rich and a good vocabulary. We have inherited our language from our ancient sages, we have inherited it from Kautilya's Artha Shastra, from our ancient literature which has such gems as the Mahabharat and the Ramayana. We have developed our language taking words from these epics. Therefore it can not be said. . . .]\*

**Mr. President:** \*[Excuse me, I do not understand what you are discussing. All the matters to which you are referring are those on which there is already considerable agreement.]\*

**Shri Algu Rai Shastri:** \*[I am only submitting that the original draft of the Constitution which we are to discuss here should be in Hindi and not in English. Therefore we should have liberty to table amendments on the clauses of the Hindi version of the Draft treating it as the original one. I beg to propose this with the idea that it would indicate that we have our own language. We do not deem our land to be such a dominion within the British Empire as can express itself only in English.]

I would like to say a few words more. Fortunately or unfortunately our brethren who live in those coastal regions where the English landed for the first time have acquired considerable proficiency in English. It is they who feel the greatest embarrassment when Hindi is mentioned as the national language. It had been the great good fortune of the people of Madras that their scholars gave to India a sublime message based on the Vedic literature and culture. Similarly it was their lot that the English.....]\*

**Mr. President:** \*[I would like to point out to you that you are continuing to talk on a subject on which there is no dispute. All admit that we can and will frame our constitution in our language. There is no scope for any further discussion on this matter. Previously also the question has been discussed many times and I am sure that at the appropriate occasion it will be adopted.]\*

**Shri Algu Rai Shastri:** \*[I am talking at present, of tabling amendments in Hindi.]\*

**Mr. President:** \*[You can table amendments in Hindi if you so desire. But how can an amendment in Hindi fit in the clause that is in English. There will be difficulty for me but, however, if you wish to table any amendment in Hindi you can do so.]\*

**Sardar Bhopinder Singh Man** (East Punjab: Sikh): \*[Mr. President, I want to invite your attention to the fact that while discussing the Report of the Minorities Board this House had decided on the last

occasion that the consideration of the problem of Sikh rights should be held up as the conditions in the East Punjab were not normal. Today, we have got before us recommendations relating to all minorities but so far Sikhs are concerned, no decision has been taken as yet.]\*

**Mr. President:** \*[When this question is taken up you will be free to say what you want to say about it.]\*

**Sardar Bhopinder Singh Man:** \*[Sir, You have observed that amendments may be sent within two days but nothing has been decided regarding this question.]\*

**Mr. President:** \*[You can send your amendments, after a decision has been taken in this matter.]\*

**Mr. Hussain Imam :** Mr. President, Sir, I do not wish to prolong the discussion on this subject. I simply wish to draw your attention to two important points. The rule as framed is all-comprehensive, the time of two days is given for giving amendments before the Constitution is taken up. Your discretion, Sir, is still left wide open, and I hope it will be used generously. I am saying this not that I am not convinced that it will be used generously but to assure my friends that, if there is anything material, they can rely on you that it will be given favourable consideration.

There is a second point on which I require your indulgence. Amendments to amendments can only come forward when the amendments are before the House. Therefore in that category you will have to relax your ruling and give us an opportunity to give amendments to amendments even after that time.

**Mr. President:** Certainly.

**Mr. Hussain Imam:** Thirdly, I wish to stress that this controversy about language may be happily solved if all those friends of ours who are interested in the Hindi version are formed into a Committee from the beginning to go forward with the work of translating or putting forward a Hindi version also. Amendments also may be sent in Hindi provided the office arranges to give us an English translation as well. So in this manner we will be able to achieve both the objectives. An amendment may be given in any language which is approved by the Constituent Assembly provided a translation appears on the Order Paper simultaneously.

Fourthly, I should like to invite the attention of the House to the fact that the Constitution is being made for - I would not say for generations - as long as it serves our purpose. The United States of America has made amendments to its constitution and about twenty amendments have already been made. There the process is so difficult. As you will remember, that not only has to be got through the two Houses, but it must be approved by each unit of the U.S.A. Our position is not so bad. But there is one thing, Sir, on which I would require your indulgence, and that is the question of the boundaries of existing or new provinces. That matter, Sir, after the constitution will become so difficult that I am sure it will become well nigh impossible to do anything towards this end. If it is the will of the House that the present boundaries should be changed in any manner, it would be meet and proper that before we finalise the Constitution in the next session after the recess, we should have a picture of the provinces as they will be constituted in the immediate future and not leave it for further action in a remote future.

**Mr. President:** I think that the suggestion is somewhat premature. We are awaiting the report of the Commission which we have appointed and we shall consider it at that stage.

**Mr. Hussain Imam:** Before finalising, we may be able to move amendments to those recommendations as and when it comes up. I simply invite the attention of the House to the urgency of the matter and to the matter being given full consideration and finalization.

**Shri R. V. Dhulekar :** \*[Sir, I submit that the period of two hours that will be given to us tomorrow for general discussion is too short. It is a different matter that hundreds of amendments will be received. When every member gets an opportunity of expressing his views, the amendments that are tabled after a discussion of a few days, are altered. The amendments are not referred to in the discussion. Therefore I request that if we are given three or four days' time for discussion and every Member is asked to observe the rule that he should not speak for more than fifteen minutes, every Member then will have the satisfaction that he has made his contribution in the House in the framing of the constitution. I submit that one day means only five hours time. If Dr. Ambedkar takes it up at four today and takes half the time tomorrow, there will hardly be left any time for us. Therefore I humbly request that we may be given an opportunity of speaking on this highly important constitution. The opportunity of framing the constitution does not come over and over again and everyone desires to speak out whatever he has to say for his country and nation. I want to submit also that whatever we speak here is not meant for this House only or for the present time only. Whatever is spoken here will be read even after hundred or two hundred or four hundred years and the people will come to know of the views of their ancestors one particular point. They will interpret it accordingly. Therefore, Sir, I think we the Members in this House will be highly obliged if at least four days are granted to us. Everyone of us wants only fifteen minutes and I want to tell you on behalf of other Members also that if this opportunity is given to us, we shall sit together and come to a decision regarding the hundreds of amendments that may be brought forward and the Members of this House will help you in finalising the constitution as quickly as possible.]\*

**Mr. President:** \*[We shall consider this later on. The time now being spent on the preliminary discussion reduces the time available for detailed discussion. Therefore, I would ask that you allow the real work to start.]\*

**Pandit Thakur Dass Bhargava (East Punjab: General):** \*[Mr. President, at the very outset I would like to enquire whether the Honourable Dr. Ambedkar has given any notice of his intention to introduce the Draft Constitution as required by the Rule 38-L or not. I am asking for this information, because if no such notice has been given, I am afraid he can not move for consideration. According to the rules five days' notice is necessary.]\*

**Mr. President:** \*[Yes! It has been included there. It has been included in the Agenda. It being a re-draft all the amendments will be taken up again.]\*

**Pandit Thakur Dass Bhargava:** \*[Another point which I wanted to bring to your notice falls under Rules 38-M. The copy of the draft constitution, which is a re-draft, has been given to us just today at the time when you were adjourning the House for lunch, whereas it should have reached us much earlier. I think all the Members have not received a copy each so far. According to Rule 38-M. such copies should reach the Members at least three days before ,more particularly for the reason that it contains various reports on new matters. Unless it has been thoroughly read and studied, how can amendments be sent?]\*

**Mr. President:** \*[Which copy are you referring to? The Draft Constitution placed before you by Dr. Ambedkar of 21stFebruary, the copies of which were distributed, will be moved by him and the amendments on it will be proposed as amendments and they will be moved on behalf of the Drafting Committee.]\*

**Pandit Thakur Dass Bhargava:** \*[The third point for submission on which I respectfully want to lay more emphasis is regarding the interpretation of Rule 38-O. In my opinion the view that the words "two clear days before the `day' on which the constitution is to be considered" in Rule 38-O is that all the amendments should reach the office by Sunday before 5 P.M., is not correct for the reason that the constitution shall not be taken up for consideration on the 9th November only; rather, its consideration will continue from day to day when the clauses will be discussed. There will be other dates further on

after which it would be stated that the Constitution will be considered on those particular dates. That being the case, Members have the right to send in their amendments, two days before the date when the particular amendments shall be discussed.]\*

**Mr. President:** \*[Let us not take a decision on this point at this stage.]\*

**Pandit Thakur Dass Bhargava:** \*[I am aware that you want to give full opportunity to the Members for discussion and that their right of giving notice of amendments should remain intact. Every Member has confidence in the matter of the exercise of your discretion. But in my humble opinion, the question of discretion does not arise here, because according to my interpretation, every Member can send in amendments as a matter of right. This is also the intention of Rules 38-P and 38-Q. Your order that Members should send their amendments by 5 o'clock on Sunday goes in a way, prima facie, against the Members, which is not in order and should be reviewed. You may not decide it now, if you do not want to, though incidentally and in a way, the decision is there. In my humble opinion, if without reviewing the order, you extend the date, instead of 7th, to 10th and decide the question, when occasion arises, then nobody will have any grievance.]\*

**Shri T. Channiah** (Mysore State): On a point of order, Mr. President, Sir, most of the honourable Members who spoke previously know the English language very well. We are very sorry to bring it to your notice that most of the Members, especially Members coming from Madras, from Bengal, Bombay, Assam and many other places cannot understand Hindi or Hindustani. We have to sit almost like dumb people. Mr. President, Sir, you are here to protect the interests of all the Members. I would, therefore, request you to see that all those members who know English and who are able to speak in English are made to speak in English.

#### **MOTION *re.* DRAFT CONSTITUTION**

**Mr. President:** I think we shall now proceed with the discussion. I call upon the Honourable Dr. Ambedkar to move his motion.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. Except on points which are referred to in my letter of the 21st February 1948 in which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315 Articles and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realize its salient and special features.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it. I dare say that some of them are based on misunderstanding and inadequate understanding of the Articles. But there the criticisms are and they have to be answered.

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet the criticism that has been levelled against it.

Before I proceed to do so I would like to place on the table of the House Reports of three Committees appointed by the Constituent Assembly # (1) Report of the Committee on Chief Commissioners' Provinces (##) (2) Report of the Expert Committee on Financial Relations between the Union and the States, and (###) (3) Report of the Advisory Committee on Tribal Areas, which came too late to be considered by that Assembly though copies of them have been circulated to Members of the Assembly. As these reports and the recommendations made therein have been considered by the Drafting Committee it is only proper that the House should formally be placed in possession of them.

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# Appendix A    ## Appendix B    ### Appendix C (1 to 3)  
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Turning to the main question. A student of Constitutional Law if a copy of a Constitution is placed in his hands is sure to ask two questions. Firstly what is the form of Government that is envisaged in the Constitution; and secondly what in the form of the Constitution? For these are the two crucial matters which every Constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the forms of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do any thing without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only

members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions - (1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament become more responsible. The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The Daily assessment of responsibility which is not available under the American system it is felt far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of Government under the Draft Constitution. I will now turn to the other question, namely, the form of the Constitution.

Two principal forms of the Constitution are known to history - one is called Unitary and the other Federal. The two essential characteristics of a Unitary Constitution are: (1) the supremacy of the Central Polity and (2) the absence of subsidiary Sovereign polities. Contrariwise, a Federal Constitution is marked: (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words. Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. This dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the States Government of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of difference between the American Federation and the Indian Federation are mainly two.

In the U.S.A. this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public office, States may and do discriminate in favour of their own citizens. This favoritism goes even farther in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to be a local resident or citizen. Similarly in the licensing of persons for the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required; and in business where public regulation must necessarily be strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own citizens. The States also charge non-residents higher tuition in State Colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may and does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the State. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs from the dual polity of the U.S.A. in another respect. In the U.S.A. the Constitutions of the Federal and the States Governments are loosely connected. In describing the relationship between the Federal and State Government in the U.S.A., Bryce has said:

"The Central or national Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other."

Distinct they are, but how distinct are the State Governments in the U.S.A. from the Federal Government? Some idea of this distinctness may be obtained from the following facts:

1. Subject to the maintenance of the republican form of Government, each State in America is free to make its own Constitution.
2. The people of a State retain for ever in their hands, altogether independent of the National Government, the power of altering their Constitution.

To put it again in the words of Bryce:

"A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State Authorities, legislative, executive and judicial are the creatures of, and subject to the Constitution."

This is not true of the proposed Indian Constitution. No States (at any rate those in Part I) have a right to frame its own Constitution. The Constitution of the Union and of the States is a single frame from

which neither can get out and within which they must work.

So far I have drawn attention to the difference between the American Federation and the proposed Indian Federation. But there are some other special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorised to do under the Provisions of Article 275, the whole scene can become transformed and the State becomes a unitary state. The Union under the Proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of.

This is not the only difference between the proposed Indian Federation and other federations. Federalism is described as a weak if not an effete form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and vice versa is a breach of the Constitution and (2) such breach is a justiciable matter to be determined by the Judiciary only. This being the nature of federalism, a federal Constitution have been found in a pronounced form in the Constitution of the United States of America.

Countries which have adopted Federalism at a later date have attempted to reduce the disadvantages following from the rigidity and legalism which are inherent therein. The example of Australia may well be referred to in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

(1) By conferring upon the Parliament of the Commonwealth large powers of concurrent Legislation and few powers of exclusive Legislation.

(2) By making some of the Articles of the Constitution of a temporary duration to remain in force only "until Parliament otherwise provides."

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify it the exercise of authority.

In assuaging the rigour of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution, concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six Articles in the Draft Constitution, where the provisions are of a temporary duration and

which could be replaced by Parliament at anytime by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Australian Constitution is in the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about 3 matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times. I refer to Articles 226, 227 and 229. Under Article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely Provincial concern, though the subject is in the State list, provided a resolution is passed by the Upper Chamber by 2/3rd majority in favour of such exercise of the power by the Centre. Article 227 gives the similar power to Parliament in a national emergency. Under Article 229 Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalism is the provision for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into two groups. In the one group are placed Articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the Courts. All other Articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of not less than two thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these Articles does not require ratification by the States. It is only in those Articles which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Upto a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws-if we have twenty States in the Union-of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

(1) a single judiciary,

(2) uniformity-in fundamental laws, civil and criminal, and

(3) a common All-India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a federation. In the U. S. A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedure. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws, such as the Civil Procedure Code, Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act, Laws of Marriage Divorce, and Inheritance, are either placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity which is inherent in a federal system as I said is followed in all federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India service recruited on an All- India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special features of the proposed Federation. I will now turn to what the critics have had to say about it.

It is said that there is nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has been borrowed from the Constitutions of other countries. Very little of it can claim originality.

One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other Constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the

Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion. Grote, the historian of Greece, has said that:

"The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of a government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves."

By constitutional morality Grote meant "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own." (*Hear, hear.*)

While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that no part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a State and that instead of incorporating Western theories the new Constitution should have been raised and built upon village Panchayats and District Panchayats. There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village Governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic (laughter). It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why? Their part in the destiny of the country has

been well described by Metcalfe himself who says:

"Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Pathan, Mogul, Maratha, Sikh, English are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls, and let the enemy pass unprovoked."

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.

The Draft Constitution is also criticised because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge someday into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this twofold purpose. To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson "ask for any safeguard you like for the Protestant minority but let us have a United Ireland." Carson's reply was "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In *Gitlow Vs. New York* in which the issue was the constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

"It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

It is argued that if any fundamental rights require qualification, it is for the Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so it should be left to be determined by the Judiciary upon a consideration of all the relevant considerations. All this, I am sorry to say, is a complete misrepresentation if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely, the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every state has inherent in it police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

"That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question. . . ."

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.

In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the Directive Principle have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.

That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgment their proper place is in Schedules III A & IV which contain Instrument of Instructions to the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution, has out-grown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution is criticized for having one sort of constitutional relations between the Centre and the Provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent List. They are not bound to accept the State List contained in the Draft Constitution. They are free to create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and, I submit quite indefensible. This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as maybe created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision which may lead to the break-up of the unity of

India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the Provinces and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was bound by the agreement arrived at between the two negotiating Committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismark in 1870 was a composite State, consisting of 25 units. Of these 25 units, 22 were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in the course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much quicker than it has been in Germany. On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as Centrally Administered Areas there have remained some 20/30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate Constitution and they will lose nothing that is of value to them. I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The Powers of amendment are left with the Legislature Central and Provincial. It is only for amendments of specific matters - and they are only few - that the ratification of the State legislatures is required. All other Articles of the

Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

I believe I have dealt with all the adverse criticisms that have been levelled against the Draft Constitution as settled by the Drafting Committee. I don't think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say. The Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, C. P., West Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the constitution and in Madras to Article 226. But excepting this, in no Provincial Assembly was any serious objection taken to the Articles of the Constitution. No Constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution. The reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile. Sir, I move.

**Mr. President:** Maulana Hasrat Mohani has given notice of an amendment. It was given at half-past Eleven this morning. I will allow him to move it, particularly because it will have the effect, if it is lost, of blocking another motion of which I have got notice. Maulana Sahib, will you kindly move your amendment?

**Maulana Hasrat Mohani:** \*[Sir, the amendment, of which I have given notice, is to the effect that the present Constitution Assembly is not competent and there are three reasons why I do not regard it as competent. The first and the most important reason is . . . . .]\*

**Shri B. Das** (Orissa: General): Mr. President, Sir, will Maulana Sahib please read out the amendment first?

**Mr. President:** I will read out the amendment. The amendment is this:

"That the Consideration of the Draft Constitution of India be postponed till the election of a fresh and competent Constituent Assembly on the basis of joint electorate and the formation of political rather than communal parties in India."

That is the amendment.

**Shri B. Das:** May I rise on a point of order, Sir? My point of order, is that Maulana Sahib cannot move his negative amendment after .....

**Mr. President:** Won't you allow him to move it?

**Shri B. Das:** He has just spoken in Hindustani, the purport of which is that he has moved his amendment. This is contrary to the practice of this House. I think it is out of order and it should not be allowed.

**Mr. President:** I think I had better allow the Maulana Saheb to move the amendment. Then, you may take the point of order.

**Maulana Hasrat Mohani :** \*[I was telling the reason why I do not regard this Constituent Assembly as a competent body. Firstly, because all over the world wherever a Constituent Assembly has been set up, it has been done as an outcome of revolution. Revolution does not necessarily mean an armed revolution. It only means that, when the prevailing system of Government has come to an end and another is intended to be set up in its place, a Constituent Assembly has been invariably called to frame and pass a constitution in the light of new conditions. If the previous form of Government were to continue then there was no need of a Constituent Assembly. Look at our new constitution drafted by Dr. Ambedkar. There is nothing new in it. He has mostly copied out either the Government of India Act of 1935 or, as admitted by himself, has drawn from the constitutions of other countries. A bit from here and a bit from there-it is a Pandora's Box. This is what has been produced by our friend Dr. Ambedkar! My biggest complaint on this account is that if for the purpose of drafting a constitution he had to copy out the constitutions of other countries, then why did he not embody the latest and the best constitution? How was it that he looked up to the constitutions of Australia, Canada, America, and England, but the constitution of the Soviet Union did not catch his eye? I have jotted down all the points he has made in his speech. This is not the time to reply them in detail, but this much I can say that he has retained all the bad points that he could lay his hands upon. He has observed that there should be no rigidity and legalism, but has he at any place said that a Unitary System of Government should be established? At one place he mentioned that he could not provide for the village Panchayats. If he had kept the Soviet Constitution in view, there would have been no difficulty in his way. I claim it and I challenge him on that point. For example, he has said that unless there is a unitary type of Government and a powerful Centre, nothing can be done. Such talk is beside the point. He does not know that it is so in the Soviet Constitution. What he has done is to allocate some subjects to Provinces, some to the Centre and some have been put in the concurrent list. In the Soviet Constitution every constituent state has been made a permanent republic; and to win its confidence every component unit has been given control over the defence, foreign relations and communications. What has been the result? He says that it would be detrimental, but there the Soviet Government have gained the confidence of their component states. The result has been that all parts of the Soviet Union - considered from the point of view of population they are all Muslim republics - have helped their utmost in the last war. People of Caucasia and of every war-ravaged region have stood wholeheartedly by the Soviet Union. Cossacks and others who rendered help all belonged to the Union. Thus his observation is unjustified. He is not taking the people into his confidence, and says that all should merge.]\*

**Pandit Balkrishna Sharma:** May I rise to a point of order? The revered Maulana Sahib is discussing the merits of the Constitution whereas the proposal that is put forward before us is that we must not consider this Constitution. The discussion of the merits of the Constitution cannot be brought before the House when we are to consider only the question of postponement of the discussion.

**Mr. President:** I thought it would save time if you left him alone.

**Maulana Hasrat Mohani:** \*[I repeat what I have already said, that the reason why this House is not competent, is that you have consulted all the constitutions of the world; but you have not cared to see the latest and the best constitutions. The second point arises, what was the basis of the election of our Constituent Assembly? It was on communal basis. Muslims had elected Muslims and Hindus had voted for the Hindus, but the States were not represented. What was the position at the time of the first meeting of the Constituent Assembly? On your own admission there were three parties, namely, the Congress, the Muslim League and the States; but up to that time the States had not come in. No member of the Muslim League had taken any part. The result has been that the constitution that has been framed has been forged by one party alone. How can you enforce it on others? I mean to say that no reliance can be placed by us as the Constitution has been framed by one party alone. In the situation that has now arisen we also find the same, namely that there is only one party. It is like this: the Muslim League is finished, it has dissolved itself and all the States have merged themselves in the Indian Union and now only the Indian Government, namely one party, has remained in the field. That is why we have to form political parties so that your difficulties may come to an end.]\*

**Shri Satyanarayan Sinha** (Bihar: General): \*[Did you find out any better solution?]\*

**Maulana Hasrat Mohani:** \*[I am coming to that. Dr. Ambedkar has just said that the majority party should be considerate towards the Minority party. I say: we do not want them. You have provided in the constitution that 14 percent of the seats should be reserved for the Muslims. You still consider yourself 86 per cent and Muslims to be 14 percent. So long as you have this communalism, nothing can be done. Why do you say that Muslims are in a Minority. So long as you depict them in communal colours Muslims shall remain a Minority. When we come as members of a political party or as members of the Independent Communist party or as Socialists and then form a coalition party, then as a whole they will be arrayed against the rest.

You say that a long time has elapsed that many things have happened and that you have worked so hard. Mr. President, I would recall that when Pandit Jawahar Lal Nehru had presented the Draft Constitution, I had then raised an objection and he had advised me to leave alone a primary matter. I had thereupon pointed out to him that it would be absurd to leave aside a point which is to be settled first. I had also pointed out that by doing so he would not be taking any strong and firm stand but would be stuffing irrelevant matter in all directions. I had also enquired what he would do if questions were raised on these issues, if without taking any decision, he started framing the constitution. It is a futility; we should see what type of Constitution is required. We want to make a picture, but if that picture is not painted correctly, then it cannot be termed a picture. You will say that you have worked hard and that quite a long time has elapsed. My answer would be that there is no difficulty about it, neither was there any risk. I had protested at that time and I was glad that the Honourable President had stated that the point would be considered and it was on that understanding that we had discussed the resolution. You know that the same thing has happened in Pakistan as well. Mr. Jinnah had said that so long as the Constituent Assembly was not elected, the constitution could not be passed. This is the reason why I am telling you that so long as the Constituent Assembly is not elected on non-communal basis, you have no right to get a constitution passed by this Constituent Assembly. No matter receives any consideration from you, because you are inflated with the idea that you are in a majority and that whatever you like will be passed. Do not imagine that no blame will come upon you. I am alone and I am saying all I can say. You may not agree. In reality you are doing all that the British Government had been doing. After sometime they used to give us pensions and used to ask us to stay at home. But why should we do so?

I would like to ask you what you are doing in Hyderabad. You say that a Constituent Assembly will be setup which would frame a constitution. You have accepted this principle for Hyderabad. Why don't you do it here? Obviously all this is being done on communal lines in which truth and justice have no place.

If he says that he cannot do that, he has no power to elect a new Constituent Assembly on the basis

of joint electorate and that would be done after the constitution has-been framed, then I repeat what you have said, that 'legalism' and 'rigidity' should be cast aside. I ask him whether he can set up a Constituent Assembly in Hyderabad without the Nizam's fireman. But here we set up an electorate for the Constituent Assembly as we felt the need for it; so it is incorrect to say that we can not do it." Where there is a will, there is a way." If you are in earnest to be just to the country and if you want to treat every one equally, then I give you a warning that your endeavour to assimilate all into one whole, to build a paramount Indian power, will bring disaster. The latest example is that of Aurangzeb the Emperor. After conquering the whole of India he annexed the two Southern States of Bijapur and Golconda with the intention of founding a unitary Moghul Empire. What was the result? They say Aurangzeb lost his kingdom because of his bigotry but I say it was lost because of his imperialistic ideas. If he had not done that, he would not have lost a kingdom. Do not think it is easy to form a single unitary Government by coercing each and all into your fold. That can not last. You should hold fresh elections on non-communal basis, on the basis of joint electorates, and then whatever constitution you frame will be acceptable to us. We regard the constitution framed by you worthy of being consigned to the waste paper basket.]\*

**Shri B. Das:** I wish to point out that under Rule 31 sub-clause (2) the motion for adjournment on the motion moved by the Honourable Dr. B. R. Ambedkar for the consideration of Draft Constitution of India should not have been allowed by the Chair.

**Mr. President:** I have taken this under Rule 25, Clause(5), sub-clause (b) as a motion for adjournment of consideration of a motion which is under discussion.

**Shri B. Das:** But he is wanting a fresh election to take place first in the country. That is a negation of the whole idea.

**Mr. President:** I have liberally construed the rule for the Honourable Member and I have taken it, as I have said, under Rule 25, Clause (5), sub-clause (b).

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, before we adjourn for the day, may I know how many days the Chair proposes to allow for the general discussion on Dr. Ambedkar's motion?

**Mr. President:** As at present advised, it is hoped to conclude the discussion tomorrow. I will limit the time of each speaker and if I find that there is a considerable opinion in favour of further discussion, more time may be given.

The Constituent Assembly then adjourned till Ten of the Clock on Friday the 5th November 1948.

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\*[Translation of Hindustani speech ]

#### **APPENDIX `A'**

#### **CONSTITUENT ASSEMBLY OF INDIA**

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COUNCIL HOUSE,

*New Delhi, the 21st October 1947.*

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA,

NEW DELHI.

DEAR SIR,

We, the members of the Committee appointed by you in accordance with the motion adopted by the Constituent Assembly on the 30th July, 1947, for the purpose of recommending constitutional changes in the five Centrally administered areas, viz., Panth Piploda, Andaman and Nicobar Islands, Coorg, Ajmer- Merwara and Delhi, submit this our report and the annexure thereto. We have adopted broadly the principles of responsible government as the basis of the constitution for the three last mentioned provinces. We have, however, made some modifications in the provisions adopted by the Assembly in respect of the Major Provinces. Before formulating our proposals we fully considered the position of these provinces with respect to their geography, financial condition and the working of the existing system of government in these areas.

2. Panth Piploda is a small tract of territory consisting of only 10 1/2 villages situated in Malwa in the Central India Agency. In view of its small size and isolated position we have recommended that it should form part of the province of Ajmer-Merwara. This step was also suggested by some influential citizens of Panth Piploda. As regards the group of islands in the Bay of Bengal known as the Andaman and Nicobar Islands which have ceased to be penal settlements, we recommend that they should continue to be administered by the Government of India as at present with such adjustments in their administrative machinery as may be deemed necessary.

3. Before recommending any constitutional changes for the three Chief Commissioners' Provinces of Coorg, Ajmer-Merwara and Delhi which we propose to designate as Lieutenant Governors' Provinces, we took into account the following considerations:-

(a) that the Centre must have a special responsibility for the good government and the financial solvency of these provinces:

(b) that on account of the smallness of these areas and the scantiness of their resources, the need for Central assistance will continue for pulling up the standard of their administration to the level in the major provinces.

Among the important decision taken by us are: -

(1) Each of these three provinces should henceforth function under a Lieutenant Governor to be appointed by the President of the Indian Federation.

(2) Each of these provinces should normally be administered by a Council of Ministers responsible to the legislature as in other provinces, but any difference on an important matter arising between the Lieutenant Governor and the Ministry should be referred to the President of the Federation for final decision.

(3) Each of these provinces should have an elected legislature which should function like

other provincial legislatures except that -

- (a) the Federal Legislature will in the case of these provinces, have concurrent power of legislation even in respect of the subjects included in the Provincial Legislative
- (b) all laws passed by the provincial legislature shall require the assent of the President of the Federation;
- (c) the budget of the province after being voted by the provincial legislature shall require the approval of the President of the Federation before it becomes operative.

4. We are fully alive to the circumstances which led to the formation of the Delhi province in 1912. We also recognize the special importance of Delhi as the Capital of the Federation. We are, however, of the opinion that the people of the province which contains the Metropolis of India should not be deprived of the right of self-government enjoyed by the rest of their country-men living in the smallest of villages. We have, accordingly, placed the Delhi Province on a par with Ajmer-Merwara and Coorg and have recommended responsible Government subject to the limitations already indicated. Our detailed recommendations are given in the annexure.

Yours sincerely,

**B. PAT TABHI SITARAMAYYA**

*(Chairman)*

**N. GOPALASWAMY AYYANGAR**

**DESHBANDU GUPTA**

**K. SANTHANAM**

**C. M. POONACHA**

**MUKAT BEHARI LAL BHARGAVA**

*Members of the Committee.*

## **[ANNEXURE 1]**

### **LIEUTENANT GOVERNORS' PROVINCES**

Delhi, Ajmer- Merwara including Panth Piploda, Coorg and such other provinces as may be so designated shall be Lieutenant Governors' Provinces.

#### **The Provincial Executive**

2. In each Province there shall be a Lieutenant Governor who shall be appointed by the President of

the Federation.

3. The provisions of the Constitution Act relating to the term of office, qualification for appointment, eligibility for re-appointment, conditions of office, declaration before entering office by the Governor shall as far as possible be applicable in the case of the Lieutenant Governor. He may be removed from office by the President on grounds upon which a Governor may be impeached.

4. (i) The executive authority of the Province shall be vested in the Lieutenant Governor and may be exercised by him either directly or through persons acting under his authority.

(ii) The power to suspend, remit or to commute the sentence of any person convicted of any offence shall be vested in the Lieutenant Governor as in the case of major provinces.

(iii) Nothing in this section shall prevent the President of the Federation or the Provincial Legislature from delegating functions to subordinate authorities.

### **Administration of Provincial Affairs**

5. (i) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. The number of ministers shall not exceed three except with the approval of the President of the Federation.

(ii) In case of difference of opinion between the Lieutenant Governor and his ministers on any issue which he considers important, he may refer the matter to the President of the Federation, whose decision shall be final and binding upon the Province.

6. The provisions of the Constitution Act relating to the appointment, dismissal and with respect to the determination of the salaries of the ministers in the Governors' Provinces shall, as far as possible, be applicable in the case of Lieutenant Governors' Provinces.

### **Legislative**

7. There shall for each of the Lieutenant Governor's Province be a Legislature, consisting of a single Chamber to be known as the Legislative Assembly. It shall be composed of members chosen by election.

8. The term of office of the elected members of the Assembly, the basis of franchise and other general provisions shall be on the lines as provided in the Constitution Act for Governors' Provinces except that the representation of the different territorial constituencies in the Assembly shall be on a scale of not more than one representative for every 5,000 persons subject to a maximum of 33 for Coorg, 15,000 subject to a maximum of 40 in the case of Ajmer-Merwara including Panth Piploda and 20,000 subject to a maximum of 50 in the case of Delhi.

9. The Provincial Assembly shall not have the power to make laws for federal subjects; and the subjects included in both the provincial and concurrent lists in the new constitution, will be treated as concurrent in respect of these minor provinces. Laws made by the federal legislature for these provinces in respect of any of these subjects shall prevail over laws passed by the Provincial Assembly in so far as the latter are inconsistent with the Federal laws.

10. Laws passed by the Provincial Assembly shall require the assent of the President of the Federation.

11. The provisions of the Constitution Act relating to prorogation and dissolution of the legislature, the right of the Governor to address and send messages, election of members as Officers of the legislature and fixation of their salaries in Governor's Provinces shall apply mutatis mutandis in the case of Lieutenant Governors' Provinces.

12. The Provisions of the Constitution Act relating to the making of declaration by members, vacation of seats, disqualifications of members, their privileges and immunities, salaries and allowances, in the Provincial Legislatures shall be as far as possible be applicable in the Lieutenant Governors' Provinces.

13. The provisions of the Constitution Act relating to language to be used in the Provincial Legislature shall as far as possible be applicable in the case of these Provinces.

### **Administrative Breakdown**

14. If at any time the President of the Federation is satisfied that the government of the Province cannot be carried on in accordance with these provisions, he should have power to supersede these arrangements, take the administration into his own hands and make such other provision for conducting it as he may consider necessary. The exercise of this power will be subject to the usual provisions relating to report to and control by the Federal Legislature in the case of emergencies in a Governor's Province.

### **Judiciary**

15. (i) In the case of Coorg, the powers of a High Court shall be exercised by the Madras High Court.

(ii) For Delhi and Ajmer- Merwara there shall be a High Court established in Delhi having original as well as appellate jurisdiction over both the provinces. The constitution of this High Court, the appointment of judges and their salaries, its jurisdiction and administrative functions shall be governed by the provisions of the Constitution Act applicable to the High Courts.

### **Provincial Services**

16. (i) For higher appointments provision shall be made in the recruitment of All India Administrative Services for meeting the requirements of these three provinces.

(ii) Provision shall be made for transfers inter se of service personnel recruited in the above manner in these three provinces.

### **Representation in the Federal Legislature**

17. Notwithstanding anything to the contrary in the Union Constitution regarding the basis of representation for the Houses of Federal Legislature, each of these three Minor Provinces should be treated as a unit of the Federation for purposes of representation in the two Houses of the Federal Legislature.

### **CHIEF COMMISSIONERS' PROVINCES**

18. (i) Andaman and Nicobar Islands and such other areas as may be so designated shall be the Chief Commissioners' Provinces.

(ii) The Andaman and Nicobar Islands shall continue to be administered as at present with such

adjustments in the administrative machinery as may be deemed necessary.

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**Additional Note by Shri Mukat Behari Lal Bhargava and Shri C. M. Poonacha, to the Chief Commissioners' Provinces Constitution Committee Report.**

We, the members representing Ajmer-Merwara and Coorg having signed the report find it necessary to append this additional note regarding the future of these two provinces.

The special problems arising out of the smallness of area, geographical position, scantiness of resources attended with, what may be called administrative difficulties of many a complex nature may, at no distant future, necessitate the joining of each of these areas with a contiguous unit. Therefore, we feel that a specific provision should be made in this chapter of the constitution to make possible such a union after ascertaining the wishes of the people of these areas. No doubt, our attention was drawn to clause 3 of the Union Constitution Committee Report, which is yet to be adopted by the Constituent Assembly, wherein certain provisions relating to the creation of a province, altering the boundaries of a province, etc., are embodied. But after careful examination we feel that the proposed clause 3 of the Union Constitution Committee Report is of a very restrictive nature and does not in specific terms contemplate the inclusion of an Indian Province of areas with a State or Group of States. Taking into account the situation of Ajmer-Merwara which is surrounded on all sides by Rajput- ana States such a clause would perpetually leave Ajmer-Merwara in isolation even though the people of Ajmer-Merwara may at any time decide against it. Accordingly we press upon the Constituent Assembly the urgency of incorporating a suitable provision in this chapter of the Constitution so as to make it possible for each of these areas to join a contiguous unit.

**APPENDIX B**

**No. CA/103/Cons/47**

**CONSTITUENT ASSEMBLY OF INDIA**

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COUNCIL HOUSE

*New Delhi, the 5th December 1947.*

To

THE SECRETARY,

CONSTITUENT ASSEMBLY OF INDIA,

COUNCIL HOUSE, NEW DELHI.

**Expert Committee on Financial Provisions**

SIR,

I have the honour to forward herewith the Report of the Expert Committee on Financial Provisions of the Union Constitution for submission to the Hon'ble the President.

I have the honour to be,

Sir,

Your most obedient servant,

**M. V. RANGACHARI,**

*Member-Secretary.*

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## **REPORT**

### **Terms of Reference**

#### **[ANNEXURE 1]**

We were appointed by the President of the Constituent Assembly to examine and report on the Financial Provisions of the Constitution Act with the following terms of reference: -

I. To examine, with the aid of the memoranda on the distribution of revenue between the Centre and the Provinces sent by the Government of India and the Provinces, the existing provisions relating to finance and borrowing powers in the Government of India Act, 1935, and their working during the last ten years and to make recommendations as to the entries in the lists and sections to be embodied in the new Constitution.

The following points shall, in particular, be kept in view in making the recommendations: -

(a) How are taxes to be allocated between the Centre and the Units as regards legislation, levy and collection?

(b) Which are the Federal taxes -

(i) whose net proceeds are to be retained entirely by the Centre;

(ii) whose net proceeds are to be entirely made over to Units;

(iii) whose net proceeds are to be shared between the Centre and the Units?

(c) On what principles the taxes mentioned in (b) (iii) are to be shared between the Centre and the Units?

(d) What is to be the machinery for determining the shares: e.g., whether a Financial Commission should be appointed immediately after the enactment of the Constitution to report on the principles of sharing and their application

to be brought into effect when the Constitution comes into force; and whether the same or a similar Commission should review these principles and their concrete application periodically, say, once in five years?

II. What should be the principles on which Federal grants should be made to the Units in future? What should be the machinery for the determination of such grants: could the same Financial Commission as is referred to in I (d) above act as the machinery for this purpose also, or should it be a different one?

III. How could the Indian States be fitted into this general system as far as possible on the same terms as Provinces? Should a time lag be provided for their being so fitted in?

IV. On the assumption of financial responsibility for Defence, Foreign Affairs and Communications on behalf of the Indian States under arrangements for accession to the Federation, what special financial arrangements, if any, are necessary between the acceding States and the Federation?

V. Should the existing rights of the Indian States as to Federal taxes now levied by them be acquired on payment of compensation?

VI. How far is it feasible, on the centralization of all customs levied at the Federal frontiers, to permit Indian States affected by such centralization to retain such portion of the customs so levied at their frontiers as might be attriments between the Centre and certain important Indian States as regards maritime customs, excises etc. may be of value in this connection.]\*

VII. Some Provinces have claimed a larger percentage of the income-tax to be made over to them than under the existing system. Does this claim merit consideration; if so ,to what extent?

VIII. A suggestion has been made that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the Provinces to tap according to their needs. Would this be possible without any material detriment to Federal revenue?

IX. On the basis that the residuary powers are vested in the Centre in the new Constitution so far as the Provinces are concerned, and in the States so far as the States are concerned, is it necessary that any additional specific taxes should be entered in the Provincial List, and if so, what?

X. Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in Sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?

XI. A large number of Indian States at present derive substantial revenues from land customs levied at the frontiers between their limits and those of neighbouring States or Provinces. One of the fundamental rights already adopted by the Constituent Assembly is to remove all internal barriers in regard to trade between Unit and Unit. Could these land customs be done away with either immediately or over a period of years, and if so, should any prejudice caused thereby to the finances of particular States be compensated and in what manner?

\*[The Committee should kindly indicate clearly which of its recommendations should go into the body of the Constitution and which should be provided for by Federal law.]\*

### **Prefatory Remarks**

2. We began our work on the 17th November and have been sitting continuously. We have received

memoranda from the various Provincial Governments setting out their claims for larger resources as well as their points of view in connection therewith. We have also received a memorandum from the Ministry of Finance of the Central Government giving a picture of the financial position of the Centre in the near future. The Secretariat of the Constituent Assembly has collected for us information on various matters relating to the States, and also helpful information regarding other Federations. It has also prepared a draft of the sections which come within our terms of reference; and this has considerably helped us in our work. We are indebted for all these memoranda, information and drafts. We are also indebted to some of the Provincial authorities who appeared before us in person and discussed with us informally the question arising out of the memoranda presented by their Governments. We availed ourselves also of the specialised knowledge and experience of not only some of the officials of the Central Secretariat, but of some members of the Constituent Assembly and others who have unique knowledge of some of the problems under our consideration. All our discussions, however, were free and informal; and we did not, therefore, record any evidence, apart from the memoranda placed before us.

3. In particular, the other two of us would like to place on record our grateful appreciation of the assistance we have received from our colleague and Secretary Mr. Rangachari, who amidst his exacting, multifarious duties, including the preparation of the interim budget, not only found time regularly to attend our meetings, but also placed his wide knowledge and experience at our disposal, and arranged to secure at short notice most of the available information required by us. We should also like to thank Mr. B. Das Gupta of the West Bengal Government Secretariat for the intelligent and extremely well informed assistance he gave us. We are also indebted to Mr. Mukerjee, Joint Secretary of the Constituent Assembly, for his help throughout our sittings and in particular for putting our recommendation in the shape of draft amendments to the Constitution.

4. Our terms of reference may be divided broadly in to the four following groups:

- (1) Relations between the Centre and the Units, and between the Units inter se;
- (2) Financial procedure, i.e. relating to the budget, expenditure and money Bills;
- (3) Borrowing powers of Units; and
- (4) Relations of the Union with the States.

We have accordingly, for convenience, regrouped our terms of reference as follows:

- (1) I, VII, VIII, IX, II
- (2) X
- (3) I
- (4) III, IV, V, VI, XI

and discussed them, as far as possible, in the above order.

### **Brief History of Financial Relations**

5. Before dealing with the working of the financial arrangements in the Government of India Act, 1935, it is necessary to give a brief account of the earlier arrangements so that we can have a correct picture of the problems before us.

6. The period before the passing of the Government of India Act, 1935, falls into two well-defined parts, namely, the period ending with the 31st March, 1921, i.e., before the operation of the Government of India Act, 1919, and the period covered by that Act.

7. The process of financial development in this country has been one of evolution from a unitary to a quasi-federal type. The Government of India started as a completely unitary Government in entire control of the revenues of the country with the Provincial Governments depending on the Central Government for all their requirements. In the earlier years, Provincial Governments were given fixed grants for meeting the expenditure on specific services, and the first step in making specific sources available to them was taken when the Provincial Governments were given the whole or part of certain heads of revenue like Forest, Excise, License Fees (later to develop into Income-tax), Stamps, Registration, Provincial Rates, Law and Justice, Public Works, Education, etc. The funds released by this allocation were not adequate for the requirements of the Provinces and had to be supplemented, mainly by sharing with them in varying proportions the main source of Central revenue, namely, Land Revenue, and partly by making to them additional cash assignments. In 1904, the settlements with the Provinces were made quasi-permanent, thereby making the Provinces less dependent on the fluctuating grants from the Centre. This method of financing the Provinces was examined more than once and retained as the best suited to the then circumstances.

8. The Government of India Act, 1919, which, among other things, aimed at giving a reasonable measure of autonomy to the Provinces as the first step in the process of self-government, made the first clear-cut allocation of resources between the Centre and the Provinces without having any divided heads between them. Under this Act, certain specific heads were given wholly to the Provinces and the remaining sources were retained by the Centre. Thus among the principal heads of revenue, Land Revenue, Excise and Stamps were given to the Provinces, while the Centre retained Customs, Income-tax, Salt and Opium. Of the three great Commercial departments of Government, Railways and Posts and Telegraphs were retained by the Centre, while irrigation was handed over to the Provinces.

9. This allocation of resources between the Centre and the Units, particularly the assignment of the whole of Land Revenue to the Provinces, left the Central budget in a substantial deficit; and in the earlier years of this scheme, the Centre had to depend on the Provinces for contributions for balancing its budget. These contributions were fixed by what is commonly known as the Meston Award, and were designed to produce for the Centre an estimated shortfall of Rs. 9.8 crores resulting from the rearrangement of resources between the Centre and the Provinces. The contributions ranged from Rs. 348 lakhs from Madras to Rs. 15 lakhs from Assam, while one Province, namely, Bihar and Orissa, had to make no contribution at all. It is unnecessary for the present purpose to describe in detail the method by which these contributions were fixed. It is enough to mention that they became a source of constant friction between the Centre and the Provinces; and when substantial Provincial deficits occurred, an unceasing clamor developed for their withdrawal. Between 1925 and 1928 these contributions were partially remitted and they were completely extinguished in 1929.

10. The experience of the years under the 1919 Act clearly showed that the sources of revenue allocated to the Provinces were inelastic, and were insufficient to meet the increasing requirements of the Provinces for their expanding needs for nation building services such as Education, Medical Relief, Public Health etc., which fell almost wholly in the Provincial field. It was clear that some additional revenue heads had to be released to the Provinces; and while the Government of India Act, 1935 did not make any radical change in the allocation of heads between the Centre and the Units, it revived in a somewhat modified form the earlier principle of dividing the proceeds of certain Central heads, the two heads concerned being Customs and Taxes on Income. The Act also provided for the grant of fixed subventions to some of the smaller Provinces, and gave the Centre power to raise Excise and Export duties for distribution among the Provinces and federating States. After an enquiry into the relative needs of the Centre and the Provinces by Sir Otto Niemeyer, the Provincial shares in the divided heads of

Central revenue and the subventions to some of the Provinces were fixed by an Order-in-Council, which, subject to a modification during the war, continued till 15th August,1947.

### **Present Constitutional Position**

11. Under the Government of India Act. 1935, which is the starting point of our enquiry, the taxing jurisdictions of the Central and Provincial Legislatures are entirely separate. But, while the Provinces retain the whole of the net proceeds of all taxes levied by them, the Central Government has to give away either in part or in whole the net proceeds of some of the taxes levied by it.

12. The taxes, the net proceeds of which are to be given away wholly to the Provinces, if levied, are -

- (1) Federal Estate and Succession duties.
- (2) Federal Stamp duties,
- (3) Terminal Taxes on goods and passengers carried by Railway or Air
- (4) Taxes on Railway fares and freights.

The Centre can levy a surcharge on those taxes entirely for its own purposes. None of these taxes has in fact been levied, except that the Federal Stamp duties continue to be levied under the old laws, the duties however being collected and retained by the Provinces.

13. The Federal Taxes, the net proceeds of which are to be shared with the Provinces, fall into two groups: -

- (1) taxes, the sharing of the net proceeds of which has been made obligatory by the Constitution viz., income-tax and jute export duty.
- (2) taxes, the sharing of the net proceeds of which has been left to be determined by the Federal Legislature viz., Central Excises including duty on salt, and export duties except on jute and jute products. The Central Legislature has levied certain taxes under these heads, but has not provided for giving any share to the Provinces.

14. Besides providing for giving away the net proceeds of taxes in whole or in part to the Provinces, the Constitution also provides for fixed grants-in-aid to some Provinces.

15. There is also a general provision for giving grants to Provinces at the discretion. of Central Government either for general or specific purposes.

16. Two tables showing the Constitutional position in respect of the revenues of the Federal and Provincial Governments respectively under the Government of India Act,1935, will be found in Appendix I. We are indebted to Mr. Myanmar's commentary on the Government of India Act, 1935,for these tables.

### **Review of Finances of Provinces and the Centre**

17. Two tables giving the financial position of the Provinces and the Centre during the year 1937-38

to 1946-47 are set out in Appendix II. In considering the working of the existing arrangements during the last decade, the most important point to note is that war broke out soon after the Government of India Act, 1935, came into operation.

18. During the war, all Provinces except Bengal and Assam had surplus budgets. Revenue receipts increased several times, mainly on account of wartime conditions and also because the Provinces levied a number of new taxes and increased the rates of existing ones; there were remarkable increases in receipts under Provincial, i.e., Liquor and Drugs, Excises, and in the Provincial share of Income-tax. Most Provinces were under Section 93 administration. All development work was stopped. The Provinces are now faced with a heavy programme of expenditure without any corresponding increase in revenue. On the contrary, even apart from voluntary abandonment of revenue as in the case of Liquor Excises, the revenue is likely to go down much below wartime levels. Land revenue, both in the permanently and temporarily settled provinces, is not likely to expand. State purchases of zamindaries will not bring any return for years to come. In ryotwari Provinces, remissions are likely to be more liberal than before, and there is thus little prospect of an increase in land revenue. Receipts from stamps and registration fees are not likely to increase much, while forest revenue will perhaps dwindle on account of large scale felling during the war. Receipts from sales tax, entertainment tax may not fall, though they will be below the war-time peak for some time to come.

19. During the war and after, most of the Provincial Governments have practically exhausted the entire field of taxation reserved for them. Moreover, Provincial Governments have to share the Provincial field with Local Bodies, and on that account too, need adequate resources. A substantial transfer of revenues from the Centre to the Provinces, therefore, seems inevitable, if essential and overdue programmes of social service and economic development have to be undertaken.

20. At this stage, we would refer to the adoption, by most Provincial Governments, of a prohibitionist policy; and of the inevitable loss of substantial revenue by all of them. Obviously, it is for the provinces to find alternative provincial resources from which to recoup the loss; and in case, in any case, it would not be practicable for provinces to expect sufficient assistance from the Centre for this purpose, at any rate for many years. The point that we wish to emphasise is that it will be for the provincial Government to balance the urgency of schemes of development against the advisability of social reforms like prohibition, and that in any case, they must not embark on schemes, whether of reform or development, depending merely on the possibility of obtaining assistance automatically from the Centre.

21. To turn now to the Centre, it has been working on deficit budgets. The large surpluses that were expected sometime ago have not been, and are not likely to be realised, mainly because of the food shortage, the refugee problem and other causes arising out of the partition of the country, particularly, continued heavy expenditure on Defence. These are, however, temporary problems, and we consider that the financial position of the Centre is essentially sound. As these temporary problems are solved, the budgetary position of the Centre will necessarily get better. There is scope for improvement in the administration of Central taxes, and particularly of taxes on income. In respect of taxes on income, it should be possible for the Centre not only to collect more in future in the ordinary course every year, but to secure for the exchequer, by legislative changes, if necessary, the large sums that are believed to have been successfully kept back from the Government in recent years. We do not, however, expect any appreciable change under Customs and Excise; and we do not expect Railway contributions on anything like the scale during the war. Even after the temporary problems referred to above have been solved, expenditure on Defence and Foreign Affairs would still be substantial. The Defence Services will probably be reorganised and re-equipped, and it is not possible to foresee what would be the scale of expenditure for properly equipped defence services even on a peace-time basis. There is little prospect on the other hand of reduction in the service of the national debt but there is, however, scope for reduction in the existing civil expenditure.

22. The problem before us is how to transfer from the Centre to the provinces, sufficient amount which, while not placing too great a strain on the Centre, would provide adequate resources for the inauguration of useful schemes of welfare and development by the Provinces. While the Centre, on its present basis, may not be in a position to part with substantial sums, we feel that with the resolution of its temporary difficulties and improvement in its tax administration, together with the levy and collection of taxes evaded in the past, it can with no serious risk to its own budget part with sizable sums every year. We are suggesting later in detail how these sums should be regulated. We have already referred to the need for Provinces having clear priorities as between contending demands for money, and we have no doubt that the Provinces will in the earlier years utilise the additional resources now placed at their disposal by concentrating on schemes that would add to the productive capacity of the country and consequently the income of the people and thus enable the provinces to embark on further schemes of reform and development.

### **Claims of Provinces**

23. Every Province has drawn pointed attention to the urgency of its programmes of social service and economic development and to the limited nature of its own resources, both existing and potential, and all of them have asked for substantial transfer of revenues from the Central sources. A summary of the detailed suggestions made by them, which vary considerably, is set out in Appendix III.

24. On the question of apportionment of income-tax among Provinces also, the provinces differ widely in their views. Bombay and West Bengal support the basis of collection or residence, the United Provinces that of population, and Bihar a combined basis of population and origin (place of accrual); Orissa and Assam want weight age for backwardness. East Punjab, while suggesting no basis, wants her deficit of Rs. 3 crores somehow to be met.

25. In the case of excise taxes, the bases suggested are production, collection, consumption and population, while Assam suggests some weight age for its low level of revenue and expenditure. Assam has further pressed for special treatment of excises collected on wasting assets, e. g., the petroleum raised in Assam Assam also wants a share of the export duty on tea.

### **General Observations**

26. Before we proceed further we would make a few general observations.

India has federal form of Government, and every federation is based on a division of authority and involves a certain amount of compromise. In this country, federation has been the result of gradual devolution of authority. It has not come into existence through agreements among sovereign States as in some other federations.

27. What we have to do is to distribute the total available resources among Federal and Provincial Governments in adequate relation to the functions imposed on each; so, however, that the arrangements are not only equitable in themselves and in the interests of the country as a whole but are also administratively feasible. We have also to ensure that there is not too violent a departure from the status quo, and also to see that while we have as much uniformity as possible, weak Units are helped at least to maintain certain minimum standards of services.

28. The basic functions of a Federal Government are Defence, Foreign Affairs and the service of the bulk of the national debt, and they are all expensive functions, particularly in the light of the limited resources of the country. The head "Communications" would ordinarily at least pay for itself. The Federal Government may also have to assume leadership in the co-ordination and development of research and

higher technical education. Normally, however, apart from war or large scale internal disorder, the expenditure of the Centre should be comparatively stable. The needs of the Provinces are in contrast, almost unlimited, particularly in relation to welfare services and general development. If these services, on which the improvement of human well-being and increase of the country's productive capacity so much depend, are to be properly planned and executed, it is necessary to place at the disposal of Provincial Governments adequate resources of their own, without their having to depend on the variable munificence or affluence of the Centre. The Provinces must, therefore, have as many independent sources of revenue as possible. On the other hand, it is not practicable to augment their revenues to any considerable extent by adding more subjects to the Provincial Legislative List, without simultaneously upsetting the equilibrium of the Centre. We cannot, therefore, avoid divided heads; and what we have to aim at is to have only a few divided heads, well balanced and high-yielding, and to arrange that the shares of the Centre and the Provinces in these heads are adjusted automatically without friction, or mutual interference.

29. In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on the basis of a broad judgment, at any rate until the necessary data become available. We attach great importance to the collection of these statistics and to connected research, and trust that the Government will make the necessary arrangements without delay. In the meantime we have made our recommendations on the best judgment we could give to the exiguous data available.

#### **List of taxes for the Centre and the Units**

30. We recommend no major change in the list of taxes in the Federal Legislative List as recommended by the Union Powers Committee. We however, recommended the substitution of the limit of Rs. 250 for Rs. 50 in clause 200 of the Draft Constitution relating to taxes on professions, trades, callings and employments. We observe from the Draft Constitution that it has been proposed to transfer to the Federal Legislative List stamp duty on transfer of shares and debentures, but we presume that the duties will continue to accrue to the Provinces. In view of the far-reaching effects on public credit and finance of Stock Exchange transactions, we consider that the Centre should have the power to legislate for the regulation of such transactions. If such regulation involves the levy of taxes, we recommend that such taxes should be retained by the Centre except that if the taxes take the form of mere duties on transfers of shares and debentures, the Provinces should have these duties just like other Stamp duties. We accordingly recommend the entry in the Federal Legislative List of a new item "Stock Exchanges and futures market and taxes other than Stamp duties on transactions in them".

31. In the list of taxes in the Provincial Legislative List, we recommend the following changes: -

(1) In entry 43, the words "hearths and windows" may be deleted. Such taxes are not likely to be levied. In any case, they would be covered by the word "buildings".

(2) In entry 53, the word "cesses" should, we think, be replaced by the word "taxes".

(3) Similarly, in entry 56, we would substitute the word "taxes" for the word "dues".

(4) In entry 50, we would make the following changes: -

(a) for the word "sale", we would substitute "sale, turnover or purchase", in order to avoid doubt.

(b) We would also add words such as "including taxes in lieu thereof on the

use or consumption within the Province, of goods liable to taxes by the Province on sale, turnover or purchase". This addition is suggested in order to prevent avoidance by importing for personal use from outside the province.

32. One of the Provincial Memoranda has suggested that the entry "State Lotteries" should be transferred to the Provincial List, but, as we do not wish to encourage State Lotteries, we should prefer the subject to remain Central where, too, we hope, it will not be used.

### **Shares in certain taxes**

33. We have no new items to suggest for insertion in the Provincial Legislative List.

34. The Federal Government will levy and collect all the taxes in the Federal Legislative List. But, according to our recommendations in the following paragraphs the Centre will retain the whole of the net proceeds of the following taxes only, *viz.*: -

- (1) Duties of customs, including export duties.
- (2) Taxes on capital value of assets and taxes on the capital of Companies.
- (3) Taxes on Railway fares and freights.

35. At present, the Central Government shares the net proceeds of the Jute Export duties with the jute-growing Provinces and has to hand over to the Provinces the whole of the net proceeds of taxes on railway fares and freights, if levied. As regards the latter, we recommend that, if such taxes are to be levied at all, they should be wholly Central, for, we cannot see any difference in substance between such taxes and a straight addition to fares and freights. As regards the former we are of the opinion that an export duties are capable of very limited application and have to be levied with great caution, they are unsuitable for sharing with the Provinces.

36. It is necessary, however, to compensate the Provinces concerned for the loss of this item of revenue and we recommend that, for a period of 10 years or till the export duties on jute and jute products are abolished, whichever may be earlier, fixed sums as set out below be paid to these Governments as compensation every year.

PROVINCE	AMOUNT
	Rs.
West Bengal . . . .	100 lakhs.
Assam . . . . .	15 lakhs
Bihar . . . . .	17 lakhs
Orissa. . . . .	3 lakhs

In arriving at these figures which we have based on the figures of pre-war years, we have taken all relevant circumstances into account, and in particular the concentration of manufacture in West Bengal. If at the end of ten years, which we think should be sufficient to enable the Provinces to develop their resources adequately, the Provinces still need assistance in order to make up for this loss of revenue, it

would no doubt be open to them to seek grants-in-aid from the Centre, which would be considered on their merits in the usual course by the Finance Commission.

37. Of the remaining Federal Taxes, we recommend that the net proceeds should be wholly or partly given away to the Provinces as indicated below:

38. Under the present arrangement the Provinces receive 50 per cent of the net proceeds of income-tax, except what is attributable to Chief Commissioner, Provinces and taxes on federal emoluments. The net proceeds of the Corporation Tax are also excluded for the purpose of the sharing. Subject to what we have said in paragraph 49 regarding tax on agricultural income, we recommend that, while the net proceeds attributable to Chief Commissioners' Provinces should be retained wholly by the Centre, the other reservations should go, and that the Provinces should get not less than 60 per cent of the net proceeds of all income tax including the net proceeds of Corporation Tax, and taxes on federal emoluments. For the purpose of the division, income-tax will mean any levy made under the authority of the entry "Taxes on Income" in the Federal Legislative List.

39. We also consider that over and above its share in the net proceeds retained by it normally, the Centre should be empowered to levy a surcharge whenever conditions require such a levy; obviously such occasions should be rare and not last for unduly long periods.

40. Excise duties are ordinarily closely connected with customs duties and, barring liquor and drug excises, which we consider, should continue to remain Provincial are inherently not suited for provincial taxation. On the other hand, they are only a species of consumption taxes of which another species namely, sales, turnover and purchase taxes have been the subject of provincial taxation for some time. The Memoranda received by us from the Provincial Governments are almost unanimous in demanding some share under excises; and our problem is to find not only more resources for the Units but to make their revenues more balanced. If it was possible to have excise on commodities not subject to Customs duties (whether revenue or protective) or not competing, or capable of competing with, or of substitution for, commodities subject to customs duties, e.g., on rice or wheat or millets or on jute and jute goods consumed in India, we see no reason why such excises or a share thereof should not be allotted to the units, apart from the general political objection to the division of heads, *viz.*, the divorce of benefit from responsibility. But such excises are not likely to be levied. Again, it is obvious that Excise duties on commodities subject to a protective tariff or even a high revenue tariff could not be conveniently shared. In the circumstances, the utmost that we can suggest by way of assistance in this respect to the Provincial Governments is to hand over to them a share of one of the important Central Excises on a commodity not receiving tariff protection, *viz.*, Tobacco. Incidentally, the effective administration of this excise requires the active co-operation of Provincial Governments, which would be better forthcoming if they had a share in the tax. We are averse to giving the units a share in too many Central Excises; for, such an arrangement would not only magnify the political objection of benefit without responsibility but lead to administrative inconvenience, since the rates could not be altered except by the consent of all the beneficiaries.

We accordingly recommend that 50 per cent of the net proceeds of the excise duty on tobacco should not form part of the revenues of the Federation but should be distributed to the Provinces.

41. It will be seen from what has been said above that we are not in favour of the suggestion made in item VIII of the Terms of Reference, *viz.*, that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the Provinces.

42. These duties cannot be administered satisfactorily except by or in the closest touch with the income-tax staff; and in any case, if the Centre is to part with a substantial amount of taxes on income and also a part of certain Central excises, it is appropriate that it should get a share of the estate and

succession duties. This will also give to the Federal Government a direct interest in the duty. Subject to what we have said in paragraph 49 about taxes on agricultural property, we recommend that not more than 40 per cent of the net proceeds of such duties should be retained by the Centre.

43. We recommend the continuance of the *status quo*, i.e., the legislation in respect of the duties on the specified documents should be Central but Provinces will collect and retain the duties.

44. These taxes are not suitable except for purely local purposes, i.e., for the benefit of municipalities, pilgrim funds, etc., but they can be conveniently levied and collected only by the Centre. The existing provisions may stand.

### **Grants-in-Aid and Subventions**

45. Item II of our terms of reference refers to Grants-in-aid. Assam and Orissa now get fixed subventions of Rs. 30 and Rs. 40 lakhs per annum, respectively. The recommendations that we have made for the increase in the Provincial share of income-tax and the transfer of a share in the excise on tobacco will increase their revenues substantially like those of other Provinces. Even so, however, we have little doubt that these two Provinces will still require fixed subventions on higher scales than at present.

The position of East Punjab is peculiar. Everything there is unsettled, and it will take some time for things to settle down. It is clear, however, that this Province will require a substantial annual subvention for some time to come.

The position of West Bengal is uncertain, and it is not clear how her finances will shape as a result of the partition. The liability that she will have to take over as a result of the partition is not yet known. All told, however, she will perhaps need some temporary assistance.

46. For lack of time and data, we have not been able to assess the subventions required by these four Provinces. We, therefore, recommend that the Central Government should immediately take up the question so that the amounts required by each of these Provinces may be determined in time. The amounts should be subject to periodical review by the Finance Commission to which we refer later.

47. We have suggested elsewhere that till the Finance Commission has been able to recommend a better basis of distribution, a part of the divisible pool of income-tax should be used in order to mitigate hardship in individual cases. The provision also contains an element of grants-in-aid.

48. It is clear that during the developmental stages of the country it will be necessary for the Centre to make specific purpose grants to the Provinces from time to time. The provisions of clause 203 of the Draft Constitution seem to be adequate for the purpose. We have considered the question whether, as in Australia, grants should be made in order to equalise, or at any rate to reduce the disparity between the levels of services and of severity of taxation in the different provinces. There is undoubtedly something attractive in seeking to bring up the backward units at least to 'average' standards, both in effort (severity of taxation) and in performance (standards of services). In Australia, the maximum difference between the levels is said to be of the order of 20 per cent and the number of unit States is small. In India, on the other hand, as for example in the U.S.A., the difference in the levels is very wide and the number of units larger when acceding States come into the picture. In such a background 'averages' would be mere mathematical concepts totally unrelated to actual facts. On the other hand, even in a Federation of autonomous units, there is a great deal to be said for helping the less prosperous units to come up to the level of the more prosperous ones. As in all such matters we must take a realistic decision with reference to the conditions in our country. While we do not recommend the adoption in this

country of the Australian system, we have no doubt that the Centre, when distributing specific purpose grants under clause 203 of the Draft Constitution, will bear in mind the varying circumstances in the different Provinces.

48-A. Section 199 of the Draft Constitution provides for special assistance to Assam in respect of expenditure for promoting the welfare of the scheduled tribes in the Province. We agree with this provision. It has been represented to us on behalf of Orissa that a similar provision should be made for assisting her to develop the backward areas of the Province. In the absence of any data, we have been unable to assess the measure of assistance, if any, required by this Province, and we content ourselves with expressing the view that if the Central Government, after a due examination of the question in all its aspects, decide the special assistance is necessary it should be provided on adequate scale.

### **Taxes on Agricultural Income and Property**

49. It is obvious that the taxation of agricultural income by the Provinces, while all other income is taxed by the Centre, stands in the way of a theoretically sound system of income-tax in the country. We should, therefore, have liked to take this opportunity to do away with this segregation. In view of the ease with which the origin of agricultural income can be traced, it could be arranged that the tax from such income, even though levied and collected by the Centre as part of an integrated system of income-taxes, should be handed back to the Provinces; and it could be further arranged that till such time as the Centre in fact levied a tax on agricultural income, the Provinces already levying this tax might continue to levy it without restriction and with full power to vary the rates of tax. The interests of Provinces could thus be fully protected, and there could, therefore, be no financial objections from them. On the other hand, the present arrangement has the political merit of keeping together in one place both benefit and responsibility, a rather important point, seeing that the Provinces will have full control over but few important heads of revenue. A few provinces have, in fact, levied the tax and are administering it for some time. Perhaps also, the Provinces can administer this particular tax with greater facility than the Centre. For the present, therefore, we have decided to continue the *status quo*, but, in view of the importance of the matter, would recommend that the Provinces should be consulted at once and if a majority, including of course those now levying the tax, agree, tax on agricultural income may be omitted from the Provincial List of subjects, consequential changes being made elsewhere in the Constitution. Our foregoing remarks apply *mutatis mutandis* to Succession and Estate Duties on agricultural property also.

### **Division of proceeds of Revenue between Provinces**

50. *Income-tax*--As regards the basis of distributing between Provinces the share of proceeds from taxes on income, we are of the opinion that no single basis would lead to equitable results. Origin or *locus* of income is no doubt relevant, but in the complex industrial and commercial structure of modern times, where a single point of control often regulates a vast net-work of transactions, where the raw materials come from one place, are processed in another, manufactured in a third, marketed wholesale in a fourth and ultimately sold in retail over a large area, contracts are made at places different from where they are performed, money is paid in at one place and goods delivered at another and more than one of these stages relate to the same tax-payer the assignment of a share of profits to each stage can only be empirical or arbitrary.

51. Again, the residence of the tax-payer is an important factor, but apart from the artificial legal definition of residence for income-tax purposes; the predominance of joint stock enterprise in business, the dispersion of the shareholders of companies all over the country and even outside, the possibility (emerging from the artificial definition) of simultaneous residence in more than one area, the non-assessment (due to various reasons) of a large number of shareholders, and the absence of authoritative, *i.e.*, tested, information in the income-tax records as to the province of a residence of a

resident of India (for, today, it is immaterial to the Income-tax Department in which particular Province on assessee is resident), all these together make this criterion of residence a difficult factor to apply in practice in distributing the proceeds of the tax. Even if the statistical difficulties were got over, residence could be changed at the will of the tax-payer.

52. Another possible criterion is the place of collection. This place is usually the principal place of business of the tax-payer, or his residence, if he is not carrying on a business or profession. The objection to this factor is that it is unfair to the areas of origin and sale which it completely ignores, while it gives far too much weight to the place of control of a business, which is usually, though not necessarily, the place of collection. Moreover, even more than in the case of residence, the place of collection can be easily altered at the will of the tax-payer.

53. Another possible basis is that of needs, *i.e.*, the shares would be regulated somewhat like grants-in-aid, and rather than go into elaborate enquiries for this purpose, the population of a Province could be taken as a rough measure of its needs. The objection to this basis is that a 'share' is something to which a Province is entitled because its citizens or things have in some measure contributed to the fund, while a grant is something given to it without regard to its contribution to the Centre or to any common pool.

54. We have said enough to show the difficulties of the problem, but the difficulties have somehow to be faced and met, unless we keep the whole of the taxes on income as Central and permit Provinces simultaneously to levy a Provincial income-tax on the basis of origin. In our opinion the latter course is not feasible in the circumstances of this country even if justifiable in theory; and pending enquiry by the Finance Commission the setting up of which we suggest later, we have no choice except somehow to make the distribution on as equitable a basis as can be devised in the circumstances.

55. We propose to proceed on the basis of collection as well as population and also to make some provision for adjustment on the basis of need. We recommend that the Provincial share, *i.e.*, 60 per cent. of the net proceeds be distributed among the Provinces, as follows:--

20 per cent. on the basis of population.

35 per cent. on the basis of collection.

5 per cent. in the manner indicated in paragraph 56.

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For the distribution of the first two blocks, population figures of the previous census and collection figures as certified by the Auditor-General should be accepted as authoritative.

56. The third block of 5 per cent. should be utilised by the apportioning authority as a balancing factor in order to mitigate any hardship that may arise in the case of particular Provinces as a result of the application of the other two criteria; in distributing this block it would be open to the authority to take into account all relevant factors.

### **Excise duty on Tobacco**

57. In our view, the most equitable method of distributing this duty is on the basis of estimated consumption. We have no doubt that the Government will take steps to obtain necessary statistical

information if it is not already available.

### **Estate and Succession Taxes**

58. These taxes have not so far been levied. One of the hurdles to be crossed before they can be levied is the determination of the manner of distribution of the net proceeds among Provinces. Until the taxes are actually levied and collected for some time, no data about their incidence will be available. Hence, the levy will have to start with some a *priori* basis of apportionment among Provinces. We accordingly recommend that until the Finance Commission is in a position to evolve a better method on the basis of data available to it, the net proceeds should be distributed among the Provinces as follows:--

The net proceeds attributable to real property--On the basis of the location of the property.

Of the balance--

75 per cent on the basis of the residence of the deceased;

25 per cent on the basis of the population of the province.

The administration and distribution of these taxes would, in the ordinary course, fall on the Central Board of Revenue, but it would be necessary to empower an appropriate authority to adjudicate in the case of disputes between Provinces as to the residence of individuals.

### **Effect of the proposals**

59. The net effect of all our recommendations together is that, on the present basis of revenue, the Centre will have to transfer to the Provinces a sum of the order of Rs. 30 crores annually. It will recover a part of this loss by the imposition of the Estate and Succession Duties, of the net proceeds of which it will retain 40 per cent. We believe that it will not be beyond the capacity of the Centre to part with this amount annually during the next five years, though it must cause some strain, while at the same time the transfer will enable the Provinces to start their programme of essential social services and economic development.

60. In our recommendations regarding the distribution of proceeds of taxes among the Provinces, we have not only proceeded on more than one basis, but have provided for an element of flexibility in order to mitigate hardship. We have also provided for a periodical review so that the method of apportionment can be adapted to changing conditions from time to time on the basis of experience. We have further provided for grants-in-aid both to the weaker Provinces and to Provinces in difficulty.

61. We have also tried to make the whole arrangement as automatic and free from interference as possible. The basic features of the scheme will be embodied in the Constitution itself, while periodic changes will be made by the President on the recommendation of the Finance Commission, which we hope will command the confidence of all. As frequent changes are undesirable, we have recommended a five-yearly review, though in special circumstances the Finance Commission may embark on a review at a shorter interval. The Provinces will now be sure of their position and can go ahead with their plans.

62. It is needless for us to add that to the extent that the Centre transfers its resources to the Provinces in the shape of new or increased shares in revenue, its ability to give grants to the Provinces for specific or other purposes must be correspondingly reduced.

63. We may not have been able in our proposals to satisfy everybody or to provide for every

contingency that may possibly arise in the future, but we have tried to do the best possible under the circumstances.

### **Finance Commission**

64. For reasons already stated, our recommendation as to the initial basis of apportionment among Provinces is not intended to be permanent. Conditions may change. The working of the scheme for some time will in itself produce some data that would indicate the nature and direction of the changes required. It is necessary, therefore, to have a periodical review of the whole position by a neutral expert authority.

65. We recommend for this purpose, among others, the appointment of a high level Tribunal of five members including a Chairman who has been, or is, holding high judicial office, not lower than that of a Judge of a High Court. This Tribunal may be called the Finance Commission. There may not ordinarily be enough work for the Commission to keep it busy continuously, and the members need not, therefore, devote their whole time to the work. The members should be appointed by the President in his discretion if only because a Commission of this kind would have frequently occasion to deal with points of conflict between the Centre and the Units. While we would not lay down any conditions in the Statute as to how these members should be selected, we recommend that two should be selected from a panel of nominees of Units Governments and two others from a panel of nominees of Units Governments and two others from a panel of nominees of the Central Government, the Chairman being selected by the President himself. One at least of the five should possess close knowledge of the finances and accounts of Governments, while another at least should have a wide and authoritative knowledge of economics, It would be an advantage if one or more were public men with wide experience. It would be further advantage if a member possessed more than one qualification, and steps should be taken to secure the services of such individuals. The appointments might be made for 5 years and be renewable for another five years.

66. Between now and the setting up of the Finance Commission, we recommend that the Central Government should take steps in consultation with the Provinces, to collect, compile and maintain statistical information on certain basic matters such as the value, volume and distribution of production, the distribution of income, the incidence of taxes, both Central and Provincial, the consumption of important commodities, particularly those that are taxed or likely to be taxed, etc. The Finance Commission, when setup, would then have some basic information to go upon, and would no doubt call for such further information as it may need. It would also, to the extent necessary, arrange for continuous examination and research in respect of all important matters.

67. The Finance Commission should be entrusted with the following functions:--

- (a) To allocate between the Provinces, the respective shares of the proceeds of taxes that have to be divided between them;
- (b) To consider applications for grant-in-aid from Provinces and report thereon;
- (c) To consider and report on any other matter referred to it by the President.

68. While these categories would exhaust the duties of the Commission, it should be open to the Commission to make any recommendations it may think expedient in the course of the discharge of these duties. It may, for example, suggest a variation in the heads of revenue assigned to the Provinces,

*i.e.*, the transfer of new heads or the withdrawal of existing heads, or increases in the shares of existing heads or a reduction in these shares. In making all such recommendations, the Commission will take into account all relevant matters, including the state of finances of the Centre. Its recommendations, in so far as they do not involve any change in the Constitution, would, when accepted by the President, be given effect to by him by order, while recommendations involving a change in the Constitution, if similarly accepted by him, would be dealt with like any other proposed amendment to the Constitution.

69. The Commission's first function would be of the nature of an arbitration, and therefore, the Commission's decisions will be final. As regards one second function, we have no doubt that the recommendation of the Commission in respect of grants-in-aid would be given the utmost weight by the President and not ordinarily departed from by him.

70. The basis for the allocation of revenues referred to in item (a) should ordinarily be settled by the Commission at intervals of five years, but it should be open to the Commission to shorten the interval if it feels satisfied in special circumstances that such shortening is called for.

71. We would further recommend, in order to save time, that the Finance Commission may be set up in advance of the coming into effect of the Constitution, and its status regularised after the Constitution comes into effect.

### **Residuary Powers of Taxation**

72. It appears that under the new Constitution, residuary powers will be vested in the Centre, so far as the Provinces are concerned, while the corresponding residuary powers in respect of the States will be vested in the States themselves. The question has therefore been raised whether, as a consequence, as many specific taxes as possible should not be entered in the Provincial List of subjects. We cannot think of any important new tax that can be levied by the Provinces, which will not fall under one or the other of the existing categories included in the Provincial List. We think that the chance of any practical difficulty arising out of the proposed constitutional position is remote, and, in any case, it seems to us that if a tax is levied by the Centre under its residuary powers, there will be nothing to prevent the proceeds of the whole or a part of this tax being distributed for the benefit of the Provinces only. As a matter of abundant caution, however, it may be laid down in the Constitution that if any tax is levied by the Centre in future under its residuary powers, and to the extent that the States do not agree to accede to the Centre in respect of the corresponding subject the whole or a part of the proceeds of the tax shall be distributed between the Provinces and the acceding States only.

This disposes of Item IX of our Terms of Reference.

### **Exemption of Provincial Governments from Taxation**

73. Section 155 of the Government of India Act provides that profits from trading by a Provincial Government would be taxable only if the trade was carried on outside the Province. The exemption from Central taxation of trade by Provincial Governments carried on within the provincial limits did not matter much in the past; for the Governments had few trading operations. With the present tendency towards nationalisation (*e.g.*, many provinces have already taken up quite seriously the nationalisation of road transport), the Centre should have some power to levy either income-tax or a contribution in lieu of income-tax in respect of these trading activities. Disputes as to such contributions should, we consider, be examined and adjudicated upon by the Finance Commission to which we have already referred. We feel that if nationalisation of industries or trades takes place rapidly, the whole question would have to be reviewed *de novo*, for the entire structure of the tax system of the country would be completely changed.

74. In the meantime we make the following recommendations:--

(a) The existing practice should continue in respect of trading operations of the Central Government, *i.e.*, no income-tax should be levied on the profits. It should be open to the Centre, however, to levy a contribution, as in the case of Railways, for its sole benefit from such operations. If the trading is carried on by a separate juristic person, tax will be levied even if the Government is the dominant shareholder.

(b) Tax should be levied on the trading operations of Units (as also of local bodies), whether carried on within or without their jurisdiction; and the tax or the contribution in lieu thereof should be treated as ordinary income-tax revenue for the purpose of the divisible pool. We presume that if there are no profits, there will be no contribution; but if this presumption is wrong, we suggest that the contribution should be treated as part of the divisible pool of income-tax.

(c) We recommend that quasi-trading operations incidental to the ordinary functions of Government such as the sale of timber by the forest department or of jail products by the jail department should not be treated as trading operations for this purpose.

### **Emergency Provisions**

75. The needs of the Centre in times of emergency, such as war or large scale internal disorder, cannot be provided for through the detailed allocation of heads of revenue or of shares therein. It is obviously not possible to legislate how emergencies should be met. We would suggest that there should be a special provision in the Constitution authorising the President in an emergency to suspend or vary the financial provisions in such manner as he may think best in the circumstances. For example, if there is a war and an Excess Profits Tax is levied, it might be necessary for the Centre to retain the whole of this tax for itself.

### **Procedure in Financial Matters**

76. Item X of our terms of reference is as follows:--

"Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in Sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?"

77. The present financial procedure in the federal sphere is laid down in sections 33--37 of the Government of India Act, 1935. The corresponding clauses in the Draft Constitution as prepared by the Secretariat of the Constituent Assembly are 74, 75 and 77--81. We have two recommendations to make:--

(1) When a money bill is sent from the Lower House to the Upper, a certificate of the Speaker of the Lower House saying that it is a money bill should be attached to, or endorsed on, the bill and a provision to that effect should be made in the Constitution on the lines of the corresponding provision in the Parliament Act, 1911. This will prevent controversies about the matter outside the Lower House.

(2) After clause 80, a provision may be made making it necessary for Government to approach the Legislature for regularising any excess expenditure that might be discovered in audit after the close of the year.

This is, in fact, done even now, but there is no statutory obligation to do so.

Subject to these two recommendations, we approve of the provisions in the Draft Constitution.

78. Financial procedure in the Provincial field is governed by sections 78--82 of the Government of India Act, 1935. The corresponding provisions in the Draft Constitution occur in clauses 149--153. We recommend--

(1) that in a Province with a bicameral Legislature, if any, the powers of the Upper House over money bills should be exactly the same as at the federal level;

(2) that the new provision, in respect of a vote on excess grants, recommended by us at the federal level should be repeated at the provincial level also.

79. It is usual in written democratic constitutions to provide that no money can be drawn from the treasury except on the authority of the Legislature granted by an act of appropriation. In this country, the practice has been to authorise expenditure by resolutions of Government after the demands have been voted, and not by law. As the existing practice has been working well in this country, appropriation by law does not appear to be necessary.

#### **Auditor-General**

80. Though the question has not been specifically referred to us, we consider that the status and powers of the Auditor-General are so closely connected with financial procedure that we have gone into this matter also. The provisions in respect of the Auditor-General of the Federation are contained in clauses 106--109 of the Draft Constitution, and those in regard to the Auditor-General of the Provinces, in clauses 174-175. In substance, all these clauses repeat the existing provisions in the Government of India Act. We consider the provisions to be adequate for the purpose of securing the independence of the Auditor-General. We notice that the Auditor-General of India is to perform the functions of the Auditor-General in respect of the Provincial Governments also for an initial period of three years, and thereafter, until a particular Provincial Government chooses to appoint its own Auditor-General. We favour the continuance of a single Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing separate Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing separate Auditor-General of their own. The Draft Constitution, however, gives them the option to appoint Auditors-General if they think fit so to do. We are not sure whether it is possible altogether to do away with this option, much as we should like to do so; but if the option remains, we recommend that the provisions of sub-clause 3 of clause 174 should be amended so as to make the Auditor-General of a Province eligible for appointment as Auditor-General of another Province also.

#### **Borrowing Powers**

81. This question is covered by Item I of our Terms of Reference.

The present position is that the Provinces have the freedom to borrow in the open market in India except when they are indebted to the Centre.

The most outstanding advantage of the freedom of borrowing is the sense of financial responsibility it creates; for, there is no more accurate, sensitive and dependable meter of the credit of a borrowing Government than the reaction of the securities market. We do not therefore wish to withdraw this freedom. Nevertheless, it is necessary to have some machinery which would ensure that borrowing Governments do not, by their competition, upset the capital market. This machinery is now provided through the Reserve Bank which advises all the Governments, but in view of the ambitious programmes of development both by the Centre and by the Units, it may become necessary to set up some kind of expert machinery, both competent and definitely empowered, to fix the order of priority of the borrowings of the different Governments. In some countries, this co-ordination is effected either by a Ministerial Conference or by a Loans Council. Such machinery should not affect the responsibility of a Government for its borrowing policy, and should help only in the timing of the loan and avoidance of unnecessary competition. The co-ordination by the Reserve Bank has worked well in practice and so long as it works well we do not recommend any change. We assume that there will be no distinction between federating States and the Provinces in this respect.

82. We are of the opinion that it should not be open to a Provincial Government or to a Government of a State to go in for a foreign loan except with the consent of the Federal Government and except under such conditions, if any, as the Federal Government may think fit to impose at the time of granting the consent. We notice, however, that there is an entry, *viz.*, "18. Foreign Loans" in the Federal Legislative List in the Draft Constitution. We are not sure whether, the insertion of this entry in the Federal Legislative List is enough to prevent the Government of a Unit from going in for a foreign loan. We, therefore, recommend that the point be examined, and if the provision is not found to be adequate, a specific provision should be made in clause 210 of the Draft Constitution making it necessary for the Government of a Unit to obtain the consent of the Federal Government before going in for a foreign loan.

### **Problem of Indian States**

83. The points at issue are contained in items III, IV, V, VI and XI of our terms of reference.

This part of our work is the most difficult party thereof, and the difficulty arises as much from the lack of statistical data as from the complications of the problem itself; for, not only do conditions differ widely between the Provinces as a whole and the States as a whole, but from State to State, so that it is difficult to apply a common yard-stick.

84. The Union Powers Committee of the Constituent Assembly in Para 2 (d) of their report, dated 17th April, 1947, has expressed its view on this subject in the following terms:--"We realise that, in the matter of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Units all at once. We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subjected to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation." We entirely agree with these observations.

85. We assume that the ultimate object of the Federation must be to secure for the federating States the same, or nearly the same standards of economic development, fiscal arrangements and administrative efficiency as in the Provinces. It is only against this background that the States can have the same identity of interest with the Union as the Provinces have.

86. The first difficulty met with in our investigation is that many of the smaller States have neither a

budget nor effective audit, so that adequate and reliable information about their financial position, on a basis permitting comparison with Provinces, is not available. We recommend accordingly that it should be made obligatory within as short a period as possible for each State to arrange for the preparation and authorisation of a periodical budget and the maintenance of proper accounts and audit and to send copies of its budget, accounts and audit reports to the Union Government.

87. In the absence of sufficient data, we are not in a position to make recommendations other than of a general nature. We are clear in our mind that the States should gradually develop all the taxes in the Provincial legislative List so that they may correspondingly give up reliance on taxes in the Federal Legislative List. This process however would necessarily take some time and in the meanwhile it will be necessary to have transitional arrangements.

88. We will now take up Land Customs. We do not recommend the immediate abolition of Land Customs, for we find that such a course would lead to a serious dislocation in the finances of many States. Moreover, where there is no large re-export trade, these land customs, though a possible source of annoyance, are really of the nature of octroi duty levied at a few point of entry. On a long view, however, in the interests of the States themselves, these duties might be replaced by other taxes, such as sales and turn-over taxes. We recommend accordingly that Land Customs now levied by the States should be abolished during the next 10 years. As a first step it may be arranged that--

(1) a State shall not in future levy land customs on a commodity on which there is no such duty now;

(2) a State shall not after a fixed date, increase the rate on any commodity;  
and

(3) a State levying land customs should grant refunds on re-exports.

Gradual abolition over a period of 10 years should not cause any serious dislocation to the finances of these States, nor can there be any question of paying any compensation to these States, for the simple reasons that the Union Government will not gain any corresponding revenue.

89. Maritime customs should be uniform all through the Union, and the Federal Government should take over the administration of such customs in all the maritime States. If this arrangement results in the loss of any State of the revenue now enjoyed by it, it is only fair that the State should be compensated for the loss. Pending determination of the appropriate compensation in each case by a States Commission, the appointment of which we recommend in a later paragraph, each State may be given an annual grant equal to the average revenue from this source during the last three years. The right of Kashmir to a rebate on sea customs maybe similarly abolished on payment of a similar grant.

90. The Federal Government may levy Central Excises in all the States, but those States which now enjoy the benefit of a part or the whole of these revenues raised in their areas should, in lieu of such benefit, receive grants on the basis of the average revenue enjoyed by them from these sources during the last three years. In our opinion, neither this arrangement nor the one referred to in the foregoing paragraph should present any difficulty from the purely financial point of view either to the Union or to the States.

91. The Indian Income-Tax Act, with such modification as may be considered necessary by the President, may be applied to all the Federating States. The net proceeds of the tax attributed to the States may be credited to a States Income-Tax Pool and such portion not being less than 75 percent of the net proceeds attributable to each State, as determined by the President, may be paid back to the

States.

We are aware that many problems will arise in the course of allocating these proceeds between the different States, but they are not insoluble, and can be solved on lines similar to those followed in allocating similar revenues between the Provinces.

92. The need for a uniform system of income-tax both in the Provinces and in the States has become urgent not only because of the facilities afforded for evasion and avoidance of the Central Income-tax by the existence of States with lower rates of taxation or no tax at all, but also because it is alleged that industries are being diverted artificially by the incentive of lower taxation to areas not inherently suited for the industries.

93. Though we do not favour any abrupt change in the *status quo*, we do not attach much weight to the argument that the States are, as a whole, industrially backward and that they cannot, therefore, stand the same high rates of taxation, particularly income-tax, as the Provinces can. If the productive capacity of a State, and consequently its level of income, is low, it follows that the State will not have to contribute much by way of tax if it falls in line with the Provinces. If, on the other hand, the point is that industries should be artificially stimulated in the States somehow by the incentive of lower taxes, it is obvious that if the State is not suited for industrial development, the cost of bolstering up its industries must ultimately fall upon the Provinces and other States.

94. As already stated, we are not in a position to make detailed recommendations regarding the States. We recommend for this purpose the establishment of a States Commission with five members who should possess wide knowledge of the financial administration of Provincial, Federal or State Governments. Preferably, one of these members might be a member of the Finance Commission (for Provinces) referred to earlier in this report. The Commission should advise the President, as also the States, about their financial systems and suggest methods by means of which the States could develop their resources and fall into line with the Provinces as quickly as possible. One of the first tasks of the Commission will be to examine in detail the privileges and immunities enjoyed by each State, and also the connected liabilities, if any, and recommended a suitable basis of compensation for the extinction of such rights and liabilities. We consider in particular that the States Commission should deal with the problems before it with understanding and sympathy and suggest solutions which would not only be fair both to the States and to the Provinces, but enable the States to come up to the Provincial standards in as short a time as possible.

95. The States which come into the above arrangements would pay their contribution for Defence and other Central services through the share of the net proceeds of Central taxes retained by the Centre, and nothing more should be expected from those States. On the other hand, the States which accede but do not come into the above arrangements, should pay a contribution to the Centre, the amount of which should be determined by the States Commission having regard to all the relevant factors.

96. The constitutional arrangements in this respect, particularly during the interregnum of 15 years, should, in our opinion, be kept very flexible. The President should be enabled by order to adopt any financial arrangement he may find expedient with each State until such arrangement is altered by an Act of the Federal Legislature after necessary consultation with the States.

97. While the outlines which we have indicated above are capable of being applied to most of the major or even middle-sided States, it is, in our opinion, necessary to group together a number of smaller States in sizable administrative units before they can be brought into any reasonable financial pattern.

98. We are sorry that we have not been able to contribute anything more precise than we have done to this part of the terms of reference to us.

99. We enclose two Appendices (IV and V) one of which sets out in detail, as far as we have been able to collect, the rights and immunities enjoyed by various States, and the other setting out the total budgets of certain States and the part played by Land Customs in those budgets.

### **Summary of Recommendations**

100. (1) No major change to be made in the list of taxes in Federal Legislative List as recommended by the Union Powers Committee. (Para. 30)\*

(2) The limit of Rs. 50 to be raised to Rs. 250 for taxes on professions etc. levied by Local Bodies. (Para 30)\*

(3) An entry to be made in the Federal Legislative List of a new item "Stock Exchanges and Futures Markets" etc. (Para. 30)\*

(4) A few minor changes of a drafting nature to be made in the list of taxes in the Provincial Legislative List; and no new items for insertion in the Provincial Legislative List. (Paras 31--33)\*

(5) The Centre to retain the whole of the net proceeds of the following taxes, *viz.*, (a) Duties of Customs including Export Duties; (b) tax on capital value of assets, etc.; (c) taxes on Railway fares and freights; and (d) Central Excises other than on tobacco. (Para 34)\*

(6) The grant of fixed assignments for a period of years to the jute-growing provinces to make up for their loss of revenue. (Paras 35-36)\*

(7) The net proceeds of the following taxes to be shared with the Provincial Governments, *viz.* (1) Income-tax, including Corporation Tax; (2) Central Excise on Tobacco; (3) Estate and Succession Duties. (Paras. 38--42)\*

(8) The suggestion that the Centre should be allotted only the excises on specified commodities, not accepted (Para 41)\*

(9) Federal Stamp Duties and Terminal taxes on goods etc., to be administered centrally, but wholly for the benefit of the provinces. (Paras 43 and 44)\*

(10) Larger fixed subventions than now, necessary for Assam and Orissa, and subventions for limited periods for East Punjab and West Bengal, but no precise figures recommended for lack of data. (Paras 45 and 46)\*

(11) Grants-in-aid on the Australian model not favoured. (Para 48)\*

(12) Merging the tax on agricultural income in the Central Income-tax and similarly the Estate and Succession Duties on agricultural property in the similar duties on property in general to be examined in consultation with Provincial Government and transfers made from the Provincial List of subjects, if necessary. (Para 49)\*

(13) Not less than 60 per cent. of the net proceeds of Income-tax, including Corporation Tax and the tax on Federal emoluments, to be divided between Provinces in the following manner:--

20 per cent. on the basis of population, 35 percent. on the basis of collection and 5 per cent as an adjusting factor to mitigate hardship. (Paras 55 and 56)\*

(14) Not less than 50 per cent of the net proceeds of the excise on tobacco to be divided between Provinces on the basis of estimated consumption. (Para 57)\*

(15) Not less than 60 per cent. of the net proceeds from Succession and Estate Duties to be divided between the Provinces on the following basis:-- Duties in respect of real property on the basis of allocation of the property, and of the balance, three-fourths on the basis of the residence of the deceased and one-fourth on the basis of population. (Para 58)\*

(16) Net effect of the recommendations, to transfer annually a sum of the order of Rs. 30 crores from the Centre to the Provinces. (Para 59)\*

(17) A Finance Commission with a High Court Judge or ex-High Court Judge as Chairman and four other members to be entrusted with the following functions:--viz. (a) allocation between the Provinces of their shares of centrally administered taxes assigned to them; (b) to consider applications for grants-in-aid for Provinces and report thereon; (c) to consider and report on other matters referred to it by the President. (Paras 66-67)\*

(18) The Commission to review the position every five years, or, in special circumstances, earlier. (Para 70)\*

(19) A tax levied by the Centre under its residuary powers, not to ensure to the benefit of a non-acceding State unless it agrees to accede to the Centre in respect of that subject. (Para 72)\*

(20) Trading operations of Units, as also of Local Bodies, whether carried on within or without their jurisdiction, to be liable to Central Income-tax or a contribution in lieu, but quasi-trading operations incidental to the normal functions of Government not to be taxed. (Para 74)\*

(21) The President to be empowered in an emergency to suspend or vary the normal financial provisions in the Constitution. (Para 75)\*

(22) A few minor changes suggested in regard to the procedure in financial matters. (Para 77)\*

(23) No change to be made in respect of borrowing powers of Units. --(Paras 81-82)\*

(24) Early arrangement to be made for the preparation of regular budgets and the maintenance of appropriate accounts and audit by all acceding States. (Para 86)\*

(25) States gradually to develop all the taxes in the Provincial Legislative List and correspondingly give up taxes in the Federal List. (Para 87)\*

(26) Maritime customs and excises in States to be taken over by the Centre, the States being compensated therefore if necessary. (Paras 89 and 90)\*

(27) The Indian Income-tax Act to be applied to all the federating States, and 75 per cent. of the net proceeds attributable to the States to be divided between them. (Para 91)\*

(28) A States Commission to be set up with five members with wide knowledge of the financial administration of Provincial, Federal or State Governments. (Para 94)\*

(29) The States Commission to examine the privileges and immunities etc. of States and to suggest suitable compensation for the extinction of these rights and liabilities. (Para 94)\*

(30) States which do not come into the arrangements to pay a contribution to the Centre to be determined by the States Commission. (Para 95)\*

(31) The interim Constitutional arrangements with the States to be flexible and small States to be grouped together. (Paras 96 and 97)\*

### Conclusion

101. Some of our recommendations would need to be embodied in the Constitution while others would be given effect to by the order of the President. We have attempted a draft of the necessary provisions in the Constitution to give effect to the former; and these are set out in Appendix VI.\*

102. Mr. Rangachari has signed this report in his personal capacity, and the views expressed in it should not be treated as committing in any manner the Ministry of Finance of which he is an officer.

**NALINI RANJAN SARKER,**

**V. S. SUNDARAM,**

**M. V.**

**RANGACHARI.**

New Delhi:

5th December 1947.

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\* Reference to paras are to paras in the original reports.  
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**[Annexure I]**  
APPENDIX B

**OF CONSTITUTIONAL POSITION OF THE CENTRE AND THE PROVINCES IN RESPECT**

**REVENUE UNDER THE GOVERNMENT OF INDIA ACT, 1935.**

#### (a) Revenue of the Federation

(1) From Taxes			(2) From Commercial Operations	(3) Sovereign Functions	(4) Contributions from States -Assigned by His Majesty
A. Levied and collected by the Federation but belonging wholly to the	B. Levied and collected by the Federal Government of which a portion is or may be assigned to the Provinces.	C. Levied and collected by Federation and, belonging wholly to the Federation.	1.Posts and Telegraph. 2.Federal Railways. 3.Banking. 4.Other	1.Coinage and Currency. 2.Escheat and lapse in areas	Tributes and other payments.

Provinces or Units.			Commercial Operations .	administered by Federal Government.	
<p>1. Duties on Succession to property other than agricultural land.*</p> <p>2. Stamp Duties on Bills of Exchange, Cheques, Pronotes, Bills of Lading, Letters of Credit, Policies of Insurance, Proxies and Receipts.!</p> <p>3. Terminal Taxes on goods or passengers carried by Railway or air.!!</p> <p>4. Taxes on Railway fares and freights.* (Subject to the right of the Federation to raise Federal Revenue by a surcharge on all the items in this list.)</p>	<p>a. Assigned by the Act.</p> <p>1. Income-tax other than Corporation Tax, (Subject to Federal Surcharge.)! 2. Jute Export Duty.!!</p>	<p>b. May be assigned by Federal Law.</p> <p>1. Duty on Salt. 2. Other duties of Excise on Tobacco and on other Goods manufactured or produced in India except. (a) alcoholic liquor for human consumption. (b) Opium, hemp and other narcotics and non narcotic drugs. (c) Medicinal and toilet preparations.# 3. Duties of Export.%</p>	<p>1. Taxes in Lists A &amp; B in areas administered by the Federal Government. 2. Customs. 3. Corporation Tax. 4. Surcharges mentioned in Lists A &amp; B. 5. Taxes on capital values of assets of individuals and companies. 6. Miscellaneous receipts from fees in respect of matters in Federal List (including fees taken in the Federal Court).</p>		
<p>*Not yet levied.</p> <p>! These duties continue to be both levied and collected by the Provinces.</p> <p>!! Levied so far only for the benefit of local bodies.</p> <p>\$Duty now abolished.</p> <p>#See notes under the other Table.</p> <p>%No share assigned to Provinces.</p>					

**(b) Revenue of the province**

A. By Taxes		B. Commercial Operations	C. Sovereign Rights   Escheat and Lapse	D. Grants-in-aid and subventions from the centre.
<p>A. Directly raised by the Province.</p> <p>1. Land Revenue.</p> <p>2. Duties of excise on alcoholic liquors, etc. excluded from Federal revenues.</p> <p>3. Taxes on Agricultural income.</p> <p>4. Taxes on Lands and Buildings* Hearths and Windows.</p> <p>5. Succession to agricultural land.</p> <p>6. Taxes on Mineral rights.</p> <p>7. Capitation taxes.</p> <p>8. Taxes on Professions, Arts, Trades and Callings.*</p> <p>9. Animals and Boats.*</p> <p>10. Sale of Goods and Advertisements.</p> <p>11. Octroi.</p> <p>12. Taxes on luxuries, entertainment, etc.*</p> <p>13. Stamps—other than Stamps in</p>	<p>B. Levied and collected by the Federation and wholly allocated to the Provinces</p> <p> </p> <p>Items in List A of the other Table.</p>	<p>C. Levied and collected by the Federation but which is or may be allocated in part to the Provinces.</p> <p> </p>		
		<p>(a) By the Government of India Act.</p> <p>Income-tax. !!</p> <p>Export duty on Jute.#</p>	<p>(b) By Federal legislation.</p> <p>\$</p> <p>Salt.!</p> <p>Federal Excise Duty.</p> <p>Export Duties.#</p>	

Federal List.				
14. Taxes on Passengers and Goods in inland waterways.				
15. Tools.!				
16. Miscellaneous receipts from fees including fees taken in Courts (other than the Federal court).				

These taxes are now raised by Municipal and other Local authorities for their needs.

By order in Council 50% of the net proceeds of tax on income other than Corporation tax exclusive of proceeds attributable to Chief commissioners Provinces and taxes in respect of federal emoluments are distributable in accordance with a prescribed ratio.

#62 1/2 assigned to Provinces by Order in Council distributed among jute producing Provinces in proportion to the respective amounts of Jute grown in them.

\$Duty abolished.

#No share allotted to Provinces.

!Now abolished—but before abolition was a source of Municipal Taxation.

## APPENDIX B

### FINANCIAL POSITION OF THE PROVINCES AND CENTRE FROM 1937-38 TO 1946-47

#### (a) Provinces

(in lakhs of Rupees)

Province	Provincial Revenue	Devolution Grants from the centre including Dev. Grants	Total Revenue	Total Revenue Expenditure	Cumulative Deficit (-) Surplus (+)	Balances in Reserve Funds on 31st Mar. 1947	Closing balance on 31st Mar. 1947
Madras	2,63,27	24,12	2,87,39	2,84,22	+3,17	29,18	-56
Bombay	1,92,52	26,51	2,19,03	2,06,69	+12,34	17,07	42
Bengal	1,65,35*	69,92	2,35,27	2,51,13*	-15,86	25	2,48
United Provinces	1,79,33	26,77	2,06,10	2,04,99	+1,11	17,31	6,43
Punjab	1,84,12	11,51	1,95,63	1,60,46	+35,17	6,79	57
Bihar	75,06	51,10	90,16	81,81	+8,35	7,78	1,07
C. P. & Berar	63,61	7,69	71,30	70,661	+64	8,14	2,41

Assam	35,54	7,89	43,43	42,89	+54	1,02	1,54
N. W. F. P	11,94	11,55	23,49	22,95	+54	15	63
Orissa	17,71	7,93	25,64	25,11	+53	10	60
Sind	55,19	10,27!	65,46	60,04	+5,42	8,14	8

\* Subsidy of 3,00 in 1943-44 taken by Bengal as reduction of expenditure on Famine . Hence Revenue and Expenditure both have been increased by 3,00.

! The Subvention was capitalised on 1st April 1944 and the value set off against the Lloyd Barrage Debt.

Revised Estimate have generally been taken for 1946-47.

### (b) Central Government (1937-38 to 1946-47)

(In lakhs of Rupees)

Year	Revenue	Civil	Expenditure --	Total	Deficit (-)
			----- Defence		Surplus (+)
1937-38	86,61	39,39	47,22	86,61	---
1938-39	84,52	38,97	46,18	85,15	--63
1939-40	94,54	45,03	49,54	94,57	----
1940-41	1,07,65	40,57	73,61	1,14,18	--6,53
1941-42	1,34,57	43,33	1,03,93	1,47,26	--12,69
1942-43	1,77,12	74,28	2,14,62	2,88,90	-1,89,89
1943-44	2,49,95	81,44	3,58,40	4,39,84	--1,89,89
1944-45	3,35,71	1,00,77	3,95,49	4,96,26	--160,55
1945-46	3,61,18	1,24,38	3,60,23	4,84,61	--1,23,43
1946-47 (Revised Estimate)	3,36,19	1,43,36	2,38,11	3,81,47	---45,28
TOTAL	19,68,07	7,31,52	18,87,33	26,18,85	---6,50,78

The amounts included in the above on account of revenue assigned to the Provinces and Grants-in-aid and Subventions to them are given below:--

(In Lakhs of Rupees)

Year	Share of Jute Export duty	Share of Income-tax	Grants-in aid and Subventions
1937-38	2,65	1,25	3,14

1938-39	2,51	1,50	3,05
1939-40	2,56	2,79	3,04
1940-41	1,85	4,16	3,04
1941-42	1,95	7,39	3,03
1942-43	1,40	10,90	2,76
1943-44	1,38	19,50	5,75 (a)
1944-45	1,49	26,56	8,70 (b)
1945-46	1,57	28,75	9,70 (c)
1946-47 (Revised Estimate)	2,80	29,87	1,70
<b>TOTAL</b>	<b>20,16</b>	<b>1,32,67</b>	<b>43,91(d)</b>

(a) Includes 3,00 Special Grant to Bengal.

(b) Includes 7,00 Special Grant to Bengal.

(c) Includes 8,00 Special Grant to Bengal.

(d) Includes 7 roundly in all for Coorg.

### Annexure III

### APPENDIX B

### SUMMARY OF PROVINCIAL SUGGESTIONS

#### Part I - Taxes

Tax	Assignment existing or contemplated	Provinces proposing	Assignment Proposed for provinces
1. Income tax (other than on agricultural income). [Sec. 138 of the Government of India Act, 1935 and item 54 in Federal Legislative List.]	A maximum of 50% of the net proceeds to be distributed among provinces.	Madras Bombay	A minimum of 50% of net proceeds.  75% of income tax and corporation tax receipts for provinces or 75% of the corporation income and super taxes paid by residents in a province to be earmarked for that province. From the divisible pool from corporation and income tax 33 1/3 % should be allotted to Bombay which is the largest single contributor to the revenue.
		U. P.	50% for provinces on population basis
		C. P.	75% Tax on Agricultural income also should be collected by collected by centre.
		West Bengal	60% to be distributed in proportion to the collection of these taxes in provinces.
		Bihar	Even on the basis of population Bihar should have received 17 crores as against 13 allotted. In

			future none of the poorer provinces should get an amount lower than that payable on the basis of population. The distribution should be governed not by residence of the assessee but by the place where the income is earned. The basic factors must be population and the place where the income is earned. If any modifications are to be made they must be done with the object of assisting the financially poorer provinces among which Bihar is at the very bottom.
		Orissa	Distribution of 50 % may continue as at present but the percentages should be revised taking into consideration the factor also of the state of development in addition to those of corporation and residence used by Sir Otto. Due weightage to be given to undeveloped provinces. Should the provincial share exceed 12 crores, 75% of the excess may be left to the discretion of the Central Government.
		East Punjab	After the partition the East Punjab Province faces a deficit of about 3 crores : its share of income tax proceeds should be very appreciably increased to meet the deficit fully.
		Assam	75 % . There should be a drastic revision of the shares of provinces in income tax receipts having regard to the facts that Sind and N. W. F. P. go out that the amounts now available in the divisible pool have enormously exceeded the original estimate and some provinces are now getting , as a result income tax amounts exceeding the entire revenues of some others.
2. Corporation Tax. [Items 46 in Federal Leg. List]	Wholly Federal	Madras	At least 50 % of the net proceed to go to provinces.
		Bombay	75 % for provinces.
		U. P	50 % for provinces on population basis.
		C. P	C. P. suggests the inclusion of Corporation tax and taxes on Capital assets in taxes on income for distribution.
3. Central Excise duties (on tobacco and other goods except alcoholic liquors. (item 46)	There is provision for sharing in full for in part [Sec. 140 (1) ] but not so far shared.	Madras	Should be entirely provincialized.
		Bombay	Should be provincialized or not less than 50 % of the net proceeds on each producing unit to be allotted to that unit.
		U. P.	Should be entirely provincialized

			and distributed on population basis.
		C. P.	Should be provincialized or 75 % should be allotted to provinces. The duties should cover some more articles such as rubber goods, papers etc.
		West Bengal	25 % of the federal excise should be allocated to provinces.
		Bihar	A portion of the duty should be distributed on the basis of the yields in different provinces.
		Orissa	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their revenue.
		Assam	At least 75 % of the excise duty collected on her oil should be allotted to Assam. At least 50 % of the other excise duties (Sugar, Steel, Matches, Tobacco and Beetle Nuts) to be given to the producing units on a formula combining factors of province of production, size of population and level of revenue expenditure.
4. Export Duties on Jute and Jute products.	62 1/2 % of net proceeds [ Section 140(2) ]	West Bengal	75 % should accrue to the provinces growing and manufacturing jute.
		Bihar	The entire net proceeds of the jute producing provinces should be distributed proportionately among the concerned provinces.
5. Export Duties		Madras	At least 50 % of net proceeds of all export duties should be distributed to provinces according to principles formulated by Federal legislature. Analogy of jute duty arrangement cited.
		Bombay	50 % of net proceeds.
		U. P.	All export duties should be entirely provincialized and distributed on population basis.
		C. P.	Export duty on minerals (coal and manganese etc.) should be allotted to C. P. ( jute analogy)
		West Bengal	25 % of net proceeds of export duties other than jute.
		Orissa	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their excise revenue.
		Assam	At least 75 % of the sale proceeds of export duty realised on her tea.
6. Succession duties, Federal Stamp duties, Terminal Taxes (Railway & Air), Taxes on Railway Fares & Freights.	Provided for full distribution to provinces.(Sec. 137)	Madras	It should be provided that the net proceeds shall not form part of the Revenues of the Federation but shall be distributed to the provinces according to principles formulated by the Federation.

		U. P.	The provisions should be fully utilized to augment the resources of provinces.
		C. P.	Succession duties in respect also of agricultural land should be transferred from the provincial to the Federal list. The duty should be on <i>ad valorem</i> basis.
		West Bengal	The provincial governments should be empowered to levy them if the Central government do not levy them.
		Assam	50 percent of income from increase in railway fares and freights above the levels determined by the Railway Budget of February 1947 to go to provinces on population ratios weighted by a given factor in favour of provinces with smaller revenues and expenditure.
7.State Lotteries	Federal (item 48 Federal List).	C. P.	Should be transferred to Provincial list.
8. Taxes on trades, professions Callings and employment.	Provincial tax Sec. 142-A, Item 46 in Provincial list.		The limit of Rs. 50 p.a. Should be removed and gradation according to capacity should be provided for.
9. Taxes on sales and advertisements.	( Item 48 in Provincial list )		Sales tax should be levied in all provinces and acceding states.

## PART II - NON TAX PROPOSALS

Tax	Assignments existing or contemplated	Provinces proposing	Assignment proposed for provinces
		U. P.	(1) The inequity of Niemeyer Award should be rectified and central allocation for U. P. should aim at a minimum of 6 or 7 crores p.a. going upto 12 or 13 crores in the space of 10 years.
			(2) The consolidated debt due from the U. P. to the Govt. of India should be wiped off.
			(3) The Govt. of India should share losses on the food grains scheme as originally promised by them.

		C. P.	A system of central grants derived after taking into account such factors as natural resources, stage of industrial development, taxable capacity, etc. is essential, An expert financial enquiry should be undertaken.
		West Bengal	(1) Provision for federal aid to provinces for social and amelioration work.
			(2) There should be financial commission on the lines of the Commonwealth Grants Commission in Australia.
		Bihar	If any grants-in-aid or subventions are given in future the per capita revenue and expenditure in each province during the last 10 years should be kept in mind. Those with low <i>per capita</i> revenue should be given greater assistance than the richer.
		Orissa	The broad lines of the present allocation may be maintained in the new Constitution; but the subvention of 40 lakhs fixed for the province should be increased; it should be stated as a percentage of the revenues of the central govt. and in any case there should be a minimum annual subvention of 150 lakhs.

			Enforcement of the policy of prohibition and judicial panchayats will make the provincial administration impossible unless the central government multiplies its grants and subventions very liberally.
			Abolition of the Zamindari system would seriously affect Land revenue and stamps. Make every one pay according to his capacity. Provide for a well regularised house tax on a provincial scale; a tax on passengers.
			Nationalization of industry will wash away the twin anchor sheets of Central finance--Income tax and Customs.
		East Punjab	(1) Particularly as the East Punjab is now to be the frontier of the Indian Dominion, there is a strong case for a recurring subvention of more than 1 crore for it ( N. W. F. P used to get 1 crore).
			(2) A non-recurring subvention for the capital of the province. (Orissa was given such a grant) .
		Assam	There is an obvious case for an upward revision of the subventions granted to Orissa and Assam.
			Assam as a frontier as well as a backward province of India deserves special treatment.
			Its royalty of 5 percent on oil (as against 10 times that amount of central excise) is unfair. Large amounts of income accrue in Assam but are assessed in Calcutta which is headquarters of the concerned companies. Some provinces like Bombay and Bengal have been allowed to get a large share of increase tax receipts because of their claim to be territorially responsible for the production of incomes. Assam is entitled to similar consideration in regard to certain items of central revenues.

**RIGHTS AND IMMUNITIES ENJOYED BY THE STATES****(A) Annual Value of the immunities enjoyed by the States under Sea****Customs, Currency and Coinage**

State	Year to which the figures relate	Rs. in lakhs	Remarks (see footnote)
<i>(i) Sea customs</i>			
Kutch	1945-46	21.18	(1)
Bhavnagar	1945-46	.19	(2)
Morvi	1945-46	6.80	(3)
Jauagadh (excluding Mangrol)	1945-46	12.65	(3)
Nawanagar	1945-46	15.27	(3)
Porvabdar	1945-46	3.63	(3)
Cambay	1945-46	2.00	(4)
Baroda	1943-44	22.98	(5)
Janjira	1945-46	3.00	(6)
Cochin	1944-45	22.70	(7)
Travancore	1944-45	17.99	(7)
Sawantwadi	1944-45	0.12	(8)
Mangrol	1945-45	2.33	(9)
Kashmir	1945-46	11.00	(10)
<i>(ii) Currency and Coinage</i>			
Hyderabad	1945-46	105.55	
	(6th October 1945--5th October 1946)		

(1) In connection with Federation, the proposed method of calculating the immunity in the case of Kutch was as follows:--

To the trade figures supplied by the State the British Indian tariff rates should be applied and from this total should be deducted the difference between the duty calculated at British Indian tariff rates and that actually collected at State rates on goods not consumed in the State itself.

As the figures necessary to apply this formula are not available the figure given in the statement represents simply the amounts of customs duty retained by the State in 1945-46.

(2) The value of the immunity in the case of Bhavnagar is the total of customs collections made and retained by the State. The figures for 1945-46 is abnormal.

The figures for 1930-31 to 1935-36 were as follows:--

Year	Rs.
1930-31	51,02,974
1931-32	75,91,016
1932-33	81,93,368

1933-34	99,32,628
1934-35	1,21,55,668
1935-36	61,62,300

(3) The value of the immunity in these cases is represented by the total customs collections less the amount payable to the Central Government under the Agreements.

(4) By the agreement of 1938 Cambay is allowed to retain whichever is greater of the following two amounts:--

(i) Rs. 2 lakhs; or

(ii) a proportion of the customs duties collected at the State ports on the basis of population with suitable adjustments to correct difference between the proportion of the urban population to the rural population in the State and the whole of India respectively.

Since the net customs revenue collected by the State during 1945-46 was only Rs. 6,993/- the State was entitled to receive from the Central Government difference between that figure and Rs. 2 lakhs. The immunity in this case is therefore Rs. 2 lakhs.

(5) Baroda is entitled to retain all the duty collected by it up to a maximum of 1 per cent. of the average customs revenue of British India and until this maximum is reached the immunity is represented by the State's collections. The latest figures available are given here.

(6) Annual payment under the 1940 Agreement, which represents the State's immunity.

(7) The immunity of Travancore and Cochin is represented by their share of the pool reduced by the collection of duty at the British port of Cochin, at Cochin ports and Travancore backwaters. In addition it is necessary to include for Travancore the annual collections of customs duty at their ports other than the backwater ports; and in respect of commodities such as tobacco, on which Travancore levies duty at rates other than British Indian rates, the amount of duty at those rates is substituted for the actual collections.

(8) The immunity is represented by the compensation payment of Rs. 13,433 less Rs. 1,700 allotted for abolition of land-customs under the Agreement of 1838.

(9) Actual amount collected and retained by the State.

(10) Drawback from customs on goods imported by sea through British India.

## **(B) Note prepared by the Ministry of States on excise arrangements with Indian States**

**Matches.--**In respect of match excise there is a pooling arrangement with the States. The main principal is that the whole of the proceeds of the tax collected in any State are made over to the general pool and the whole proceeds of the pool divided between British India on the one hand and the various States that agree to come into the pool on the other on the basis of population, regardless of whether matches are manufactured or not, in the States. Import of matches from the States that have not joined this arrangement, is prohibited. The conditions that a State is required to accept for admission to the pool are--

(a) The State should levy duty on matches produced in their territories by means of British Indian banderols and pay the proceeds into the common pool.

(b) The British Indian procedure for the levy and collection of duty should be followed.

Licence fees and fines are not included in the pool. Deduction on account of collection-charges at a uniform rate is allowed. The present rate is 3 per cent of the net collections. The total net revenue is distributed among the various States and British India on the basis of population. While the amount contributed by States during 1944-45 to the pool was Rs. 44,38,970 the amount actually paid to the States was Rs. 1,00,66,875. The British Indian realisation was Rs. 5,46,26,781.

\* \* \* \* \*

3. **Sugar.**--Arrangements were made in 1934 with the sugar producing States whereby they were required to levy the same rates of excise and under the same conditions as in force in British India in return for which sugar produced in Indian States was to be admitted free to British India. Soon after the outbreak of war, arrangements were made with the major sugar producing States, whereby in addition to compliance with the 1934 arrangements, these States undertook to hand over to the Central Government the excess of their earnings from sugar excise in any year above the highest revenue derived from the sugar excise in any of the three years preceding 1939-40. As regards States which had not till the developed a degree of production materially in excess of their own consumption and States which had not commenced production, the Residents were asked to watch and report developments. All producing States were, however, requested to levy the same duty as in British India. In the case of such States where production now exceeds consumption, the arrangement is that the State retains duty on the basis of population at the rate of Rs. 3/20 per capita revenue.

The sugar producing States are -

A	B
Mysore	Baroda
Phaltan	Hyderabad
Kolhapur	Udaipur
Kaparthala	Gwalior
Rampur	Aundh
Jaora	Nabha
Bhopal	Kashmir
Sangli	
Miraj	

The States falling in category A above produce sugar in excess of their requirements and those falling in category B less than their requirements. Of the first mentioned States, negotiations were satisfactorily concluded with the first five. Bhopal which is surrounded on three sides and Jaora which is surrounded on all sides by Indian States, taking full advantage of their geographical position did not accept the settlement at first. Jaora, however, agreed to surrender its surplus revenue from 1942-43. Sangli and Miraj States only recently developed their sugar factories and have agreed to surrender the surplus revenue on the basis of the formula at 'A' above but have protested for revision of the arbitrary figure of actual consumption represented by 3/20ths. The matter is under consideration.

**The amount retainable by Indian States and the average duty Collected are as follows:-**

Name of state	Amount retainable	Average Col-lection
	(Rs.)	(Rs. in lakhs)
Mysore	12,91,135	17
Kapurthala	2,52,000	8
Kolhapur	2,33,592	4
Rampur	11,43,532	16
Phaltan	5,21,262	
Sangli	44,007	Not Known
Miraj	6,944	Not Known

Following is the contribution by the above States to the Central Exchequer in respect of the year 1945-46 -

	Rs.
Mysore	---
Kapurthala	6,47,368
Kolhapur	2,26,820
Rampur	---
Phaltan	1,40,585
Sangli	1,07,869
Miraj	59,268

Information regarding the amount to be surrendered by Mysore and Rampur is still awaited.

\* \* \* \* \*

**7. Tobacco.** - All States are expected to levy the British Indian rate of duty. (Some States where production is not of much consequence levy excise on the basis of acreage in view of the high cost of administration.) The States are entitled to retain the proceeds of the excise duty subject to the limit, on the basis of their population, worked out in accordance with the following formula -

$$A = \frac{R \times P}{P}$$

Where A is the limit retainable by a State;

R = the total net revenue in any year calculated from 1 st April to 31 st March, collected in British India and all the participating States (*i.e.*, the gross revenue less the cost of collection, licence fees, penalties, fines etc.);

p = the population of the State concerned;

P = the population of British India and all the participating States.

Some States have not come into the scheme and the tobacco of such States on entry into British India is confiscated and released on payment of fine and penalty. Although section 5 of the Central Excises and Salt Act 1944 empowers us to impose customs duty equivalent to the excise duty, the provisions of this section have not been involved because it has been possible to realise an amount equivalent to the excise duty on State Tobacco under rule 32 of the Central Excise Rules by means of confiscation. Hyderabad has not accepted the formula and does not share the revenue with the Government of India although it has legislated on the lines of British India. No restrictions have been imposed on the entry of Hyderabad Tobacco into British India.

To facilitate movement of tobacco from and to the States, a special procedure for the movement in bond has been devised. Under this procedure the duty is realised at destination and credited to a Suspense account. The amounts realised on the State tobacco is at the end of the year credited to the State and is taken into account in the State's realisations for purposes of the formula. The revenue contributable by the States during the years 1943-44 and 1944-45 were Rs. 51,38,809 and Rs. 1,48,07,552 respectively.

**8. Vegetable Product.** - The formula is the same as in respect of tobacco. The only States concerned at present are Mysore and Cochin although the other States were asked to legislate and have legislated on the matter. Of the two States, namely, Cochin and Mysore, Cochin's contribution to the Central Revenues during the year 1943-44 and 1944-45 was Rs. 76,160 and Rs. 41,212 respectively. The Mysore State has nothing to pay under the formula.

**9. Tea, Coffee and Betel Nuts.** - The States concerned are: -

Tea: - Mysore, Travancore, Cochin, Tripura, Mandi;

Coffee: - Mysore, Travancore, Cochin;

Betel Nuts: - Mysore, Travancore, Cochin, Tripura, Sawantwadi and Janjira. The rates of duty imposed by Travancore are as follows: -

Betel Nut . . . . .	As. 1/6 per lb.
Coffee . . . . .	As.-/6 ,, ,,
Tea . . . . .	As.1/9 ,, ,,

The same formula as in respect of tobacco has been adopted in respect of these excises also, although the Board's intention was that 'P' in respect of these excises should denote the population of all India and not limited to participating States and British India as in the case of tobacco. Mysore and Travancore, the two important States, have been clamouring for a revision of the formula. In the case of Travancore the following revised formula has been offered: -

$$A = \frac{P}{T}$$

Where A denotes per capita consumption figure;

T = the total quantity of the article taxed in British India and in other participating units;

P = the total population of British India and other participating States.

On the basis of the per capita consumption figure worked out, the amount retainable by the State will be worked on the basis of the following formula: --

$$A = a \times d \times p$$

Where A = amount retainable by the State;

a = per capital consumption figure of British India and the participating units;

d = rate of excise duty levied by the State;

p = Population of Travancore.

The excess over 'A' plus cost of collection will have to be surrendered by the State. The State's acceptance of the formula has not yet been received.

In the case of Mysore, we have agreed in respect of coffee that the amount retainable by the State may be determined on the basis of the Coffee Controller's statistics of coffee consumption in the State. Mysore has accepted this formula and is pressing for a similar formula in respect of betel nuts. After a recent tour, the Board has stated that after the establishment of the Betel Nut marketing Board, it may be possible to adopt the coffee formula in respect of betel also.

**(C) Statement showing the value of service postage stamps supplied  
annually free to States**

Sl. No	Name of State	Value
		Rs.
1	Alwar	30,000
2	Baroda	1,25,000
3	Bharatpur	12,000
4	Bhopal	8,380
5	Bikaner	37,000
6	Bushahr	600
7	Cooch Behar	9,000
8	Datia	5,000
9	Dhar	3,000

10	Faridkot	1,000
11	Gwalior	480
12	Idar	550
13	Indore	35,000
14	jhalawar	.2,400
15	jubbal	250
16	kalsia	.450
17	Kashmir	20,000
18	Kotah	15,000
19	Loharu	300
20	Malerkotta	900
21	Mandi	700
22	Marear	39,000
23	Panna	900
24	Sikkim	1,500
25	Sirmoor	1,275
26	suket	700

**(D) Statement showing the values of immunities granted annually to Indian States in the shape of free conveyance of their official correspondence within the State limits**

Name of the state	Value of the immunity (Rs.)	Remarks
(1) Mysore	21,38,182	
(2) Hyderabad	5,440	Combined figures for the portions of the state in the Madras and Bombay Circles .
(3) Banganapalle	365	
(4) pudukottai	37,960	
(5) Baroda	14,705	
(6) Bhor	68	
(7) Jawhar	3,627	
(8) Bhopal	49,177	
(9) Rewah	1,72,380	

**(E) Statement showing the amounts of telephone revenue accruing in India on behalf of Indian States and vice versa**

*Amount of revenue accruing in India on behalf of States*

		1944-45	1945-46	1946-47
		Rs.	Rs.	Rs.
1	Kashmir	1,912 3 0	2,731 3 0	1,646 13 0

2	Jammu Tawi	3,880 0 0	4,475 5 0	4,005 4 0
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*Amount of revenue accruing in India on behalf of India*

		1944- 45	1945-46	1946-47
		Rs.	Rs.	Rs.
1	Kashmir	1,702 5 0	2,375 1 0	1,187 7 0
2	Jammu Tawi	3,608 1 0	4,133 112 0	1,501 3 0

## APPENDIX B

### [Annexure V]

#### STATEMENT SHOWING REVENUE AND THE PERCENTAGE OF LAND

#### CUSTOMS INCLUDED IN THE REVENUE OF CERTAIN STATES

(In lakhs of Rupees)

Sl.No	Name of satate	Total Revenue (Ordinary )	Total Revenue (Ordinary)	percentage	Remarks
1	Hyderabad	943	124	13.2	
2	Travancore	611	89	14.6	
3	Kashmir	557	117	21.0	
4	Gwalior	303	41	13.5	
5	Jaipur	197	23	11.6	
6	Baroda	434	20*	4.6	* Includes sea custmos, figures of which are not seperately available.
7	Jodhpur	224	40	17.8	
8	Udaipur (Mewar )	81	1	1.3	
9	Indore	305	27	8.9	
10	Bikaner	252	29	11.5	
11	Alwar	90	44	48.9	
12	Bhopal	124	20	16.1	
13	Kotah	48	6	12.5	

14	Tehri -Garhwal	23	4*	17.4	#Includes Excise also.
15	Bharatpur	65	23	35.4	
16	Cutch	89	1	1.1	
17	Patna	30	6	20.0	
18	Sarguja	17	5	29.4	
19	Nawanagar	110	19* *	17.3	## Includes sea customs Figures of Which are not seperately available .
20	Tonk	34	11	32.3	
21	Bundi	29	8	27.6	
22	Sirohi	21	4	19.0	
23	Dungarpur	22	8	36.4	
24	Banswara	13	3	23.1	
25	Partabgarh	8	3	37.5	
26	Jhalawar	7	1	14.3	
27	Jhisalmer	6	3	50.0	
28	Shahpura	4	1	25.0	
29	Danta	3	1	33.3	
30	Paladpur	28	5	17.9	
31	Idar	45	17	37.8	
32	Balasinor	5	1	20.0	
33	Lunawada	10	2	20.0	
34	Sant	12	2	16.7	
35	Chhata Udaipur	24	2	8.3	
36	Radhanpur	23	4	17.4	
37	Baria	18	1	5.6	
38	Dewas (Junior)	23	4	17.4	
39	Panna	10	1f	10.0	f Includes Tributes &C.
40	Rattam	17	6	35.3	
41	Alirajpur	6	1&	16.7	& Includes sayar.
42	Bijawar	7	1&	14.3	& Includes Biyai.
43	Chhatarpur	4	2	40.0	
44	Barwani	12	2	16.6	
45	Jaora	22	3	13.6	
46	Rajgarh	12	1	8.3	
47	Sailana	6	1	16.6	

48	Jhabua	13	4	30.8	
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## APPENDIX B

### AMENDMENTS RECOMMENDED IN THE DRAFT CONSTITUTION

#### Provisions relating to procedure in financial matters

**Clause 75.** - To clause 75 *add* the following, namely:-

"(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under Section 74, and when it is presented to the President for assent under section 76, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill."

**Clause 79.** -- In sub-clause (3) of clause 79, for the words "succeeding section" *substitute* the words "two succeeding sections".

**New clause 80-A.** - After clause 80, *insert* the following new clause namely --

"80-A. *Excess grants.* - If in any financial year expenditure from the revenues of the Federation has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of sections 78 and 79 shall have effect in relation to such demand as they have effect in relation to a demand for a grant."

**Clause 145.** - For sub-clause (1) of clause 145, *substitute* the following namely: --

"(1) Subject to the special provisions of this Part of this Constitution with respect to Money Bills, a Bill may originate in either House of the Legislature of a Province which has a Legislative council.

(1a) Subject to the provisions of sections 146 and 146- A, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a Province having a Legislative Council unless it has been agreed to by both Houses either without amendments or with such amendments only as are agreed to by both Houses."

**Clause 146.** - For clause 146, *substitute* the following, namely: -

**"146. Passing of Bills other than Money Bills in Provinces having Legislative Councils.** - (1) If a Bill which has been passed by the Legislative Assembly of a Province having a Legislative Council and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this section shall apply to a Money Bill.

(2) If at a joint sitting of the two Houses summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting: --

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendments shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed in the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-- section shall be final."

**New clauses 146-A and 146-B.** - After clause 146, *insert* the following clauses, namely: --

**"146-A. Special provisions in respect of Money Bills.** - (1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a Province having a Legislative Council it shall be transmitted to the legislative Council for its recommendations, and the Legislative Council shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly, and if the Legislative Assembly does not accept any of the recommendations of the Legislative Council, it shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the Amendments recommended by the Legislative Council.

(4) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period of thirty days in the form in which it was passed by the Legislative Assembly.

**146-B. Definition of "Money Bill",** - (1) For the purposes of this Chapter, a Bill shall be deemed to be a money Bill if it makes provision -

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of an guarantee by the province or for amending the law with respect to any financial obligations undertaken or to be undertaken by the province; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the

Province, or for increasing the amount of any such expenditure.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition or increase of any tax by any local authority of body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under section 146-A after it has been passed by the Legislative Assembly, and when it is presented to the Governor for as sent under section 147, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill".

**Clause 148.** - In the proviso to clause 148, after the words "Provided that *insert* the words "if the Bill is not a Money Bill".

**Clause 151.** - In the sub-clause (3) of clause 151, for the words "succeeding section" *substitute* the words "two succeeding sections."

**New Clause 152-A.** - After clause 152, *insert* the following clause namely: --

**"152-A. Excess grants.** - If in any financial year expenditure from the revenues of the Province has been incurred on any service for which the vote of the legislative Assembly is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly and the provisions of sections 150 and 151 shall have effect in relation to such demand as they have effect in relation to a demand for a grant."

**Clause 153.** - For clause 153, *substitute* the following clause, namely: --

**"153. Special provisions as to financial Bills.** - (1) A Money Bill or an amendment thereto shall not be introduced or moved except on the recommendation of the Governor.

(2) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a House of the Provincial Legislature unless the Governor has recommended to that house the consideration of the Bill."

### **Provisions relating to the Auditor-General of the Province**

**Clause 174.** - For sub-clause 93) of clause 174 substitute the following namely. --

"(3) The Auditor-General of a Province shall be eligible for appointment as Auditor-General of the federation or as Auditor-General of any other Province but not for any other appointment either under the Federation or under the Government of a unit after he has ceased to hold his office."

### **Provisions relating to distribution of revenues between the Federation and units and miscellaneous Financial provisions**

**Clause 194-A.** - For, clause 194-A *substitute* the following, namely: --

**"194-A. Interpretation.** - In this Part --

(a) 'Finance Commission' means the Finance Commission constituted under Section 202-A of this Constitution;

(b) 'unit' does not include a Chief Commissioner's Province."

**Clauses 196 to 199.** -- For clause 196 to 199, *substitute* the following, namely: -

**"196. Certain succession duties.** - (1) Duties in respect of succession to property other than agricultural land and estate duty in respect of property other than agricultural land shall be levied and collected by the Federation, but sixty per cent or such higher percentage as may be prescribed of the net proceeds in any financial year of any such duty, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

(2) If any dispute arises as to the distribution of the net proceeds of any such duty among the units, it shall be referred for decision to such authority as may be appointed in this behalf by the President and the decision of such authority shall be final.

**196-A. Certain terminal taxes.** - Terminal taxes on goods or passenger carried by railway or air shall be levied and collected by the Federation, but the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

**196-B. Certain stamp duties.** - Such stamp duties as are mentioned in the Federal Legislative List shall be levied by the Federation and collected, in the case where such duties are leviable within any Chief Commissioner's province, by the Federation and in other cases, by the units within which such duties are respectively leviable, but the proceeds in any financial year of any such duty leviable in that year within any unit shall not form part of the revenues of the Federation, but shall be assigned to that unit.

**197. Taxes on Income.** - (1) Taxes on income other than agricultural income shall be levied and collected by the federation, but sixty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in such manner as may be prescribed:

Provided that the Federal Parliament may, at any time, increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) In this section, "taxes on income" includes any sum levied by the Federation in lieu of any tax on income but does not include any contributions levied by the Federation in respect of its own undertakings.

**198. Salt duties and excise duties.** - (1) No duties on salt shall be levied by the Federation.

(2) Federal duties of excise shall be levied and collected by the Federation, but , if an Act of the Federal Parliament so provides, there shall be paid out of the revenues of the Federation to the units to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the units in accordance with such principles of distribution as may be prescribed:

Provided that fifty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of the excise duty on tobacco, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in such manner as may be prescribed.

**198-A. Taxes not enumerated in any of the lists in the Ninth Schedule.** - If any tax not mentioned in any of the lists in the Ninth Schedule to this Constitution is imposed by Act of the Federal Parliament by virtue of entry 90 of the Federal Legislative List, such tax shall be levied and collected by the Federation but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

**198-B. Grants in lieu of jute export duty.** - Until the abolition of the export duty levied by the Federation on jute or jute products or the expiration of ten years from the commencement of this Constitution, whichever is earlier, there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the Provinces mentioned below the sums respectively specified against those Provinces:

<i>Province</i>	<i>Sum</i>
West Bengal	100 lakhs of rupees.
Bihar	17 lakhs of rupees.
Assam	15 lakhs of rupees.
Orissa	3 lakhs of rupees.

**199. Grants from Federation to certain units.** - Such sums as the President may, on the recommendation of the Finance Commission, by order fix shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of such units as the President may on such recommendation determine to be in need of assistance, and different sums may be fixed for different units:

Provided that there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the provinces of Assam and Orison the sums of thirty and forty lakhs of rupees respectively or such higher sums as the president may on the recommendation of the Finance commission fix in respect of either of these Provinces:

Provided further that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of a Province such capital and recurring sums as may be necessary to enable that Province to

meet the costs of such schemes of development as may be undertaken by the Province with the approval of the Federal Government for the purpose of promoting the welfare of the scheduled tribes in the province or raising the level of administration of the scheduled areas in the Province to that of the administration of the rest of the Province:

Provided also that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of the province of Assam sums, capital and recurring, equivalent to -

(a) the average excess of expenditure over the revenues during the three years immediately preceding the date of commencement of this Constitution in respect of the administration of the areas specified in Part I of the table appended to paragraph 19 of the Eighth Schedule to this Constitution; and

(b) the costs of such schemes of development as may be undertaken by that province with the approval of the Federal Government for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the province.

**Clause 200.** -- In sub-clause (2) of clause 200, for the word "fifty", wherever it occurs, substitute the words "two hundred and fifty".

**New Clause 201-A.** - After clause 201, insert the following clause, namely: --

**"201-A. Application of the provisions relating to distribution of revenues during the period a proclamation of Emergency is in operation.** -- Where a proclamation of Emergency is in operation whereby the President has declared that the security of India is threatened, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the President may, by order, direct that all or any of those provisions shall, until the expiration of the financial year in which such Proclamation ceases to operate, have effect subject to such exceptions or modifications as may be specified in such order."

**Clause 202.** - For Clause 202, substitute the following, namely: --

**"202. Definition of 'prescribed' and calculation of 'net proceeds' etc.** - (1) In the foregoing provisions of this Chapter --

(a) 'prescribed' means --

(i) until the Finance commission has been constituted, prescribed by order of the President; and

(ii) after the Finance Commission has been constituted, prescribed by order of the President on the recommendation of the Finance Commission;

(b) 'net proceeds' means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of the Federation, whose certificate shall be final.

(2) subject as aforesaid, and to any other express provision in this Chapter, an order of the President

may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any unit, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters."

**New Clause 202-A and 202-B.** - After clause 202, insert the following clauses, namely: --

**"202-A. Finance Commission.** - (1) There shall be a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President in his discretion.

(2) The Chairman shall be a person who holds or has held judicial office not inferior in rank to that of a Judge of a High Court.

(3) The members of the Commission shall receive such remuneration as the President may by order determine and shall hold office for a term of five years and may on the expiry of such term be re-appointed for another term of five years.

(4) It shall be the duty of the Commission to perform the functions conferred on the Commission by this Chapter or by any other law for the time being in force and to give advice to the Federal Government upon such financial matters or to perform such other duties of a financial character as may from time to time be referred or assigned to it by the President.

(5) The Commission shall determine its procedure and shall have such powers in the performance of its function as the President may by order confer on it.

**202-B. Recommendations of the Finance Commission.** - The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum, as to the action taken thereon by the President to be laid before the Federal Parliament."

**Clause 207.** - To clause 207, add the following Explanation, namely: --

**"Explanation.** -- For the purposes of this section, any undertaking by the Government of any unit, such as the sale of the forest produce of any forest under the control of such unit or of any article produced in any jail within such unit, shall not be deemed to be a trade or business, carried on by or on behalf of such Government."

### **Provisions relating to borrowing**

**Clause 210.** -- In sub-clause (3) of clause 210, for the word "Province", in the two places where it occurs, substitute the word "unit".

## **Ninth Schedule**

### **Provincial Legislative Lists**

In the Provincial Legislative List in the Ninth Schedule --

(1) in entry 43, omit the words "hearths and windows";

(2) for entry 50, substitute the following, namely: --

"50. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the Province of goods liable to taxes within the Province on sale, turnover or purchase taxes on advertisement;"

(3) in entry 53, for the word "Cesses" substitute the word "Taxes"; and

(4) in entry 56, for the word "Does" substitute the word "Taxes".

### **APPENDIX C**

**No. OA/24/Cons/47**

### **CONSTITUENT ASSEMBLY OF INDIA**

Council House,

*New Delhi, the 4th March 1948.*

From

The HONOURABLE SARDAR VALLABHBHAI J. PATEL,

CHAIRMAN,

ADVISORY COMMITTEE ON MINORITIES FUNDAMENTAL RIGHTS, ETC.,

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

On behalf of the members of the Advisory Committee I have the honour to forward herewith the reports of the North east Frontier (Assam) Tribal and Excluded Areas and Excluded and Partially Excluded Areas (Other than Assam) Sub--Committees, adopted by the Committee at the meeting held on the 24th February 1948. The two sub--Committees had been setup by the Advisory Committee in their meeting held on the 27th February 1947 in pursuance of paragraphs 19 (iv) and 20 of the Cabinet Mission's Statement dated the 16th May 1946 and the two reports had been drawn up after they had undertaken extensive tours of the provinces, examined witnesses and representatives of the people and the provincial governments and taken the views of the different political organizations.

2. Acting on an earlier suggestion of the Advisory Committee made on the 7th December 1947, the Drafting Committee had already incorporated in the Draft Constitution provisions on the basis of the recommendations contained in the reports of the two sub-Committees. This coupled with the fact that the recommendations were practically unanimous made our task easy, and except for the two

amendments mentioned in the Appendix to this report, the Advisory Committee have accepted all the recommendations of the two sub--committees. In regard to these amendments, it was agreed that these should be noted for the present and necessary amendments made later.

3. Summaries of the recommendations of the two sub-committees are given on pages 208 to 218 of the report (Volume I) of Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee. Provisions embodying these recommendations are contained in the Fifth, Sixth and Eighth Schedules attached to the Draft Constitution.

Yours truly,

V. J. PATEL, CHAIRMAN

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**[Annexure II]**

APPENDIX C

**North East Frontier (Assam) Tribal and Excluded Areas**

1. The following proviso is to be added to paragraph D (1) of appendix `A' to Part I on page 20 of the report:-

"Provided that the Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the District Court is without jurisdiction."

2. In Schedule `B' on page 23 of the report the words" excluding the plains portion" be added after each of the items in the schedule so as to read as follows:-

The Sadiya and BaliPara Frontier Tracts (excluding the plains portion).

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract and the plains portion).

The Naga Tribal Area (excluding the plains portion).

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**[Annexure III]**

APPENDIX C

*The 28th July 1947.*

From

THE CHAIRMAN,

NORTH-EAST FRONTIER (ASSAM) TRIBAL & EXCLUDED AREAS

SUB-COMMITTEE.

To

THE CHAIRMAN,

ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, MINORITIES,

TRIBAL AREAS, ETC.,

CONSTITUENT ASSEMBLY OF INDIA,

COUNCIL HOUSE, NEW DELHI.

SIR,

I have the honour to forward herewith my Sub-Committee's report on the Tribal and Excluded Areas of Assam. The report has been drawn up by us after a tour of the Province which included visits to the Lushai Hills District, the North Cachar Hills Sub--Division, the Mikir Hills and the Naga Hills District. The Committee could not visit the Garo Hills District on account of bad weather and difficult communications and the Jowai Sub-division of the Khasi Hills District could not also be visited for the same reason. We however examined witnesses and representatives of the Garo Hills District at Gauhati and paid a visit also to certain Garo villages on and near the Goalpara road. At most of the places we visited, we had to be satisfied with a visit to the headquarters of the district or tract and with a visit to one or two villages in the neighborhood. To visit places in the interior would have taken us a great deal more of time and delayed our report considerably. Representatives of the tribes however visited the headquarters, even from long distances, and on the whole we feel that we have been able to get into contact with all the important representatives of the hill people and to take their views on the future administration of the areas. We have also taken the views of the different political organisations in the province and recorded the evidence of officials.

2. Except for the Frontier Tracts and Tribal Areas, we co-opted two members from the tribes of each of the districts visited. The co-opted members, with the exception of Mr. Kezehol (representative of the Kohima section of the Naga National Council and himself an Angami) who submitted his resignation during the final meeting at Shillong, discussed the proposals and signed (subject to dissent in the case of Mr. Kheloushe & Mr. Aliba Imti) the minutes of the meeting.

3. In connection with the co-option of members we would like to mention the "District Conference" convened by the Superintendent of the Lushai Hills as an elected body purporting to be representative of the whole of the Lushai Hills. The election to this body which consisted of twenty chiefs and twenty commoners with the Superintendent himself as President was boycotted by the Mizo Union which was the only representative body of the Lushai is at that time and clearly could not be regarded by us as representing more than a section of opinion, largely that of certain officials and chiefs controlled by them. Consequently the criticism that we co-opted members without consulting the Superintendent or his conference carries, in our opinion, no weight.

4. In the Naga Hills, the Committee had to face a similar situation in the sense that certain officials were influencing the extreme elements of the Naga National Council. Discussion of a number of points could not be carried on to the full extent on account of lack of agreement within the Naga National Council but we understand that on the occasion of the Governor's visit to Kohima, the more reasonable elements put forward their views. We find that our proposals not only contain the substance of these but

go further in some respects. The resignation of Mr. Kezehol was due to the fact that his section of the Naga National Council was dissident. Our proposals correspond fully to the spirit of the resolution of the Naga National Council passed at Wokha in June 1946, and we feel confident that the majority of people in the Naga Hills District will find that our proposals go a long way towards meeting even their present point of view.

5. Our report (Volume I) is divided into two parts and the evidence forms a separate volume (Volume II). In the first part of our report we have given a bird's eye view of the areas as a whole, noting in particular their common features and giving the frame work of the scheme of administration recommended by us. In Part II a largely descriptive account of the different areas is given separately and we have mentioned their special features or needs.

6. We regret that our colleague Mr. Aliba Imti has not been able to attend the meeting to sign the report and hope that he will be able to attend the meeting of the Advisory Committee.

I have the honour to be,

SIR,

Your most obedient servant,

G. N. BARDOLOI,

*Chairman,*

*North-East Frontier (Assam) Tribal*

*& Excluded Areas Sub-Committee*

[Annexure IV]

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APPENDIX C

**REPORT OF THE SUB-COMMITTEE ON NORTH-EAST FRONTIER**

**(ASSAM) TRIBAL AND EXCLUDED AREAS**

**Part I**

**1. INTRODUCTORY --**

The Excluded and Partially Excluded Areas of Assam as scheduled by the Order-in-Council under the Government of India Act, 1935, are as follows:

**Excluded Areas**

The North--East Frontier ( Sadiya, Balipara and Lakhimpur ).

### **Tracts**

The Naga Hills Districts.

The Lushai Hills District.

The North Cachar Hills Sub-Division of the Cachar District.

### **Partially Excluded Areas**

The Garo Hills District.

The Mikir Hills (in the Nowgong and Sibsagar Districts).

The British portion of the Khasi and Jaintia Hills District, other than Shillong Municipality and Cantt.

There is also an area to the east of the Naga Hills District known as the Naga Tribal Area the position of which is covered by the provisions of Section 311 (1) of the Government of India Act: The Tirap Frontier Tract which adjoins the Lakhimpur Frontier Tract has no defined boundary with Burma.

The Assam Tribal and Excluded Areas Sub-Committee is required to report on a scheme of administration for all these areas.

## **2. GENERAL DESCRIPTION --**

**(a) The Frontier Tracts.** -- The Schedule quoted above shows the North-East Frontier Tracts as excluded areas. In considering the list of areas to be excluded or partially excluded and making recommendations to H. M. G. in 1935 the Government of India wrote as follows: -

"Balipara, Sadiya and Lakhimpur are essentially frontier areas inhabited by tribes in an early stage of development. BaliPara has no defined outer boundaries and extends to the confines of Bhutan and Tibet." It will be seen that it was mentioned that BaliPara has no definite outer boundaries but the position of Sadiya and Lakhimpur or the Tirap Frontier Tract was apparently the same. On the Tirap Frontier Tract in fact, the boundary with Burma has yet to be settled and all three regions include considerable areas of as yet virtually unadministered and only partially explored territory. The position of Balipara and Sadiya however differs from that of the Tirap Frontier in that there exists a boundary between Tibet and India. The facts are that in 1914 there was a tripartite convention with Tibet and China regarding the relations of the three Governments and in particular regarding the frontier between India and Tibet. The convention which contained an agreement about the frontier line between India and Tibet was ratified by the Tibetan authorities at Lhasa, and the line known as the MacMahon Line was indicated on a map of which a copy was given to the Lhasa Government which acknowledged it. The existence of this line was for a long time not known to the Assam Government, and on the other hand it was found that there was no notification under Section 60 of the Government of India Act, 1919, specifying the northern frontier of Assam, with the result that the MacMahon Line which is the frontier between Tibet and India is the legal boundary of Assam as well. In practice the position is peculiar. Though the Governor of Assam is vested with authority over the Frontier Tracts, it is taken to be exercised, not by virtue of the provisions applicable to Excluded Areas of the Government of India Act, 1935, but as the Agent of the Governor-General under Section 123 of the Act, *vide* Notification No. I-X,

dated the 1st April 1937 of the Government of India in the External Affairs Department (Appendix B, page 130). All the costs of administration of the tracts are also borne by the Central Government and the Central Government are inclined to treat them as tribal areas within the meaning of Section 311 of the Government of India Act. On the other hand, the local officials treat the area as consisting of two parts. One which they call the Excluded Area and stretches up to the "Inner Line" boundary, and the Tribal Area, which by them is understood to mean the area beyond the "Inner Line" boundary. The "Inner Line" boundary is roughly along the foot of the hills and the area bounded by it is occupied by a somewhat mixed population, while the hill portions beyond it are purely inhabited by the tribes. This treatment again does not appear to be strictly justifiable in law though it may be convenient to think of the administered plains portion of the area separately from the not fully administered hills. Since the frontier tracts are administered in practice by the Central Government as tribal areas, the absence of a notification under Section 60 of the Government of India Act, 1919, was regarded as an oversight. The position of these areas will be discussed further at a later stage, but it is clear from the foregoing that the Naga Tribal Area on the Eastern Frontier and the Balipara, Sadiya and Lakhimpur or Tirap Frontier Tracts on the North-Eastern Frontier fall under one category. The Balipara Frontier Tract which includes the Subansiri area is the tract over which there is as yet the smallest measure of control and administration. This tract and the Sadiya Frontier Tract are inhabited by tribes such as the Senjithonji, Dafla, Apa Tani, Momba (Balipara) the Abor, Mishmi, Hkampti (Sadiya). The Tirap Frontier contains Singphaws (who were originally Kachins) and a number of tribes classed as Nag a, while the Naga Tribal Area is largely inhabited by Nagas of the Konyak group. The policy on these Frontiers is to establish administration and control over the whole area right up to the frontier, and a five--year plan has been sanctioned by the Government of India. This plan mostly covers the Sadiya and Balipara Tracts but a few schemes of the Naga Tribal Area are also included in it. A separate plan for the development of the latter is under consideration.

**(b) The Excluded Areas.** - The Excluded Areas of the Naga Hills District, the Lushai Hills District and the North Cachar Hills Sub-division fall within the second category of areas over which the Provincial Ministry has no jurisdiction whatever and the revenues expended in this area are not subject to the vote of the provincial legislature. The Naga Hills District is the home of a good number of tribes classed as Nag a, such as Angami, Ao, Sema, Lhota. Adjoining it is the Naga Tribal Area in the eastern portion of which a good deal of head hunting still goes on. Though the tribes are all called Nag a, they speak different languages and have differing customs and practices also. The Lushai on the other hand, though consisting of a number of clans, are practically one people and speak a common language. The Kuki in the North Cachar Hills and else where are people of the same stock as Lushai or Mizo and speak the same language or a dialect. The Lushai Hills District except for an inappreciable number of Lakhers in the extreme south contains a uniform population. The North Cachar Hills, on the other hand, provide sanctuary for the Kachari, Nag a, Kuki, Mikir and Khasi. The largest of the tribes here are the Kachari and the villages of the different tribes, are more or less interspersed.

**(c) Partially Excluded Areas.** - The third category is the Partially Excluded Areas consisting of the Khasi Hills District (British portion), the Garo Hills District and the Mikir Hills which fall in two districts, viz. Nowgong and Sibsagar, are administered by the Provincial Government subject to the powers of the Governor to withhold or apply the laws of the Provincial Legislature with or without modifications, or to make special rules. The Khasias, incidentally, are the only line of the tribes in this area who speak a Monkhmer language; all the other tribes speak Tibeto-Burmese languages. Generally speaking, they inhabit the areas which bear their names but there are villages outside these districts which also contain some of the tribes. Thus, the Garo inhabit a number of villages in the Mymensingh district of Bengal in addition to many villages in the districts of Kamrup and Goalpara in Assam. The Khasi population is not only to be found in the British portion of the Khasi and Jaintia Hills, but the States (which comprise a fairly large area) round about Shillong are inhabited by the Khasis. These States, twenty five in number, have the special feature that their chiefs are actually elected in a few cases by free election, though in the majority of cases the election is confined to a particular clan, the electorate consisting of Myntries of the clan only in some states, by a joint electorate of Myntries and electors elected by the people in

general in others. The States have comparatively little revenue or authority and seem to depend for a good deal of support on the Political Officer in their relations with their peoples. There is a strong desire among the people of the States to "federate" with their brothers in the British portion, a feeling which the people on the British side reciprocate. Some of the Siems also appear to favour amalgamation but their idea of the Federation differs from that of the people in that the Chiefs seek a greater power for themselves than the people are prepared to concede to them.

Of the people in the Partially Excluded Areas, the Khasi are the most advanced and the Mikir the least. Unlike the Naga and the Lushai Hills these areas have had much more contact with people in the plains, situated as they are between the valleys of the Brahmaputra and the Surma. They have representatives in the provincial legislature who, in the case of the Garo and the Mikir Hills, are elected by franchise of the Nokmas and the village headmen respectively.

### **3. DEVELOPMENT-**

As regards the degree of development and education in the excluded and Partially Excluded Areas, the most backward areas, comparatively appear to be the Mikir and the Garo Hills, both of which are Partially Excluded Areas. The Frontier Tracts, parts of which must be inhabited by people with no contact with civilisation or education, are of course on a different footing. The Khasi Hills have probably benefited by the fact that the capital of the province is situated in them. In the Garo Hills, Christian Missions have spread some education along with Christianity but the Mikir Hills have suffered from the fact that they are divided between two districts, Nowgong and Sibsagar, and thus nobody's child. Partial exclusion has in a way been responsible for their backwardness also, since both the Governor of the province and the Ministry can disclaim the sole responsibility for the area. The Sub-divisional Officers and Deputy Commissioners of these Hills moreover seem to have taken little interest in them and hardly any touring has been performed by officers in the Mikir areas. On the whole, however, the Hill Districts show considerable progress. The Khasi Hills have provided Ministers in the Provincial Government. The people of the Lushai Hills who have benefited by the activities of the Missionaries among them cannot be said to be behind the people of the plains in culture, education and literacy. In literacy particularly they are in a better position than a good number of the plains areas and the general percentage of literacy among them is about 13 per cent, while the literacy among men only is about 30 per cent. Among the Naga also may be found a number of persons of college education, though the district as a whole appears to be less advanced than the Lushai Hills. In the Naga Hills, the demand for education is keener in the Mokokchung Sub-division than in the Kohima Sub-division. In the North Cachar Hills, the development of the people has not been impressive and the Sub-division as a whole should be classed as more backward than other areas and comparable with the Mikir rather than the Lushai Hills. While education has made some progress in all these areas, the conditions of life and pursuit of non-agricultural occupations cannot be said to have reached the level attained in the plains, although the degree of intelligence necessary is undoubtedly available in most of these areas, even in the tribal areas. We were in fact impressed by the intelligence of the Apatani and Mishmi, the Sherdukpen, the Hkampti and even the Konyak of the tribal area. The skill of many of the tribes in weaving and tapestry contains the elements of a very attractive cottage industry-at present articles are made largely for personal use-but agriculture is practically the only occupation, and with the exception of considerable areas occupied by the Angami in the Naga Hill under terraced and irrigated cultivation and the advanced cultivation in the Khasi Hills, the mode of agriculture is still the primitive one of *jhuming*. Portions of the forest are burnt down and in the ashes of the burnt patch the seeds are sown: the following year a new patch of forest is felled and cultivated and so on, the first patch perhaps being ready again for cultivation after three or four years. The *jhuming* patches develop a thick growth of bamboo or weeds and trees do not grow on them. Thus the method is destructive of good jungle. In certain parts, of course, conditions may be said to be unfavorable to the terracing of the hillsides and there is no source of water supply other than rainfall. In the Lushai Hills for instance comparatively few areas have the gradual slope which renders terracing easy; in the North Cachar Hills Sub-division, irrigation is difficult to arrange and the small hamlets occupied by the tribes

cannot provide enough labour for terracing work. Attempts have however been made to introduce terracing and improved methods of cultivation as well as the growing of fruits, and there is little doubt that good progress will soon be feasible in these directions. A certain amount of political consciousness has also developed among the tribes, and we were much impressed by the demand of the Abor in the Sadiya Frontier Tract for representation in the provincial legislature. The idea of Government by the people through their chosen representatives is not a totally new conception to most of the hill people whose ways of life centre around the tribal and village councils, and what is required now is really an understanding of the mechanism and implications as well as the responsibilities of the higher stages of administration and the impracticability as well as the undesirable results of small groups of rural population being entrusted with too much responsibility. Generally speaking, it can be stated that all the excluded areas of the province, not taking into account at this stage the frontier and tribal areas, have reached the stage of development when they can exercise their votes as intelligently as the people of the plains. On the ground of inability to understand or exercise the franchise therefore, there is absolutely no justification for keeping the excluded areas in that condition any longer.

As regards the Frontier Tracts, not only has there been little education except in the fringes or plains portions, but administration has yet to be fully established over large tracts and the tribes freed from feuds or raids among themselves and from the encroachment and oppression of Tibetan tax collectors. The removal of the trade blocks set up by these Tibetans on the Indian side of the MacMahon Line sometimes creates delicate situations. Thus the country is in many ways unripe for regular administration. Only when the new five-year programme has made good headway will there be an adequate improvement in the position. Even the village councils in these tracts appear to be ill-organised and there seems to be little material as yet for local self-governing institutions though it may be possible to find a few people who can speak for their tribe. The plains portions are however on a different footing and the question of including them in the provincial administration needs careful examination. For example, we are of the view that *prima facie* there is little justification to keep the Saikhoaghat, the Sadiya plains portion and possibly portions of the BaliPara Frontier Tract under special administration.

#### **4. THE HILL PEOPLE'S VIEWS -**

Though the Constituent Assembly Secretariat and we ourselves, issued a leaflet to provide information and create interest in the political future of India, the Constituent Assembly's functions and the objects of our tour, the Hill people, even of the Excluded Areas, were not found lacking in political consciousness. Perhaps not without instigation by certain elements, this consciousness has even instilled ideas of an independent status the external relations under which would be governed by treaty or agreement only. In the Lushai Hills District the idea of the Superintendent who constituted himself the President of the "District Conference" which he himself had convened (see par. 5 Part II) was that the District should manage all affairs with the exception of defence in regard to which it should enter into an agreement with the Government of India. A "Constitution" based on this principle was later drafted by the Conference. (The great majority of the Lushai however cannot be regarded as holding these views and it is doubtful if the District Conference represents the views of anybody other than certain officials and chiefs). In the Naga Hills, although the original resolution as passed by the Naga National Council at Wokha contemplated the administration of the area more or less like other parts of Assam, a demand was subsequently put forward for "an interim Government of the Naga people" under the protection of a benevolent "guardian power" who would provide funds for development and defence for a period often years after which the Naga people would decide what they would do with themselves. Here again it seems to us clear that the views of a small group of people, following the vogue in the Naga Hills of decisions being taken by general agreement and not by majority-gained the acceptance of the National Council, for little more purpose than that of presenting a common front. In other areas more moderate views prevail. In the Garo Hills the draft constitution asked for all powers of government including taxation, administration of justice etc. to be vested in the legal council and the only link proposed with

the Provincial Government was in respect of a few subjects like higher education, medical aid etc., other than the subjects of defense, external affairs and communications which were not provincial subjects. In the Mikir Hills and in the North Cachar Hills, which are the least vocal and advanced of the areas under consideration, there would probably be satisfaction if control over land and local customs and administration of justice are left to the local people. The Khasi Hills proposals were for a federation of the States and British portions; otherwise the proposals were similar to those made for the Garo Hills. A feeling common to all of the Hill Districts is that people of the same tribe should be brought together under a common administration. This has led to a demand for rectification of boundaries. The Lushai want the Kuki of Manipur and other areas in their boundaries, the Naga want the Zemi areas of the North Cachar Hills included in their district and so on.

## **5. POLITICAL EXPERIENCE -**

Except for the Municipality of Shillong, there are no statutory local self-governing bodies in any of the Hill Districts. The partially excluded areas have elected representatives in the provincial legislature but in the Garo Hills the franchise is limited to the Nokmas and in the Mikir Hills to the headmen. Generally, however, the tribes are all highly democratic in the sense that their village councils are created by general assent or election. Chiefship among certain tribes like the Lushai is hereditary (although certain chiefs have been appointed by the Superintendent) but among other tribes appointment of headmen is by common consent or by election or, in some cases, selection from particular families. Disputes are usually settled by the Chief or headman or council of elders. In the Naga Hills what is aimed at is general agreement in settling disputes. Allotment of land for jhumis generally the function of the Chiefs or headmen (except in the Khasi & Jaintia Hills) and there are doubtless many other matters pertaining to the life of the village which are dealt with by the chiefs or elders, but while this may form a suitable background for local self-government the tribes altogether lack experience of modern self-governing institutions. The "District Conference" of the Lushai Hills, the tribal council of the North Cachar Hills and the Naga National Council are very recent essays in organising representative bodies for the district as a whole and have no statutory sanction. While there is no doubt that the Nag a, Lushai, Khasi and Garo will be able to manage a large measure of local autonomy, the North Cachar tribes and the Mikir may yet want a period of supervision and guidance.

## **6. THE SPECIAL FEATURES -**

Whatever the capacity of the different councils or conferences to manage the affairs of the areas may be, the general proposals for the administration of these areas must be based upon the following considerations: -

(a) The distinct social customs and tribal organisations of the different peoples as well as their religious beliefs. For instance, the Khasi and the Garo have a matriarchal system, the Lushai have hereditary chiefs, the Ao Naga have got the council of elders called '*Tatar*' which is periodically renewed by election. The laws of succession of the Lushai permit the youngest son of the family to succeed to the property of his father. Similarly, in the case of the Garo, the youngest daughter gets her mother's property and so on. Christianity has made considerable headway among the Lushai, Khasi and the Garo, but large numbers of the hill people still continue their own tribal forms of worship which some people describe as '*animism*'.

(b) The fear of exploitation by the people of the plains on account of their superior organisation and experience of business, the hill people fear that if suitable provisions are not made to prevent the people of the plains from acquiring land in the hill areas, large numbers of them will settle down and not only occupy land belonging to the hill people but will also exploit them in the non-agricultural professions. Thus, the hill people seem to attach special value to the present system of an '*Inner Line*' to cross which non-tribals entering the area require a pass, and the provisions prohibiting non-tribals from settling down

or carrying on business without the approval of the district-officer. It is felt that even industries should not be started in the hill areas by non-tribals because that might mean exploitation of the people and the land by the non-tribals. In addition to these main points there is the question of preserving their ways of life and language, and method of cultivation etc. Opinions are expressed that there could be adequate protection in these matters only by transferring the government of the area entirely into the hands of the hill people themselves.

(c) In the making suitable financial provisions it is feared that unless suitable provisions are made or powers are conferred upon the local councils themselves, the provincial government may not, due to the pressure of the plains people, set apart adequate funds for the development of the tribal areas. In this connection we invite a reference to the views expressed in the Assam Government's Factual Memorandum on p. 67 of Constituent Assembly Pamphlet Excluded and Partially Excluded Areas - I.

## **7. PROVISIONS OF 1935 ACT -**

The provisions of the Government of India Act are based on the principle that legislation which is passed by the Provincial Legislature is often likely to be unsuitable for application to the Hill Districts. The mechanism provided for "filtering" the legislation is therefore to empower the Governor of the Province to apply or not to apply such legislation. The full implications of the provisions of the Government of India Act are discussed in the Constituent Assembly pamphlets on "Excluded and Partially Excluded Areas" Parts I and II, and it is perhaps not necessary to discuss them exhaustively here. The main features of the provisions are that certain areas have been scheduled as excluded or partially excluded; it is possible for areas to be transferred from the category of excluded to the category of partially excluded by an Order-in-Council and, similarly, from the category of partially excluded to the category of non-excluded; legislation will not apply automatically to any such scheduled area even if it is a partially excluded area, but will have to be notified by the Governor who, if he applies them at all, can make alterations. The revenues for excluded areas are charged to the revenues of the Province and special regulations, which do not apply to the rest of the Province, may be made by the Governor in his discretion for excluded and partially excluded areas.

## **8. FUTURE POLICY -**

The continuance or otherwise of exclusion cannot be considered solely from the point of view of the general advancement of an area. If that were so, all that would be necessary in the case of areas like the Lushai Hills which are considered sufficiently advanced would be to remove the feature of exclusion or partial exclusion. such action may be suitable in the case of certain partially excluded areas in other parts of India. But in the Hills of Assam the fact that the hill people have not yet been assimilated with the people of the plains of Assam has to be taken into account though a great proportion of hill people now classed as plains tribals have gone a long way towards such assimilation. Assimilation has probably advanced least in the Naga Hills and in the Lushai Hills, and the policy of exclusion has of course tended to create a feeling of separateness.

On the other hand, it is the advice of anthropologists (see Dr. Guha's evidence) that assimilation cannot take place by the sudden breaking up of tribal institutions and what is required is evolution or growth on the old foundations. This means that the evolution should come as far as possible from the tribe itself but it is equally clear that contact with outside influences is necessary though not in a compelling way. The distinct features of their way of life have at any rate to be taken into account. Some of the tribal systems such as the system of the tribal council for the decision of disputes afford by far the simplest and the best way of dispensation of justice for the rural areas without the costly system of courts and codified laws. Until there is a change in the way of life brought about by the hill people themselves, it would not be desirable to permit any different system to be imposed from outside. The future of these hills now does not seem to lie in absorption in the hill people will become

indistinguishable from non-hill people but in political and social amalgamation.

## **9. THE HILL PEOPLE'S LAND -**

The anxiety of the hill people about their land and their fear of exploitation are undoubtedly matters for making special provisions; it has been the experience in other parts of India and in other countries, that unless protection is given, land is taken up by people from the more advanced and crowded areas. The question has already acquired serious proportions in the plains portions of Assam and the pressure of population from outside has brought it up as a serious problem which in the next few years may be expected to become very much more acute. There seems to be no doubt whatever therefore that the hill people should have the largest possible measure of protection for their land and provisions for the control of immigration into their areas for agricultural or non-agricultural purposes. It seems also clear that the hill people will not have sufficient confidence if the control on such matters is kept in the hands of the provincial Government which may only be too amenable to the pressure of its supporters. Even the Head of the State under the new Constitution will probably be an elected head, and even though he may be elected also by the votes of the hill people, they may still have the fear that he will give way to the pressure of the plains people on whose votes he may be largely dependent. The atmosphere of fear and suspicion which now prevails, even if it is argued that it is unjustified, is nevertheless one which must be recognised and in order to allay these suspicions and fears, it would appear necessary to provide as far as possible such constitutional provisions and safeguards as would give no room for them. Moreover, in the areas where no right of private property or proprietary right of the chief is recognised the land is regarded as the property of the clan, including the forests. Boundaries between the area of one hill or tribe are recognised and violation may result in fighting. Large areas of land are required for *jhum* and this explains in part the fear of the tribesman that its availability will be reduced if incursions by outsiders is permitted. In all the hill areas visited by us, there was an emphatic unanimity of opinion among the hill people that there should be control of immigration and allocation of land to outsiders, and that such controls should be vested in the hands of the hill people themselves. Accepting this then as a fundamental feature of the administration of the hills, we recommend that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. The only limitation we would place upon this is to provide that the local councils should not require payment for the occupation of vacant land by the Provisional Government for public purposes or prevent the acquisition of private land, also required for public purposes, on payment of compensation.

## **10. FOREST -**

As part of the question of occupation of land the transfer of the management of land now classed as reserved forest has also been raised. We have recommended that the legislative powers of the Local Councils should not cover reserved forests. While accepting the need for centralised management of the forests, we would strongly emphasise that in questions of actual management, including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the hill people should be taken into account, and we recommend that the Provincial Government should accept this principle as a part of its policy.

## **11. JHUMING -**

We recommend further that the tribes should have the right of deciding for themselves whether to permit *jhum* cultivation, or not. We are fully aware of the evils of *jhum* cultivation that it leads to erosion, alteration of the rainfall, floods, change of climate etc. The tribes may not always be aware of these dangers but they have definitely begun to realise that settled or terraced cultivation is the better way. The Angami terrace on a large scale and in most of the hills definite attempts at introducing settled cultivation are being made. The main difficulty however is the fact that all hill areas do not lend

themselves to terracing equally well and in some parts, there may be a portion which could be terraced without prohibitive cost, or economically cultivated, by this method. Terracing means labour, a suitable hill side and the possibility of irrigation. When these are not all available it is obvious that the tribes cannot be persuaded to take up terracing and must continue *jhum*. While therefore, we feel strongly that *jhuming* should be discouraged and stopped whenever possible, no general legislative bar can be imposed without taking local circumstances in the account. Besides there is a feeling among the tribes that *jhuming* is part of their way of life, and that interference with it is wanton, and done with ulterior motives. The wearing out of that feeling must come from within rather than as imposition from outside which may cause undue excitement among the tribes. We propose therefore that the control of *jhuming* should be left to local councils who, we expect, will be guided by expert advice.

## **12. CIVIL AND CRIMINAL COURTS -**

On the principle that the local customary laws should be interfered with as little as possible and that the tribal councils and courts should be maintained we recommended that the hill people should have full powers of administering their own social laws, codifying or modifying them. At present the Code of Criminal Procedure and the Civil Procedure Code are not applicable to the hill districts though officials are expected to be guided by the spirit of these laws. In practice, criminal cases, which are not of a serious nature like murder and offences against the State, are left to the tribal councils or chiefs to be dealt within accordance with custom. Usually offences are treated as matter for the payment of compensation and fines are inflicted. There appears no harm and a good deal of advantage in maintaining current practice in this respect and we recommend accordingly that all criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and that so far as such offences are concerned the Code of Criminal Procedure should not apply. As regards the more serious offences punishable with imprisonment of five years or more we are of the view that they should be tried henceforth regularly under the Criminal Procedure Code. This does not mean that tribal councils or courts set up by the local councils should not try such cases and we contemplate that wherever they are capable of being empowered with powers under the Criminal Procedure Code this should be done. As regards civil cases (among the tribes there is little distinction between criminal and civil cases) we recommend that except suits arising out of special laws, all ordinary suits should be disposed of by the tribal councils or courts and we see no objection to the local councils being invested with full powers to deal with them, including appeal and revision. In respect of civil and criminal cases where non-tribals are involved, they should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing Circuit Magistrates or Judges.

## **13. OTHER LOCAL SELF GOVERNMENT -**

As regards such matters as primary schools dispensaries and the like which normally come under the scope of local self-governing institutions in the plains it is needless for us to say that the Hill Districts should get all such powers and except in the North Cachar Hills and the Mikir Hills, we are of opinion that the Hills People will be able to takeover control of such matters without much difficulty. With a view to providing some training and thereby smoothening the transition, the Chairman of our Sub-Committee has already taken up the question of establishment of councils with powers of local boards. The difference between the councils we contemplate for the Hill Districts and Local Boards will already have been clear from the foregoing paragraphs. It is proposed to entrust these councils with powers of legislation and administration over land, village forest agriculture and village and town management in general, in addition to the administration of tribal or local law. Over and above these matters the tribes are highly interested in education and feel that they should have full control over primary education at least. We have considered this question in all its aspects and feel that the safe policy to follow in this matter is to leave it to the local councils to come to a decision on the policy to be followed. We recommend that primary education should be administered by the Local Councils without interference by

the Government of Assam. The Assam Government will however always be available to provide such advice and assistance as the Local Councils may require through its Education Department particularly with reference to the linking up of primary with secondary education. As regards secondary school education we do not consider that the Hill People in general are able to look after this subject themselves nor do we consider that this stage should be left without some integration at least with the general system of the Province. There is of course no objection to Local Council being made responsible for the management of secondary schools where they are found to have the necessary material. But we consider that no statutory provision for this necessary and that it should be open to the Council and the Government of Assam by executive instructions to make the necessary arrangements. The Local Councils will have powers of management in all other matters usually administered by local boards and we consider that on account of the special circumstances in the hills the councils should have powers to make their own administrative regulations and rules. We expect however that in all matters, particularly those involving technical matters like and management of dispensaries or construction of roads, the Local Councils and their staffs will work under the Executive guidance of the corresponding Provincial Department.

For the Mikir and the North Cachar Hills, we recommend that the necessary supervision and guidance should be provided for a period of six years which we expect will be the term of two councils by the appointment of the District or Sub-Divisional officer, as the case may be, as *ex-officio* President of the Council with powers, subject to the control of the Government of Assam, to modify or annul resolutions of the Council and to issue instructions as he may find necessary.

#### **14. FINANCE -**

(a) **Powers of the Council.** - The next question we propose to consider is finance. A demand common to the Naga Hills, the Khasi and Jaintia Hills, the Garo Hills and the Lushai Hill is that all powers of taxation should rest in the National Councils. The National Conference of the Garo and of the Khasi and Jaintia Hills suggested a contribution to the provincial revenues or a sharing of certain items. If this were accepted even the Centre would have no powers to levy finances in these areas. Suggestions regarding contribution to provincial revenues are obviously based on the assumption that the district, in addition to what it needs for its own expenditure, will have a surplus to make over to the Provincial Government. In the case of the Garo Hills, it was suggested that the abolition of zamindari rights in that area would result in a considerable augmentation of the revenues of the district which would then be able to spare a certain sum to the Provincial Government, and generally the idea seems to be that given sufficient powers the Districts will be able to increase their revenues by exploitation of forests, mineral and hydro-electrical potentialities. Not only do some of the districts feel that they will have plenty of money in due course but the demand for all powers of taxation is based to a large extent on the fear that if the Provincial Government has those powers they may not get a fair deal and there may be diversion of money to other districts. Districts which, on the other hand feel that they do not command potential sources of revenue or at least realise that the development of the resources will take time during which they remained deficit can only make a vague demand for allocation of funds from a benevolent Province or Centre to supplement local resources.

The question of finance and powers of taxation in an atmosphere of suspicion and fear is not an easy one. Any surplus district is likely to examine the provincial expenditure with a jealous eye to find out whether it gets a good share of expenditure for its own benefit or not. The extreme case is the expectation or demand that all the revenues derived from a particular district must be spent within that district itself. It is obvious however that where different districts are functioning under a common Provincial Government, the revenues of the whole area become diverted to a common pool from which they are distributed to the best possible advantage of the Province as a whole. Should all powers of taxation and appropriation of revenues be placed in the hands of the hills districts, the plains districts will not fail to make a similar demand, and if they do, there would be little justification to refuse it to them.

The concession of such a demand to the various districts virtually amounts to breaking up the provincial administration. Besides, giving unregulated powers of taxation in general to small units is undesirable as it would result in different principles, perhaps unsound principles, being adopted in different places for purposes of taxation and in the absence of coordination and provincial control, chaos is more likely than sound administration. Further it is obvious that a local council and local executive would be much more susceptible and amenable to local pressure and influence than either the Provincial Government or its executive and will therefore not find it possible to undertake measures of taxation which the Province as a whole can. Even if taxes can be adequately resorted to by the local council, the proposal that an appropriation could be made for the provincial revenues does not sound practicable, for what the quantum of that will be is to be determined only by the National Council and it is quite obvious that the Council will decide the quantum from the point of view of its own need rather than the needs of the Province as a whole. The areas which feel that they have large potential sources of revenue must not forget that their demands for educational and other development are also very large and expanding. Various other factors such as the efficiency of tax collection and the cost of collecting staff have to be taken into consideration and we are of the view that the only practicable way is to allocate certain taxes and financial powers to the Councils and not all powers of taxation. Accepting this conclusion then we can consider what powers they should have. It goes without saying that they should have all the powers which local bodies in a plains district enjoy and we recommend that in respect of taxes like taxes on houses, professions or trades, vehicles, animals, octroi, market dues, ferry dues and powers to impose cesses for specific purposes within the ambit of the Councils, they should have full powers. We expect that the Councils will seek the advice of the Provincial Government in exercising these powers but in view of the democratic spirit and nature of tribal life, we do not consider that any control by the Provincial Government which is prescribed by statute is necessary. In addition we would recommend powers to impose house tax or poll tax, land revenue (as land administration is made over to the Councils), levies arising out of the powers of management of village forest, such as grazing dues and licences for removal of forest produce.

(b) **Provincial Finance.** - There is no doubt that for some time to come the development of the Hills must depend on the rest of the province and they will be regarded as "deficit areas". As their development must be regarded as a matter of urgency considerable sums of money will be required but it is equally certain that measures of development are needed in other districts also and the claims of the Hills will not find a free field. The expenditure on the excluded areas has so far been a non-voted charge on the provincial revenues but unless it is provided in the Constitution that sums considered necessary by the Governor for the Hills will be outside the vote of the legislature we have to consider how the provision of adequate revenues can be secured. In this connection, we would point out the admission in the Factual Memorandum\* received from the Government of Assam that while the Excluded Areas have benefited by the provision in the Government of India Act regarding them, the Partially Excluded Areas in respect of which the funds are subject to the vote of the legislature have suffered greatly. In particular, the position of the Mikir Hills seems to be a bad example. Here, only a small proportion of the revenues derived from the area which contains rich forests is utilised in the district and the position in respect of provision of schools, medical facilities etc. is unsatisfactory. We have noted the views of witnesses from the various political or agitations that there is a lot of goodwill among the plains people towards the tribes but we feel that a more concrete provision is necessary as practical administration must be taken into account. It is admitted all round that the development of the hills is a matter of urgency for the province as a whole and there should therefore be a good measure of support for a specific provision.

Coming to the actual provision to be made, it has been suggested in some quarters that the revenue to be spent within a Hill District should be earmarked by provision in the Constitution and should form a definite proportion of the revenue of the Province. This, in our opinion, is an impracticable proposition since any statutory ratio is invariable for a number of years and there are no simple considerations on which it can be based. If it is based on the population, it is obvious that the expenditure would be totally inadequate, for the hill areas are generally sparsely populated. On the other hand, if a certain stage of development has been reached, the provision of funds on the basis of area may amount to pampering the

tracts, while revenue is needed elsewhere. We have no doubt that the fixation of a rigid ratio by statute would not be suitable for the Provincial Government to work on and may not be in the interests of the Hills themselves. We feel that placing the sums outside the vote of the legislature is likely to be distasteful to the Legislature and contrary to the democratic spirit and proceed therefore to consider an alternative.

It appears to us that the main reason why the needs of the Hills are apt to be overlooked is due to the clamour of more vocal districts and the facts that there is little attention to or criticism of, the provisions made for the Hills, which in the case of voted items are merged in general figures. If therefore a separate financial statement for each such area showing the revenue from it and the expenditure proposed is placed before the legislature, it would have, apart from the psychological effect, the advantage that it would draw attention specifically to any inadequacy and make scrutiny and criticism easy. It can of course be objected that criticism may be ignored and that the separate statement may therefore not serve any really useful purpose, but we nevertheless recommend the provision of a separate financial statement as likely to fulfil its purpose. We also recommend that the framing of a suitable programme of development, should be on the Government of Assam, either by statute or by an Instrument of Instructions, as an additional safeguard.

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\* P. Excluded and Partially Excluded Areas -- I (reference to pages are to pages in the original reports).

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(c) **Central Subventions.** - While the Province may be expected to do its best to provide finances to the limit of its capacity, it seems to us quit clear that the requirements of the Hill Districts, particularly for development schemes, are completely beyond the present resources of Assam. Though the Districts are more developed than the Frontier Tracts in respect of which the Central Government has recognised the need for special grants for development, the position of the Hill Districts in comparison with the plains districts is not radically different. The development of the Hill Districts should for obvious reason be as much the concern of the Central Government as of the Provincial Government. Bearing in mind the special position of this province in respect of sources of central revenue, we consider that financial assistance should be provided by the Centre to meet the deficit in the ordinary administration of the districts on the basis of the average deficit during the past three years and that the cost of development schemes should also be borne by the Central Exchequer. We recommend statutory provisions accordingly.

(d) **Provincial Grants for the Local Councils.** - Some of our coopted Members have expressed the apprehension that the sources of revenue open to them may not provide adequate revenue for the administration of the District Council, particularly where there are Regional Councils. We have not made a survey of the financial position of the new councils and their requirements in the light of the responsibilities imposed on them but we recognise their claim for assistance from general provincial revenues to the extent that they are unable to raise the necessary revenue from the sources allotted to them for the due discharge of their statutory liabilities.

## 15. CONTROL OF IMMIGRATION -

The Hill People, as remarked earlier, are extremely nervous of outsiders, particularly non-tribals, and feel that they are greatly in need of protection against their encroachment and exploitation. It is on account of this fear that they attach considerable value of regulations like the Chin Hill Regulations under which an outsider could be required to possess a pass to enter the Hills territory beyond the Inner Line and an undesirable person could be expelled. They felt that with the disappearance of exclusion they

should have powers similar to those conferred by the Chin Hills Regulations. The Provincial Government, in their view, is not the proper custodian of such powers since they would be susceptible to the influence of plains people. Experience in areas inhabited by other tribes shows that even where provincial laws conferred protection on the land they have still been subjected to expropriation at the hands of money-lenders and others. We consider therefore that the fears of the Hill People regarding unrestrained liberty to outsiders to carry on money lending or other non-agricultural professions is not without justification and we recognise also the depth of their feeling. We recommend accordingly that if the local councils so decide by a majority of three fourths of their members, they introduce a system of licensing for money-lenders and traders. They should not of course refuse licences to existing money-lenders and dealers and any regulations framed by them should be restricted to regulating interest, prices or profit and the maintenance of accounts and inspection.

#### **16. MINES AND MINERALS -**

The present position is that except in relation to the Khasi States all powers are vested in the Provincial Government. The hill people strongly desire that revenues accruing from the exploitation of minerals should not go entirely to the Provincial Government and that their Council should be entitled to the benefits also. In order to ensure this they demand that control should be vested in them in one way or another. We have considered this carefully keeping particularly in mind that the Khasi Hill States are now entitled to half the royalties from minerals and feel that the demand of the hill should be met, not by placing the management in their hands, but by recognising their right to a fair share of the revenue. The mineral resources of the country are limited and it is recognised by us that the issue of licences and leases to unsuitable persons is likely to result in unbusiness like working and devastation. We consider that the best policy is to centralise the management of mineral resources in the hands of the Provincial Government subject to the sharing of the revenue as aforesaid and also to the condition that no licences or leases shall be given out by the Provincial Government except in consultation with the local Council.

#### **17. LEGISLATION -**

The position under the Government of India Act, 1935, has already been described. It has been argued in some quarters that no provincial legislation should be applicable to the hills except with the approval of the Hill Council. This, we consider, is a proposition which cannot be acceded to without reservations. It is true that no legislation is now applicable without a notification by the Governor but the Governor in practice would apply the legislation unless there is a reason why it should not be applied, while the Council would probably be guided by other considerations. There are many matters in which the legislature has jurisdiction which has nothing to do with special customs in the hills and to provide that such legislation should not apply directly would only amount to obstruction or delaying the course of legislation which ought to be applied. It may also frustrate the application of a uniform policy through the whole province and subject everything to the limited vision of a local council. The Hill Districts will of course have their representatives in the provincial legislature and we feel that a bar should be placed only in the way of provincial legislation which deals with subjects in which the Hill Councils have legislative powers or which are likely to affect social customs and laws. We consider therefore that there is no need for a general restriction and we have provided accordingly for limited restriction in Clause L\* of Appendix A to this Part. We have also included in this draft a clause concerning the drinking of rice-beer which is very much a part of the hill people's life. We feel that the Council should have liberty to permit or prohibit this according to the wishes of the people. We would draw attention to the fact that the rice-beer (Zu or Laopani) is not a distilled liquor and that its consumption is not deleterious to the same extent as distilled liquor consumed by tribes in other areas.

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\* Reference to pages are to pages in the original reports.

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## 18. REGIONAL COUNCILS -

The conditions obtaining in the Naga Hills and the North Cachar Hills, in particular, need special provision. The Naga Hills are the home of many different tribes known by the general name of Nag a; in the North Cachar Hills, there are Nag a, Cachari, Kuki, Mikir and some Khasi or Synteng. Other Hills also contain pockets of tribes other than the main tribe. The local organisations referred to earlier have themselves found the need for separate Sub-Councils for the different tribes and the condition are such that unless such separate councils are provided for the different tribes may not only feel that their local autonomy is encroached upon but there is the possibility of friction also. We have therefore provided for the creation of Regional Councils, if the tribes so desire. These Regional Councils will have powers limited to their customary law and management of their land villages. We also propose that the Regional Councils shall be able to delegate their powers to the District Councils.

## 19. EMERGENCY PROVISIONS -

The picture drawn thus far is therefore that an autonomous Council for the district with powers of legislation over land, village, forests, social customs, administration of local law, powers over village and town committees, etc., with corresponding financial powers. These are far in excess of the powers of Local Boards. What if the Council or the executive controlled by it should misuse the powers or prove incapable of reasonably efficient management? Some of the Hill Districts are on the borders of India. What if their acts prove prejudicial to the safety of the country? Experience all over the country indicates that local bodies sometimes mismanage their affairs grossly. We consider that the Governor should have the power to act in an emergency and to declare an act or resolution of the Council illegal or void, if the safety of the country is prejudiced, and to take such other action as may be necessary. We also consider that if gross mismanagement is reported by a Commission, the Governor should have powers to dissolve the Council subject to the approval of the Legislature before which the Council, if so it desires, can put its case. (See clause Q of Appendix A\*).

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\* Reference to pages are to pages in the original reports.

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## 20. THE FRONTIER TRACTS -

(a) **Central Administration recommended.** - We have indicated the difference between the Frontier Tracts and other Hill Areas already. It is clear that the legal position on the Balipara and Sadiya Frontier Tracts is that they are part of the province right up to the MacMahon Line. Regular provincial administration is however not yet possible (except perhaps in the plains portion before the Inner Line) on account of the circumstances prevailing there. The policy followed in these tracts as well as on the Tirap Frontier (where there is no delineated frontier with Burma yet) and the Naga Tribal Area is that of gradually extending administration. We recommend that when the Central Government which now administers these areas (and which we consider it should continue to do with the government of Assam as its agent) is of the view that administration has been satisfactorily established over a sufficiently wide area, the Government of Assam should take over the administration of that area by the issue of a notification. We also recommend that the pace of extending administration should be greatly accelerated and that in order to facilitate this, steps should be taken to appoint separate officers for the Lohit Valley, the Siang Valley and the Naga Tribal area which at present is in the jurisdiction of two different officers (the Political Officer, Tirap Frontier Tract and the Deputy Commissioner, Naga Hills District). We have

provided that the administration of the areas to be brought under the provincial administration in future should also be similar to that of existing Hill Districts.

(b) **Lakhimpur Frontier and Plains Portions.** - Regarding the Lakhimpur Frontier Tract, it appears to be the view of the External Affairs Department that this Tract does not differ from the plains "and need not be considered in relation to the problems of the hill tribes." Our information goes to show that a portion of the Lakhimpur Frontier Tract was recently (during the war) included in the Tirap Frontier Tract. The view of the Political Officer regarding this portion differed from that of other witnesses and the circumstances here seem to need closer examination, as the Political Officer has stated that the area is inhabited by tribes people. There are certain Buddhist villages inhabited by Fakials who should be brought into the regularly administered area if possible. About the Lakhimpur Frontier Tract which is under the Deputy Commissioner Lakhimpur we have no hesitation in recommending that it should be attached to the regular administration of the District. The report of the Deputy Commissioner produced before us in evidence is clear on the point. We also conclude from the evidence collected at Sadiya that the Saikhoaghat portion of the excluded area south of the Lohit river and possibly the whole of the Sadiya plains portion up to the Inner Line could be included in regular administration, but feel that the question needs more detailed investigation and recommend that it should be undertaken by the Provincial Government. The portion of the BaliPara Frontier Tract round Charduar should be subjected to a similar examination, and the headquarters of the Political Officer of this tract should be shifted into the hills as early as possible.

(c) **Posa Payments.** - Certain payments are being made at present to the tribes on the North East Frontier. In the Balipara Frontier Tract payments called *posa* which total in all to about Rs. 10,000 per year, and certain customary presents are paid. These are vestigial payments of sums which the tribes used to claim in the days of the Ahom kings whether by way of *quid pro quo* for keeping the peace on the border and not raiding the plains or in recognition of a customary claim on the local inhabitants or territory. On the Tirap Frontier a payment of Rs. 450 per year is made to the Chief of Namsang as lease money for a tea garden. We have considered the question whether these payments should be continued in view of the costly development schemes being undertaken, and have come to the conclusion that it would be a mistake to stop them. The effect upon the tribes of such a step would be the feeling that the first act of the new Government was adverse to them and the result of any disaffection in this area might seriously jeopardise our aims of establishing administration and bringing the tribes, who are well disposed at present, into the fold of civilisation within our boundaries. The payments are negligibly small in comparison with the large sums of money required for these areas and we recommend that they should continue unchanged at any rate till there is a suitable opportunity for a review of the position.

## 21. REPRESENTATION -

(a) **Adult Franchise.** - The partially excluded areas are already represented in the provincial legislature. In the Garo Hills and Mikir Hills the franchise as already stated is a restricted one. The excluded areas have no representation at present. So far as the frontier tracts tribal areas are concerned they have no representation and the circumstances are such that until it is declared that an area is or can be brought under regular administration, representation cannot be provided. We are of opinion that examination should be made as soon as possible of this question in view of the very clear desire expressed by the Abor, Hkampti and others for representation. Meanwhile, we are of the view that there is no longer any justification for the exclusion of the Nag a, Lushai and North Cachar Hills and that these areas should be represented in the provincial legislature. The restriction on the franchise in the Garo and Mikir Hills should be removed and, if there is universal adult franchise elsewhere, that system should be applied to all these Hills. We would note here that our colleagues from the Lushai Hills expressed some doubts about the feasibility of adult franchise in the Lushai Hills and seemed to prefer household franchise. We do not anticipate any real difficulty in adult franchise here if it is feasible elsewhere but would recommend that the position of the Lushai Hills may be considered by the appropriate body which

deals with the question of franchise.

(b) Provincial Representation. - As regards the number of representatives of the Hill Districts in the provincial legislature, we are of the view that if the principle of weight age is recognised for any community, the case of the hill people should receive appropriate consideration in that respect. Though we do not propose that there should be any weight-- age for the hill people as a principle, we are clear that the number of representatives for each of the Hill Districts should not be less in proportion to the total number than the ratio of the population of the district to the total population even though this may, in some cases, mean a slightly weighted representation in practice. In the draft provincial constitution we find that it is provided that the scale of representation in the provincial Assembly is not to exceed one representative for every lakh of the population. On this basis, the Hill Districts would, according to the minimum recommended by us, obtain representation as follows: -

Khasi & Jaintia Hills	No	Population
Garo Hills	2	105,463
Mikir Hills	3	223,569
Naga Hills	2	149,746
Lushai Hills	2	189,641
North Cachar Hills	2	152,786
	1	37,361
	<b>TOTAL</b>	<b>12</b>
		<b>858,566</b>

It will be seen if the total population of the Hills is taken, the number of representatives for all the Hills will be somewhat in excess of the number which would be arrived at on the basis of one representative for each lakh of the population. We are not only of the view that in the special circumstances of the Hills, representatives as recommended by us is necessary to provide proper representation but that the excess should not be adjusted to the detriment of the rest of Assam out of the total number admissible under Section 19(2) of the Draft Provincial Constitution. We have provided accordingly that in reckoning the number of representatives for the rest of Assam, the population and the number of representatives for the rest of Assam, the population and the number of representatives of the Hills shall not be taken into account. We contemplate that the Khasi and Jaintia Hills should include the Municipality and Cantonment of Shilling which is at present a general constituency. This will be an exception to the provision barring non-tribals from election in the Hill constituencies.

(c) **Federal Legislature.** - The total population of the Hill Districts given above clearly justifies a seat for the Hill Tribes in the Federal Legislature on the scale proposed in Section 13(c) of the Draft Union Constitution.

(d) **Joint Electorate.** - The Hill Districts have this simple feature, that their populations are almost entirely tribal. In the Khasi and Jaintia Hills (a pocket of Mikir excepted) in the Garo Hills, the Mikir Hills (some Rengma and Kuki excepted) the population is uniform. In the Naga Hills, among the different tribes like the Angami, Ao, Sema, there is now the beginning of a feeling of unity. The Naga Hills District has a population of 1.85 lakhs and is likely to get two representatives at least which might enable the allocation of one each to the two main centres of Kohima and Mokohehung. In the North Cachar Hills the position is less satisfactory but in all these areas we consider that the electorate should be joint for all the tribes and non-tribals residing there. In view of the preponderance of tribal people we consider that no reservation of seats is necessary and the only condition which we propose is that the constituencies should not overlap across the boundaries of the district (in the case of North Cachar, the subdivision).

(e) Non-Tribals Barred. - We have considered the question of non-tribals residing permanently in the hills. Some of these have been in residence for more than one generation and may well claim the right to

stand for election but we find that the feeling against allowing them to stand for election is extremely strong. It is felt that even though in a predominantly tribal constituency the chances are all in favour of a tribal candidate, the non-tribals, in view of their greater financial strength can nullify this advantage. We recommend therefore that plains people should not be eligible for election to the provincial legislature from the Hill Constituencies.

## 22. THE PROVINCIAL MINISTRY -

That the Hills can already provide representative who can take part in the provincial administration is obvious. On four occasions residents of the Khasi Hills have occupied a place in the provincial Executive Council or Cabinet. The hitherto excluded Lushai and Naga Hills have the same potentiality. With Ministers from the Hills in the Cabinet it may be expected indeed that their interests will not be neglected. The doubts raised are: will there necessarily be a Minister from the Hills even when a suitable person is available? If not who will look after interest of the Hills? The Hill areas contain close upon a million people and in view of the great importance of the frontier hills in particular, it would be wise of any Ministry to make a point of having at least one colleague from the Hills. It is our considered view that representation for the Hills should be guaranteed by statutory provision if possible. If this is not possible, we are of the view that a suitable instruction should be provided in the instrument of instructions or corresponding provision. The development of the Hills however is a matter which requires special attention in the interests of the province and we feel that if the circumstances necessitate it, the Governor should be in a position to appoint a special Minister who should, if possible, be from among the hill people. In this connection we would refer to the need for a special development plan which we have referred to in Para. \*16(b).

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\* Reference to pages are to pages in the original reports.

## 23. THE SERVICES -

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A good deal of discussion has centred round the problem of providing suitable officials for the hills. The number of suitably qualified candidates from the hill people themselves has been inadequate hitherto and the utilisation of other candidates has of course been found necessary. No special service has been considered necessary for the hills. On the other hand there has been a certain amount of feeling against the plains officials notably against inferior staff, who have been posted there. We have considered this question carefully and come to the conclusion that no separate service for the Hills is desirable or necessary and that there should be free interchange between hill and non-hill officials, at least in the higher cadres of the provincial and All India Services. The District Councils will doubtless appoint all their staff from their own people and to prevent interchangeability would be tantamount to perpetuating exclusion as our proposals involve a good deal of separation already. We recommend therefore that while non-tribal officials should be eligible for posting to the hills and *vice versa* should be selected with care. We also recommend that in recruitment the appointment of a due proportion of hill peoples should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government.

## 24. A COMMISSION -

We have referred to the need for special attention to the development of the Hills. No statutory provision for the earmarking of adequate funds is considered possible. On the other hand, the Hill Councils recommended by us will have far greater powers than local bodies in plains districts. The Hills occupy a position of strategic importance and it is in our opinion of great importance for constant touch

to be maintained with the development and administration of these areas. For this purpose we consider that there should be provision for the appointment of a Commission, on which we expect that there will be representatives of the tribes, to examine the state of affairs periodically and report. We recommend that there should be provision to appoint the Commission *ad hoc* or permanently and that the Governor of the province should have the responsibility and power for appointing it. The report of the Commission should enable the Government to watch the progress of the development plan and take such other administrative action as may be necessary.

## 25. PLAINS TRIBALS -

The total tribal population of Assam was shown in the Census of 1941 as 2,484,996. The excluded and partially excluded areas contribute to this only 863,248. About 1.6 million tribals therefore live in the plains including those who work as tea-gardens labour. The terms of our enquiry are that we report on a scheme of administration for the tribal and excluded areas and the question of tribes people in the plains strictly does not concern us. Their case will doubtless be dealt with by the Minorities Sub-Committee. The population of the plains tribals which is being gradually assimilated to the population of the plains, should for all practical purposes be treated as a minority. Measures of protection for their land are also in our view necessary. At present certain seats are reserved in the provincial legislature for them. The question of their representation and protection will we hope be considered by the Minorities Sub-Committee. We have kept in mind however the possibility of there being certain areas inhabited by tribals in the plains or at the foot of the hills whom it may be necessary to provide for in the same manner [See Clause\* A (3) of Appendix A].\*

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\* Reference to clause is to clause in the original reports.

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## 26. BOUNDARIES -

All the Hills people have expressed a desire for the rectification of district boundaries so that people of the same tribe are brought under a common administration. We sympathise with this desire but find that it is only outside our terms of reference but also that it would necessitate an amount of examination which would make it impossible for us to submit our report to the Advisory Committee in time. The present boundaries have, we find, been in existence for many years and we feel that there is time for a separate commission set up by the Provincial Government to work on the problems involved. An exception should however be the case of the Barpathar and Sarupathar mauzas included in the Mikir Hills which the Provincial Government have already decided should be removed from the category of excluded and added to the regularly administered areas (see memorandum of Government of Assam). We agree with this recommendation and propose that it should be given effect when the new Constitution comes into force.

## 27. NON-TRIBAL RESIDENTS-

In the Hill Districts, a certain number of non-tribal people reside as permanent residents. They generally follow non-agricultural professions but some cultivate land also. We have recommended that these residents should not be eligible to stand for election to the provincial legislature. It is necessary however to provide them with representation in the local council if they are sufficiently numerous. We contemplate that constituencies may be formed for the local councils if the number of residents is not below 500 and that non-tribal constituencies should be formed where this is justified.

## 28. DRAFT PROVISIONS-

For the sake of convenience we have condensed most of our recommendations into the forms of a draft of provisions in roughly legal form and this draft will be found as an appendix to this part. The draft also contains certain incidental provisions including finance not referred to in this report.

## 29. TRANSITIONAL PROVISIONS-

Reference has been made to the constitutions drafted in the different district for their local councils. This is of course the expression of the strong desire for autonomy in the Hill District. Rather more important however are the individualities of the different tribes and the distinctness of their customs and social systems. If the tribes are allowed to decide the composition and powers of their own councils it will doubtless afford them the maximum of sentimental satisfaction and conduce also to the erection of a mechanism suited without question for their own needs and purposes. While therefore it will be necessary in the existing conditions for the Governor of Assam (as the functionary who will carry on the administration till the new constitution comes into force) to frame provisional rules for holding elections and constituting the councils. We recommend that the councils thus convened should be provisional councils (one year) and that they should frame their own constitution and regulations for the future.

[Annexure V]

### **APPENDIX A\* TO PART OF NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE REPORT**

A (1) The areas included in Schedule\* A to this Part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of section P the Government of Assam may from time to time notify any area not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule or part of such district, as ceasing to be an autonomous district or a part thereof.

B (1) There shall be a District Council for each of the areas specified in Schedule\* A. The Council shall have not less than twenty nor more than forty members, of whom not less than three-fourths shall be elected by universal adult franchise.

*Note.* - If adult franchise is not universally adopted this provision will have to be altered.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group:

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Council shall have such powers as may be delegated by the Regional Council in addition to the powers conferred by this constitution.

(5) The District or the Regional Council may frame rules regarding (a) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (b) the conduct of business, (c) the appointment of staff, (d) the formation and functioning of sub ordinate local councils or boards, (e) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers:

Provided that the Deputy Commissioner or the Sub-divisional officer as the case may be of the Mikir and the North Cachar Hills shall be the Chairman *ex-officio* of the District Council and shall have for a period of six years after the constitution of the Council, powers subject to the control of the Government of Assam to annul or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C (1). The Regional Council, or if there is no Regional Council, the District Council, shall 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 for grazing, cultivation, residential or other purposes ancillary to the life of the village or town, 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.

Provided that land required by the Government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land, (b) the management of any forest which is not a reserve forest, (c) the use of canal or water courses for the purposes of agriculture, (d) controlling, prohibiting or permitting the practice of *jhum* or other forms of shifting cultivation, (e) the establishment of village or town committees and council and their powers, (f) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regarding (a) the appointment or succession of chiefs or headmen, (b) inheritance of property, (c) marriage and all other social customs.

D (1) Save as provided in Section F the Regional Council, or if there is no Regional Council, the District Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council, may set up Village Councils or Courts for the hearing and disposal of disputes or cases other than cases tribal under the provisions of Section F, or cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F (1). For the trial of acts which constitute offences punishable with imprisonment for five years or

more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non-tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council, the District Council or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on the Regional Council or District Council or any court or office under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous district.

*Note.* - "Special Laws" - Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G (1). There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H (1). A Regional Council, or if there is no Regional Council the District Council shall have the following powers of taxation:

(a) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue, (b) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (a) a tax on professions, trades or calling, (b) a tax on animals, vehicles, (c) toll tax (d) market dues, (e) ferry dues, (f) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes within its financial powers.

I (1). The Government of Assam shall not grant any licence or lease to prospect for or extract minerals within an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accruing from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in his discretion shall be paid.

J (1). The District Council may for the purpose of regulating the profession of money lending or trading by non-tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (a) prescribing that except the holder of a licence issued by the Council in this behalf no person shall carry on money lending, (b) prescribing the maximum rate of interest which may be levied by a moneylender, (c) providing for the maintenance of accounts and for their inspection by its officials, (d) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the district council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three-fourths of its members:

Provided further that a licence shall not be refused to money lenders and dealer carrying on business at the time of the making of the rules.

K (1). The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts (which may at any time be specified in Schedule A\*) in accordance with Sub-section (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section.....of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas nor shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L (1) Legislation passed by the provincial legislature in respect of (a) any of the subjects specified in section C or

(b) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or if there is no Regional Council, the District Council may apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary to enable that Government - (a) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this constitution in respect of the administration of the areas specified in Schedule A; and (b) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administration of the aforesaid areas to that of the rest of the province.

O (1). The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or, generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (a) the provision of educational and medical facilities and communications (b) the need for any new or special legislation, and (c) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with the recommendations of the Governor shall be placed before the provincial legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the Autonomous Districts.

P (1). The Government of Assam may, with the approval of the Federal Government, by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B\* to this part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said Schedule.

(2) Till a notification is issued under this section, the administration of any area specified in Schedule B\* or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q (1). The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, amend or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the legislature as soon as possible and the legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the legislature of the province, place the administration of the area directly under himself or the commission or other body considered suitable by him, during the interim period or for a period not exceeding twelve months:

Provided that such action shall not be taken without affording an opportunity to the District or Regional Council to be heard by the provincial legislature and shall not be taken if the provincial legislature is opposed to it.

#### **Transitional Provisions:**

Governor to carry on administration as under the 1935 Act till a Council is set up, he should take action to constitute the first District Council or Regional Council and frame provisional rules in consultation with existing tribal Councils or other representative organisations, for the conduct of the elections, prescribed who shall be the office bearers, etc. The term of the first Council to be one year.

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\* Reference to appendices and schedules are to appendices and schedules in the original reports.

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**GOPINATH BARDOLOI**

*(Chairman).*

**J. J. M. NICHOLS-ROY.**

**RUP NATH BRAHMA.**

**A. V. THAKKAR**

*Schedule A*

The Khasi and Jaintia Hills District excluding the town of Shillong.

The Garo Hills District.

The Lushai Hills District.

The Naga Hills District.

The North Cachar Sub-division of the Cachar District.

The Mikir Hills portion of Nowgong and Sibsagar District excepting the mouzas of Barpathar and Sarupathar.

*Schedule B*

The Sadiya and Balipara Frontier Tracts.

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).

The Nag a Tribal Area.

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APPENDIX C

**[Annexure VI]**

Copy of Notification No. 1-X, dated the 1st April 1937, from the Government of India in the External Affairs Department.

In exercise of the powers conferred by sub-section (1) of Section 123, read with sub-section (3) of Section 313, of the Government of India Act, 1935, the Governor General in Council is pleased to direct the Governor of Assam to discharge as his agent, in and in relation to the tribal areas beyond the external boundaries of the Province of Assam, all functions hitherto discharged in and in relation to the said areas by the said Governor as Agent to the Governor-General in respect of the political control of the trans-border tribes, the administration of the said areas and the administration of the Assam Rifles and other armed civil forces.

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APPENDIX C

**[Annexure VII]**

**REPORT OF THE NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE**

**Part II**

## 1. THE BALIPARA FRONTIER TRACT -

This is the tract between the Subansiri River on the east, Bhutan on the west and the Mac Mahon Line to the north, with its headquarters at Charduar about 20 miles from Tezpur. It is included in the Schedule to the Government of India (Excluded and Partially Excluded Areas) Order as an Excluded Area, but in practice it is administered by the Governor of Assam as the Agent to the Government of India and is treated in this respect as a tribal area. The portion immediately to the north of Charduar and up to the Inner Line is a plains portion the area of which is estimated to be approximately 1,000 square miles. The censused portion of the area was 571 square miles and the population of 6,512 contained only 560 Dafla, the remaining number of 2,323 persons enumerated as Assam tribes consisting of Cachari, Garo, Mikir and Miri. The area beyond the Inner Line is estimated to cover about 11,000 square miles and contain a population of approximately 350,000. For administrative purposes it is at present divided into two parts, the Balipara or Sela Agency and the Subansiri Area under two Political Officers. Particularly in the Subansiri Area there are portions which have not yet been explored by our officers, and the details of the tribes living there are still not fully known. In the Sela area administration has been extended as far as Dirang Dzong and this area contains tribes like the Momba, Sillung, Aka or Rhuso, Senjithonji. The Subansiri area is inhabited largely by Dafla (Nisu) and Apatani but large areas have yet to be visited and explored.

In the western portions of the tract the way of life of the tribes is influenced a good deal by Tibetan customs and Buddhist monasteries but in the eastern sector the people are much more primitive. Some terraced cultivation and orange gardens exist but people like the Aka depend on *jhuming*. Literacy among the tribes seems to be very poor in spite of the influence of monasteries. Except among the Momba there is little demand even for education. For their requirements of cloth and salt notably the inhabitants depend upon contact with the plains areas or with the Tibetans. The monastery at Towing exercises considerable influence over the lives of these tribes and puts forward claims to monastic taxation. The tribes keep poultry, pigs, goats and mithun. In the olden days some chiefs here apparently used to exercise a kind of right of levying taxes in plains villages. This appears to have been recognised by the Ahom Kings who allowed relief to the people liable to such taxes from other taxes to a corresponding extent. In connection with these levies an agreement\* was entered in to by the British Government for the payment of an annual subsidy, known as *posa*. Rs. 5,000 are paid to the Talung Dzongpons and the Sat Rajas of Kalaktang and some bottles of rum and cloth also are given. The tribes in return also given certain presents like ebony, a gold ring, two Chinese cups, two yak tails and two blankets. Similar payments of *posa* are made to the Chaduar Bhutia or Sherdukpen, Thembangia Bhutia, Aka and certain other tribes. Payments to the Dafla and Miri are however made only to freemen and in all cases cease on the death of the present holder. The total payment of *posa* comes to about 10,000 rupees per year. Maintenance of law and order in this area as well as defence against external encroachment is looked after by the posts occupied by the Assam Rifles.

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\* Clause IV of Agreement No. XLIV of 1888 with the Kapaschor or Kavatsun Akas suns as follows :- The "posa" we shall receive from Government is in lieu of the we formerly levied on the Assamese inhabitants of the plains, and that we have no right to receive any food, service, dues or other token of superiority from any receipt in British territory...

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Though some of the witnesses who appeared before us could speak Assamese and appeared to be intelligent, we are inclined to agree with the Political Officer's view that until the five-year plan which provides for an expansion of schools and communications has been given effect, there is likely to be little material in this Tract particularly in the Subansiri Area, for local self-governing institutions. For some

time the problems of administration here must remain confined largely to the maintenance of peace among the tribes, prevention of encroachment and oppression by Tibetan tax collectors, extension of communications, and elementary facilities for obtaining medicine and primary education. Tibetan officials are known to have set up trade blocks with a view to compelling trade with Tibet rather than India and the removal of these obstructions is a matter which may involve political contact with Tibetan authorities. As already pointed out large areas are as yet *terra incognita* to our officers and the attitude of the tribes is one of fear or suspicion which may easily turn to hostility. It is clear however that the southern portions of the tract will develop earlier than the northern most portions and administration of the political agency type can therefore be gradually shifted northwards. The Political officers' view is that the time is not yet ripe for shifting his headquarters from Charduar to a place in the hills. The area round Charduar which is in the plains portion is inhabited mostly by non-tribals or detribalised people of tribal origin. The question of bringing it under regular administration needs therefore to be examined in detail by the Provincial Government. What we contemplate is that areas over which adequate control has been established should be brought under the regular provincial administration while areas further north remain under the control of the Central Government, as at present. The Centre should however administer the tract through the Provincial Government as its agent so that the Provincial Government remains in contact with the administration\*.

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\* See Assam Government's Factual Memorandum on page 70 of Excluded and Partially Excluded Areas—I (C.A) Pamphlet); all references to pages are to pages in original reports.

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We are also of the view that steps should be taken as soon as practicable to erect boundary pillars on the trade routes to Tibet at places where they intersect the MacMahon Line.

The payments of *posa* represent a small amount and the sentimental value attached to it and the probability that any cessation of it concurrently with the coming into force of the new constitution would have most undesirable consequences on the attitude of the tribes, should be kept in mind. It should clearly not be discontinued for the present.

## **2. THE SADIYA FRONTIER TRACT -**

The Sadiya Frontier Tract is the tract between the Subansiri river on the west and the boundary of the Tirap Frontier Tract on the north-east. The latter boundary has been adjusted from time to time. The Frontier area comprising the Sadiya and Tirap Frontier Tracts is somewhat in the shape of parabola which contains the area through which the Brahmaputra river with its tributaries debouches on to the plains. The Sadiya tract may be regarded as falling into two or three distinct portions. To begin with, there is the portion to the west consisting of the valley of the Dibang or Siang with Abor tribes like Minyong, Bori, Galong, Pad am. The Valley of the Dibang in the centre covers the area inhabited by Idu or Chulikata Mishmi, and the valley of the Lohit is inhabited by Digaru and other Mishmi and certain Hkampti and Miri tribes. Included in these three broad divisions is the plains portion of the tract (which includes Saikhoaghat on the south bank of the Lohit river) which runs up to the foot of the hill (roughly along the Inner Line). As in the case of the BaliPara tract, regular administration has yet to be established in portions up to the MacMahon Line, which itself needs to be demarcated by the erection of boundary pillars at least at the points where the trade routes cross into India. The headquarters of the Political Officer is at Sadiya and there is an Assistant Political Officer at Pasighat.

The Assistant Political Officer of the Lohit Valley stays at Sadiya and his jurisdiction includes the Chulikata or Idu Mishmi in the north and the Digaru and others towards the east and south of the tract.

There are no easy lateral communications between the Chulikata area and the Lohit Valley proper.

By inhabitants, the hill tract falls broadly into portions inhabited by Abor (Siang Valley) the Chulikata in the Dibang Valley and other Mishmi in the Lohit Valley, and the Hkampti or Shan who are a comparatively civilised tribe following Buddhism. In addition there is the mixed population of the Sadiya portion to the south of Inner Line containing non-tribals and some Miri. Although the Gallong Abor are somewhat different from the Padam and Minyong the languages are practically the same and the whole of the Abor Tract could be regarded as reasonably uniform. The Mishmi area, though it falls into two separate portions along the Dibang and Lohit Rivers respectively, and the tribes do not understand one another's language, could be treated as one. The Hkampti area which is the third one is small and the Sadiya population is a mixed one. The area beyond the Inner Line which is not censused is estimated to contain 250,000 Abor 40,000 Idu, 25,000 Digaru and Miji and about 2,000 Hkampti. The censused portion is an area of 3,309 square miles with a total population of 60,118 of which 39,974 are of tribal origin.

The total area of the tract may be in the neighbourhood of 15,000 square miles and its development and administration clearly necessitate the sub-division of the tract and the appointment of more officials. In fact the Political Officer has already recommended the division of the tract into two portions based on Pasighat and Sadiya respectively. This is roughly equivalent to a division into the Mishmi area and the Abor area respectively and the proposals under consideration at present seem to contemplate the posting of a Political Officer at Sadiya for the Mishmi Agency with an Assistant with headquarters at Walong (Lohit Valley) and a second Political Officer at Pasighat (now the headquarters of an A. P.O.). The main reason for keeping Sadiya as the headquarters for the Mishmi Agency would appear to be the lack of lateral communications between the Chulikata area in the Dibang Valley and the Digaru area in the Lohit Valley. It is clear however that Sadiya and the portion up to the Inner Line is in the plains and contains a mixed population. Cultivation in this tract is also settled and the people of the tract desire that it should not continue under the present system of exclusion. Moreover, there is the area occupied by the Hkampti who are settled cultivators professing Buddhism which has also spread a good deal of literacy among them. *Prima facie* there is a strong case for treating the plains portion of the tract as well as the Hkampti portion as regularly administered areas in the form perhaps of a separate subdivision or district. The distinctness of the Hkampti must however be borne in mind and the area will probably have to be treated as a separate taluk. An early and detailed examination of the whole question is clearly called for. If Sadiya is treated as plain, suitable headquarters for the Political officer of the Mishmi Area needs to be looked for keeping in mind the difficulties of communication between the Dibang and Lohit valleys.

With the exception of the Hkampti who are settled cultivators, and may be regarded as comparatively civilised, and a few people in the plains portion who also do settled cultivation, the Abor and Mishmi pursue *jhuming* and appear to exhibit little competence in the art of raising crops. They of course eke out a livelihood by keeping poultry, sheep and *mithun*. The herds of *mithun* kept by these tribes are in fact the occasion for disputes between people as raiding for *mithun* seems to be in this area what head-hunting is in the Nag a tribal area. Serious quarrels arising out of raiding for *mithun* may call for the intervention of the Political officer. The tribes are generally heavily addicted to opium and attempts to keep the growth and consumption of opium in check seem to be meeting with little success. Though we feel that the Abor and Mishmi are people who can be educated and assimilated to civilised administration in a comparatively short time, there is little literacy or education among them at present, and the depth of the area over which control has been established beyond the Inner Line does not seem to be great. Communications are the urgent need so that greater contact is possible even if the lack of education is regarded as no impediment. By the time the five year plan has been worked out (it contemplates the making of a road to Walong and improvement of communications in other respects also) it may be possible to give effect to the keenly expressed desire among the Abors of a share in the provincial administration. It is obvious that the pace of establishment of full-fledged administration in this area should be accelerated. A beginning should however be possible by way of political education of

the people, if tribal councils are set up to enable the different tribes to come together to discuss matters of mutual interest and understand the problems of administration.

The forests of this tract can produce a good revenue but land revenue in the plains portions amounts to about 50,000 and the poll tax which is also levied in this area amounts to about 15,000. This forest revenue in 1946-47 was 430,000.

### 3. THE LAKHIMPUR AND TIRAP FRONTIER TRACTS -

The exact position, legal and *de facto* is not clear. The Lakhmipur Frontier Tract is mentioned as one of the North-East Frontier Tracts scheduled as an excluded area. No frontier has as yet been laid down between Burma and India in this region. There is an area locally known as the Lakhimpur Frontier Tract which is treated as an excluded area with the Deputy Commissioner, Lakhimpur, as the Agent or Political Officer. The Tirap Frontier Tract, which apparently derives its name from the river of that name, is said at present to contain a number of villages added to it from the Lakhimpur Frontier Tract during the war, and the rest of the portion inhabited by Naga tribes towards the Burmese territory. In addition to the Tirap Frontier Tract the Political Officer, whose headquarters are at present in Margherita in Lakhmipur district, is also in charge of a portion of the Naga Tribal Area which stretches along the boundary of the Lakhmipur district till it touches the northern apex of the Naga Hills district boundary and then runs along the eastern boundary of the Naga Hills districts towards its southern projection towards Burma. The area of the Lakhmipur Frontier Tract as shown in the census is about 394 square miles. The area of the Tirap Frontier Tract can of course only be guessed as there is no definite boundary with Burma. It may be in the neighbourhood of 4,000 square miles. In population also the tract differs from part to part. The Lakhmipur Frontier Tract differs "in no way from the surrounding plains; possesses none of the characteristics of the hill areas and need not be considered in relation to the problems of the hill tribes". \*In the portion of the Lakhimpur Frontier Tract which has now been taken into the Tirap Frontier Tract there are several villages inhabited by Kachins and others who are regarded as tribal and pay house tax. In the Tirap Frontier Tract a number of tribes classed as Naga such as Tikak, Yogli, Ranrang, Lungri, Sank-e, Mosang, Morang etc. reside. The whole of the area inhabited by the Naga tribes could appropriately be regarded as part of India since the economic relations of all these tribes are with India and not with any other country. The demarcation of a boundary with Burma is to be taken up therefore on this principal and the question is said to be now under consideration by the Government of India. It is obviously a matter which needs to be expedited.

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\* See North East Frontier and Excluded Areas (C.A. Pamphlet) paragraph 5 (c); all references to pages are to pages in the original reports.

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In the northern portion of the Naga Tribal area (which may be really regarded as part of the Tirap Frontier, since for a considerable distance the boundary of this area runs along with the eastern boundary of Lakhimpur district) there are tribes classed as Konyak Naga and the relations of this area are also with the plains portion of the Lakhimpur district. For instance it is common for tribes from Namsang and Borduria to come frequently to Jaipur for their marketing etc., and a good number of them seem to speak Assamese. The area is thickly populated. The Singpho or Kachin are Buddhists and they had chiefs belonging to the old ruling family before the country was taken over in 1839. The agreements entered into in 1826 and 1836 are a dead letter and though the chiefs are consulted by the Political Officer whenever there is any dispute to be settled or other matter to be dealt with, the Political Officer is being looked up to more and more, and the chief is regarded only by way of being an adviser to the Political Officer.

Agriculture is mostly by the primitive method of *jhuming* and there are no educational facilities. The economic condition of the tract is pretty poor. The Kachin however are settled cultivators and are in a better position than the Nag a. In the Nag a Tribal Area head hunting is still practised and slavery also seems to exist.

For the Tirap Frontier Tract also the five year plan approved by the Government of India contemplates the extension of the benefits of administration. The headquarters is proposed to be moved to a place in the interior called Horukhunma and hospitals and schools are to be constructed. Both in the Tirap Frontier Tract and the Naga tribal area the policy is just the same, namely the extension of administration gradually up to the Burma frontier. This policy appears to us to be the correct one to follow, whatever the legal status of the area may be under the Government of India Act. As in the case of the MacMahon Line frontier, all the portion between the Burmese boundary and the administered area of Assam should be merged in Assam as soon as possible and the distinction between Tribal Area and administered Indian territory abolished.

The Lakhimpur Frontier Tract need no longer be treated as an excluded area. As regards the portions of this tract taken over into the Tirap Frontier Tract the justification for continuing it as a frontier area needs to be further examined and if no difficulty is likely to be caused by the inclusion of the Kachins and other tribes who live there in the Lakhimpur district the area should be merged in the district. In the rest of the area, steps should be taken to organise non-statutory tribal councils, panchayats etc., in anticipation of the time when this tract will be fit for inclusion in the provincial administration. For the proper administration of the Naga Hills tribal area it would appear desirable to provide more officials, and a separate officer with headquarters as close as possible to the area, if not inside, is necessary. It would appear that there is already sanction for a separate Sub-divisional Officer at Mokokchung under the control of the Deputy Commissioner. Naga Hills district but the present arrangement by which the tribal area is shared between the Deputy Commissioner, Kohima, and the Political Officer. Tirap Frontier Tract, needs to be further examined. It would perhaps be best to divide the portion into two districts one which will in due course either merge with the existing Naga Hills district and form a sub-division thereof or be a Konyak district, and another which will form a portion of another district under an officer with headquarters in the present Tirap Frontier Tract.

#### **4. NAGA HILLS DISTRICT -**

The Naga Hills District is an area of 4,289 square miles bounded on the east by the Naga tribal area, on the south by Manipur State and on the west by the Sibsagar district. The population was given as 189,641 of which 184,766 or 97.4 per cent were tribal, at the 1941 census. The district is inhabited by a number of Naga tribes notably the Angami, the Sema, the Lhota and the Ao. Of these tribes Angami are the most numerous and inhabit the area round Kahana, their number at the 1941 census being slightly over 52,000. The Aos are the next numerous numbering over 40,000 and the Semas come third with 35,741. These two tribes inhabit the area round Mokokchung which is a separate sub-division of the district, and the Sema also inhabit the region to the north-west of the Angami country. The tribes speak different languages and their *lingua franca* is Assamese or Hindustani. They have also differing customs and traditions. Areas claimed by the tribe or village are jealously guarded against encroachment and to such an extent in the Naga Tribal Area that a villager seldom ventures outside his village boundary. Within the boundary of the district proper there is generally speaking regular administration though during the war a slightly different atmosphere might have been introduced. Though the percentage of literacy among male Naga is about 6 only, quite a good number of these have received high education. Female literacy among the Naga is however negligible, though in the Mokokchung Sub-division it was found to be nearly four per cent. Literacy seems to be higher in the Mokokchung area than the Kohima area and the demand for education is also keener here. As regards economic circumstances a good deal of terracing is done in the Angami areas and a number of Nagas seem to have taken up non-agricultural occupations--the planting of gardens, etc.

It has been mentioned that the district is inhabited by mutually exclusive, diverse tribes. A movement for unification has however been afoot in the last two or three years and a body known as the Naga National Council (with sub-councils of the different tribes) was formed in 1945. Though a non-official political organisation, many of its leaders and members are Government officials and the organisation has also received official recognition locally. Thus the anomalous position of Government servants participating in political activity exist and in part this situation is due to the fact, that the educated, influential and leading elements are Government servants. Though the formation of this Council may be taken as an indication that the unity of administration has given a sense of unity to the different tribes it would perhaps be a mistake to suppose that there has been any real consolidation, and the tenacity with which the tribes hold on to their own particular views of traditions is still a potent factor. A notable characteristic of Naga\* tribes is that decisions in their tribal councils are taken by general agreement and not by the minority accepting the decisions of the majority. This feature, though perhaps well suited to village affairs, may lead to many an unsatisfactory compromise in matters of greater movement.

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\* Other tribes have this characteristic also in greater or lesser degree.

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In June 1946, the Naga National Council passed a resolution expressing their approval of the scheme proposed by the Cabinet Mission in the State Paper of May 16, 1946, and their desire to form part of Assam and India. The resolution protested against the proposal to group Assam with Bengal. This resolution and the feeling which prompted it seems to have held the field throughout 1946, and the Premier of Assam who visited the district in November 1946 was greeted with the utmost cordiality. Early in 1947 the Governor of Assam, Sir Andrew Clow, visited the Naga Hills and advised the Nagas that their future lay with India and with Assam. Subsequently, towards the end of February 1947, the Naga National Council passed a resolution in which they desired the establishment of "an Interim Government of Nagas with financial provisions, for a period of ten years at the end of which the Naga people will be left to choose any form of Government under which they themselves choose to live." This resolution was of course completely different from the previous one in that it was based on the idea of being a separate nation and country. Subsequently the Naga National Council sent another memorandum in which they mentioned a "guardian power" without however stating who should be the guardian power, and it was found that they were extremely reluctant to express any choice openly between the three possibilities of the Government of India, the Provincial Government and H.M.G. It would appear that this was the formula on which a general measure of agreement could be obtained among the Nagas since there were clear indications that many of them were inclined to take moderate views more on the lines of the original resolution passed at Wokha but in view of the intransigence of certain other members, probably of the Angami group, they were prevented from doing so.

Subsequent events connected with the visit of H. E. the Governor to the Naga Hills on the 26th of June 1946 show that the Nagas have dropped their extreme demands. The substance of the claims made by the Nagas is now to maintain their customary laws and courts, management of their land with its resources, the continuance of the Regulations by which entry and residence in the Hills could be controlled and a review of the whole position after ten years.

## **5. LUSHAI HILLS DISTRICT -**

This district has an area of 8,142 square miles and lies to the south of the Surma Valley. It forms a narrow edge-shaped strip of territory about 70 miles wide in the north tapering to almost a point at its southern extremity and separates Burma from the State of Tripura and the Chittagong Hill Tracts of Bengal on the east and south-east respectively. With the exception of a small area at its southern

extremity which is inhabited by Lushai tribesmen, the rest of the district is inhabited by the tribes known as Lushai or Mizo and found elsewhere in North Cachar sub-division, and Manipur as Kuki. The communications with the main inhabited areas of Aijal (headquarters) and Lungleh are difficult and there is only a bridal path connecting Aijal with Silchar. From Serang, near Aijal, communication by river, along the Dhaleswari, is possible and Demagiri in the south is connected with Rangamati in the Chittagong Hill Tracts, by the Karnaphuli river. There is also a bridal path connecting Lungleh with Rangamati. The population of this district is 152,786 according to the last census and over 96 per cent of the population is tribal. The district as a whole is hilly, with a general elevation of between 3,000 and 4,000 feet and the slopes are usually quite steep.

*Jhuming*, with the exception of certain orange gardens, is the common form of cultivation, and terracing and wet cultivation present many difficulties. Spinning and weaving is a common cottage industry, and every woman in a Lushai household spins and weaves for the needs of the family. Most attractive tapestry work is done in these hills and the designs make a very colourful display. Much of the weaving and spinning is done however for personal use and not for sale. The degree of literacy in the area is very high; the reason for it being probably the fact that a large proportion of the population is Christian and the Sunday Schools have assisted the spread of literacy even among the adult men but, apart from a few Government servants, the number of people following non-agricultural occupations is negligible. The general level of intelligence and civilised behaviour in this area is high and compares favourably with most places in the plains.

There are no local self-governing institutions and village life is to a great extent dominated by the chief who is generally hereditary\*. Formerly the number of chiefs was small, probably 50 or 60, but on account of the increase in population and the growth of new villages the present number is over 300. The chiefs settle disputes in the village, make a distribution of land for *jhuming* and generally carry out any orders issued to them by the officials including such work as collection of taxes. Of late the relations between the chiefs and the people has been rather strained, and it would appear that one reason for this is the convening of the so-called District Conference by the Superintendent of the Lushai Hills. The "Mizo Union" was started sometime ago by the people (including chiefs also as members) as a non-official organisation, with the consent of the Superintendent. This organisation seems to have been without a rival to begin with but in 1946 the Superintendent convened the District Conference with a membership of 40 of which 20 were commoners and 20 were chiefs. The District Conference was supposed to be elected by household franchise at the rate of one voter for every 10 houses and in the first conference, the chiefs and the people had separate electorates, that is the people elected their own representatives and the chiefs theirs. The conference apparently created little enthusiasm and the large representation of chiefs on it must have caused some dissatisfaction. The Superintendent was the President of the conference. Towards October 1946 this conference seems to have broken down and was virtually abandoned. Shortly before the visit of the Sub-Committee however fresh elections were held by the Superintendent. At this election a change was made in the franchise so that the separate electorate was abolished and chiefs and commoners voted jointly. The ratio of chiefs and commoners was however maintained and on this account the "Mizo Union" decided to boycott the elections with considerable effect on it. In fact it is claimed by the Mizo Union that only two or three hundred voters actually took part in the elections. However this might be, the convening of the District Conference which was claimed to be an elected body obviously brought it into rivalry with the Mizo Union, and since the conference was supported by the Superintendent, the Mizo Union incurred official disfavour!. The Superintendent being the President of the conference and the chiefs being largely under official control and influence, there was apparent justification for the suggestion that the District Conference was not representative of the views of the people. In fact the attitude of the Superintendent gave us very good reason to believe that the District Conference was completely dominated by him and was his mouthpiece. The Superintendent himself propounded a scheme before the Committee the purport of which was that all local affairs should be managed by a constitutional body elected by the district who would have their own officers appointed by themselves and that the Government of Assam or of the Union should pay only a certain sum of money amounting to the deficit of the district and enter into an agreement regarding the defence of the

district and its external relations. To what extent the Superintendent believed that the Lushais could actually administer their own affairs efficiently in every matter other than defense is a matter of some doubt because in answer to a question whether he thought that the whole administration could be managed by them, he replied "I will not guarantee that it could be done". (See p. - Vol. II Evidence). In answer to a further question he gave it as his opinion that it would not be very long before the district could manage its own affairs and that the length of the period would depend upon whether there was interference from outside by bodies that are too powerful or not. The general impressions gathered by us during our discussions with representatives of various interests in the district was that, with the exception of a few people who are under the influence of the Superintendent, the attitude of the rest was reasonable and it would not be long before disruptive ideas prevailing now completely disappear.

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\* A certain number of non-hereditary appointments have been made of late by the Superintendent.

! There were incidents earlier leading to the seizure of the Mizo Union's funds by the Superintendent.

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The main emphasis in the demands of the Lushais was laid on the protection of the land, the prevention of exploitation by outsiders and the continuance of their local customs and language.

The district has a revenue of about 2 lakhs and an expenditure amounting to about six lakhs. A high school has recently been started. The Assam Rifles are stationed at Aijal and Lungleh.

## **6. THE NORTH CACHAR HILLS SUB-DIVISION -**

This area is a sub-division of the Cachar district whose head quarters is Silchar. It is an area of 1,888 square miles inhabited by 37,361 people of which 31,529 were tribals, the remainder being accounted for by the various railway and other colonies of outsiders. The main feature of this sub-division is that it contains a number of different tribes namely the Cachari, the Naga, the Kuki and Mikir; a small number of Synteng or Khasi also inhabit the area. The general characteristic is that the tribes named above, with the exception of one or two villages of Naga inhabited by a few Kuki, live in areas of their own and there is no intermingling of population of the different tribes in the villages. The Zemi Naga are however not in a compact block and live in three different portions with Kuki or Cachari in the intervening portion. The Mikir form a pocket to the north-west of the area and the Cachari roughly inhabit the central and south-west portions. The Cachari are the most numerous of the tribes with a population of about 16,000; the Kuki are about 7,000 and the Zemi about 6,000. Relations between the Kuki and the Naga are said to be unsatisfactory though for the time being relations appear to be good. It may be mentioned here that the Zemi have still unpleasant memories of bad treatment by the Angami of the Naga Hills District and there is not much love lost between them though they showed themselves responsive to instructions given by certain Angami officials from Kohima.

There is little literacy in this area and cultivation is by the primitive method of *jhuming*. Unlike the Angami areas in the Naga Hills District, the hill sides here are much steeper and, apart from rainfall, there is no scope for irrigation. Then again, unlike the Angami, the Zemi live in small hamlets and it is not an easy matter to find adequate labour for the introduction of terracing and wet cultivation. A certain number of orange gardens have been planted and potatoes have been introduced into the district. There is little doubt that with the encouragement of education, for which there is a demand the tribes can be brought up to the level of the others; but at present while they are quite capable of understanding the broad outlines of the democratic mechanism and can take part in elections, it is unlikely that they will be able to manage a body like a local board without official aid. The main difficulty in this portion is however

that caused by the existence of different tribes who have little feeling of solidarity among themselves. Quite recently a sort of tribal council to bring, together the different tribes with a view to educating them in local self-government was undertaken by the Sub-Divisional Officer, but the Mikir, influenced as they were by people from the Mikir Hills who wanted an amalgamation of the Mikir area with the Mikir Hills portion, would not co-operate in the joint council. Then there is the question of choosing a common representative. The Cachari being the most numerous have some advantage and the area is obviously too small for the representation of more than one in the provincial legislature. It is likely however that there will be a sufficient combination for the purpose of electing a common representative. Since this area cannot share a representative with plains areas, the population of 37,000 will have to be provided with a representative of their own. If however a local self-governing body is formed in this district it is clear that there will have to be some kind of regional arrangement by which the different tribes have their own separate councils which will then come together in the form of a council for the whole sub-division.

Like most other hill districts this area is also a deficit area. The same feeling which exists in other areas about safeguarding land and protection of the land from occupation by outsiders as well as excluding them also from other activities which may lead to exploitation prevails here. One feature of this area is that among the different tribes it is Hindustani which is more of common language than Assamese.

#### **7. KHASI AND JAINTIA HILLS -**

This partially excluded area consists of the Jaintia Hills formerly forming part of the Kingdom of the old Jaintia Kings and now forming the Jowai Sub-division, and some 176 villages in the Sadar Sub-division. The Khasi and Jaintia Hills as a whole consists of a large territory between the Garo Hills on the west and the North Cachar Hills and the Mikir Hills on the east. The Khasi States which consist of 1,509 villages cover the western portion of the Hills and the British villages are interlaced with them. The people of the Jowai Sub-division are known as Synteng or Pnar and speak a dialect but with the exception of a small number of Mikir on the northern slopes of the Hills, the whole population of these Hills may be regarded as uniform. Unlike their neighbours who speak Tibeto-Burman tongues the Khasi form an island of the MonKhmer linguistic family.

The Khasi States, which are about 25 in number, are some of the smallest in India. The largest States are Khyriem, Myllem and Nongkhlaio and the smallest is Nonglewai. The system of inheritance of Chiefship is described as follows: -

"The Chiefs of these little States are generally taken from the same family inheritance going through the female. A uterine brother usually has the first claim and failing him a sister's son. The appointment is however subject to the approval of a small electoral body, and the heir-apparent is occasionally passed over, if for any reason, mental, physical or moral, he is unfit for the position. The electors are generally the myntries or lyngdohs, the representatives of the clans which go to form the State." In Langrin, the appointment is by popular election. In some of the States, if the Myntries are not unanimous in their choice, a popular election is held. The Chiefs are known as siem in most States; but in some they are called Sardar, Lyngdoh in three of them and Wahadadar in one. The functions of the chiefs are largely magisterial and in the discharge of their duties they are assisted by their My tries. The relations between them and the Government of India are based upon sanads issued to them. For specimen of these sanads Volume XII of Aitchison's Treaties Engagements and Sanads may be referred to. Under the terms of the sanad, the chiefs are placed completely under the control of the Deputy Commissioner and the Government of India and waste lands as well as minerals are ceded to the Government on condition that half the revenue is made over to the Siems. Their criminal and civil authority are also limited. The sanads do not mention the right to levy excise on liquor and drugs and presumably the Siems have that right. Though the States are not in the partially excluded areas, the main interest attaching to them is the fact

that there is an understandable feeling among the people of the States that there should be a federation between the States and the British portions so that all the Khasi people are brought under a common administration. The position is that in the British areas, though there is now the franchise and a member is sent to the provincial legislature, there is no statutory local body for local self-government. The States, on the other hand, enjoy certain rights as stated above, and the problem is to bridge the gap.

The Khasi and Jaintia Hills have the advantage of the provincial head quarters Shilling, being situated among them. Literacy among the Khasi amounts to about 11 per cent with a male literacy of 19 per cent. The district is already enfranchised and the special features which it is desirable to bear in mind is the matriarchal system prevalent there, the democratic village systems and other special customs and traditions. Cultivation in the Khasi and Jaintia Hills maybe regarded as comparatively advanced. There is a good deal of wet cultivation and the culture of oranges and potatoes is common. The Khasi have also taken to non-agricultural professions much more than other hill people.

## **8. THE GARO HILLS -**

Which is the butt-end of the range of hills which constitute the water shed for the Brahmaputra and the Surma Valleys. The Garo who inhabit these hills are people of Tibeto-Burman origin and are similar to the Cachari. The area of the district is 3,152 square miles and it is inhabited by a population of 233,569 of which 198,474 or nearly 85 per cent, are tribals, mainly Garo. The Garo inhabit not only the district which bears their name but there are villages inhabited by them in Kamrup and Goalpara also and portions of the Mymensingh district of Bengal joining the Garo Hills is inhabited by thousands of Garo.

The Garo are a people with a matriarchal system like the Khasi. The tribal system of the Garo is highly democratic and the whole village with the Nokma as the head or chairman takes part in the council if any matter is in dispute. The district as a whole is pretty backward with only about five literates in a hundred and lacking in communications. Christian missions have been active and there has been a certain amount of conversion but on the whole the Garo even while being able to produce a fair number of intelligent and literate people have yet to come up to the degree of the Khasi or the Lushai. Franchise at present is restricted to the Nokma but is unlikely that there will be any great difficulty in working a franchise system based on adult franchise than in most other areas.

In the Garo Hills also the sole occupation is agriculture and though garden crops are grown round the huts sometimes, the method is largely that of *jhuming*. The people weave their own clothes but there is no important cottage industry. The area is however much more in contact with the plains on either side of it than areas like the Lushai Hills or the Naga Hills.

The Garo are keenly desirous of uniting all the villages inhabited by Garo whether in the plains of Assam or in the Mymensingh district of Bengal under a common administration. The Bengal district of Mymensingh seems to be the home of about 48,000 Garo most of whom are on the fringe of the Garo Hills, and the question of rectification of the boundary to include this area in the Garo Hills district of Assam definitely deserves consideration. A similar examination is necessary in respect of other Garo villages in the Kamrup and GoalPara districts of Assam.

## **9. THE MIKIR HILLS -**

The partially excluded area of the Mikir Hills with an area of about 4,400 square miles and a population of about 150,000 persons is split up between two districts namely Nowgong and Sibsagar. The Mikir Hills form an area rather irregular in shape into which there projects an enclave of the Assam Valley. The western extremity of the partially excluded area actually reaches a point in the Khasi Hills and eastwards, it extends to a point not far from Dimapur while to the north it approaches Golaghat. It is

clear that the irregular shape of this area makes the administration from centres outside the area rather inconvenient which apparently is the reason why the district has had to be split up between two plains districts. Being a rather sparsely populated\* area with rather less than 50 persons to the square mile and containing no communications other than the railway passing through it, it has apparently not been considered suitable for treatment as a separate district. The Provincial Government has at present under consideration a proposal for the making of the whole of the Mikir Hills area into a separate sub-division, perhaps on the analogy of the North Cachar Hills Sub-division. Divided between two districts as it is and consisting of inhospitable territory in which *jhuming* is the only method of cultivation practised while malaria takes its toll, it has been sadly neglected in many ways and special steps are necessary for its development. Very obviously the present state of affairs where it is divided between two districts cannot continue if the area is to be developed and it should be made either a district or a sub-division with its headquarters somewhere in the middle of the bend so that it is accessible from both extremities. The area includes certain mouz Barpathar and Sarupathar inhabited very largely by non-tribals which even at the time of the constitution of the partially excluded areas were considered doubtful areas for exclusion, and the Provincial Government have since taken a decision that the areas should be added to regularly administered portions as soon as possible.

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\* It may be noted however that the Lushai Hills are also sparsely populated and there is no railway running through it.

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The Mikir are probably the most backward of all the tribes of the Assam Hills though this backwardness is probably not their own fault. There are pockets of Mikir in the North Cachar and the Khasi Hills. Like the Garo and Khasi the Mikir desire the consolidation of their own tribesmen under a single administration. Unlike the Lushai or the Khasi Hills, Christianity has made little progress here.

While the special customs of the Mikir, their addiction to *jhuming* cultivation etc. necessitate that an arrangement must be made by which they are able to maintain their own system, the Mikir Hills at present find representation in the provincial legislature although through the restricted franchise of the headman, and opinion generally is that there is no objection to the extension of adult franchise in the area. The sparse population may give rise to certain practical difficulties in organising elections there but it would appear that these are not insurmountable.

The Mikir Hills are inhabited to some extent by Cachari (about 2,000) Rengma Naga and a few Kuki, but on the whole, the population may be regarded as uniform.

In view of the comparatively backward state of the Mikir and the fact that there are no self-governing institutions of a statutory type locally, it is necessary in introducing institutions of this kind to arrange for a period of supervision and guidance in other words, any local council set up in the hills should at first be subject to the control of the local District or Sub-divisional officer.

**G. N. BARDOLOI**

(Chairman),

J. J. M. NICHOLS-ROY,

RUP NATH BRAHMA.

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**APPENDIX C**

**[Annexure VIII]**

**SUMMARY OF RECOMMENDATIONS OF THE ASSAM SUB-COMMITTEE.**

District Councils should be set up in the Hill Districts (see Section \*B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required for the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Para. \*9 Section C (1) Appendix A]. \*

2. Reserved forest will be managed by the Provincial Government. In questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the Hill people should be taken into account (Para. \*10).

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, *jhuming* should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of *jhuming* should be left to the local councils [Para. \*11 and Section C. of Appendix A]\*.

4. All social law and custom is left to be controlled or regulated by the tribes [Para. \*12 and Section C (2) of appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit magistrates or judges [Para. \*12 Sections D & F of Appendix A].\*

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some integration with the general system of the province and it is left open to the Provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable [Para. \*13 and Section E of Appendix A]\*.

For the Mikir and North Cachar Hills the District or Sub Divisional Officer, as the case may be, should be ex-officio President of the local council with powers, subject to the control of the Government of Assam, to modify or annual resolutions or decisions of the local councils and to issue such instructions as

may be necessary [Para. \*13 and Section B (5) of Appendix A]\*.

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest [Section \*H of Appendix A and Para. 14 (a)]\*.

Statutory provision for a fixed proportion of provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived from the district and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoyed either by statute or by Instrument of Instructions [Section \*M of Appendix A and Para. 14 (b)]\*.

It is quite clear that the urgent requirements of the hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill-districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section \*N of appendix A and Para. 14 (c)]\*.

The claim of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognised [Para. 14 (d)]\*.

7. If local councils decide by a majority of three-fourths of their members to licence moneylenders or traders they should have powers to require moneylenders and professional dealers from outside to take out licences [Para. \*15 and Section J of Appendix A]\*.

8. The management of mineral resources should be centralised in the hands of the Provincial Government but the right of the district councils to a fair share of the revenues is recognised. No licence or lease shall be given by the Provincial Government except in consultation with the local Council. If there is no agreement between the Provincial Government and the district Council regarding the share of the revenue, the Governor will decide the matter in his discretion [Para. \*16 and Section 1 of Appendix A]\*.

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. \*17 and Section L of Appendix A]\*.

10. It is necessary to provide for the creation of regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional councils may delegate their powers to the district councils [Para. \*18 and Section B (4) of Appendix A]\*.

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the legislature. The Governor is also given powers to dissolve the council if gross mismanagement is reported by a commission [Para. \*19 and Sections Q and R of appendix A]\*.

12. The Central Government should continue to administer the Frontier Tracts and Tribal Area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the Provincial Government with the approval of the Federal Government [Section \*P of Appendix A and Para. 20 (a)]\*.

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Naga Tribal Area [Para. \*20(a)]\*.

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the Provincial Government with a view to a decision whether it could immediately be brought under provincial administration. A similar examination of the position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the BaliPara Frontier Tract around Charduar should also be subject to a similar examination [Para. \*20 (b)]\*.

*Posa* payment should be continued [Para. \*20 (c)]\*.

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. \*21 (a) and Section B (1) of Appendix A]\*.

Weightage is not considered necessary but the hill districts should be represented in the provincial legislature in proportion not less than what is due on their population even if this involves a certain weight age in rounding off. The total number of representatives for the hills thus arrived at [See par a. 21 (b)] should not be taken into account in determining the number of representatives to the provincial legislature from the rest of Assam [Para. 21 (b) and Section K of Appendix A]\*.

The total population of the hill-districts justifies a seat for the hill tribes in the Federal Legislature on the scale proposed in Section \*13 (c) of the Draft Union Constitution [Para. \*21 (c)]\*.

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [ par a. \*21 (d) and Section K (3) of Appendix A]\*.

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para.\*21 (e) and Section K (8) of Appendix A]\*.

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions or corresponding provision [Para. \*22 - See also Section O (3) of Appendix A]\*.

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Para. \*23]\*.

16. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Para. \*24 and Section O (i) of Appendix A]\*.

17. Plains tribals number 1.6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee [Para. \*25]\*.

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. \*26]\*.

19. Non-tribal residents may be provided with representation in the local councils if they are sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. \*27 and Section B (2) of appendix A]\*.

20. Provincial councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. \*29 and Transitional Provisions of Appendix A also]\*.

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\* References to paras., sections and appendices are to paras., sections and appendices in the original reports  
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## **APPENDIX D**

### **[Annexure I]**

#### **CONSTITUENT ASSEMBLY OF INDIA**

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#### **EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM)**

#### **SUB-COMMITTEE [VOLUME I (REPORT)]**

#### **Sub-committee**

1. Shri A. V. Thakkar - Chairman.

*Members:*

2. Shri Jaipal Singh.

3. Shri Devendra Nath Sam anta.

4. Shri Phul Bhanu Shah.

5. The Honourable Shri Jagjivan Ram.

6. The Honourable Dr. Profulla Chandra Ghosh.

7. Shri Raj Krushna Bose.

*Co-opted Members:*

8. Shri Khetramani Panda (Phulbani Area).

9. Shri Sadasiv Tripathi (Orissa P. E. Areas).

10. Shri Kodanda Ramiah (Madras P. E. Areas).

11. Shri Sneha Kumar Chakma (Chittagong Hill Tracts).

12. Shri Damber Singh Gurung (Darjeeling District).

*Secretary:*

13. Mr. R. K. Ramadhyani, I. C. S.

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**[Annexure II]**

**APPENDIX D**

From

**THE CHARIMAN, EXCLUDED & PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM)**

**SUM-COMMITTEE.**

To

THE CHAIRMAN, ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, ETC.

SIR,

I have the honour to submit herewith the Report of my Sub-Committee for the Excluded and Partially Excluded Areas of Provinces other than Assam. We have visited the Provinces of Madras, Bombay, Bengal, Central Provinces and Orissa, and in regard to these Provinces our recommendations may be taken as final. We have yet to visit Bihar and the United Provinces and to examine certain witnesses from the Punjab. In respect of these Provinces, the Report may kindly be treated as provisional. Our final Report is expected to be ready by the end of September.

I have the honour to be,

SIR,

Your most obedient servant,

**A. V. THAKKAR,**

*Chairman,*

*Excluded & Partially Excluded Areas*

*(other than Assam) Sub-Committee.*

NEW DELHI;

*The 18th August 1947.*

**[Annexure III]**

## **APPENDIX D**

### **INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE OF THE ADVISORY COMMITTEE (CONSTITUENT ASSEMBLY OF INDIA).**

#### **1. INTRODUCTORY -**

Appendix A\* shows the excluded and partially excluded areas for which we are required to submit a scheme of administration. Appendix B\* contains certain statistical information and the thirteenth schedule to the government of India (provincial Legislative Assemblies) Order, 1936, which shows the different tribes classed as backward, and among these tribes are to be found the inhabitants of the excluded and partially excluded areas. In determining the areas to be classified as excluded or partially excluded, the Secretary of State for India issued instructions that exclusion must be based upon strict necessity and must be as limited as possible in scope consistently with the needs of the aboriginal population. As regards partial exclusion, he considered that *prima facie* any areas containing a preponderance of aborigines or very backward people which was of sufficient size to make possible the application to it of special legislation and which was susceptible, without inconvenience, of special administrative treatment should be partially excluded. The Government of India in making recommendations for partial exclusion kept in view the possibility of obtaining convenient blocks of territory with readily recognizable boundaries susceptible of special administrative treatment without inconvenience. Thus, the excluded and partially excluded areas are well defined are as populated either predominantly or to a considerable extent by aboriginals. The excluded and partially excluded areas, however, do not by any means cover the entire population of tribal origin, and in many cases represent only a comparatively small proportion of the aboriginal population, the rest of them being scattered over non-excluded areas. As an example, in the C. P., out of 299 millions of tribals of all religions, only 8.3 lakhs live in the partially excluded areas. With the exception of the Mandla District, which is a partially excluded area and contains 60.5 per cent of tribals, Betul and Chhindwara districts which include partially excluded areas and contain 38.4 and 38.3 respectively of tribals, the tribals are scattered all over the province and comprise almost a fifth of the population in some districts. This kind of intermingling is prominently noticeable in Bombay and Bengal and to some extent in other provinces also. In Bengal notably, the tribal population of the excluded areas is but a small fraction of the

total tribal population of the province. A common feature of the partially excluded areas is that they are generally located in the out of the way and hilly tracts, and it is in these areas that concentrations of aboriginal population may be found. In the non-excluded areas although small blocks of them can be distinguished, notably in the Madras Presidency, elsewhere, they are interspersed with the rest of the population and are sometimes hardly distinguishable from the general population. Although our terms of reference strictly require us to report on the excluded areas, the total population of tribals in the non-excluded portions of British India not including Assam comes to about 5.5 millions, and we consider therefore that our recommendations should not altogether leave out of consideration such a large population who in many respects are in a very backward condition. We have felt it therefore necessary to recommend that the whole tribal population should be treated as a minority community for the welfare of whom certain special measures are necessary. Bearing this in mind, we proceed to discuss the general features of the tribal population in the different provinces.

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\* Reference to Appendix is to Appendix in the original report

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## 2. THE EXCLUDED AREAS -

The excluded areas are few in number and consist of the islands of the Laccadive group on the West Coast of Madras, the Chittagong Hill Tracts in Bengal and the Waziris of Spiti and Lahoul in the Punjab. Of these tracts, the West Coast Islands and the Waziris of the Punjab are isolated from the rest of the province on account of their geographical position and the impossibility of communicating with them during a part of the year. The West Coast islands are cut off from the mainland for several months during the monsoon. Similarly, the Punjab Waziris are isolated during the winter when snow blocks the passes. Inaccessibility of these areas is largely responsible for their exclusion as well as for the backward condition of their inhabitants. The position in these areas is briefly given below: -

(a) **Madras.** - The islands may be considered to fall in three divisions, the Amindivi islands opposite the South Canara coast, the Laccadives attached to Malabar and Minicoy, the southernmost of them, also attached to Malabar. The total area is about 10 square miles and the population, all Muslim, 18,355. The Minicoy islanders are of Sinhalese origin while the inhabitants of the others are akin to the Mapillah of Malabar. The economy of the islands is based on the coconut palm and the produce (coir production is a whole family job) is exchanged for rice and other necessities. The administration is carried on largely by customary laws and special regulations. An amin, or monegar (Amindivi) with powers to try petty criminal and civil cases is the official immediately in contact with the islanders and the amin is in fact selected from the islanders. In the Minicoy island, literacy is said to be cent per cent; in the others, it is negligible. There is no appreciable intercourse between these lands of the three groups and their geographical position necessitates separate treatment. While they are located in a strategic position, we understand that the islands are not suitable for naval stations as they are coral islands and there is difficulty in getting fresh water. Hitherto, they have been administered practically in the manner in which relations were started with them in the days of John Company. Rs. 2 lakhs are spent, partly by way of doles including gifts of combs and mirrors, on the visits of the Collector or other official to the islands, but no attempt seems to have been made to increase intercourse between these lands and the mainland.

(b) **Punjab.** - The excluded area consists of Spiti and Lahoul with an area of 2,931 and 1,764 square miles respectively. Spiti has a population of only 3,700 and Lahoul about 9,000 (1941). The people are of

Tibetan origin and Buddhists. The main difficulty about the areas is the difficulty of communication as the passes leading to them are blocked by snow in the winter.

The Provincial Government have now come to the conclusion that Lahoul need no longer be considered as excluded area and should be brought under the general system of administration.

The cultivation of *kuth* has brought some economic prosperity to this area and many Lahoulis have taken to trade also. Spiti is still economically in a backward condition and the schools there are not flourishing. Spiti has still very little of the contact with the plains which Lahoul has. Several agrarian laws have not been applied to Spiti particularly though the most important enactments are now in force without modification.

(c) **Bengal.** - The Chittagong Hill Tracts on the other hand, are not inhabited by a population of Burmese and tribal extraction. They cover an area of about 5,000 square miles and contain a total population of 247,053, mostly Buddhists. In 1941, there were 9,395 literates including 622 females among the tribes out of a population of 233,392. There are 154 schools and a High School at Rangamati. There is a good deal of contact with the plains people in the western portion of the tract, but the eastern portion towards the Lushai Hills and the Burmese border is more primitive.

*Jhuming* cultivation is practised almost universally and it would appear that there are considerable difficulties in the way of terraced or wet cultivation on account of the friable nature of the hill sides and the difficulty of irrigation. Some settled cultivation also exists and it may happen that a family does both kinds of cultivation. Both plough rent and *jhum* tax are levied. Pressure on the land is increasing and the tribes are greatly apprehensive of encroachment by outsiders.

Weaving and tapestry is a common household occupation but cannot be said to be a cottage industry though it has potentialities in that direction. The district is deficit to the extent of about Rs. 2 lakhs.

The special feature of the Chittagong Hill Tracts are the Chiefs, the Chakma Raja, the Bohmong and Mong Raja. The tract is divided into three circles representing the jurisdiction of the Chief. The Chakma circle is the largest and is 2,409 square miles; the Bohmong and Mong circles are 1,935 and 704 square miles respectively. The chief have certain magisterial and appellate powers and out of the *jhum* tax of Rs. 6 per family. Rs. 2-8-0 goes to the Chief, Rs. 2-4-0 to the headman and Rs. 1-4-0 to the Government. On the ground that they are really tributary powers, the Chiefs are claiming the status of Indian States and desire that three States corresponding to the circles should be set up. It is claimed that before the *jhum* tax was imposed there was a capitation or family tax and that the right to levy this tax was a symbol of sovereignty. In 1928, a report on the position of the chiefs was submitted by Mr. Mills who recommended that the chiefs should be relieved of the collection of *jhum* tax and should also be relieved of their magisterial duties, the powers of Honorary Magistrates being conferred on them if they were proved fit. His idea was that "they were the leaders of their people and in that lay their value" and they should therefore be consulted in all important matters of the administration. Their position and future is a matter of some importance and needs careful examination by the Provincial Government. We do not feel that we can express a carefully considered opinion.

Now that Bengal is to be partitioned, the future administration of the Hill Tracts appears to lie with Assam. The Lushai Hills form in part the hinterland of this district and though communications to the east are not easy, they are not more difficult than with Chittagong. The Karnafuli provides a waterway to Demagiri which is connected with Lungleh in the Lushai Hills. The *Chakma*, *Magh* and *Mro* of these Hills have probably their tribal origin in common with the Lushais and in any case the province of Assam is the home of many different tribes. It is obvious that the Hill Tracts should not go to East Bengal in view of its predominantly non-Muslim population. The people themselves are strongly averse to inclusion in Bengal. They desired that the area should be set up as an autonomous district.

### 3. PARTIALLY EXCLUDED AREAS -

The main feature of the Partially Excluded Areas is that they are not altogether excluded from the scope of the Provincial Ministries like the excluded areas nor is the expenditure on them outside the scope of the legislature. In fact the administration of the areas notably of the C. P. and Bombay has not been appreciably different from the rest of the province and the Provincial Governments were in greater or less degree opposed to their exclusion. It is in the Agency Tracts of Madras and Orissa and in the Santal Parganas that a different system prevails. A brief account of the areas of each province follows: -

(a) **Madras.** - The partially excluded areas consist of the East Godavari Agency, the Polavaram taluq of West Godavari Agency. The total area is 6,792 square miles and the total population 493,006 of which about 278,000 are tribal, and 54,000 are classed as backward making a total percentage of 67.6. The tribes inhabiting these tracts are Koya, Koya Dora, Hill Reddy, Dombo, Kondh and others. The tribes are pretty backward on the whole and do podu (shifting cultivation) largely. Except manual labour they have no non-agricultural occupations worth mentioning. There are special agency rules and save for certain sections the Civil Procedure Code does not apply. Crime is scarce and the aboriginals are simple and truthful. The mechanism of justice therefore needs to be a simple one.

There are no local self-governing bodies and tribal panchayats do not seem to be fit for work other than the decision of petty disputes. The toddy palm plays a large part in the life of aboriginals. They have suffered in the past through exploitation by moneylenders and landlords and incidents like the Rampa rebellion have occurred in the areas. Licencing of moneylenders, as agreed by the Collector of West Godavari, is probably a definite need of these parts in addition to the prevention of acquisition of land by non-aborigines.

Yaws and malaria are very common in these parts.

(b) **Bombay.** - The partially excluded areas which are to be found in the districts of West Khandesh, East Khandesh, Nasik, Thana, Broach and Panch Mahals cover an area of 6,697 square miles and contain a population of 1,125,471 of which 663,628 or 58.9 per cent are tribals. The tribes are largely Bhil, Varli, Kokna, Thakur and Katkari. In 1935, the Government of Bombay were not in favour of exclusion of any area except the Mewasi Chiefs Estates and the Akrani Mahal in the West Khandesh District on the ground that the administration of these areas was all along carried on in the same manner as the other tracts and that there were local self-governing institutions in the areas. The Akrani Mahal in the Satpura Hills is an almost purely Bhil area and probably the one with the least contact with the plains.

In 1937, the Government of Bombay appointed Mr. D. Symington to conduct a special enquiry into the conditions prevailing in the aboriginal areas. Mr. Symington pointed out that the local boards were largely or even exclusively run by non-Bhil elected members and opined that it was not a mere question of providing seats for the hill tribes but that these people were not sufficiently educated and advanced either to use their votes sensibly or to produce from among themselves enough representatives capable of looking after their interests intelligently on local boards. "They are not only illiterate but also ignorant of everything outside their daily run. They are contemptuous of education which they regard as a degrading and senseless waste of time. They have more faith in witch-doctors than in pharmacopoeia. They live near the border line of starvation. They are inveterate drunkards. It was not surprising that they take no interest in the local boards elections or local board administration." He also expressed the opinion that the salvation of the aboriginal lay in protecting him from exploitation by the moneylenders who were gradually depriving him of his land, and stopping the drink habit. Giving evidence before us, he reiterated the view that elections would be completely useless so far as these people were concerned.

Among the Thadvi Bhils (Muslims) there is a Sub-Judge. Among the half dozen graduates from the Bhils there is Mr. Natwadkar, the M. L. A. from West Khandesh and there is a lady from the Panch

Mahals. The demand for education is however becoming very keen.

In the Warli areas of the Thana District visited by us practically all the land had been taken up by non-tribals and the tribals were reduced to the condition of landless serfs. The Bombay Government have in fact now found it necessary to pass special legislation to prevent alienation of land. On account of the acquisition of all the land by a few people, the land system in this tract has been virtually transformed from a ryotwari system to a system similar to the malguzari system of the Central Provinces.

(c) **Central Provinces & Berar.** - The partially excluded areas, of which Mandla District is the largest unit, contain only 833,143 tribals out of a total tribal population of nearly 3 millions. The Gond (including Maria and Pardhan) is the main tribe in the C. P. and the Korku in the Melghat are prominent in Berar. Although backward and adhering largely to their own customs and ways in the areas where they are still most numerous, the tribes have in appreciable degree assimilated the life of the rest of the population and tribal institutions are either weak or practically non-existent. Mostly the tribes have taken to settled cultivation and there is little bewart or dahia in the province. Of handicrafts and cottage industries, however, there is next to nothing and this is the great weakness of the aboriginal economy. The aboriginal is given to drink but opinion in favour of temperance or prohibition seems to be gaining ground.

The partially excluded areas are, with hardly any exception, administered in the same manner as the other districts. The C. P. Land Alienation Act of 1916 is the only notable legislation enacted specially for the protection of the aboriginals and restricts the transfer of agricultural land from aboriginal to non-aboriginal classes. In 1940, when the C. P. Tenancy Act was amended to confer rights of alienation on certain classes of tenants, the application of the amending Act to the partially excluded areas was made subject to certain modifications designed to secure that unscrupulous landlords would not manipulate to their own advantage the complicated provisions of the Act.

A special enquiry into the problems of the aboriginals was ordered by the C. P. Government and a report was submitted by Mr. W. V. Grigson in 1942. Among the points made by Mr. Grigson were the weakness of the tribal representatives in the local boards and the need for provisions to prevent the application of legislation to aboriginal areas except after special consideration. Mr. Grigson was also examined by us as a witness and expressed himself in favour of a system of indirect election for the aboriginals. Opinion of a number of C. P. witnesses was not in favour of reserved representation for the aboriginals in proportion to their population. Some witnesses preferred nomination out of a panel submitted by the District Officers. At present there are three tribal members in the Legislature although only one seat is reserved.

The Provincial Government have now created a special Department and inaugurated a scheme of development of the aboriginal areas in which multipurpose co-operative societies play a prominent part. Opinion in the C. P. (as in Bombay) was strongly in favour of boarding schools with free meals as the only way of making schooling acceptable to the aboriginals.

(d) **Orissa.** - This province contains a partially excluded area of nearly 20,000 sq. miles, *i.e.*, almost two-thirds of the province is partially excluded. The partially excluded area includes the portions of the Madras Agency Tracts transferred to Orissa, the Khondmals of the former Angul District and the Sambalpur District which was formerly in the C. P. The total tribal population of the province is 1,721,006 of which 1,560,104 are found in the partially excluded areas. The tribes inhabiting this province are among the most backward in the whole of India. The Bonda Porja, Gadaba, Kondh and Savara are among the most important of them. In 1939 the Orissa Government appointed a special committee to make recommendations for the partially excluded areas (Thakkar Committee) which found that some tracts were too backward to administer even local boards. Although they have representatives in the legislature, four of the five reserved seats are filled in by nomination and some of the nominated

members have to be non-tribals. The percentage of literacy in the Agency Tracts is about one per cent. A backward Classes Welfare Department has recently been setup. The Thakkar Committee made a number of important recommendations which could not be given effect to during the war and are now being taken up.

Apart from the Khondmals which are now attached to the Ganjam Agency, the Angul Sub-division which is a partially excluded area has only 13,308 tribals who form 8 per cent of its population. The Thakkar Committee recommended the administration of this area as a regular district and pointed out that the Angul Laws Regulation is no longer suited to the advanced condition of the people. Even in 1935, it was stated by the Orissa Government that the area was so advanced that it should be possible within a few years to place it on a level with the normal districts ( para. 49, Recommendations of Provincial Government and the Government of India, Indian Reprint).

The District of Sambalpur was made a partially excluded area largely on account of the special system of that district, viz., the distinct system of revenue and village administration. The district was formerly part of the C. P. and the C. P. Revenue Laws and type of village administration were in force. The aboriginal population of the district is 252,095 and constitutes 19.6 per cent. but most of these tribals seem to have assimilated the customs and culture of the surrounding Hindu population. The administration of the district though differing from the rest of Orissa was not radically different from the administration of the C. P. plains districts until 1921. Three of the Zamindar is of Sambalpur had been declared scheduled districts under the Act of 1874, but with the exception of the Insolvency Act of 1920 all other legislation was applied to the district. The Thakkar Committee recommended (para. 397) that the district should cease to be a partially excluded area and should be treated as a normally administered area. The Committee however considered (Para. 402) that some sort of protection was still needed for the aboriginals of that district and recommended certain special measures for the protection of the land of the aboriginals (Para. 403). The tribes in this district consist mainly of Gond (102,765), Kondh, Kharia and Savara. They are concentrated largely in the Sadar Sub-division of the district. Literacy among them is not up to the level of the Scheduled Castes of the District and amounts to only about 2 per cent. They however take part in elections and in the Sambalpur Sadar constituency there is are served seat for the backward tribes. This is the only one of the five tribal seats in the province which is filled by election.

The question of representation for the Orissa tribes presents somewhat of a problem. Local officials had serious doubts as to the possibility of finding suit-able representatives from among them, at any rate in proportion to their population. The Provincial Government have similar hesitations. In their factual memorandum (page. 28\*) they have recommended that local bodies should be partly elected and partly nominated. For the Provincial Legislature, "a specific number of seats should be reserved for aboriginal members in general constituencies; but the aboriginal members should be elected to these seats by a system of indirect or group election."

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\* Reference to page is to page in the original report

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(e) **Bengal.** - The partially excluded areas of Bengal consist of the District of Darjeeling and certain police station areas in the Mymensingh district which border on the Garo Hills of Assam.

The Darjeeling District is shown to contain 141, 301 tribes out of a total population of 376,369 in 1941. The tribal population of the district seems to consist largely of labour employed in the tea gardens and some Lepcha and Bhotia. Actually, the latter are only about 20,000 in number. The prominent

community in Darjeeling is the Gurkha or Nepalese community which numbers about 2 1/2 lakhs. A good many are employed in the tea gardens and the local police force also contains a high proportion of them. The Gurkha are not regarded as a backward tribe and the thirteenth schedule to the Govt. of India (Legislative Assemblies) Order does not include Gurkha. They feel however neglected so far as other ranks of Government service are concerned and in the trade and business of the place, the Marwari has the upper hand. On the other hand, the small community of Lepcha (12,000) finds itself dominated by the Gurkha and one of the complaints is that their land (the Lepcha claim to be the original inhabitants) has been gradually taken away from them by Nepalese immigrants.

The partial exclusion of Darjeeling was recommended by the Govt. of Bengal not because it was considered as backward area but because it was felt that safeguards were necessary in the interests of the hill people. The fact that Darjeeling was the summer capital of the Government of Bengal and the existence of European tea-planters may have played some little part. The 1941 census shows that even among the tribals (mostly tea garden coolies) there was 16,450 literates out of a total population of 141,301 and 2,571 of these were women.

The local bodies (Municipality and District Board) are not wholly elected bodies and the Deputy Commissioner is the President of the Municipality. Undoubtedly the land the hill tribes needs to be protected from the maw of money lenders but there is little case otherwise for continuing partial exclusion or special administration.

The Gurkha League desires that there should be an elected Advisory Council in the District so that the interests of the Gurkhas in representation in the services, in the land and industry of the district may be protected. They have also sponsored a movement for union with Assam where there is a strong Gurkha element.

As regards the partially excluded portion of the Mymensingh District, there are about 49,000 Garo in all but according to the census, some of the *thanas* contain very few tribes. The provincial Govt. were opposed to its partial exclusion in 1935. They pointed out that no special measures had been hitherto necessary to protect the tribe and had no indication at any time that the existing administrative system had worked inequitably for them. It would appear that the partial exclusion of this area was consequential upon the exclusion of the Garo Hills District in Assam. The Garo of this area are keenly desirous of being united with the Garo of Assam under a common administration, and in view of the division of Bengal there is a good case for rectification of the boundary, *i.e.* to include the Garo area in the Garo Hills Districts of Assam. The majority of the population of the partially excluded area (5.94 lakhs) consists however of non-tribals and it will be necessary therefore, to draw a fresh boundary.

(f) **Bihar.** - The Partially Excluded Areas of this province extend over the enormous area of 32,458 sq. miles comprising the whole of Chota Nagpur division and the Santhal Parganas District. The total population of the area is 9,750,846 and nearly 4.5 million of these are tribal people consisting of Santhal, Oraon, Munda, Ho, Bhumij and other lesser tribes of the Kolarian family. Although the general level of literacy and development in this area is lower than that of the non-aboriginal population, the tribes people here are rapidly advancing and quite a number of people in the learned professions may be found among the Munda and Oraon. Local self-governing institutions exist, and there is no question that the area would be able to take part intelligently in the administration of the province. The main feature of this area may be summarized in the words of the Provincial Government in recommending partial exclusion: "The Special Tenancy Laws in Chota Nagpur, the Santhal Parganas, \*Sambalpur and \*Angul are the bulwark of the backward peoples. The legislatures of the future would have the power to amend, modify or even repeal those laws and the only safeguard against legislative action detrimental to the interests of backward peoples is the power of the Governor to refuse assent. ....The importance of these special Tenancy Laws to the aboriginals cannot be over-stressed. The history of the Santhal Parganas and Chota Nagpur was one of continuous exploitation and dispossession of the aboriginals

punctuated by disorder and even rebellion until special and adequate protection was given. In the fringe areas, such as Manbhum, where the non-aboriginals are in a majority, the aboriginal element would probably have been driven from the land long ago but for the protection given by tenancy laws. ....The fate of the aboriginal where he has been unprotected has usually been to lose his land....." In the Santhal Parganas, legislation since 1855 has been mainly by means of special regulations framed by the Governor-General-in-Council. The main function of these regulations was to regulate *inter alia* the agrarian law, the constitution of courts and their procedure, money lending and the village police. Except in the most important cases the jurisdiction of the High Court was excluded and judicial procedure simplified. In the Kolhanpir of the Singhbhum District also, the Civil Procedure Code was replaced by simplified rules but generally speaking, the laws of the rest of the province operate in Chota Nagpur. For a detailed account, the Factual Memorandum of the Provincial Government may be referred to (pages 97-98, Excluded and Partially Excluded Areas - I). Since 1937, section 92 (2) of the Government of India Act has been made use of to frame some special regulations notably for the Santhal Parganas.

The population of Chota Nagpur and the Santhal Parganas is rather mixed and except in the Ranchi District, the Singhbhum District and the Santhal Parganas, the tribal population are in a minority. In their Factual Memorandum, the Bihar Government have pointed out that a comparison between the figures of 1941 and 1931 census shows that there is room for doubting the accuracy of the figures of the 1941 census. Recently an agitation has been started for the formation of a separate Chota Nagpur Province on the ground that this land is the land of the aboriginal residents who are distinct from the inhabitants of the plains in many ways. Taken as a whole, the tribals form only 45.6 per cent of the total population of the Partially Excluded Areas and in Chota Nagpur they constitute 44.2 per cent of the population. Only in Ranchi (70 per cent), Singhbhum (58.4 per cent) and Santhal Parganas (50.6 per cent) are they in anything like a majority. The creation of a separate province is a matter outside the scope of our enquiry and we do not find that this is in fact necessary for the satisfactory administration of the tribals.

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\* Now in Orissa

\* Reference to pages is to pages in the original report  
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(g) **United Provinces.** - The partially excluded areas are the Pargana inhabited by the Jaunsari tribes in the north and the portion of the Mirzapur District below the Kaimur Range inhabited by mixed tribes of Chota Nagpur and Central India. The area is 483 sq. miles in the Dehra Dun District and 1,766 sq. miles in the Mirzapur District. The total population of both areas is about 200,000.

The Jaunsar Bawar Pargana forms the watershed between the Jumna and the Tons. The country is hilly and offers little land for cultivation. It appears that most of the cultivable land is held by Brahmins and Rajputs and that the Koltas (Scheduled Caste) are debarred from possession of land according to the village Wazibul-arz and occupy practically the position of serfs. Though the great majority of the people are Hindus, polyandry and special systems of divorce are in vogue since ancient times. Although the area is under the criminal jurisdiction of the High Court a simplified system of criminal, civil and revenue administration is followed and except in Chakrata Cantonment, regular police are not employed. For civil law, the Commissioner, Meerut, acts as a High Court. The Excise and Opium Acts have not been extended to the area and opium cultivation is permitted. There is great illiteracy in the area and the administration will have to be suited to the lift of the inhabitants. In Khat Haripur Bias at the foot of the hills however conditions are different and approximate to those in the plains. The Khat Haripur Bias Tenants Protection Regulation of 1940 has afforded some protection to the tenants. The Provincial Government are of the view that this Khat should be included in the Dehra Dun Tahsil. Though the area

is enfranchised and is included in the Dehra Dun rural constituency, it is considered incapable of sending representatives to the legislature.

As regards the Mirzapur District, the excluded area consists of four parganas of which only the Agori and Bijaigarh parganas have a concentration of aboriginals. The population consists of a number of tribes having affinities to the tribes in the neighbouring provinces from which they have come. There is no strong tribal life left among them. Their occupations are said to be those usually followed by the Scheduled Castes and in their religious and social customs they are similar to low-caste Hindus.

The land revenue system of this area is different from the rest of the Province and is based on a plough tax. Then on-agricultural classes are gradually acquiring land from the aboriginal. The Tahsildars of the tract who exercise magisterial functions are Munsifs also. Except in relation to suits of succession and divorce, the court of the Commissioner is the highest court of appeal in civil suits. The area is under the jurisdiction of the District Board of Mirzapur.

The Provincial Government are of the view that there is no justification for this area being treated differently from the rest of the province and that normal administration should be extended to it immediately.

#### **4. POLITICAL EXPERIENCE -**

The people of the excluded areas have no experience of local self-governing institutions of the modern or statutory type and are of course not represented in the legislature. The management of a Local Board is perhaps likely to be a much bigger undertaking for the people of these areas than the mere election of a representative to the legislature and the establishment of such bodies needs perhaps a period of official guidance and control, particularly in areas like the Madras islands. The partially excluded areas on the other hand are all included in electoral constituencies of the provincial legislatures and with the exception of the Agency tracts of Madras and Orissa,\* the Santhal Parganas and Jaunsar Bawar, are covered by local boards also. There are certain reserved constituencies, viz., Bihar 7, Orissa 5, Madras 1, Bombay 1 and C. P. 1. In Orissa, four of the five members are selected by nomination. Unlike Assam, no reservation of seats had been made for tribals of the plains or non-excluded areas and these vote along with general Voters. In Bombay, C. P. and Chota Nagpur, the tribals though reported to be apathetic and showed aside by non-tribals, have known, at least nominally, such bodies as local boards. Nevertheless it is likely to take some time before there is sufficient interest in these bodies and probably interest in local self-government will have to be built up from the village stage. Although as shown by Mr. Grigson in his report, the tribals cast their vote as copiously as others, they have yet to learn to utilise its powers to their own advantage.

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\* In the Koraput District there is a District Board with the collector as president .

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#### **5. EFFECTS OF EXCLUSION -**

Although exclusion or partial exclusion has been in force for a number of years now, the benefits which the areas have derived from it are not particularly noticeable. In the case of the excluded areas, the sole responsibility for the administration has lain upon the Governor and the revenues earmarked for these areas have been outside the vote of the provincial legislature. No definite programme for the development of the excluded areas with a view to removing the disability of exclusion has been followed.

The introduction of *kuth* cultivation in Lahaul has brought it some economic prosperity but the West Coast islands are probably no better off than they were ten or twelve years ago, and in the Chittagong Hill Tracts no great impetus to enlightenment is perceptible. On the other hand, in the partially excluded areas also little improvement is as yet visible although in Bombay an inquiry into the conditions of the aboriginals was started as early as 1937. A Backward Class Department and Board have also been functioning in Bombay. Other provinces have since taken the cue and welfare work now seems to be forging ahead but it is perhaps the general interests in the backward classes which is responsible rather than the system of partial exclusion as such. The remarks of the Orissa Government are of interest: "The system of partial exclusion has also been a most unsatisfactory constitutional device. In matters of administration of the partially excluded areas, the Ministers tender advice to the Governor, with whom the ultimate responsibility for the good Government of these areas rests. He may accept or reject such advice. The system suffers from a fundamental defect; the responsibility is shared between the Governor, and the Ministry answerable to the people of this country or their elected representatives." No less responsible is perhaps the fact that the representatives of the partially excluded areas have not been capable of bringing sufficient pressure and influence to bear on the Ministry. Further, some of the partially excluded areas which constitute small pockets in large districts and constituencies could apparently be lost sight of and their interests subordinated to those of the larger areas in which they were contained. Some of the C. P. excluded areas situated in the Chhindwara and Bilaspur districts may be particularly noticed in this connection. They constitute comparatively small islands of partial exclusion which have little voice in a large constituency. The greatest weakness of the scheme of partial exclusion is perhaps the fact that it left areas weakly or only nominally represented in the legislature without any special financial provisions. Whatever the reasons may be, the conclusion to be drawn from the state of affairs noticed by us is that partial exclusion or exclusion has been of very little practical value. There has been neither educational nor economic development on any appreciable scale. The object of special administration has thus not been achieved, and it is clear that if the hill tribes are to be brought up to the level of the rest of the population the strongest measures are now necessary.

## **6. ATTITUDE OF THE GENERAL PUBLIC -**

One thing which we noticed in the course of our visits to the different Provinces was a considerable awakening of the public conscience in the matter of the welfare of the tribal people. The inquiries instituted in some of the Provinces have doubtless contributed to this quickening. Non-official organisations are beginning to take interest in the welfare of the tribes and the work of the Servants of India Society stands out prominently among these. The recent rising of the Warlis in Bombay Presidency has drawn attention in a rather forcible way perhaps, to their problems. Whatever the reasons, it seems now clear that there is a general tendency to take up the question of development of the tribes people as a serious matter, but whether this by itself is sufficient to ensure the future well-being of the tribes is more than questionable. Most of the Provinces are far from being happily placed in the matter of funds, and the development of areas inhabited by tribes which are situated generally in hilly country is a matter which calls for a good deal of expenditure for which there are many competitors. The emergence of educated people among the tribes is as yet inadequate for the maintenance of interest in their problems.

## **7. POTENTIALITIES OF THE TRIBES -**

The views of people of different points of view regarding the future administration of the hill tracts and of the tribes people themselves was found to be remarkably uniform. To begin with, there was hardly anybody who did not believe that the tribals are capable of being brought to the level of that rest of the population by means of education and contact. Wherever facilities for education and contact have been available, the tribes people have showed that their intelligence can be developed and environmental difficulties overcome. It is true that as yet there is a great deal of apathy in certain areas. Mr. Symington's report in particular points out that the Bhils take little interest in the local boards or in education and their addiction to drink is likely to keep them in their present backward state. In the

partially excluded areas of Orissa, we came across tribals who had not been anywhere beyond a few miles of their village or seen a motor car or a railway train. By and large however we found that there is a considerable demand for education and advancement among the tribal peoples and have no doubt that within a short time they can be brought up to a satisfactory level, if development plans are vigorously pursued.

## **8. GENERAL CONCLUSIONS -**

To sum up: Both exclusion and partial exclusion have not yielded much tangible result in taking the aboriginal areas towards removal of that condition or towards economic and educational betterment. Representation of partially excluded areas in the legislature and in local bodies has been weak and ineffective and is likely to continue to be so for some time to come. Education shows definite signs of being sought after more and more but the poor economic condition of the aboriginal and the difficulty of finding suitable teachers present problems which must be overcome before illiteracy can be properly tackled. The great need of the aboriginal is protection from expropriation from his agricultural land and virtual serfdom under the money-lender.

There are certain tracts like Sambalpur and Angul in the Orissa province which need no longer be treated differently from the regularly administered districts. On the other hand areas like the Madras and the Orissa Agency tracts still need a simplified type of administration which does not expose them to the complicated machinery of ordinary law courts. Differences in social customs and practices among the tribes also need to be kept in mind.

## **9. REPRESENTATION IN LEGISLATURES -**

We have pointed out at the very outset that the tribals who live in non-excluded areas form part of our problem and cannot be left out of account. In considering representation in the Legislatures we would urge that the tribes should be treated as a whole as a minority and not separately. In this regard, we would refer to a certain difference of opinion which exists among the parties interested. In Bombay the view of the Ministers and others dealing with the problem was unreservedly in favour of providing representation for the tribes as a whole by reservation of seats in a joint electorate. In Madras also a similar view found favour. In the Central Provinces, however, different views were expressed not only in respect of the method of election but also about reservation, both by officials and by Ministers. Certain district officials suggested that there should be nomination out of a panel submitted by district officials. Mr. Grigson favoured a scheme of indirect elections by means of group panchayats. The general feeling among these officials was that election was not likely in the present circumstances to produce suitable representatives. Some point was given to this by the reply of Mr. Wadiwa, a Gond pleader, who gave evidence before us, that he could not stand for election on account of the expense involved. The Ministers on the contrary seemed to have no objection to elections but were strongly opposed to reservation of seats in proportion to their population. Mr. Grigson also did not appear to favour reservation though he was of the view that if reservation was made for the scheduled castes there was no justification for not protecting the aboriginal similarly: "But once we start with reservation there is the possibility of it becoming permanent." The Ministers considered that increased representation would be provided by their scheme of demarcating constituencies without the evil of creating a separatist mentality. "These tahsil areas will be delimited so that particular communities in particular areas will get an effective voice. Just as particular wards in a municipality return only a particular class or community of persons - some wards in Nagpur Municipality return only Muslim members - an Ahir ward or tahsil will return only an Ahir, a Gond tahsil will return only a Gond and so on. In this way we want to give all the sections of our people thorough and complete representation without whetting their communal appetite." As regards the other tribals who are not found in compact areas, it is asserted that they are generally dispersed in the province and not easily distinguishable from the other people. In Orissa reservation of "a specific number of seats" in general constituencies is recommended but it is considered necessary that

aboriginal members should be elected to these seats by a suitable system of indirect or group election. The remarks of the Orissa Government in connection with the system of partial exclusion are relevant: "The inadequacy of representation of the aboriginal people of these areas in the legislature has also contributed to their neglect. They are not vocal nor have they any press for propaganda. They have been represented in the Assembly by five members, four nominated by the Governor and one elected from Sambalpur. As a result of this insufficient representation the problems of these areas do not receive the attention to which their size and importance entitle them." We have given serious thought to the question and come to the conclusion that the tribals should have reserved seats in a joint electorate based on adult franchise. We do not consider the scheme of the C. P. Government adequate as it provides no safeguards for the large numbers of tribals who live in the non-excluded areas and who without reservation would have no chance of being represented in the Legislature. The case of the tribals is not essentially different from that of the Scheduled Castes and they are in fact more backward in education and in their economic condition than the Scheduled Castes. Representation in proportion to their numbers in the legislatures, even if some of them are not vocal or able to argue their case will emphasize the importance and urgency of their problems. And it is to the interest of the country to see that these original inhabitants of the Indian soil are brought up to the level of the rest so that they can contribute in due measure to the progress of the country rather than be a drag on the rest. We do not consider that the method of indirect election or nomination should be resorted to. The aboriginals have to take part in direct election some time and the sooner their training for this starts the better.

Having regard to the circumstances of the Madras island and the Punjab Excluded Areas, we recommend special representation as follows: -

Laccadive Group .....	1
Lahaul and Spiti .....	1
Amindivi Group .....	1
Minicoy .....	1

It seems clear to us that these areas cannot be included in other constituencies, nor would they be suitably represented if so included.

## 10. LEGISLATION-

(a) **Areas to be Scheduled.** - The provisions for partially excluded and excluded areas in the 1935 Constitution are designed to prevent the application of unsuitable legislation, to permit the making of special rules and regulations required for any different system of administration needed in the aboriginal areas, and for the provision of funds at the discretion of the Governor for the totally excluded areas. Although in most of the Provinces, there has been a good deal of assimilation of the tribal people of the people of the plains, yet the social system of the tribes is different from that of the plains people in a number of the partially excluded areas. In the excluded areas, of course as already pointed out, there are people like Tibetans, the Chakma, Miro and Mogh of the Chittagong Hill Tracts, the islanders of the Laccadive Islands and so on. In the partially excluded areas, the tribes of Orissa and Chhota Nagpur and even the Gonds of the C. P. and the Bhils of Bombay who have assimilated the life of the plains to a greater extent than others have different social customs. The law of inheritance and the systems of marriage and divorce are different from those of other communities. It is possible of course for the legislatures to bear these features in mind and pass different laws just as different laws have been passed for Hindus and Muslims but there are other subjects as well in which the tribes will have to be treated on a different footing. In places like the Agency Tracts, for example, the population is as yet too primitive to be able to understand or make use of the complicated procedure and law of the civil,

criminal and revenue courts. We have mentioned earlier the features peculiar to the Santal Parganas and the Jaunsar Bawar Pargana. Even in the more advanced tracts of the Central Provinces of Bombay, the tribal is at a serious disadvantage on account of his poverty and ignorance and the procrastination of courts and officials and is easily victimized. This is of course true of all poor and simple rural folk, but it is clear that in the case of the aboriginal, it applies to a community found predominantly in certain areas and not to individuals. Thus a simplified system of dispensation of justice will be necessary in certain areas. There is again the question of land legislation. The land is the only thing left to the aboriginal, who does not follow non-agricultural professions to any appreciable extent as yet. In the Chhota Nagur Division different kinds of tenure have been recognized for the tribals and in any case, even where the tenure is simple and common to other areas, grant of the power of alienation to the tribals is certain to result in his gradual expropriation. We are thus led to the conclusion that it is necessary to provide that in certain areas laws of the provincial legislature which are likely to be based largely on the needs of the majority of the populations should not apply automatically, if not generally, at least in certain specified subjects. A general provision of this kind is of course a matter of convenience and would eliminate the need for the legislature to provide special clauses or saving clauses. It would also enable special consideration if the legislation is to be applied to the area. This of course involves notification of areas and we recommend provision for the purpose. We propose that the areas should be known as "Scheduled Areas" in future.

(b) **Application to Scheduled Areas.** - The next question which arises is whether any special mechanism is to be provided or whether the matter should be left to the legislature without any additional safeguard to apply legislation. The Government of Orissa have apparently thought it sufficient if the laws are specially extended by the Provincial Government and other Governments may hold similar views. The fact that non-tribals will be in a majority in all the legislatures and the fears which the tribals entertain that their interests and special customs and circumstances may be ignored must in this context be taken into account. Doubtless they would like to feel that they themselves have a voice in the decision and that a decision is not taken by persons unacquainted or imperfectly acquainted with their special circumstances and not genuinely interested in their welfare. The feeling which prevails in this matter has been expressed thus: "Speaking purely hypothetically, it should not be possible for the member representing Chittagong to be able to oblige his constituents by getting some radical changes made to the detriment of the hill tribes, which is of local advantage to them." (Lt.-Col. Hyde, D. C. Chittagong Hill Tracts) and "Ministers may find that owing to political pressure from organised pressure groups, that it is impossible for them to give the protection which they desire to give". (Grigson, aboriginal Tribes Enquiry Officer, C. P. & Berar.)

The present system under which the Governor in his discretion applies the legislation is not likely to appeal as this principle will be regarded as undemocratic, even though the governor in future may be an elected functionary. An alternative mechanism is therefore necessary. We have considered the question in all its aspects and come to the conclusion that in respect of certain subjects, laws passed by the Provincial Legislature should not be applied to the Scheduled Areas if the Tribes Advisory Council does not consider them suitable for those areas. We have also provided that in other subjects the Provincial Government should have the power to withhold or modify legislation on the advice of the Tribes Advisory Council. (Para\*, 15).

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\* Reference to para is to para in the original reports .

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(c) **Special Subjects.** - It has been stated above that in certain subjects legislation should not apply if considered unsuitable by the Tribes Advisory Council. We consider such a definition desirable to

prevent any unnecessary complication of legislative procedure or delaying of legislation. In most of the areas ordinary legislation is applicable and the policy has been and should be to apply legislation normally unless there is any special reason to the contrary. As a matter of general concern restriction seems necessary only in certain matters and we recommend that all legislation relating to (1) social matters (2) occupation of land including tenancy laws, allotment of land and setting apart of land for village purposes, and (3) village management including the establishment of village panchayats should be dealt with in this manner.

### **13. CRIMINAL AND CIVIL COURTS -**

We have noticed that there are areas where the regular machinery for the disposal of criminal and civil cases is not in operation and an "Agency" system is in force. The civil procedure has in particular been substituted by a simplified procedure. We have no doubt that simplified procedure should be possible for the disposal of petty criminal and civil cases and recommended accordingly that except where the regular procedure is already in force, a simplified system should continue to be in force. We are not however in a position to say whether the exact procedure followed at present needs modification or not.

### **14. RESERVATION IN FEDERAL LEGISLATURE -**

We have recommended reservation of seats in the Provincial Legislature. We recommend reservation in the Federal Legislature also on the basis of population in each province. On the scale contemplated in the draft Union Constitution, this would be 5 for Bihar, 3 for C. P., and 2 each for Bombay and Orissa.

### **15. PROVINCIAL TRIBES ADVISORY COUNCIL -**

Most of the Provincial Governments have found it necessary to set up advisory bodies for the proper administration of the tribal areas. In our view, it is necessary that there should be a body which will keep the Provincial Government constantly in touch with the needs of the aboriginal tracts (Scheduled Areas) in particular and the tribal for such a council requires little explanation. Whatever legal machinery is set up, it is no fancy to suggest that its actual translation into practice may not be in accord with its spirit, and besides the legal machinery itself may be found defective in practice. For a number of years clearly, the development of the aboriginals will require the most meticulous care. There are many ways in which the aboriginals' interests may be neglected, and it is known that regardless of certain prohibitory rules they are subjected to harassment at the hands of subordinate government officials and contractors. In spite of the abolition of beggar, for instance, there are still a good many cases of it in fairly serious form coming to notice from time to time. The working of provincial legislation or the machinery of administration in whole or in part needs constant scrutiny and regulation. The reclamation of the tribal is not likely to be an easy matter since it is seen from experience that even where provision for local bodies exists the aboriginal requires special encouragement to take active part in it. We have also pointed out that the representation of the aboriginal in the legislature is likely to be weak for some time to come. To exercise special supervisory functions therefore and to bring to the attention of the Provincial Government from time to time the financial and other needs of the aboriginal areas, the working of development schemes, the suggestion of plans, or legislative or administrative machinery, it is necessary to provide by statute for the establishment of a Tribes Advisory Council in which the tribal element is strongly represented. There may be no objection to the advisory council being made use of for supervision of the interests of other backward classes as well. We are of the view that the establishment of an Advisory Council for the next ten years at least is necessary in the Provinces of Madras, Bombay, West Bengal, Bihar, C. P. & Berar and Orissa, and we recommend that statutory provision be made accordingly. We have referred earlier (Para. 11) to the part that the Tribes Advisory Council will play in respect of Legislation.

## **16. CENTRAL COMMISSION -**

We have indicated above that unless the attention of the Government is concentrated with special emphasis on the problems of the aboriginals and the needs of the Scheduled Areas, there is little likelihood of any development. We do not intend any reflections on Provincial Governments if we remark that they may fail to take adequate interest. The provincial finances may also need to be strengthened by subventions from the Central fisc and we have in fact recommended that the Federation should come to the aid of the provinces to the extent necessary. We are of the view therefore that the Federal Government should take direct interest in the development of the tribes. We consider that it should be possible for the Federal Government to institute at any time a special Commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general. In any case, such a commission should be instituted on the expiry of ten years from the commencement of the new Constitution. We have no doubt that the provinces would welcome such a commission and we commend that provision for its appointment should be made in the Union constitution.

## **17. CENTRAL SUBVENTIONS -**

The development of the Scheduled Areas is likely to involve heavy expenditure on account of the nature of the country and other practical difficulties. It is obvious that in the hilly tracts the construction and maintenance of roads will require a good deal of money. Most of these tracts are devoid of any attraction for officials who thus need to be specially compensated. The provision of schools, medical facilities and water supply which are dire needs will doubtless make a heavy demand on the budget. While we are clearly of the view that to the maximum possible extent the funds required for the welfare and development of these areas should be found in the provinces themselves, we feel that unless the Central Government provides the necessary assistance, some of the Provincial Governments at any rate may find it impossible to carry out schemes of improvement. We recommend therefore that for all schemes of development approved by it the Central Government should contribute, in whole or in part, funds for the implementation of the development schemes. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas. We have recommended statutory provision to this effect.

## **18. PROVINCIAL FUNDS -**

The main anxiety of the Scheduled Areas will centre round the attitude of the legislature in the provision of funds. These areas as already pointed out will be weakly represented and, being deficit areas, may be dealt with on the principle of he who pays more gets more. In the absence of a keen demand it is even possible that there is a diversion of revenues to the more vociferous areas. We have remarked earlier that one of the weaknesses of the system of partial exclusion is the lack of financial safeguards. There is very clearly a necessity for making the required provisions to remove this weakness. It has been suggested to us that funds for the development of the Scheduled Areas should be provided by the fixation of a statutory percentage of the provincial revenues. It may be easy to provide by statute that such and such a proportion of the Provincial revenues should be spent upon the Scheduled Areas, but there is first of all the difficulty of determining the ratio. The needs of the Scheduled Areas are great in comparison with the population and in some cases even with the extent of the tract. Secondly if a rigid statutory ratio is fixed, it may in practice be found that it is not possible to adhere to it. The framing of a budget has to take into account many factors and rigid statutory ratio is likely to cause difficulties to the Provincial Governments, apart from being perhaps ineffective in providing the real needs of the hill tracts. If a low ratio is fixed it is practically certain that the Provincial Governments will not exceed that. If a high ratio is fixed, the Provincial Government may be unable to meet it and in any case the working out of an acceptable ratio itself seems impracticable in the circumstances without a careful examination of the needs of all the different tracts. We feel consequently

that no direct statutory safeguard of this nature is possible. The other possibility is that the Governor in his discretion should set apart funds and that these funds should be outside the vote of the legislature. We feel that such a provision is likely to be repugnant to the provincial legislature.

We recommend however that the revenues derived from and the expenses incurred on the Scheduled Areas from the provincial budget should be shown separately so as to prevent the needs of these areas being overlooked through incorporation in the general items. Such a separate statement will of course afford a better opportunity for scrutiny and criticism.

#### 19. **GOVERNOR'S RESPONSIBILITY -**

In connection with financial safeguards the view was expressed that the formulation of a plan of improvement affords sufficient guarantee for the expenditure of funds. We are of the view that in the provisions corresponding to the Instrument of Instructions the Governor should be required to see that a suitable scheme of development is drawn up and implemented as far as possible (See Para. \*17)

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\* Reference to para is to para in the original reports.

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#### 20. **TRIBAL MINISTER -**

Connected with the formulation of development schemes and the provision of adequate expenditure for the hill tracts is the need for the appointment of a separate Minister to give effect to the plans and to look after the interests of the aboriginals. The tribal population in the C. P., Orissa and Bihar forms a considerable proportion of the total population and on this ground alone the tribals have a case for representation in the Provincial Government. In the C. P., the tribal population is nearly 18 per cent. In Orissa, almost a fifth of the population is tribal, and in Bihar there are over 5 millions of them constituting about 14 per cent. Partly in order to provide representation for the tribals and in any case to see that adequate attention is paid to their administration we are of the view that there should be a separate Minister for the tribal areas and tribes in C. P., Orissa and Bihar and that this should be provided by statute. The Minister should be a tribal himself unless a suitable person cannot be found. We may add that the Government of Orissa have recognised that there should be a separate portfolio for the welfare of the backward classes under the new constitution.

#### 21. **SERVICES -**

It has been pointed out that the tribals constitute an appreciable proportion of the population particularly in some Provinces. On this account, the policy of recruitment of a due proportion of aboriginals having regard to reasonable efficiency, into the Government services is justified and necessary and must be followed. Apart from this, however, it is necessary that there should be an adequate number of tribals in the services so that the constant complaints of mishandling by non-tribal Officials, particularly, of such servants as forest guards, constables or excise peons and clerks can be minimized. Moreover, it is only by adequate representation in the Government and local bodies' services that the tribal can gain the necessary confidence and status.

We do not consider that a separate service of tribal people is necessary or desirable for the Scheduled Areas, and we recommend that they should be recruited to a general cadre. This will enable them to come into contact with non-tribes people and we also consider that there is no objection to the posting of

selected non-tribal officials to the Scheduled Areas. In fact, in the evidence before us, opinion has been practically uniform that there is no necessity for a special cadre of officials for the hill tracts and what is really required is selection of sympathetic officials for working in the hills. We would draw attention here to the importance of providing suitable accommodation and facilities for medical attention to officials serving in the scheduled areas. Malaria and other diseases constitute the scourge of these hill tracts and unless special attention is paid to the health of the staff it is unlikely that development schemes will make much headway. The provision of facilities for recreation and adequate compensatory allowances for officials posted to these areas should be kept in mind. Any tendency to treat these posts as penal posts or posts for the safe deposit of incompetents must be strongly deprecated.

## **22. TRIBAL PANCHAYATS -**

We have recommended that simplified rules should be continued where they are in force in the Scheduled Areas for the trial of civil and criminal cases. Wherever trial institutions are still fairly vigorous, we would recommend that they should be utilised to try petty civil disputes and criminal cases. The establishment of the more advanced type of village panchayat is recommended wherever possible.

## **23. SHIFTING CULTIVATION -**

Shifting cultivation or podu is practised mostly in the Koraput and Ganjam agency tracts of Orissa and in the similar agency tracts of Madras. In the Central Provinces it is prohibited by law and is not practised to any appreciable extent except in the Baiga Chak where it is permitted and in the Zamindar is. We have nothing to add to the recommendations of the Orissa Partially Excluded Areas Inquiry Committee. This method of cultivation should be eliminated, as soon as possible.

## **24. PROHIBITION -**

We invite the attention of Provincial Governments to the recommendations made by Mr. Symington (Bombay) and the Orissa Partially Excluded Areas Committee. Temperance propaganda should be taken up as part of the welfare work. A feeling has been growing among aboriginals, particularly in the tracts of Bombay and the Central Provinces that prohibition is to their advantage, and this feeling should be fostered among all the tribals.

## **25. LAND -**

The importance of protection for the land of the tribals has been emphasised earlier. All tenancy legislation which has been passed hitherto with a view to protecting the aboriginal has tended to prohibit the alienation of the tribals land to non-tribals. Alienation of any kind, even to other tribals, may have to be prohibited or severely restricted in different stages of advancement are concerned. We find however that Provincial Governments are generally alive to this question and that protective laws exist. We assume that these will continue to apply and as we have made special provision to see that land laws are not altered to the disadvantage of the tribal in future, we do not consider additional restrictions necessary. As regards the allotment of new land for cultivation or residence however, we are of the view that the interests of the tribal need to be safeguarded in view of the increasing pressure on land everywhere. We have provided accordingly that the allotment of vacant land, belonging to the State in Scheduled Areas should not be made except in accordance with special regulations made by the Government on the advice of the Tribes Advisory Council.

## **26. MONEY-LENDERS -**

Connected with the protection of the land is the need for prevention of exploitation by money-

lenders. We consider it necessary that in the Scheduled Areas money-lenders should not be permitted at all and that at any rate they should be allowed to operate under licence and stringent control only.

## 27. THE SCHEDULED AREAS -

It has been pointed out that areas like Sambalpur, Angul and Darjeeling need no longer be treated as partially excluded areas. The U. P. Government are of the view that the Khat Haripur Bias should be detached from the Hill Sub-division. They have also recommended the removal of the Dudhi Partially Excluded Areas. The population of the partially excluded areas in the United Provinces is small and the Jaunsar Bawar pargana is not inhabited by people who are in an ethnic sense tribals. We have not recommended a Tribes Advisory Council for U. P. and we do not consider it necessary to schedule either of these areas. Similarly we do not consider it necessary to schedule the Spiti area of the Punjab. In all these tracts, it will be open to the Provincial Government to apply the provisions of part II of the law proposed by us. In Bombay, we consider that certain areas in the West Khandesh District and the partially excluded areas of the Broach and Panch Mahals District should henceforth be administered without any special provisions. The C. P. areas are retained as they are and in Chhota Nagpur we are provisionally of the view that only the three districts which have a majority of tribal should be scheduled. The schedule proposed is shown as Appendix D\*.

On the other hand, there may be other areas which the Provincial Governments may like to bring under special administration. This can be done by the Provincial Government in their discretion. For the protection of the land of tribes line the Lepcha in Darjeeling the Provincial Government could make the appropriate provision of the chapter relating to the Scheduled areas applicable to the area concerned.

## 28. DRAFT PROVISIONS -

We enclose a draft of provisions contemplated by us in roughly legal form (Appendix C\*).

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\* Reference to Appendix is to Appendix in the original reports.

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**A. V. THAKKAR**

*Chairman*

**D. N. SAMANTA**

**THAKUR PHUL BHANU SHAH**

**RAJ KRUSHNA BOSE**

**JAIPAL SINGH**

**P. C. GHOSH.**

-----

**[Annexure IV]**

**APPENDIX D**

**Part I - Excluded Areas**

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

BENGAL

The Chittagong Hill Tracts.

THE PUNJAB.

Spiti and Lahaul in the Kangra District.

**Part II - Partially Excluded areas**

MADRAS

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

BOMBAY

In the West Khandesh District, the Shahada, Nandurbar and Taloda Taluks, the Navapur Petha and the Akrani Mahal, and the villages belonging to the following Mehwasssi Chiefs' namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

The Satpura Hills reserved forest areas of the East Khandesh District.

The Kalvan Taluk and Peint Peth of the Nasik District.

The Dhahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thana District.

The Dohad Taluk and the Jhalod Mahal of the Broach and Panch Mahal District.

BENGAL

The Darjeeling District.

The Dewanganj, Sribardi, Nalitabori, Haluaghat, Durgapur and Kalmakanda police stations of the Mymensingh District.

#### THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District.

The portion of the Mirzapur District south of the Kaimur Range.

#### BIHAR

The Chhota Nagpur Division.

The Santal Parganas District.

#### THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindar is in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabar as and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District. The Bhainsdehi Tahsil of the Betul District.

#### ORISSA

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras.

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APPENDIX D

[Annexure V]

I

**Statement showing the total population and tribal population of provinces:-**

Name of province	Total population	Tribal population	percentage
Madras	49,341,810	562,029	1.1
Bombay	20,849,840	1,614,298	7.7
Bengal	60,306,525	1,889,389	3.1
United provinces	55,020,617	289,422	.53
Punjab	28,418,819	..	..
Bihar	36,340,151	5,055,647	13.9
C. P and Berar	16,813,584	2,937,364	17.5
Assam	10,204,733	2,484,996	24.4
N.W.F.P	3,038,067	..	..
Orissa	8,728,544	1,721,006	19.7
Sind	4,535,008	33,819	0.81
Ajmer-Merwara	583,693	91,472	15.6
Andaman and Nicobar	33,768	11,076	32.8
Baluchistan	501,631	3	..
Coorg	168,726	19,723	11.7
Delhi	917,939	..	..

Source : 1941 Census Table

II

**Excluded and Partially Excluded Areas Population**

**(Provincial Totals)**

Name of province	Areas in SQ. Miles	Total population	Aboriginal or Backward class	Percentage
Madras	Excluded Areas-			
	9.62	18,357	18,335	99.9
	Sq.Miles+			
	201 3/4			
	acres.			
	Partially Excluded Areas-			
	6,792.31	493,026	333,372*	67.6
Bombay	Excluded Areas-			
	Nil			
	Partially Excluded Areas-			

	6,697!	1,125,471	663,528	58.9
Bengal	Excluded Areas-		233,392	94.5
	5,007	247,053		
	Partially Excluded Areas-			
	2,518	977,665	190,112	19.4
United provinces	Excluded Areas-			
	<i>Nil</i>			
	Partially Excluded Areas-			
	2,250	202,000	143,600	71.1
Punjab	Excluded Areas-			
	4,695	11,700	11,700	100
			(Tibetans)	
	Partially Excluded Areas-			
	<i>Nil</i>			
Bihar	Excluded Areas-			
	<i>Nil</i>			
	Partially Excluded Areas-			
	32,592	9,750,846	4,451,109	45.6
Central provinces and Barer	Excluded Areas-			
	<i>Nil</i>			
	Partially Excluded Areas--		829,918	36.6
	19,856	1,467,681		
Orissa	Excluded Areas-			
	<i>Nil</i>			
	Partially Excluded Areas-			
	19,831	2,939,416	1,560,104	53.07
GRAND TOTAL	100,248	17,233,205	8,435,190	48.95

\* Includes 72,809 Backward Class.

! Does not include the area of "Satpura Hills Reserved Forest"

### III

#### Statement Showing Total Population and Tribal Population By Districts

Province or District	Total population	Tribal population	Percentage
<b>MADRAS PROVINCE</b>			

British Territory	49,341,810	562,029	1.14
Vizagapatam	3,845,944	286,923	7.46
Agency	421,437	140,721	63.55
plains	3,624,507	146,202	4.03
Godavari East	2,161,863	101,532	4.70
Agency	271,569	97,200	35.79
Plains	1,890,294	4,332	.23
Godavari west	1,380,088	1,999	.14
Kistna	1,444,294	345	.02
Guntur	2,277,283	2,246	.10
Nellore	1,617,026	15	..
Cuddapah	1,056,507	19	..
Kurnool	1,146,250	5,878	.51
Bellary	1,051,235	548	..
Anantapur	1,171,419	4	..
Madras	777,481	2	..
Chingleput	1,823,955	39	..
Chittoor	1,632,395	..	..
North Arcot	2,577,540	..	..
Salem	2,869,226	6	..
Coimbatore	2,809,648	12,440	.44
South Arcot	2,608,753	..	..
Tanjore	2,563,375	213	..
Trichinopoly	2,194,091	24	..
Madura	2,446,601	8	..
Ramnad	1,979,643	..	..
Tinnevelley	2,244,543	161	..
Nilgiris	209,709	62,951	30.20
Malabar	3,929,425	34,366	.87
South Kanara	1,523,516	52,312	3.43
<b>BOMBAY PROVINCE</b>			
Province of Bombay Proper	20,849,840	1,614,298	7.74
Bombay city	1,489,883	4,606	.31
<i>Northern Division</i>	5,276,593	874,103	16.56
Ahmedabad	1,372,171	8,730	.64
Ahmedabad City	591,267	5,744	.97
Broach& panch Mahals	924,527	268,617	29.06
Kaira	914,957	5,161	.57
Surat	881,058	320,575	36.37
Thana	932,733	257,130	27.57

Bombay suburban	251,147	13,890	5.53
<i>Central Division</i>	8,197,398	667,828	8.15
Ahmednagar	1,112,229	41,146	3.60
East Khandesh	1,327,722	61,054	4.60
West Khandesh	912,214	357,719	39.21
Nasik	1,113,901	167,280	15.02
poona	1,359,408	36,835	2.71
Satara	1,327,249	11,014	.08
Sholapur	1,014,670	2,780	.21
<i>Southern Division</i>	5,885,971	67,761	1.15
Belgaum	1,225,428	1,674	.14
Bijapur	975,982	1,008	.10
Dharwar	1,210,016	1,414	.12
Kanarah	441,157	197	.04
Kolaba	668,922	62,170	9.29
Ratnagiri	1,373,466	1,298	.09
<b>BENGAL PROVINCE</b>			
British Territory	60,306,525	1,889,389	3.13
<i>Burdwan division</i>	10,287,369	706,729	6.87
Burdwan	1,890,732	151,355	8.0
Birbhum	1,048,317	74,084	7.07
Bankura	1,289,640	154,246	11.96
Midnapur	3,190,647	253,625	7.95
Hooghly	1,377,729	69,500	5.04
Howrah	1,490,304	3,919	.26
<i>Presidency Division</i>	12,817,087	99,235	.77
24-parganas	3,536,386	51,085	1.44
Calcutta	2,108,891	1,688	.08
Nadia	1,759,846	12,671	.72
Murshidabad	1,640,530	26,138	1.59
Jessore	1,828,216	4,978	.27
Khulna	1,943,218	2,675	.14
<i>Rajshahi Division</i>	12,040,465	776,729	6.44
Rajshahi	1,571,750	67,298	4.28
Dinajpur	1,926,833	182,892	9.49
Jalpaiguri	1,089,513	279,296	25.63
Darjeeling	376,369	141,301	37.54
Rangpur	2,877,847	18,200	.63
Bogra	1,260,463	14,387	1.14
Pabna	1,705,072	6,906	.45

Malda	1,232,618	66,449	5.39
<i>Dacca Division</i>	16,683,714	65,398	.39
Dacca	4,222,143	4,029	.10
Mymensingh	6,023,758	59,722	.99
Faridpur	2,888,803	1,363	.05
Bakarganj	3,549,010	284	.01
<i>Chittagong Division</i>	8,477,890	241,298	2.85
Tippera	3,860,139	1,524	.04
Noakhali	2,217,402	34	....
Chittagong	2,153,296	6,348	.29
Chittagong Hill tracts	247,053	233,392	94.47
<b>UNITED PROVINCES</b>			
British Territory	55,020,617	289,422	.53
<b>Agra Province</b>	40,906,147	289,244	.71
<i>Meerut Division</i>	5,716,451	70	....
Dehra Dun	266,244	....	....
Saharanpur	1,179,643	....	....
Muzaffarnagar	1,056,759	....	....
Meerut	1,896,582	....	....
Bulandshahar	1,317,223	70	....
<i>Agra Division</i>	5,326,768	79	....
Aligarh	1,372,641	1	....
Muttra	806,992	....	...
Agra	1,289,774	....	.....
Etah	984,760	78	.01
<i>Rohilkhand Division</i>	6,195,996	57	....
Bareilly	1,176,197	28	....
Bijnor	910,223	11	....
Budaun	1,162,322	....	....
Moradabad	1,473,151	17	....
Shahjahanpur	983,385	1	....
Pilibhit	490,718	....	....
<i>Allahabad Division</i>	6,014,813	19,139	.32
Farrukhabad	955,377	47	...
Etawah	883,264	143	.02
Cawnpore	1,556,247	1,083	.70
Fatehpur	806,944	241	.03
Allahabad	1,812,981	17,625	.97
<i>Jhansi Division</i>	2,553,492	26,439	1.04
Jhansi	773,002	12,494	106

Jalaun	482,384	6,361	1.31
Hamirpur	575,538	7,584	1.32
Banda	722,568	....	...
<i>Benares Division</i>	5,545,257	141,661	2.55
Benares	1,218,629	21,152	1.74
Mirzapur	899,929	43,383	4.82
Jaunpur	1,387,439	3,353	.24
Ghazipur	985,380	21,641	2.20
Ballia	1,053,880	52,133	4.95
<i>Gorakhpur Division</i>	7,972,108	101,746	1.28
Gorakhpur	3,963,574	99,076	2.50
Basti	2,185,641	83	...
Azamgarh	1,822,893	2,587	.14
<i>Kumaon Division</i>	1,581,262	53	...
Nainital	291,861	...	...
Almora	687,286	...	...
Garhwal	602,115	53	.01
<b>Oudh Province</b>	14,114,470	178	...
<i>Lucknow Division</i>	6,530,932	7	...
Lucknow	949,728	7	...
Unao	959,542	...	...
Rae Bareli	1,064,804	...	...
Sitapur	1,293,554	...	...
Hardoi	1,239,279	...	...
Kheri	1,024,025	...	...
<i>Fyzabad Division</i>	7,583,538	171	...
Fyzabad	1,319,425	157	.01
Gonda	1,719,644	...	...
Bahraich	1,240,569	...	...
Sultanpur	1,100,368	14	...
Partapgarh	1041,024	...	...
Bara Banki	1,162,508	...	...
<b>BIHAR PROVINCE</b>			
British Territory	36,340,151	5,055,647	13.91
<i>Patna Division</i>	7,265,950	300,004	4.12
Patna	2,162,008	12,722	.59
Gaya	2,775,361	258,032	9.33
Shahabad	2,328,581	29,250	1.26
<i>Tirhut Division</i>	11,959,827	31,378	.35
Saran	2,860,537	18,314	.64
Champanan	2,397,569	20,086	.83

Muzaffarpur	3,244,651	1,996	.05
Darbhanga	3,457,070	982	.03
<i>Bhagalpur Division</i>	9,598,025	1,393,041	14.45
Monghyr	2,564,544	53,421	2.08
Bhagalpur	2,408,879	104,879	4.35
Purnea	2,390,105	104,856	4.38
Santal Parganas	2,234,497	1,129,885	50.56
<i>Chhota Nagpur Division</i>	7,516,349	3,321,224	44.19
Hazaribagh	1,751,339	478,253	27.31
Ranchi	1,675,413	1,173,142	70.02
Palamau	912,734	323,106	35.40
Manbhum	2,032,146	678,126	33.37
Singhbhum	1,144,717	668,597	58.41
<b>CENTRAL PROVINCE AND BERAR</b>			
British territory	16,113,584	2,937,364	17.47
<b>Central provinces</b>	13,208,718	2,663,959	20.16
<i>Jubbulpore Division</i>	3,691,112	789,335	21.39
Saugor	939,068	82,107	8.74
jubbulpore	910,603	166,958	18.33
Mandla	504,580	304,099	60.27
Hoshangabad	823,585	123,621	15.01
Nimar	513,276	112,570	21.93
<i>Nagpur Division</i>	3,924,985	854,939	21.78
Betul	438,342	168,229	38.38
Chhindwara	1,034,040	395,781	38.28
Wardha	519,330	51,848	9.98
Nagpur	1,059,989	66,471	6.27
Chanda	873,284	172,610	19.77
<i>Chattisgarh Division</i>	5,592,621	1,019,665	18.23
Bhandara	963,225	115,173	11.96
Balaghat	634,350	138,693	21.86
Raipur	1,516,686	273,260	17.01
Bilaspur	1,549,509	287,680	18.56
Durg	928,851	104,859	20.91
<b>Berar Province</b>	3,604,866	273,405	7.86
Amraoti	988,524	63,210	6.39
Akola	907,742	30,456	3.36
Buldana	820,862	19,849	2.42
Yeotmal	887,738	159,890	18.01
<b>ASSAM PROVINCE</b>			

British Territory	10,204,733	2,484,996	24.35
<i>Surma valley and Hill division</i>	4,218,875	683,546	16.20
Cachar	641,181	178,264	27.80
Sylhet	3,116,602	69,907	2.24
Khasi & Jaintia Hills (British)	118,665	103,567	87.28
Naga Hills	189,641	184,766	97.43
Lushai Hills	152,786	147,042	96.24
<i>Assam Valley Division</i>	5,919,228	1,757,664	23.46
Goalpara	1,014,285	237,993	15.66
Kamrup	1,264,200	197,926	35.39
Darrang	736,791	260,748	23.43
Nowgong	710,800	166,525	33.57
Sibsagar	1,074,741	360,768	37.46
Lakhimpur	894,842	335,230	88.78
Garo Hills	223,569	198,474	66.49
Assam Valley Division-Contd.			
Sadiya Frontier Tracts	60,118	39,974	58.54
Balipara Frontier Tracts	6,512	3,812	58.54
<b>ORISSA Province</b>			
British Territory	8,728,544	1,721,006	19.72
Cuttack	2,431,427	55,280	2.27
Balasore	1,029,430	29,757	2.69
Puri	1,101,939	29,555	2.68
Sambalpur	1,182,622	232,095	19.71
Ganjam	1,855,264	433,687	23.38
plains	1,392,188	59,658	4.29
Agency	463,076	374,029	80.77
Koraput	1,127,862	940,632	83.40
<b>Sind Province</b>			
British territory	4,535,008	36,819	0.81
Dadu	389,380	154	0.31
Hyderabad	758,748	769	0.01
Karachi	713,900	884	0.12
Larkana	511,208	.....	.....
Nawabshah	584,178	1,326	0.23
Sukkur	692,556	51	0.01
Thar Parkar	581,004	33,635	5.79
Upper Sind Frontier	304,034	.....	.....
<b>AJMER-MERWARA</b>	583,693	91,472	15.67
<b>ANDAMANS &amp; NICOBARS</b>			
Andamans	33,768	11,076	32.80

Nicobars	21,316	.....	.....
Coorg	12,452	11,076	88.95
	168,726	19,723	11.69

#### IV

### Schedule 13 to Government of India (Provincial Legislative Assemblies)

#### Order, 1936

#### BACKWARD TRIBES

#### PART I - MADRAS

1. Bagata.
2. Bottadas - Bodo Bhottada, Muria Bhottada and Sano Bhottada.
3. Bhumias - Bhuri Bhumia and Bodo Bhumia.
4. Bissoy - Barangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoria, Kollai, Konde, Paranga, Penga-Jodia, Sodo Jodia and Takora.
5. Dhakkada.
6. Domb - Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telaga and Ummia.
7. Gadabas - Boda Gadaba, Cerlam Gadaba, Franji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba.
8. Ghasis - Boda Ghasis and San Ghasis.
9. Gondi - Modya Gond and Rajo Gond.
10. Goundus - Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11. Kosalya Goudus - Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullosoriay Goudus.
12. Magatha Goudus - Bernia Goudu, Boodo Magatha, Dongayath Goudu, Ladya Goudu, Ponna Magatha and Sana Magatha.

13. Serithi Goudus.
14. Holva.
15. Jadapus.
16. Jatapus.
17. Kammaras.
18. Khattis - Khatti, Kommaro and Lohara.
19. Kodu.
20. Kommar.
21. Konda Dhoras.
22. Konda Kapus.
23. Kondareddis.
24. Kondhs - Desaya Kondhs, Dongria, Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.
25. Kotia - Bartikar, Benthoriya, Dhulia or Dulia, Holva Paiko, Putiay, Sanrona  
and Sidho Paiko.
26. Koya or Gound with its sub-castes, Raja or Rasha Koyas, Lingadhari Koyas,  
Koyas (ordinary) and Kottu Koyas.
27. Madigas.
28. Malas or Agency Malas or Valmikies.
29. Malis - Worchia Malis, Paiko Malis and Pedda Malis.
30. Maune.
31. Manna Dhora.
32. Mukha, Dhora-Nooka Dhora.
33. Muli or Muliya.
34. Muria.
35. Ojulus or Metta Komsalies.

36. Omanaito.
37. Paigarapu.
38. Palasi.
39. Palli.
40. Pentias.
41. Porjas - Bodo, Bonda, Daruva, Didua, Jodia, Mundili, Pengu/Rvdi and Saliya.
42. Reddi or Dhoras.
43. Relli or Sachandi.
44. Ronas.
45. Savaras - Kapu Savaras, Khutto Savaras and Maliya Savaras.
46. The inhabitants of the Laccadive, Minicoy and Amindivi Islands.

#### **PART II - BOMBAY**

- |                    |                         |                  |
|--------------------|-------------------------|------------------|
| 1. Barda.          | 9. Gond.                | 16. Patenaa.     |
| 2. Bavacha.        | 10. Kathodi or Katkari. | 17. Pomla.       |
| 3. Bhil.           | 11. Konkna.             | 18. Powara.      |
| 4. Chodhra.        | 12. Koli Mahadeb.       | 19. Rathawa.     |
| 5. Dhanka.         | 13. Mavchi.             | 20. Tadvi Bhill. |
| 6. Dhodia.         | 14. Naikda or Nayak.    | 21. Thakur.      |
| 7. Dublia.         | 15. Pardhi, including   | 22. Valvai.      |
| 8. Gamit or Gamta. | Advichincher or         | 23. Varli.       |
|                    | Phanse Pardhi.          | 24. Vasava.      |

#### **PART III - BIHAR**

(a) A resident of the Province belonging to any of the following tribes: --

- |             |             |            |
|-------------|-------------|------------|
| 1. Asur.    | 12. Gond.   | 23. Kora.  |
| 2. Banjara. | 13. Gorait. | 24. Korwa. |

- |                 |               |                     |
|-----------------|---------------|---------------------|
| 3. Bathudi.     | 14. Ho.       | 25. Mahli.          |
| 4. Bentkar.     | 15. Jaung.    | 26. Mal Paharia.    |
| 5. Binghia.     | 16. Karmali.  | 27. Munda.          |
| 6. Birhor.      | 17. Kharia.   | 28. Oraon.          |
| 7. Birjia.      | 18. Kharwar.  | 29. Parhiya.        |
| 8. Chero.       | 19. Khetauri. | 30. Santal.         |
| 9. Chik Baraik. | 20. Khond.    | 31. Sauria Paharia. |
| 10. Gadaba.     | 21. Kisan.    | 32. Savar.          |
| 11. Ghatwar.    | 22. Koli.     | 33. Tharu.          |

(b) he is resident in any of the following districts or police stations, that is to say the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamada, Banduan and Manbazar in the district of Manbhum and belongs to one of the following tribes: --

- |            |            |            |
|------------|------------|------------|
| 1. Bauri.  | 4. Bhumji. | 7. Rajwar. |
| 2. Bhogta. | 5. Ghasi.  | 8. Turi.   |
| 3. Bhuiya. | 6. Pan.    |            |

(c) he is resident in the Dhanbad sub-division or any of the following police stations in the Manbhum district, that is to say, Purulia, Hura, Pancha, Ragunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Kashipur, and belongs to the Bhumi tribe.

## PART VI - CENTRAL PROVINCES

- |                   |               |                         |
|-------------------|---------------|-------------------------|
| 1. Gond.          | 13. Baiga.    | 25. Kol.                |
| 2. Kwar.          | 14. Kolam.    | 26. Nagasia.            |
| 3. Maria.         | 15. Bhil.     | 27. Sawara.             |
| 4. Muria.         | 16. Bhuinhar. | 28. Korwa.              |
| 5. Halba.         | 17. Dhanwar.  | 29. Majhwar.            |
| 6. Pardhan.       | 18. Bhaina.   | 30. Kharia.             |
| 7. Oraon.         | 19. Parja.    | 31. Saunta.             |
| 8. Binjhar.       | 20. Kamar.    | 32. Kondh.              |
| 9. Andh.          | 21. Bhunjia.  | 33. Nihal.              |
| 10. Bhabha Bhumia | 22. Nagarchi. | 34. Birhaul (or Biror). |

- |              |            |             |
|--------------|------------|-------------|
| 11. Koti.    | 23. Ojha.  | 35. Rautia. |
| 12. Bhattra. | 24. Korku. | 36. Pando.  |

## **PART V - ORISSA**

A person shall be deemed to be a member of backward tribe if and only if -

(a) he is resident in the Province and belongs to any of the following tribes: --

- |                 |                    |              |
|-----------------|--------------------|--------------|
| 1. Bagata.      | 8. Konda-Dora.     | 15. Munda.   |
| 2. Banjari.     | 9. Koya.           | 16. Banjara. |
| 3. Chenchu.     | 10. Paroja.        | 17. Bingjia. |
| 4. Gadaba.      | 11. Saora (Savar). | 18. Kisan.   |
| 5. Gond.        | 12. Oraon.         | 19. Koli.    |
| 6. Jatapu.      | 13. Santal.        | 20. Kora.    |
| 7. Khond (Kond) | 14. Kharia.        |              |

(b) he is resident in any of the following areas, that is to say, the Koraput and Khondmals districts and the Ganjam Agency and belongs to either of the following tribes: -

- |                  |                 |
|------------------|-----------------|
| 1. Dom or Dombo. | 2. Pan or Pano. |
|------------------|-----------------|

(c) he is resident in the Sambalpur district and belongs to any of the following tribes: -

- |            |            |                 |
|------------|------------|-----------------|
| 1. Bauri.  | 3. Bhumij. | 5. Turi.        |
| 2. Bhuiya. | 4. Ghasi.  | 6. Pan or Pano. |

[Annexure VI]

## APPENDIX D

### **Statutory Recommendations**

#### PART I

A. The Provincial Government may at any time by notification apply the provisions of Part II of this Chapter or of any of its sections to such areas as may be specified in the notification, being areas in habited by any of the tribes named in Schedule A (and hereinafter referred to as "the tribes").

B. (1) The number of representatives of the tribes in the Provincial Legislature shall not be less in proportion to the total number of representatives than the population of the tribes in the Province bears to its total population.

(2) In the Federal Legislature (House of the People) there shall be such number of representatives of the tribes of each Province as may be in accordance with the total population of the tribes in that Province on the scale prescribed in Section.

C. The election of the representatives of the tribes to the Provincial Legislature shall be by universal adult franchise.

## **PART II**

D. As from the commencement of this Constitution the provisions of this Part shall apply to the areas specified in Schedule B to this Chapter (and hereinafter referred to as "the Scheduled Areas").

E. (1) The Provincial Government may, if so advised by the Tribes Advisory Council, by notification direct that any law passed by the Legislature shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe:

Provided that the Provincial Government shall, if so advised by the Tribes Advisory Council, direct that any law passed by the Provincial legislature in respect of the following subjects, that is to say, (i) all social matters including inheritance of property; (ii) occupation of land (not being forest reserved under the provisions of the Indian Forest Act or other law applicable) including tenancy laws, allotment of land, reservation of land for any purpose; (iii) village management, including the establishment of village panchayats, shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe with the concurrence of the said Council.

(2) The Provincial Government may, in consultation with the Tribes Advisory Council, make special regulations for a Scheduled Area on any matter not provided for by a law in force in the Area.

F. Vacant land in a Scheduled Area which is the property of the State shall not be allotted to a non-tribal except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council.

G. (1) The Provincial Government may, and if so advised by the Tribes Advisory Council shall, direct that no person shall carry on business in a Scheduled Area as a money lender except under and in accordance with the conditions of a licence issued by it or by an officer authorised by it in this behalf.

(2) Any contravention of an order issued by the Provincial Government under sub-section (1) of this Sections shall be an offence.

H. The revenue and expenditure pertaining to a Scheduled Area which is credited to or met from the funds of the Provincial Government shall be shown separately in the annual financial statement of the Provincial Government.

I. There shall be paid out of the revenues of the Federation such capital and recurring sums as may be necessary to enable the Provincial Government to meet the cost of such schemes of development as may be undertaken with the approval of the Federal Government for the purpose of raising the level of administration of the Scheduled Areas and all round development of the tribes to that of the rest of the province.

J. (1) There shall be established as soon as may be after the commencement of this Constitution in the Provinces of Madras, Bombay, West Bengal, Bihar, C. P. and Berar and Orissa, a Tribes Advisory Council to perform such functions as may be prescribed in this Constitution and to advise the Provincial

Government from time to time on all matters pertaining to the administration and welfare of the tribes and of the Scheduled Areas.

(2) The Tribes Advisory Council shall consist of not less than ten and not more than twenty-five members of whom three-fourths shall be elected representatives of the tribes in the Provincial Legislature (Lower House).

(3) The Provincial Government may make rules prescribing or regulating as the case may be: -

- (a) the number of members of the Council, the mode of appointment of the members and of the Chairman or other office-bearers;
- (b) the conduct of meetings and procedure in general;
- (c) relations with officials and local bodies;
- (d) all other incidental matters.

K. (1) The Federal Government may, at any time, and shall after the expiry of ten years from the commencement of this Constitution, institute a Commission to report on the administration of the tribes and the Scheduled Areas in general.

(2) The Federal Government may at any time require the Provincial Government to draw up and execute such schemes as it considers essential for the welfare of the tribes.

L. In the Provinces of Bihar, the Central Provinces and Berar and Orissa there shall be a separate Minister for Tribal Welfare:

Provided that the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes or other backward classes or any other work.

M. Notwithstanding anything in the Criminal Procedure Code 1898, or the Civil Procedure Code (Act V of 1908), the Provincial Government may make special regulations for a Scheduled Area for the trial of offences other than those punishable with imprisonment for five years or more or with death or transportation for life and of disputes other than those arising out of special laws respectively and may empower headmen or panchayats to try such cases.

[Annexure IX]

## APPENDIX D

### **Schedule A**

#### PART I - MADRAS

1. Bagata.
2. Bottadas - Bodo Bhattada, Muria Bhattada and Sano Bhattada.
3. Bhumias - Bhuri Bhumia and Bodo Bhumia.

4. Bissoy - Bharangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoria, Kollai,  
Konde, Paranga, Penga Jodia, Sodo Jodia and Takora.
5. Dhakkada.
6. Domb - Andhiya Dembs, Audiniya Dombs, Chonel Dombs, Christian Dombs,  
Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telag and Ummia.
7. Gadabas - Boda Gadaba, Cerlam Gadaba, Fanji Gadaba, Jodia Gadaba, Olaro  
Gadaba, Pangi Gadaba and Paranga Gadaba.
8. Ghasis - Boda Ghasis and San Ghasis.
9. Gondi - Modya Gond and Rajo Gond.
10. Goundus - Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11. Kosalya Goudus - Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus,  
Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and  
Pullosoriay Goudus.
12. Magatha Goudus - Bernia Goudu, Boodo Magatha, Dongayath Goudu Ladya  
Goudu, Ponna Magatha and Sana Magatha.
13. Serithi Goudus.
14. Holva.
15. Jadapus.
16. Jataus.
17. Kammaras.
18. Khattis - Khatti, Kammaro and Lohara.
19. Kodu.
20. Kommar.
21. Konda Dhoras.
22. Konda Kapus.

23. Kondareddis.
24. Kondhs - Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs  
and Yenity Kondhs.
25. Kotia - Bartikar, Benthoriya, Dhulia or Dulia, Holva Paiko, Putiay, Sanrona  
and Sidho Paiko.
26. Koya or Gound with its sub-sects, Raja of Rasha Koyas, Lingadhari Koyas,  
Koyas (ordinary) and Kottu Koyas.
27. Madigas.
28. Malas or Agency Malas or Valmikies.
29. Malis - Worchia Malis, Paiko Malis and Pedda Malis.
30. Maune.
31. Manna Dhora.
32. Mukha Dhora - Nooka Dhora.
33. Muli or Muliya.
34. Muria.
35. Ojulus or Metta Komsalies.
36. Omanaito.
37. Paigarapu.
38. Palasi.
39. Pali.
40. Pentias.
41. Porjas - Bodo. Bonda, Daruva, Didua, Jodia, Mundili, Pengu Pydi and Saliya.
42. Reddi or Dhoras.
43. Relli or Sachandi.
44. Ronas.

45. Savaras - Kapu Savaras, Khutto Savaras and Maliya Savaras.

46. The inhabitants of the Laccadive, Minicoy and Amindivi Islands.

### **PART II - BOMBAY**

1. Barda.	9. Gond.	16. Patelia.
2. Bavacha.	10. Kathodi or katkari.	17. Pomla.
3. Bhil.	11. Konkna.	18. Powara.
4. Chodhra.	12. Koli Mahadeb.	19. Rathawa.
5. Dhanka.	13. Mavchi.	20. Tadvi Bhill.
6. Dhodia.	14. Naikda or Nayak.	21. Thakur.
7. Dublia.	15. Pardhi, including	22. Valvai.
8. Gamit or Gamta.	Advichincher or	23. Varli.
	Phanse Pardhi.	24. Vasava.

### **PART III - BIHAR**

(a) A resident of the province belonging to any of the following tribes: -

1. Asur.	12. Gond.	23. Kora.
2. Bajra.	13. Gorait.	24. Korwa.
3. Bathudi.	14. Ho.	25. Mahli.
4. Bentkar.	15. Juang.	26. Mal Paharia.
5. Binjhia.	16. Karmali.	27. Munda.
6. Birhor.	17. Kharia.	28. Oraon.
7. Birjia.	18. kharwar.	29. Parhiya.
8. Chero.	19. Khetauri.	30. Santal.
9. Chik Baraik.	20. Khond.	31. Sauria Paharia.
10. Gadaba.	21. Kisan	32. Savar.
11. Ghatwar.	22. Koli.	33. Tharu.

(b) a resident in any of the following districts or police stations, that is to say, the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas, and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamda Banduan and Manbazar in the district of Manbhum, belonging to any of the following tribes: -

- |            |            |            |
|------------|------------|------------|
| 1. Bauri.  | 4. Bhumij. | 7. Rajwar. |
| 2. Bhagta. | 5. Ghasi.  | 8. Turi.   |
| 3. Bhuiya. | 6. Pan.    |            |

(c) a resident in the Dhanbad Sub-Division or any of the following police stations in the Manbhum District, that is to say, Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Khasipur belonging to the Bhumij tribe.

#### PART IV - CENTRAL PROVINCES

- |                    |               |                          |
|--------------------|---------------|--------------------------|
| 1. Gond.           | 13. Baiga.    | 25. Kol.                 |
| 2. Kavar.          | 14. Kolan.    | 26. Nagasia.             |
| 3. Maria.          | 15. Bhil.     | 27. Sawara.              |
| 4. Muria.          | 16. Bhuinhar. | 28. Korwa.               |
| 5. Halba.          | 17. Dhanwar.  | 29. Majhwar.             |
| 6. Pardhan.        | 18. Bhaina.   | 30. Kharia.              |
| 7. Oraon.          | 19. Parja.    | 31. Saunta.              |
| 8. Bimjhar.        | 20. Kamar.    | 32. Kondh.               |
| 9. Andh.           | 21. Bhunjia.  | 33. Nihal.               |
| 10. Bharia-Bhumia. | 22. Nagarchi. | 34. Birhaul( or Birhor.) |
| 11. Koti.          | 23. Ojha.     | 35. Rautia.              |
| 12. Bhattra.       | 24. Korku.    | 36. Pando.               |

#### PART V - ORISSA

(a) A resident of the province belonging to any of the following tribes: -

- |             |                |              |
|-------------|----------------|--------------|
| 1. Bagata.  | 8. Konda-Dora. | 15. Munda.   |
| 2. Banjari. | 9. Koya.       | 16. Banjara. |

- |                  |                    |              |
|------------------|--------------------|--------------|
| 3. Chenchu.      | 10. Paroja.        | 17. Binjhia. |
| 4. Gadaba.       | 11. Saora (Savar). | 18. Kisan.   |
| 5. Gond.         | 12. Oraon.         | 19. Koli.    |
| 6. Jatapu.       | 13. Santal.        | 20. Kora.    |
| 7. Khand (Kond). | 14. Kharia.        |              |

(b) a resident of any of the following areas, that is to say, the Koraput and Khondmals Districts and the Ganjam Agency belonging to either of the following tribes: -

- |                  |                 |
|------------------|-----------------|
| 1. Dom or Dombo. | 2. Pan or Pano. |
|------------------|-----------------|

(c) a resident of the Sambalpur District belonging to any of the following tribes: -

- |            |            |                 |
|------------|------------|-----------------|
| 1. Bauri.  | 3. Bhumij. | 5. Turi.        |
| 2. Bhuiya. | 4. Ghasi.  | 6. Pan or Pano. |

#### PART VI - BENGAL

- |            |  |
|------------|--|
| 1. Botia.  | 7. Mro.  |
| 2. Chakma. | 8. Oraon.  |
| 3. Kuki.   | 9. Santal.   |
| 4. Lepcha. | 10. Tippera.   |
| 5. Munda.  | 11. Any other tribe notified by the Provincial Govt. |
| 6. Magh.   |  |

#### PART VII - UNITED PROVINCES

- |             |   |
|-------------|---|
| 1. Bhuinya. | 6. Kol.   |
| 2. Baiswar. | 7. Ojha.  |
| 3. Baiga.   | 8. Any other tribe notified by the Provincial Govt. |
| 4. Gond.    |   |
| 5. Kharwar. |   |

### **Schedule B**

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

#### BENGAL

The Chittagong Hill Tracts.

#### BOMBAY

In the West Khandesh District: - The Navapur Petha, the Akrani Mahal and the villages belonging to the following Mehwasji Chiefs: (1) the Parvi of kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walvi of Gaohali, (5) the Wassawa of Chikhli and (6) the Parvi of Navalpur.

In the East Khandesh District: - The Satpura Hills Reserved Forest Areas.

In the Nasik District: - The Kalvan Taluk and Peint Peth.

In the Thana District: - The Dahanu and Shahpur Talukas and Mokhala and Umbergaon Pethas.

#### BIHAR

The Ranchi and Singhbhum districts and the Latehar Sub-division of the Palamau district of the Chhota Nagpur Division.

The Santal Paraganas District, excluding the Godda and Deogarh sub-divisions.

#### THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur Jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kendra, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabar as and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ORISSA

The Ganjam Agency Tracts including Khondmals.

The Koraput District.

## **MINUTE OF DISSENT**

### **Scheduled Areas**

I regret I must submit a minute of dissent in regard to the "Scheduled areas" for the Chhota Nagpur Plateau. I cannot agree to the elimination of the Districts of Manbhum, Hazaribagh and Palamau which, even according to the unreliable 1941 Census, contain 678, 126, 478, 253 and 323,106 Adibasis respectively, that is, a total of 1,479,485 Adibasis for the three Districts. I cannot see how I can agree to the demolition of the economic, geographical and ethnic unity and entity of the Chhota Nagpur Division. It is not right that we should give an *ex parte* verdict and change the *status quo* of these three Districts.

JAIPAL SINGH

*The 19th August 1947.*

[Annexure VIII]

## APPENDIX D

### **INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED**

#### **AREAS (OTHER THAN ASSAM) SUB-COMMITTEE**

##### **Summary of Recommendations**

1. Tribes who live in the non-excluded areas are part of the problem and the tribes as a whole should be treated as a minority. Tribals should have reserved seats in a joint electorate based on adult franchise in proportion to their population. One representative each is recommended for the Laccadive, Amindivi and Minicoy islands respectively in the Madras Legislature and one for the Lahaul and Spiti Waziris in the East Punjab Legislature [Para. \*9 and Sections A and B (1) of Appendix C]\*
2. It will be necessary to provide for the exclusion of unsuitable legislation in such matters as land, village management and social customs in certain areas inhabited predominantly or to an appreciable extent by tribals. These areas will be known as Scheduled Areas (Para. \*10).
3. Legislation in such matters as land and social customs should not be applied to Scheduled Areas if the Tribes Advisory Council advises to the contrary ( Paras.\*11 and 12 and Section E of Appendix C).
4. Simplified procedure should be continued for the disposal of petty criminal and civil cases (Para. \*13 and Section M).

5. Seats should be reserved in the Federal Legislature on the basis of the tribal population of the province. A Tribal Advisory Council should be set up with a minimum of ten and a maximum of 25 members in Madras, Bombay, Bengal, Bihar, C. P. and Orissa (Para. \*15 and Section J of Appendix C).

6. There should be provision for the Federal Government to institute a special commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general [Para. \*16 and Section K (1) of Appendix C].\*

7. It will be necessary for the Central Government to come to the assistance of Provincial Governments for the execution of schemes of development by providing the necessary funds. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas (Para. \*17 and Sections I and K (2) of Appendix C)\*.

8. The revenues derived from and the expenses incurred on the Schedule Areas from the provincial budget should be shown separately in the annual financial statement of the province (Para. \*18 and Section H of Appendix C).

9. It should be the Governor's responsibility to see that schemes of development are drawn up and implemented. (Para. \*19).

10. There should be a separate Minister for Tribal Welfare in C. P. Orissa and Bihar, and provision for this should be contained in the statute. (Para. \*20 and Section L of Appendix C).

11. There should be a due proportion of aboriginals recruited into the various Government Services. A separate service is not recommended but non-tribal officials posted to the Scheduled Areas should be selected with care. (Para.\*21).

12. Tribal panchayats should be encouraged wherever possible (Para. \*22).

13. Shifting cultivation should be discouraged (Para.\*23).

14. Temperance propaganda should be carried on as part of tribal welfare work (Para \*24).

15. The alienation of land belonging to tribals to non-tribals should be prohibited. Allotment of new land in Scheduled Areas should not be made to non-aboriginals except in exceptional cases (Para. \*25 and Section F of Appendix C).

16. There should be provision for control of money-lenders by a system of licensing (Para. \*26 and Section G of appendix C).

Sambalpur, Angul and Darjeeling and certain areas in Bombay need not be treated as Scheduled Areas. In Bihar the three districts of Ranchi, Singhb hum, and Santal Parganas only where the tribes are in a majority are included in the Schedule provisionally. The U. P. and Punjab areas are not included (Para. \*27 and Schedule B of Appendix C).

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\* References to pages, paras., sections and appendices are to pages, paras., sections and appendices in the original reports.

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[Annexure VII]

APPENDIX D

**FINAL REPORT**

To

THE CHAIRMAN,

ADVISORY COMMITTEE ON MINORITIES, etc.

DEAR SIR,

This is our final report written after our visit to Bihar and the United Provinces. It relates to the partially excluded areas of these provinces and the excluded areas of the Punjab in respect of all of which the recommendations contained in our interim report were provisional. Certain general recommendations have also been added.

2. With reference to Bihar we confirm the constitutional proposals already made by us *in toto*.

BIHAR

We consider it necessary in addition to refer to certain matters connected with the administration of this, the largest compact block of territory comprising any excluded area in India, which came to our notice during our tour. To begin with, the Christian section of the tribals, though small in number (see statement appended), is educationally and economically far in advance of the non-Christian tribals. The demand for education among the non-Christians is said to be negligible and this presumably is the result of their economic backwardness which makes it necessary that children should assist their parents in earning their livelihood. There are however allegations that the Christian teachers and educational officials encourage only Christian children, and as a good number of the schools are run by Christian Missions, the non-Christians lack facilities for education. The Christians again appear to be much better organised and vocal and they are found to take prominent part in local and political organisations. The other striking feature of this area is the feeling common among educated tribals and shared by non-tribals in considerable measure that Chhota Nagpur has little share in the administration commensurate with its area, population and industrial importance and is being neglected by the Government which is made up of elements interested mostly in the rest of Bihar. Certain non-aboriginal witnesses have expressed their views of the neglect of Chhota Nagpur in no uncertain terms and suggested that the ameliorative measures claimed by the Government are purely defensive action prompted by the separation movement. Even when the Government is supposed to be resident at Ranchi, it is given as concrete proof of their lack of interest that they are mostly absent on tour in areas other than Chhota Nagpur in which they are interested. Dr. Sinha has also stated that the present Government has yet to do something "to capture the imagination of the people" and that under the present practice "the Honourable Ministers stay for a very short period at Ranchi - at their own will and convenience - and do not usually visit so much the aboriginal areas as they do those of the other three divisions of Bihar". We have referred to these statements not because we are in agreement with them or with a view to adjudicating on them but purely as indicative of the local atmosphere. Dr. Sinha has referred to the absence of the aboriginal element in the Ministry and has recommended reconstitution.

The extreme expression of the discontent prevalent in Chhota Nagpur is the separatist movement which demands the formation of a new province of Jharkhand out of the partially excluded area. This movement is sponsored at present by the Adibasi Mahasabha containing a very large advanced or Christian element but in Singhbhum and in the Santal Parganas also, a good proportion of non-Christians seem to have been affected by it. To borrow Dr. Sinha's words it is "capturing the imagination" of the tribals. Unmistakably also the movement is gaining sympathy among the non-aboriginals; and even if it be partly due to mere local ambition, the virtual exclusion of tribal elements from the Cabinet has undoubtedly contributed much to it. We have already held in our interim report that the question of the formation of a separate province is not for us to tackle but we would invite the attention of the Provincial and Central Government to the separation movement, which seems to be gaining strength, as a symptom of the discontent which is simmering in varying intensity among all sections of the Chota Nagpur population. At the same time we have noticed that the Cabinet of the Bihar Government and such an eminent public man as Dr. S. Sinha oppose the separation movement on the grounds very well shown in the brochure of Dr. Sinha. We have also received a number of telegrams from these areas saying that they thoroughly disapprove of the separatist movement.

We are inclined to the view which seems to be shared by Dr. Sinha also, that there should be adequate association of the people of the partially excluded areas, particularly the tribals, in the different branches of the administration including the Cabinet and that there can be neither satisfaction nor adequate progress until this is done. In short, the problem of administration in this tract must be dealt with not only by economic and educational improvements but also by remedies which recognise its political and psychological aspects; and we would lay the maximum emphasis on the urgency of action in both these directions.

#### UNITED PROVINCES

3. As regards the partially excluded areas of the United Provinces viz., the Jaunsar-Bawar Pargana in the Dehra Dun District and the area comprising the Dudhi Tahsil and part of the Robertsganj Tahsil of the Mirzapur District, we find that both of these comparatively small areas are suffering from serious neglect. Although a committee was set up as early as 1939 to enquire into the administration of the Jaunsar-Bawar Pargana and a report was submitted by it in 1941, it is a matter for regret that no action has yet been possible although the report was ultimately made only by the official members of the Committee. We understand that another committee has been appointed recently this year to go into the matter by the Provincial Government and hope that speedy action will be taken on its report. The main matters which require attention in this area are as follows: -

- (1) the fixation and collection of land revenue and distribution of "rights timber" through the agency of the Sayanas as well as the position of the Sayana in the village panchayat which gives rise to a great deal of oppression.
- (2) survey resettlement of the area and removal of restrictions on the possession of land and reclamation of waste land by Koltas (local depressed castes of Hindus).
- (3) the elimination of social evils like polyandry and venereal disease.

In the partially excluded area of the Mirzapur District which is inhabited by a majority of tribals we find that the administration is of a pretty primitive character. The figures given in the U. P. Government's factual memorandum for the Dudhi Government Estate which are shown below indicate that the revenue from it is not utilised to the extent of even two-fifths of the administration of the area: -

	Income	Expenditure
1944-45	1,64,430	83,421
1945-46	2,96,002	88,002
1946-47	2,34,797	89,854
TOTAL	6,95,229	2,61,227 <i>i.e. 37.6 per cent of the income</i>

We would draw particular attention to the statement of witnesses that a very large percentage of the population of this area is suffering from venereal disease. In the Dudhi Estate the U. P. Government have themselves noted that there is a passage of land from the hands of the aboriginals to the non-aboriginals. It would appear that the rules of the Dudhi Estate are ineffective in preventing this since land can be surrendered to the Supurdar who re-allots the same to another person, most probably a non-aboriginal. Such a transfer unfortunately does not require the approval of the S. D. O. or the Collector. It does not appear that suitable steps have been taken to put a stop to this. Among other complaints are the working of this monopoly Given to Messrs. Gladstone wyllie and Company Ltd., For the Collection and sale of lac which is terminable in the year 1952. The working of this monopoly under which only about one-seventh, or if we allow for overhead and working charges, not more than one-fourth, of the price realised by the company for the sale of the lac is obtained by the aboriginal cultivator tends to keep the aboriginal in a miserable condition. It does not appear to us that the Government have any comprehensive or fully considered programme for this area as yet.

The population of this tract is very small (1/3 percent.) in comparison with the total population of the United Provinces. We would not on that account recommend for its future administration the proposals which we have recommended for some of the backward tracts of other provinces, but we are equally definite that special provisions for its development are essential, as without them it is certain that due attention will not be paid to its needs. Similarly although the inhabitants of the Jaunsar-Bawar Area, as pointed out in our interim report, are not tribals by race and we do not recommend inclusion in the schedule of our Interim Report special provisions are necessary for this area also. We recommend therefore constitutional provisions for both of these tracts as follows: -

- (1) there should be an advisory committee consisting of tribes or backward people to the extent of not less than two-thirds of its membership to advise the Government on the development of the area.
- (2) the estimated revenue and expenditure (including development schemes) pertaining to the area should be shown separately in the provincial budget;
- (3) although general administration of the type in force in other districts may be applied to the tract, the trial of petty civil and criminal cases should be permissible under special regulations;
- (4) there should be provision in the Constitution prohibiting the transfer of land from aboriginals to non-aboriginals except with the sanction of an authorised officer:
- (5) the powers of Supurdars in the Dudhi area of Mirzapur District to allot wastelands and accept surrender of land should be withdrawn and in Jaunsar -Bawar the system of Sayanas should be abolished and the Sayanas replaced by Government employees;
- (6) the U. P. Government should report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive;

(7) there shall be one seat reserved in the Provincial Assembly for a tribal from the area of the Mirzapur District which is now partially excluded.

#### EAST PUNJAB

4. The disturbed conditions in the East Punjab have prevented the appearance of witnesses from Spiti and Lahoul before us and it is equally not possible for us to visit the area. It is unlikely that settled conditions will prevail in the Punjab before the passes are blocked and we do not propose therefore to postpone our recommendations which will now be based on the factual memorandum sent by the Provincial Government.

We consider that constitutional provisions should be made as follows: -

(a) An Advisory Committee of which at least 2/3 shall be local residents shall be set up to advise the Provincial Government regarding the administration of Lahoul and Spiti.

(b) The Provincial Government may declare any law passed by the Federal or Provincial Legislature as not applicable to the tracts or applicable with specified modifications.

(c) The Provincial Government may make special regulations for the administration of criminal and civil law and the protection or rights of local Tibetan inhabitants in land.

(d) The Provincial Government shall report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive.

(e) We confirm the recommendation made in paragraph 9 of the Interim Report that there should be a representative for Lahoul and Spiti in the Provincial Legislature.

**5. A Central Department.** - After surveying the position in all the provinces, we have been forced to the conclusion that unless there is a separate department of the Federal Government prescribed by Statute to supervise and which the development of the scheduled areas and the tribals in the different provinces and to furnish such advice and guidance as may be needed, the pace of progress of the tribes will not be sufficiently swift. The Central Government have already recognised the need for a Directorate of anthropological Survey and we recommend that provision for a Central Department of Tribal Welfare should be made in the Constitution.

**6. Recruitment to Armed Forces.** - We are also of the view that special attention should be paid to the recruitment of the tribes to the armed forces of India. The tribes people can in our opinion furnish valuable material for this purpose as experience in the last war goes to show.

**7. Village and Tribal Headmen.** - During the course of our enquiry many complaints of oppression and mishandling of the tribes people by the hereditary chiefs or heads of villages like the Mustadars Bissois and Paros and Muthadars of South Orissa, the Parganaites and Pradhans of the Santal Parganas and the Mankis and Mundas of Singhbhum have reached us. We are of the view that a general review of the powers and functions of such village or tribal heads should be undertaken by Provincial Governments with a view to removing the grievances of the tribal villagers, the abolition of powers which are exercised in an oppressive manner and the general reform of these ancient systems.

**8. Non-official welfare organisations.** - We recommend that the Provincial Governments should utilise the services of approved non-official organisations which are at present doing welfare work in the

provinces for the tribals or which may hereafter come into existence by giving them grants-in-aid with a view to supplementing the volume of development work.

**9. Officials to learn tribal languages.** - We have found that officials posted to aboriginal areas rarely know the local language. This obviously does not conduce to satisfactory administration and we are of the view that it should be made compulsory for officials posted to the aboriginal areas to obtain a working knowledge of the language within a reasonable period. Proficiency in these languages or dialects should be encouraged by the grant of suitable awards.

Yours truly,

**A. V. THAKKAR,**

*Chairman,*

**Excluded & Partially Excluded Areas.**

*(other than Assam) Sub-*

*Committee.*

Members -

RAJ KRUSHNA BOSE.

PHUL BHAN SHAH (Subject to Minute of Dissent).

JAIPAL SINGH.

The percentage of Tribal population on to the total population in 6 Districts of Bihar and of the Christian population to that of the Tribal population.

	Name of District	Total Population	Tribal Population	Percentage	Christian Tribal Population	Percentage
1	Santhal Parganas	22,34,500	11,29,885	50.5	23,205	2.05
2	Hazaribagh	17,51,300	4,78,253	27.8	2,593	0.54
3	Ranchi	16,75,400	11,73,142	70.0	2,85,200	24.31
4	Palamau	9,12,700	3,23,106	35.4	10,786	3.34
5	Manbhum	20,32,100	6,78,126	33.3	1,354	0.19
6	Singhbhum	11,44,700	6,68,597	58.4	17,775	2.65
	Total	97,50,700	44,51,109	45.65	3,40,913	7.66

#### **MINUTE OF DISSENT**

I submitted a dissenting minute against the provisional report which had included recommendations for those tribal areas also which had then not been visited. After the visit of the Sub-Committee to these areas, I am more than confirmed in my opinion that all the six districts of the Chhota Nagpur Plateau, namely, Manbhum, Singhbhum, Palamau, Hazaribagh, Ranchi and the Santhal Parganas, should remain "Scheduled Areas". All the witnesses were emphatic that the Chhota Nagpur Division as a whole should be scheduled and no district or territory should be excluded from the scheduled status. Even Dr. Sachchidananda Sinha, whose Memorandum has received such attention from the other members of the

Sub-Committee, has admitted that for administrative reasons all the six districts should be scheduled. I have other reasons also for the same insistence but the most vital one is the necessity of protecting 1,479,485 Adibasis of the districts of Manbhum, Hazaribagh and Palamau with the veto of the Tribes Advisory Council. This 1941 Census figure is large enough to justify the claim that 15 lakhs of Adibasis should not be exposed to the dangers of General Administration.

**Partially Excluded Areas in Mirzapur District.** - The tribal tract in Mirzapur district should be transferred to the Scheduled Area of the Chhota Nagpur Plateau. Administratively as well as geographically, the Bihar Government would be in a better position to manage this far-off corner of the United Provinces.

**Chittagong Hill Tracts.** - The Indian Government must claim back the Chittagong Hill Tracts. The Radcliffe Award must be altered in regard to them

JAIPAL SINGH.

Sept. 25th, 1947.

#### **Note by Chairman on Minute of Dissent by Shri Jaipal Singh**

I do not think that any witnesses whom the Committee examined were explained our proposal that was under contemplation by the Committee about "Scheduling" of certain areas in some provinces. "Scheduling" has a certain special meaning which was not explained to nor known by witnesses at all, not even to Dr. Sachchidananda Sinha. Therefore they could not distinguish between "Schedule and non-schedule" areas in which Tribes reside. Therefore the statement that, all the witnesses were emphatic that the Chhota Nagpur Division as a whole should be scheduled and that no District or territory should be excluded from the "Scheduled States" is incorrect, at any rate, very highly exaggerated.

The Tribal people in Manbhum District form only 33.3 per cent. of the total population. In Hazaribagh 27.8 is the similar percentage. The Latehar Sub-Division of the Palamau District has been recommended by the Sub-Committee as "Schedule". But in the Sadar Sub-Division the percentage is only 26.0. Moreover there are very small compact areas in the two districts mentioned above and in the Sadar Sub-Division of Palamau District which have a Tribal population of more than 40 per cent of the total population, the tribal people have assimilated themselves with the rest of the population so as to be indistinguishable in those areas. It is not therefore necessary to "schedule" the districts of Manbhum and Hazaribagh and the Sadar Sub-Division of Palamau District for the small percentage of the Tribal people who are dispersed among the rest of the population, and thus to brand these 2 2/2 districts as backward.

As has already been shown in the body of the report the area of Dudhi Tehsil and parts of Robertsganj are too small to be made a Scheduled Area. It is a very fantastic proposal to detach this area from the United Provinces and to tag it on to Bihar Province. It requires no argument to say that this proposal can form no part of this Committee's proposal.

Chittagong Hill Tracts is a purely 97 per cent Buddhistic or non-Muslim area and this Committee would have been too glad, had it formed a part of West Bengal but as the Boundary Commission gave its decision to the contrary and it was accepted by both the Dominions of India and Pakistan. The Committee has been very sorry to know this decision but the award of the Boundary Commission is unalterable.

A. V. THAKKAR

Delhi, 25th Sept. 1947.

Chairman.

### **MINUTE OF DISSENT**

The Sub-Committee submitted a provisional report prior to visiting Bihar. While submitting that report I raised a question to the effect that all districts of Chhota Nagpur Division and Santhal Pargana should be included as Scheduled Areas. During Bihar tour evidence adduced before the Sub-Committee strongly confirmed my contention that the aforesaid areas deserve to be included as Scheduled Areas. The evidence including that of Dr. Sachchidananda Sinha strongly support this contention. Inclusion of the aforesaid tracts as scheduled Areas is strongly warranted.

D. N. SAMANTA

The 13th October, 1947.

[Annexure X]

### **APPENDIX D**

#### **Joint Report of the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee and the North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee of the Advisory Committee.**

In accordance with the ruling of the Chairman, Advisory Committee, we have held a joint meeting of our two sub-committee. Separate reports have already been submitted by us which in the case of the Assam Sub-Committee contains final recommendations, and in the case of the other Sub-Committee is final for the Provinces of Madras, Bombay, Bengal, the Central Provinces and Orissa, and is provisional for Bihar, the United Provinces and the Punjab which have yet to be visited or in respect of which witnesses are yet to be examined. The report of the latter Sub-Committee contains however the framework of the proposals likely to be adopted finally. Although that report is not final for all Provinces, this joint report is being submitted so that the recommendations could be taken into consideration by the Advisory Committee, if this is necessary, before the final report is available towards the end of September. We would further point out that the position of the excluded and partially excluded areas has undergone a change with the coming into operation of the Indian Independence Act and the adapted Constitution of 1935. Under the Indian Independence Act so much of the provisions of the Government of India Act, 1935 as requires a Governor to act in his discretion or exercise his individual judgment ceases to have effect from the 15th of August. The partially excluded areas are represented in the legislatures, however inadequately, but in the case of the excluded areas the change implies that they are brought under the jurisdiction of the Ministry without representation in the legislature. Taking into account the past history of these tracts, the needs and susceptibilities, of the people and other factors, it appears desirable that the Provincial Governments should at least be aware of our recommendations as soon as possible so that their policy may be guided thereby even if other steps are not found necessary in the Constituent Assembly for their implementation at an early date. We recommend that Provincial Governments should be advised to take such action as the establishment of District Councils and Tribal Advisory Councils as may be possible immediately to give effect to the policy recommended by us and to make such statutory regulations for this purpose as may be necessary.

2. Coming to the actual recommendations made by the two Sub-Committees, we are of the view that although certain features are common to all these areas, yet the circumstances of the Assam Hill Districts are so different that radically different proposals have to be made for the areas of this Province. The distinguishing feature of the Assam Hills and Frontier Tracts is the fact that they are divided into fairly large districts inhabited by single tribes or fairly homogenous groups of tribes with highly democratic and mutually exclusive tribal organisation and with very little of the plains leaven which is so common a feature of the corresponding areas, particularly the partially excluded areas of other Provinces. The Assam Hill Districts contain as a rule, upwards of 90 per cent of tribal population whereas, unless we isolate small areas, this is generally not the case in the other Provinces. The tribal population in the other Provinces has moreover assimilated to a considerable extent the life and ways of the plains people and tribal organisations have in many places completely disintegrated. Another feature is that some of the areas in Assam like the Khasi Hills or the Lushai Hills, show greater potentialities for quick progress than tribes in the other Provinces. They may also be distinguished by their greater eagerness for reform in which they have a dominant share than the apathy shown by the tribals of some other Provinces. Having been excluded totally from ministerial jurisdiction and secluded also from the rest of the Province by the Inner Line system, a parallel to which is not to be found in any other part of India, the excluded areas have been mostly anthropological specimens; and these circumstances together with the policy of officials who have hitherto been in charge of the tracts have produced an atmosphere which is not to be found elsewhere. It is in these conditions that proposals have been made for the establishment of special local councils which in their separate hill domains will carry on the administration of tribal law and control the utilisation of the village land and forest. As regards the features common to tribal areas in other Provinces, the Assam hill man is as much in need of protection for his land as his brother in other Provinces. He shares the backwardness of his tract and in some parts the degree of illiteracy and lack of facilities for education, medical aid and communications. Provision is necessary for the development of the hill tracts in all these matters and we have found it necessary to recommend constitutional safeguards of various kinds.

3. The differences between Assam and other areas as well as certain common features have been indicated above. While in Assam the Hill Districts present features of their own and the Assam Sub-Committee have confined their recommendations on the whole to these tracts, it has not been possible for the other Sub-Committee to deal with the problems of the tribes in exactly the same manner. The special features of the hills have been mentioned and they distinguish almost to the same degree the tribesmen in the hill and the tribesmen in the plains of Assam as they do the regular plains inhabitants. The total population censused as tribal in the plains of Assam is about 1.5 million out of which possibly some 50 per cent. consists of tea-garden labour, drawn in part from other provinces. This portion of the plains tribals is of course a population which has assimilated in high degree the life of the plains. The stable population of plains tribals is more or less in the same position. As regards other Provinces, the degree of assimilation is on the whole greater whether the tribesman is found in the hills or in the more accessible parts although some of the small tribes in the Agency Tracts of Orissa and Madras have hardly come into contact with the plains. In any case their outlook is totally different. From the very manner in which partially excluded areas have been formed it has not been possible to include large numbers of tribals who are scattered about in the Provinces irrespective of whether their condition was advanced or otherwise. It has been necessary therefore to treat all persons of tribal origin as a single minority and not separately as in the case of Assam. In this method of treatment therefore the recommendations for other Provinces differ radically from the proposals for Assam. The excluded and partially excluded areas however contain considerable concentrations of tribes people and generally they are in hilly and comparatively inaccessible areas with no communications and facilities for the development of the population. Land for them also is a vital factor and protection of the tribals' land is an essential need. The financial requirements of the Scheduled Areas are considerable, and the Centre will have to come to the assistance of certain Provinces at any rate. Thus the essential features of the proposals for the tribals of Provinces other than Assam are proportionate representation for the tribals as a whole in the Legislature, the scheduling of certain areas as in need of special attention and in which the protection of land and the social organisation of the tribals is an indispensable need. To facilitate the proper administration of the

tribes, a Tribes Advisory Council with statutory functions is recommended for the Provinces of Madras, Bombay, the Central Provinces, Bihar, West Bengal and Orissa, and the application of provincial legislation to the Scheduled Areas is linked up with this Advisory Council.

4. The common proposals for Assam and other Provinces is that of provision of funds by the Centre and a separate financial statement in the budget for the Hill Districts (Assam) and the Scheduled Areas (other Provinces). The inclusion of provisions for the control of moneylenders is another common feature.

5. We have attached copies of the Appendices\* to the separate reports which indicate the legal provisions necessary and a summary! of the recommendations of both the Sub-Committees.

6. We recommended that the plains tribals of Assam!! should be recognised as a minority and should be entitled to all the privileges of a minority including representation in the legislatures in proportion to population and in the services; and that their land should be protected.

7. Subject therefore to the special provisions for the representation of the Hill Districts of Assam, all tribals should be recognised as a minority for the purposes of representation in the legislatures and in the services.

G. N. BARDOLOI, Chairman,  
N. E. F. (Assam)  
Tribal & Excluded Areas  
Sub-Committee.

A. V. THAKKAR, Chairman,  
Excluded & Partially  
Excluded Areas (Other  
than Assam)  
Sub-Committee.

Dated New Delhi, the 25th August 1947.

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\* For the relevant Appendices of the Report of the excluded and Partially Excluded Areas (other than Assam) Sub-Committee, See pages 33-34 of the original reports.

! See page 63 of the original report.

!! This means that Tea-garden labour and ex tea-garden labour which consists of tribals from provinces other than Assam are excluded.

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**[Annexure XI]**

APPENDIX D

**Appendix A to Part I of North-East Frontier (Assam) Tribal and Excluded**

## **Areas Sub-Committee Report**

A. (1) The areas included in Schedule A to this part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of Section P the Government of Assam may from time to time notify any area not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule or part of such district, as ceasing to be an autonomous district or a part thereof.

B. (1) There shall be a District Council for each of the areas specified in schedule A. The Council shall have not less than twenty nor more than forty members, of whom not less than three-fourths shall be elected by universal adult franchise.

Note. - If adult franchise is not universally adopted this provision will have to be altered.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group:

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Councils shall have such powers as may be delegated by the Regional Councils in addition to the powers conferred by this constitution.

(5) The District or the Regional Council may frame rules regarding (a) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (b) the conduct of business, (c) the appointment of staff, (d) the formation and functioning of subordinate local councils or boards, (e) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers:

Provided that the Deputy Commissioner or the Sub-divisional officer as the case may be of the Mikir and the North Cachar Hills shall be the Chairman *ex-officio* of the District Council and shall have powers for a period of six years after the constitution of the Council, subject to the control of the Government of Assam, to annul or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C. (1) The Regional Council, or if there is no Regional Council, the District Council, shall 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 for grazing, cultivation, residential or other purposes ancillary to the life of the village or town, 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:

Provided that land required by the government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land; (b) the management of any forest which is not a reserve forest; (c) the use of canal or water courses for the purposes of agriculture; (d) controlling, prohibiting or permitting the practice of *jhum* or other forms of shifting cultivation; (e) the establishment of village or town committees and councils and their powers; (f) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regulating (a) the appointment or succession of chiefs or headmen; (b) inheritance of property; (c) marriage and all other social customs.

D. (1) Save as provided in Section F the Regional Council, or if there is no Regional Council, the District Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council may set up village Councils or Courts for the hearing and disposal of disputes or cases other than cases triable under the provisions of Section F, or cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F. (1) For the trial of acts which constitute offences punishable with imprisonment for five years or more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non-tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council the District Council or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on the Regional Council or District Council or any court or officer under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous district.

Note. - "Special Laws" - Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G. (1) There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H. (1) A Regional council, or if there is no Regional Council the District Council shall have the

following powers of taxation:

(a) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue (b) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (a) a tax on professions, trades or calling, (b) a tax on animals, vehicles, (c) toll tax, (d) market dues, (e) ferry dues, (f) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes within its financial powers.

I. (1) The Government of Assam shall not grant any licence or lease to prospect for or extract minerals within an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accruing from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in his discretion shall be paid.

J. (1) The District Council may for the purpose of regulating the profession of money lending, or trading by non-tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (a) prescribing that except the holder of a licence issued by the Council in this behalf no person shall carry on money lending, (b) prescribing the maximum rate of interest which may be levied by a moneylender, (c) providing for the maintenance of accounts and for their inspection by its officials, (d) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the District Council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three fourths of its members:

Provided further that a licence shall not be refused to moneylenders and dealers carrying on business at the time of making of the rules.

K. (1) The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts which may at any time be specified in Schedule A in accordance with Sub-section (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section .....of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas, nor shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L. (1) Legislation passed by the provincial legislature in respect of (a) any of the subjects specified in section C or (b) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or if there is no Regional Council, the District Council

may apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary to enable that Government - (a) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this constitution in respect of the administration of the areas specified in Schedule A; and (b) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administrations of the aforesaid areas to that of the rest of the province.

O. (1) The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or, generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (a) the provision of educational and medical facilities and communications (b) the need for any new or special legislation and (c) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with the commendations of the Governor shall be placed before the provincial legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the Autonomous Districts.

P. (1) The Government of Assam may, with the approval of the Federal Government, by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B to this Part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said Schedule.

(2) Till a notification is issued under this section, the administration of any area specified in Schedule B or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q. (1) The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, annul or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the legislature as soon as possible and the legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the legislature of the province, place the administration of the area directly under himself or the commission or other body considered suitable by him, during the interim period or for a period not exceeding twelve months:

Provided that such action shall not be taken without affording an opportunity to the District or

Regional Council to be heard by the provincial legislature and shall not be taken if the provincial legislature is opposed to it.

### **Transitional Provisions**

Governor to carry on administration as under the 1935 Act till a Council is set up, he should take action to constitute the first District Council or Regional councils and frame provisional rules in consultation with existing tribal Councils or other representative organisations, for the conduct of the elections, prescribe who shall be the office bearers etc. The term of the first Council to be one year.

GOPINATH BARDOLOI, (Chairman)

J. J. M. NICHOLS-ROY.

RUP NATH BRAHMA.

A. V. THAKKAR.

### Schedule B

The Khasi and Jaintia Hills District excluding the town of Shillong.

The Garo Hills District.

The Lushai Hills District.

The Naga Hills District.

The North Cachar Sub-division of the Cachar District.

The Mikir Hills portion of Nowgong and Sibsagar District excepting the mouzas of Barpathar and Sarupathar.

### Schedule B

The Sadiya and Balipara Frontier Tracts.

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).

The Naga Tribal Area.

### **[Annexure XII]**

### APPENDIX D

### **SUMMARY OF RECOMMENDATIONS OF THE ASSAM**

### **SUB-COMMITTEE**

District Councils should be set up in the Hill Districts (see Section B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required for the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Para. \*9 - Section C (1) Appendix A].\*

2. Reserved forests will be managed by the Provincial Government in questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the Hill People should be taken into account [Para. \*10]\*.

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, jhuming should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of jhuming should be left to the local councils [Para. \*11 and Section C of Appendix A]\*.

4. All social law and custom is left to be controlled or regulated by the tribes. [Para. \*12 and Section C (2) of appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit magistrates or judges. [Para. \*12 - Section D & F of Appendix A].\*

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some integration with the general system of the province and it is left open to the provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable. [Para. \*13 and Section E of Appendix A].\*

For the Mikir and North Cachar Hills the District or Sub Divisional province and it is left open to the provincial Government to entrust local councils with powers, subject to the control of the Government of Assam, to modify or annul resolutions or decisions of the local councils and to issue such instructions as may be necessary. [Para. \*13 and Section B (5) of Appendix A]\*.

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest. [Section \*H of Appendix A and Para. 14 (a)]\*.

Statutory provision for a fixed proportion of provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived

from the district and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoined either by statute or by Instrument of Instructions. Section \*M of Appendix A and Para. 14 (b)]\*.

It is quite clear that the urgent requirements of the hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section \*N of appendix A and Para. 14 (c)]\*.

The claims of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognised [Para. \*16 (d)]\*.

7. If local councils decide by a majority of three-fourths of their members to license moneylenders or traders they should have powers to require moneylenders and professional dealers from outside to take out licences. [Para. \*15 and Section J of Appendix A]\*.

8. The management of mineral resources should be centralised in the hands of the Provincial Government but the right of the district councils to a fair share of the revenues is recognised. No licence or lease shall be given by the Provincial Government except in consultation with the local Council. If there is no agreement between the Provincial Government and the district council regarding the share of the revenue, the Governor will decide the matter in his discretion [Para. \*16 and Section I of Appendix A]\*.

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. \*17 and Section L of Appendix A]\*.

10. It is necessary to provide for the creation of regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional councils may delegate their powers to the district councils Para. \*18 and Section B (4) of Appendix A]\*.

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the legislature. The Governor is also given powers to dissolve the council if gross mismanagement is reported by a commission [Para. \*19 and Section Q and R of appendix A]\*.

12. The Central Government should continue to administer the Frontier Tracts and Tribal Area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the Provincial Government with the approval of the Federal Government [Section \*P of Appendix A and Para. 20 (a)]\*.

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Naga Tribal Area [Para. \*20(a)]\*.

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the Provincial Government with a view to a decision whether it could immediately be brought under provincial administration. A similar examination of the position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the Balipara Frontier Tract around Charduar should also be subject to a similar examination [Para. \*20(b)]\*.

Posa payment should be continued [Para. \*20 (c)]\*.

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. \*21 (a) and Section B (1) of Appendix A]\*.

Weightage is not considered necessary but the hill districts should be represented in the provincial legislature in proportion not less than what is due on their population even if this involves a certain weightage in rounding off. The total number of representatives for the hills thus arrived at [See Para. \*21 (b)] should not be taken into account in determining the number of representatives to the provincial legislature from the rest of Assam [Para. \*21 (b) and Section K or Appendix A]\*.

The total population of the hill districts justifies a seat for the hill tribes in the Federal Legislature on the scale proposed in Section 11 (c) of the Draft Union Constitution [Para. \*21 (c)]\*.

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [Para. \*21 (d) and Section K (3) of Appendix A]\*.

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para.\*21 (e) and Section K (8) of Appendix A]\*.

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions or corresponding provision [Para. \*22 - See also Section O (3) of Appendix A]\*.

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Para. \*23]\*.

16. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Para. \*24 and Section O (i) of Appendix A]\*.

17. Plains tribals number 1.6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee. [Para. \*25]\*.

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. \*26]\*.

19. Non-tribal residents may be provided with representation in the local councils if they are

sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. \*27 and Section B (2) of appendix A]\*.

20. Provincial councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. \*29 and Transitional Provisions of Appendix A also]\*.

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\* References to pages, paras., sections and appendices are to pages, paras., sections and appendices in the original reports.  
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**[Annexure XIII]**

APPENDIX D

**SCHEDULE 13 TO GOVERNMENT OF INDIA (PROVINCIAL  
LEGISLATIVE ASSEMBLIES) ORDER, 1936**

BACKWARD TRIBES

PART V - ASSAM

The following Tribes and Communities: -

- |                          |  |
|--------------------------|--|
| 1. Kachari.              | 9. Doori.  |
| 2. Boro or Boro-Kachari. | 10. Abor.  |
| 3. Rabha.                | 11. Mishmi.  |
| 4. Miri.                 | 12. Dafla.   |
| 5. Lalung.               | 13. Singpho.   |
| 6. Mikir.                | 14. Khampti.   |
| 7. Garo.                 | 15. Any Naga or Kuki tribe.  |
| 8. Hajong.               | 16. Any other tribe or community for<br>the time being designated of by the<br>Governor in his discretion. |

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**[Annexure XIV]**

## APPENDIX D

### **General Summary of the Reports of the Excluded & Partially Excluded Areas (other than Assam) Sub-Committee and the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee [including the Final Report of the E. & P. E. Areas (other than Assam) Sub-Committee.]\***

#### **I**

In provinces other than Assam, with the exception of the Laccadive Islands of Madras and the Spiti and Lahoul area of Punjab, there are no excluded areas. In both of these excluded areas the population is not ethnically tribal. In the Laccadive Islands the islanders are Muslims of the same stock as the Moppillahs of Malabar. In Minicoy they are believed to be of Sinhalese origin. In Spiti and Lahoul the inhabitants are of Tibetan origin. In the remaining partially excluded areas of provinces other than Assam the principal tribes to be found are Santal, Gond, Bhil, Munda, Oraon, Kondh, Ho and Savara. Many minor tribes like Korku, Pardhan, Ko, Bhumij, Warli also inhabit the areas. The total population of all the tribes, excluding Assam, is about 13½ millions of which approximately 8 millions inhabit the partially excluded areas. With the exception of certain small tribes like the Bonda Porja and the Kutia Kondh of Orissa, all the remaining tribes have experienced varying degrees of sophistication and come into contact with people of the plains and advanced tracts. Although the tribals living in the non-excluded areas are often hard to distinguish from the plains people among whom they live, they are generally in a backward condition which is sometimes worse than the condition of the scheduled castes. It is not possible therefore to leave them out of consideration on the ground that only the tribes in the partially excluded areas need attention. All the tribes of provinces other than Assam, whether living in the plains or in the partially excluded tracts, should, as one whole be treated as a minority. As regards Assam, conditions in the hill districts of which the Naga Hills, the Lushai Hill and the North Cachar Hills have been excluded are on a totally different footing and the atmosphere, particularly in these excluded areas, is one which is not to be found elsewhere. These areas must therefore be treated separately from the rest. As regards plains tribals the total number of whom, including Sylhet, comes to approximately 1.5 million according to census figures, about seven lakhs are tea-garden labour from various parts of the country \* [not included in the schedule B to the Government of India (Legislative Assemblies Order) 1936]\* are not to be taken into account as tribes of Assam. The tribal population of the excluded and partially excluded area comes to about 8½ lakhs. In Assam there are in addition the frontier tracts and tribal areas in which conditions of settled administration prevail only to a very small extent and large areas cannot be said to be under regular administration at all. Even now, in the northern frontier tracts, Tibetan tax-collectors make in roads and, in the Naga tribal area, head-hunting goes on. The administration of these areas still involves contact with foreign States and problems of defence.

2. The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult of access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilizing facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plains folk resulting in the passage of land formerly cultivated by them to money-lenders and other erstwhile non-agriculturists. While a good number of superstitions and even harmful practices are prevalent among them the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of the tribal customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the tribals' simplicity and weaknesses it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value. In making provisions however allowance could be made for the fact that in the non-excluded areas the tribals have assimilated themselves in considerable

degree to the life of the people with whom they live and the special provisions concerning legislation in particular are therefore proposed largely for the schedule areas \*[provinces other than Assam; see page \*33 of this volume]\* and the autonomous districts \*[(Assam) Para. \*13 of Report and Section \*A of Appendix A on p. 19 of Report].\*

3. Although in the case of the autonomous districts of Assam a distinction has been made, the proposals in the main contemplate that tribals should be treated as a minority in the matter of representation in the legislatures and recruitment to the various services of the Central and Provincial Governments. In the case of the tribals of provinces other than Assam reserved representation in the provincial and Federal Legislatures (House of the People) in proportion to the total tribal population of the Province is recommended by joint electorate. In the case of Assam similar reservation of representation for the plains tribals (excluding tea-garden labour) is recommended. In the case of the hill districts, in view of their small and exclusive populations it is recommended that representation should be provided in proportion to the population out in such a way that all fractions of a lakh are taken as one lakh even though this might involve a small weight age. In the Federal Legislature (House of the People) the autonomous hill districts should have a representative. The plains tribal should have representation in the House of the People also on the basis of their population. In all cases election by adult franchise is recommended and indirect election or nomination should not be resorted to. There should be special representation as follows: -

Laccadive	Group - 1.
Amindivi	Group - 1.
Minicoy	Island - 1.
Lahaul & Spiti	- 1.

(Para. \*9 of Interim Report of Other Than Assam Sub-Committee and Para. \*21 of Assam Sub-Committee Report; see also Para. 6 of Joint Report).

Non-tribals will not be eligible for elections from hill constituencies to the provincial legislature except the constituency which includes the municipality of Shilling \*[Para. \*21 (e) and Sec. K (8) of App. A of Assam Report]\*. Constituencies may not be so made as to extend outside the boundaries of autonomous districts [Para. \*21 (d) and Sec. K (3) or App. A, Assam Report]\*.

4. There should be a department under the Federal Government in order to supervise and watch the development of the tribals in the different provinces and to furnish such advice and guidance as may be needed \*[Para. \*5 of Final Report of Other Than Assam Sub-Committee]\*.

5. The areas inhabited by the tribes are hilly and difficult country, to develop which is likely to be beyond the resources of some Provincial Governments. The Federation should therefore provide the necessary funds for the execution of approved schemes of development [Para. \*17 of Interim Report and Sec. \*I & K (2) of App. C of Other Than Assam Sub-Committee, also para. \*14 (c) and Sec. N of App. A of Assam Sub-Committee Report]\*. In the case of Assam, the Federation should also meet the average deficit of the autonomous districts during the three years preceding the commencement of the Constitution [Para. \*14 (c) and Sec. \*N of App. A of Assam Report]\*.

6. The Central Government should also be in a position to require the Provincial Governments to draw up and execute schemes for the scheduled areas [Para. \*17 of Interim Report and Sec. I & K (2) of App. C of Other Than Assam Sub-Committee]\*.

7. The Federal Government should institute a special commission after ten years to enquire into the progress of the scheduled areas and the tribes \*[Para. \*16 and Sec. K (1) of App. C of Other Than Assam Sub-Committee Report]\*.

8. In provinces other than Assam, excepting the U. P. and the Punjab, a Tribes Advisory Council containing, to the extent of three-fourths of its membership, elected members of the provincial legislatures is recommended. The Council shall have not less than ten or more than twenty-five members \*[Para. \*15 and Sec. J of App. C of Other Than Assam Sub-Committee Report]\*. For U. P. and the Punjab an advisory committee containing representatives of the tribal or backward class concerned to the extent of two thirds is recommended \*[ Par as. \*3 & 4 of Final Report; see also para.\*18 of this Summary for details of U. P. Committees]\*. For Assam there is provision for the Governor to appoint either a permanent or an *ad hoc* commission to report or keep the Government in touch with the administration of the autonomous districts [Para. \*24 & Sec. O (1) of App. A of Assam Sub-Committee Report]\*.

9. The hill districts of Assam are to be designated as autonomous districts and special district councils should be set up for each of them. The district councils will have powers of legislation over (a) occupation or use of land other than land comprising reserved forest, (b) the management of forest other than reserved forest, (c) the use of canals and water courses for the purposes of agriculture, (d) control of jhum cultivation, (e) establishment of village and town committees and (f) village management in general. Reserved forests will be managed by the Provincial Government [ Par as. \*9 to 13 of Assam Sub-Committee Report]\*.

The district council will have powers of management of all institutions which normally come under the scope of local self-government in the plains and will have full control over primary education [Para. \*13 and Sec. E of App. A of Assam Sub-Committee Report]\*.

The district council will also have powers to make its own rules and regulations regarding its own constitution \*[sec.\*B (5) of app . A of Assam sub-committee Report]\*.

The district council will have powers to make laws affecting (a) appointment and succession of Chiefs, (b) inheritance of property councils [Para. \*18 & Sec. B (3) of app. A of Assam Sub-Committee Report]\*.

District councils and regional councils can set up courts with full powers to deal with all civil suits other than those arising out of special laws and offences punishable under the Penal Code with imprisonment of less than five years in accordance with local or tribal custom except where non-tribals are involved. (Para. \*12 & Sec. D & F. of App. A of Assam. Sub-Committee Report).

Where there are different tribes in a district and they wish to manage their own affairs regional councils may be set up. Regional councils have powers limited to their customary law and the management of lands-villages and courts. Regional councils may delegate their powers to district councils \*[Para. \*18 & Sec. B (3) of App. A of Assam Sub-Committee Report]\*.

The district and regional councils (Assam Hill Districts) will have powers to levy land revenue, house tax or poll tax and other taxes levied by local self-governing institutions in the plains \*[Para. \*14 (a) & Sec H of App. A of Assam Sub-Committee Report]\*. They should be assisted by provincial grants where necessary \*[Para. \*14 (b) of Assam Report]\*.

The District or Sub-divisional officer, as the case may be, will be ex-officio President of the district council of the Mikir and North Cachar Hills.

10. The district council shall be an elected body with not less than 20 or more than 40 members of whom not less than three-fourths shall be elected by universal adult franchise. Separate constituencies to be formed for separate tribes, with a population of not less than 500. Non-tribal residents of autonomous districts, if their population is not below 500, may be formed into a separate constituency for election to the district council [Para. \*27 and Sec. B(1) & (2) of App. A of Assam Report]\*.

11. In matters relating to land (provinces other than Assam), social customs and village management, if the Tribes Advisory Council advises that any law passed by the provincial legislature should not be applied to a scheduled area the Provincial Government shall direct accordingly. The Provincial Government shall have powers to direct that any other legislation shall not apply to the scheduled areas on the advice of the Council \*[Para. \*9 & 10 and Sec. E of App. C of Other Than Assam Sub-Committee Report]\*.

In the case of Assam legislation on these matters is left to the district council and provincial laws will not apply unless the district council applies them with or without modifications. Legislation prohibiting the consumption of non-distilled liquors will also not apply unless the district council applies it [Para. \*17 & Sec. L of App. A of Assam Sub-Committee Report]\*.

12. If the Tribes Advisory Council so advises, moneylenders in scheduled areas should not be permitted to carry on business except under a licence [Para. \*26 & Sec. G of App. C of Other Than Assam Sub-Committee Interim Report]\*.

In Assam the district council should have powers to take action to license moneylenders and non-tribal traders if the rules are approved by a majority of three-fourths of their members; this is to prevent the practice of the seprofessions by non-tribals in a manner detrimental to the interests of tribals \*[Para. \*15 and Sec. J of App. of Assam Sub-Committee Report]\*.

13. Allotment of waste land in a scheduled area should not be made to non-aboriginals except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council \*[Para. \*25 and Sec. F of App. C of Other Than Assam Sub-Committee Report]\*.

14. Mineral resources in the autonomous districts of Assam will be managed by the Provincial Government but the district councils will be entitled to a share of the revenue. Licences or leases shall not be given out except in consultation with the district council [Para. \*16 and Sec. I of App. A of Assam Report]\*.

15. The Governor of Assam should be empowered to set aside any act or resolution of a district council if the safety of the country is prejudiced; he should also have powers to dissolve a council if gross mismanagement is reported by the commission [Para. \*19 and Sec. Q & R of App. A of Assam Sub-Committee Report]\*.

In provinces other than Assam the Governor should have the special responsibility to see that schemes of development are drawn up and implemented. This should be enjoyed on him by instructions [Para. \*18 of Other Than Assam Report]\*.

16. The Central Government should continue to administer the frontier tracts and tribal area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over with the approval of the Federal Government [Section \*P of App. A and Para. 20 (a) of Assam Sub-Committee Report]\*.

Provincial Governments (other than Assam) should have powers to make special regulations for the trial of petty criminal and civil cases in scheduled areas, with a view to simplify procedure [Section \*M of App A of Other Than Assam Report]\*.

17. The estimated revenue and expenditure pertaining to a scheduled area or an autonomous district should be shown separately in the provincial budget [Para. \*18 & Section H of App. C of Other Than Assam Sub-Committee Report and Para.\*14 (b) and Section M of App. A of Assam Sub-Committee Report]\*.

18. There shall be a separate Minister for tribal welfare in the C. P., Orissa and Bihar [Para. \*20 & Section L of App. C of Other Than Assam Sub-Committee Report]\*. In Assam representation for the hill people in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions [Para. \*22; see also Section O (3) of App. A of Assam Sub-Committee Report]\*.

19. For the partially excluded areas of the U. P. an advisory committee consisting of tribals or backward people to the extent of two-thirds of its membership, provision to prevent the transfer of land from the aboriginals to non-aboriginals, (except with special permission) for regulations for the trial of petty civil and criminal cases by simple procedure, is recommended. The revenue and expenditure of the area should be shown separately in the provincial budget and there should be a seat reserved in the provincial assembly for a tribal from the partially excluded area of the Mirzapur District. There should also be provision for the Federal Government to call for reports from the Provincial Government regarding the administration of the areas.

Parallel provisions are recommended for Spiti & Lahoul (E. Punjab) which should have one seat in the provincial legislature. ( Paras \*3 & 4 of Final Report of Other Than Assam Sub-Committee]\*.

## II

### OTHER RECOMMENDATIONS

20. Tribal panchayats should be encouraged wherever possible. (Para \*22 of Interim Report Other Than Assam Sub-Committee]\*. Shifting cultivation should be discouraged \*[Para. \*23 of Interim Report of Other Than Assam Sub-Committee & Para. \*11 of Assam Sub-Committee Report]\*. Temperance propaganda should be carried on as part of tribal welfare work \*[Para. \*24 of Other Than Assam Sub-Committee Report]\*.

21. Tribals should be recruited in due proportion to all Government services. Non-tribals posted to tribal areas should be selected with care \*[Para. \*25 of Assam Report and Para. 21 of Other Than Assam Report]\*.

Special attention should be paid to the recruitment of tribes to the Armed Forces of India \*[Para. \*6 of Final Report of Other Than Assam Sub-Committee]\*.

22. The abolition of the powers of Supurdas (Dudhi area of Mirzapur District, U. P.) to accept surrender and make a reallocation of land is recommended. The system of Sayanas in Jaunsar Bawar (U. P.) should be abolished and revenue collected through officials.

23. A general review of the powers and functions of ancient systems of village or tribal headmen should be undertaken with a view to removing the grievances of tribals and the abolition of oppressive powers and general reform \*[Para. \*7 of Final Report of Other Than Assam Sub-Committee]\*.

24. Provincial Governments should utilise the services of approved non-official organisations doing welfare work among the tribals, with a view to adding to the volume of development work, by giving them grants-in-aid \* [Para. \*8 of Final Report of Other Than Assam Sub-Committee]\*.

25. It should be made compulsory for officials posted to aboriginal tracts to obtain a working knowledge of the local language within a reasonable period.

26. Posa payments to the frontier tribes should be continued \* [Para. \*20 (c) of Assam Sub-Committee Report]\*.

The pace of extending administration in the frontier tracts should be greatly accelerated and additional officers appointed where necessary [Para. \*20 (a) of Assam Sub-Committee Report]\*.

The Provincial Government should undertake an examination of the position in the frontier tracts with a view to taking a decision whether any portion could be taken immediately by it under provincial administration \* [par a. \*20 (b) of Assam Sub-Committee Report]\*.

NOTE. - The contents of Appendix A of the Assam Report [page 19] and of Appendix \*C [page 33] of this volume must be studied for a full picture of the constitutional provisions recommended. \* [See also pages \*300 - 32 for Schedule of tribes.]\*

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\* References to pages, paras., sections and appendices are to pages, paras., sections and appendices in the original reports.

! Including Assam, the total population of the tribes in the provinces is 15.9 millions.  
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