

SIXTH SCHEDULE TO THE CONSTITUTION (AMENDMENT) BILL, 1988

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI SANTOSH MOHAN DEV): Madam, I move;

"That the Bill further to amend the Sixth Schedule to the Constitution of India in its application to the States of Tripura and Mizoram, as passed by the Lok Sabha, be taken into consideration."

[The Vice Chairman (Suri Jagesh Desai) in the Chair].

The Sixth Schedule was incorporated in the Constitution by which the autonomous district council was a measure of autonomy to govern themselves according to their own genius with a view to safeguard and serve their economic interests, their distinct culture and social way of life, customs and traditions. The provisions of the Sixth Schedule to the Constitution have evolved a separate scheme for the administration of tribal areas in Assam, Meghalaya, Mizoram and Tripura, through the institution of District Council or the Regional Council. The District Councils in the Sixth Schedule area differ from State to State so far as their composition is concerned. Mizoram is predominantly a tribal area where mizos are the predominant tribe. The Sixth Schedule provisions have been provided to the minority tribes in Mizoram, namely, Pawi, Lokher and Chakmas. In Tripura the Sixth Schedule provisions are applicable to two-thirds of the State, covering both tribals and the plainsmen. In Assam, the District Council consists of areas inhabited by the tribals whereas the majority are plainsmen. In Meghalaya, except the Shillong cantonment area and a small portion of Shillong municipality, the whole of Meghalaya is governed by the District Council areas consisting of Khasis, Garos and Jaintias. The hon. Members might recall that Tripura was included in the Sixth Schedule in 1984 through a constitutional amendment. Over a period of time, the minority tribals of Mizoram covered under the Sixth Schedule have come to feel that their autonomy

under the Sixth Schedule will be made meaningful and they can achieve speedier progress if overall control of the State Government over them in matters like approval of rules made by the District Council, nominations of their members, appointment of Commission to inquire into their administration, their dissolution etc. is relaxed. In their view, the powers under the Sixth Schedule have not always been exercised by the State Government for the betterment and the interest of the tribal minorities. They have therefore, represented that the Governor should exercise powers in his discretion in these matters. In the memorandum of settlement of Mizoram, there is a provision that the rights and privileges of the minorities of Mizoram, as envisaged in the Constitution, shall continue to be preserved and protected. Similarly, in the memorandum of settlement in Tripura, there is a commitment to the protection of tribal interests. It is, therefore, proposed to apply the provisions of this amendment Bill to the State of Mizoram and Tripura. In the context of discretionary powers, it may be relevant to mention here that under the Government of India Act, 1935, the discretionary powers were given to the Governor in respect of excluded areas consisting of backward tribal regions. The Constitution of India also provides discretionary powers to the Governor under para 9(2) of the Sixth Schedule and Article 239(2) of the Constitution relating to administration of Union Territories and special responsibility under article 371(2) 371A, 371C, 371G and 371H. The Sixth Schedule to the Constitution (Amendment) Bill seeks to provide more autonomy for the District Council in Mizoram and Tripura and also discretionary powers to the Governor in dealing with certain provisions of the Sixth Schedule to the Constitution. It is hoped that after vesting these powers in the District Council of Mizoram and Tripura and also discretionary powers to the Governor of Mizoram and Tripura, the District Council areas, in these two States, will make speedier progress while preserving their identity. With these words Sir, I beg to move that the Bill, as passed by the Lok Sabha, be taken into consideration.

The question was proposed.

SHRI M. S. GURUPADASWAMY (Karnataka): Mr. Vice-Chairman, Sir, I would like to oppose this Bill, the Sixth Schedule to the Constitution (Amendment) Bill, 1988. I wish to oppose this Bill on two or three grounds. Firstly, the Bill, by implication and indirectly, distorts the scheme of things envisaged in the Constitution. It upsets the important arrangements and the balance maintained by the Constitution in its original form. I am aware of the diversities in our country— history. There are different regions, different culture and various customs and traditions, operating in the country. It is strongly felt that the diversities in the culture, in the traditions and the customs of the different peoples should be respected. Their rights and privileges in so far as the preservation of these values is concerned should be ensured. The Constitution in its original form has thought of these things. My friend has read out a number of Articles in this regard. But the point is, how far we should go in this matter. We should be very careful in dealing with the powers of Parliament and the powers of State Legislatures. We should also be very careful in dealing with the autonomy of States. I am afraid, in our zeal to please various groups, we seem to be belittling these aspects. There has been a progressive distortion which affects adversely the rights of Parliament and the rights of State Legislatures. If we accept this amending Bill, we will give authority to the President and the Governors in the States to amend and change the laws passed by Parliament and Legislatures. The President can himself implement the laws of Parliament in respect of certain areas where District Councils or Regional Councils operate. Likewise, the Governors in Assam, Mizoram, Tripura and Meghalaya will have more discretionary powers to change the laws of the Parliament of India. States will be empowered to make laws in certain areas. This will lead to a complete breakdown of the uniformity of the laws in the country. The Bill is a complete distortion of the original scheme of the Constitution. When the framers of the Constitution had in mind the diversities in the customs and traditions and the diversities in our traditions. They

have taken note of all these things. But they have been diluted. Not only have they diluted them, but, as I said earlier, they have changed—I would not use the words “basic structure”—the general structure of the Constitution. If this philosophy is accepted, the philosophy that is adumbrated in this Bill, what stops me from claiming in the name of a group of people in my area that we should have autonomy and the powers of the State Legislature and the powers of Parliament to that extent should be restricted and abridged and that the regional arrangements or the zonal arrangements, whatever they may be, should have pre-eminence over the Acts of Parliament or over the Acts of the State Legislature? There is a demand for separate regions not only there, but elsewhere also like Madhya Pradesh, Bihar, Andhra Pradesh, etc. There are demands for separate regions.

SHRI E. BALANANDAN (Kerala):
In West Bengal also.

SHRI M. S. GURUPADASWAMY: Yes, there are demands in West Bengal too, and there may be demands elsewhere also. Are we taking a right decision, exercising the right judgment, in giving such powers to the District Council? I am not arguing against the District Councils at all because we have accepted them. I am only on this point whether you are right or whether you are within your limits, rational limits, in restricting or abridging the powers of Parliament and the State Legislature, and in giving power to the Governor who is a nominee of the Centre. We do not want to trust a State Legislature, we do not want to trust Parliament, but we rather trust the Governor who has no responsibility for the way in which he exercises his powers. I am not giving any reason, but I am only asking against the spirit of the Constitution and against the letter of the Constitution.

Therefore, Mr. Vice-Chairman, Sir, I am opposed to this Bill and I am opposed to the Amendment to the Constitution for such frivolous purposes. And let me not be misunderstood. I am all for cultural

autonomy of various regions, various people. But this amendment is not necessary. It is totally unnecessary. I think, the Minister should withdraw this Bill.

SHRI S. C. JAMIR (Nagaland): Mr. Vice-Chairman, Sir, I rise to support the Sixth Schedule to the Constitution (Amendment) Bill, 1988 which is brought on the floor of this House. Sir, it is a welcome measure in the right direction. This Bill seeks to devolve more powers to the District Councils, Sir, in the District Councils, the Members are the tribals.

Sir, the Founding Fathers of the Constitution of India through their wisdom and political foresight recognised the very delicate sentiments, culture and traditions of the tribals. They foresaw that unless certain protections are given to the tribals in the management of their affairs, they will be submerged in the process of normalisation along with the most or more advanced people of the plains. This aspect was then recognised not only by the Founding Fathers of the Constitution but by the alien rulers as well. According to the 1937 Act certain areas of Assam in the North-Eastern Region were kept excluded, to be looked after by the Governor. This was also a recognition to the very peculiar feature prevailing in the tribal areas. This was intended to protect the innocent tribals from being exploited by more advanced people of the plains. So, when the Constitution was drafted, this special provision was made to protect the interests of the tribals, particularly in the North-Eastern Region,

Sir, even before the drafting of the Constitution of India, the tribals in the North-Eastern Region agitated and they showed their resentment that when the British leave the country, they should be kept in such a way that their identities, their culture and their traditions are safeguarded. When the Sub-Committee of the Constituent Assembly in which Brother Basumatari was also a Member, when they visited Kohima, they were told that the Nagas want a separate home. In other

words, they do not want to lose their identities, they want to preserve their culture they want to preserve their traditions¹. Similar is the case is Mizoram, Meghalaya and other tribal areas. In this Amendment, Sir, there are some redemptory features for which, I think, this House should not have an iota of doubt. If you just look at the face of the Bill, a question would arise that when the entire State is predominantly tribal, why should we have tribal councils. What we have to remember is, that even among the tribals, there are some minorities whose interests have to be taken care of. The whole trouble is that they speak different dialects; they also have different traditions and cultures, and in order to preserve and protect those small minorities even within the tribals, necessity of having this amendment was thought of.

When we devolve powers in the district councils or at the grassroot levels, it clearly shows the intention of the Government to extend the democratic process even at the grassroot level so that this would give more opportunities to the people for deeper involvement in the scheme of things in the whole country. If we all the time look at the tribals as backward and if we do not give opportunity to them to develop, how can they be trained in the art of governance? How can they be trained in running the affairs of their own State? So, I feel that devolution of more powers to the local self-government specially in the tribal areas is a very welcome feature and in the right direction.

I am afraid that while giving more powers to the council, if we do not again give them financial powers, I think this will be like an anti-drama. Without financial powers, how can they manage? Therefore, in the amendment, I think you have rightly given more financial powers for the management of the district councils. Now a suspicion has arisen, if we do not allow the legislators to attend the district council, does it mean a distrust. I don't think so. Even if the Governor has to use

[Shri S. C. Jamir].

his discretion, he has to consult the Council of Ministers. Therefore, the question of misuse of discretionary power by the Governor, I think, would not arise. And also, use of discretion is on matters pertaining to the progress of these tribals and, therefore, we should not misconstrue the spirit of the amendment which we are having before us. In Tripura, the tribals are the real inhabitants but because of historical reasons, because of political reasons, they are completely submerged by outside people and, therefore, specially for Tripura, a special provision to safeguard the interests of the tribals in matters of appointments, in matters of law, in matters of land, in matters of their traditions and customs, shall have to be worked out. I would request the Government to ensure that more protection and more safeguards are initiated especially for the tribal minorities of Tripura. After all, in their own home, they are finding themselves in a minority and, therefore, it is our moral obligation to ensure their safety, their security and their future. I do not want to dwell much on this. I only wish that the District Council in Mizoram, which has been envisaged in this amending Bill, works well. The agreement with Mr. Laldenga also clearly indicates that protection would be given to these minorities. He opposed it. But the Government of India, in all fairness, thought that minorities wherever they are, whether they are in Mizoram or in Meghalaya or in other tribal areas, shall have to be protected. Therefore, the present amendment is a wise one and I hope the tribals will be jubilant about this amendment.

With these words, I once again extend my support to the Bill.

*SHRI NARAYAN KAR (Tripora): Hon'ble Mr. Vice-Chairman, I would like to submit that the Sixth Schedule to the Constitution (Amendment) Bill, 1988

*English translation of the original speech delivered in Bengali.

will curb the powers of the autonomous District Councils. With the adoption of the Bill the undesirable interference of the State Governments with the functionings of the Councils will increase. This Bill will make the autonomous District Councils puppets in the hands of the State Governments and as a result of which the objective with which the autonomous District Councils were constituted will be frustrated. Therefore, I oppose this Bill tooth and nail.

Sir, the demands of the District Councils in the North Eastern Regions are for more powers. It is a fact that the District Councils held meetings for more powers. They submitted a Memorandum to the Central Government for the same purpose. They wanted that in their daily work and in their developmental works the State Governments should not interfere. They feel that interference from the State Governments will hamper the developmental works within their respective jurisdictions. The idea was that the autonomous District Councils should get all opportunities to function independently on the basis of their allotted powers.

I shall show how this Bill curbs the powers of the autonomous District Councils. Even in day to day matter within the jurisdiction of an autonomous District Council the Council of Ministers of a State is interfering.

Under sub-paragraph (2) of Paragraph 1 of the Sixth Schedule to the Constitution, the autonomous District Councils are empowered to reconstitute their respective areas. A Council can exclude an area from its jurisdiction where the tribals are in minority and instead include a neighbouring area where the tribals are in majority. It is also provided for in the said provisions of the Sixth Schedule that the Governors shall approve of re-determination of areas by the Councils. Under the present Bill the Governors will have to consult their respective Council of Ministers when areas will be re-determined by the Councils. It means, the State Governments have been empowered to

interfere with the re-constitution of the District Councils. Again, under the existing Sixth Schedule, the Governors are empowered to nominate four members to the autonomous District Councils but now, under the present Bill, the Governors will be forced to consult the Council of Ministers while nominating four members to the said Councils.

Under sub-paragraph (7) of Paragraph 2 of the Sixth Schedule to the Constitution, the District or the Regional Council is empowered to make rules for the conduct of its business with the approval of the Governor. Now, under the present Bill, the Governor will be compelled to take the advice of the Council of Ministers while approving of the rules of the District or the Regional Council.

Under sub-paragraph (4) of paragraph 4 of the Sixth Schedule to the Constitution, a Regional Council or District Council shall have power to make rules regulating the constitution of village councils and courts with the previous approval of the Governor. They will also have power to make rules regulating the procedure to be followed by village councils or courts in the trial of suits and cases with the previous approval of the Governor. But now under the present Bill the Governor will be compelled to take the advice of the Council of Ministers in such matters. Consequently, the Regional Council or the District Council will have to remain at the mercy of the State Government even for laying down procedure for the conduct of its business.

Under paragraph 6 of the Sixth Schedule to the Constitution, the District Council can establish primary schools. Under the same paragraph the District Council can provide the bursaries for which the education is to be imparted to primary students. Again, under the same paragraph, the District Council can appoint a District school master and an assistant school master, fisheries and waterways. The District Council can make regulations for the regulation and control of all these activities with the approval of the Governor. But now under the present Bill the Govern-

nor will have to take the approval of the Council of Ministers while approving of the regulations made by the District Council. Consequently, the State Government has been empowered to interfere with the development works of the District Council.

Under sub-paragraph (2) of Paragraph 9 of the Sixth Schedule to the Constitution, if any dispute arises over the share of royalties for exploitation of mineral resources between the State Government and the District Council, the dispute shall be referred to the Governor and his decision thereon shall be final. But under the present Bill the decision of the State Government in such a matter shall be final and in this manner the District Council will be deprived of its due share of royalty.

The present Bill seeks to give more powers to the State Government to interfere with the discretionary powers of the Governor. At the same time all democratic norms are being flouted to curb the powers of the District Council by the Council of Ministers.

Under sub-paragraph (1) of Paragraph 15 of the Sixth Schedule to the Constitution, the Governor can annul a legislation of the District Council with the approval of the State Legislature if it is likely to endanger the safety of India or is likely to be prejudicial to public order. But now under the present Bill the Governor will not be required to take approval of the State Legislature. He will rather be required to get the approval of the Council of Ministers. So the present Bill seeks to curb the powers of the State Legislature.

Under Paragraph 16 of the Sixth Schedule to the Constitution, the Governor may on the recommendation of a Commission appointed under Paragraph 14 of the said Schedule order the dissolution of a District Council on charges of gross misconduct in the Commission's Report. Thereafter he may direct that a fresh election shall be held immediately for the reconstitution of the Council. He may also assume the administration of the area under the authority of the Council himself or place the administration of such

[Shri Narayan Kar].

area under the Commission appointed under the said paragraph Or any other body considered suitable by him with the previous approval of the State Legislature. But now under the present Bill the Governor will not be required to get the approval of the State Legislature if he wants to assume the administration of the area under the authority of a Council himself. The Governor can now dissolve the District Council with the consent of the Council of Ministers. Consequently the representatives of the people in the Legislature will be deprived of expressing their views on the dissolution of the Council. So the present Bill strikes at the very roots of democracy.

The present Bill relates to Tripura and Mizoram. We have five crores tribals in our country. What is the condition of these tribals? What facilities do these tribals enjoy to develop themselves educationally and culturally? How is it that under the Constitution even after forty one years of independence we have not yet been able to provide sufficient facilities to the tribals to enable them to develop their language, culture and education? Who is responsible for it? According to me, the Ruling Party at the Centre who is ruling most of the State Governments is responsible for it because it favours the majority community people in a State to keep itself in power. The Ruling Party neglects the interests of tribal minorities to please the majority community people. I feel that every tribal community in this country has got the right to preserve its language and culture under the Constitution. The same Constitution gives the tribals safeguard and autonomy to keep their tradition, heritage and self determination. So in various parts of the country the tribals are now demanding for autonomy. But the Government of India is concentrating powers instead of accepting the demands of the tribals for autonomy.

Tripura was a tribal State. Now the tribals have become minority there. The language and culture of the majority people there are very much developed. So the main question before Tripura is

how to preserve language and culture of the tribals. The Sixth Schedule to the Constitution gave constitutional guarantees to the tribals for the preservation of their language and culture. It is very unfortunate that the said Schedule is now being amended for snatching away the Constitutional rights.

The tribals of Tripura struggled long for the formation of autonomous District Council. They got their autonomous District Council after the Left Front Government came to power there.

What happened during the last election in Tripura? It is known to the Hon'ble Minister and to the people of Tripura. Ten days before election Tripura National Volunteers murdered people of majority community in tribal areas in order to create a feeling of insecurity among them. Taking advantage of the insecurity of the people of the majority community the Central Government declared Tripura a disturbed area and deployed army there. The Ruling Party exploited the issue of security for the people of the majority community and came to power unjustly. Now the present Bill seeks to please the people of the Bengali chauvinists in Tripura. Entire Tribal community are against this Bill.

What is the viewpoint of the tribals in the North Eastern Region about this Bill? The tribals in the said region held meeting and submitted a Memorandum to the Central Government. They also met the Minister, Shri Santosh Mohan Dev. The Minister assured them that the draft Bill, which had been sent to them by the Central Government would be discussed with them before it was given the final shape.

Sir, no District Council of the North Eastern Region has supported the present Bill. The Autonomous District Council of Tripura has unanimously protested against this Bill. Therefore, I would request the Hon'ble Minister to withdraw this Bill. This Bill cannot satisfy the tribals of Tripura and the North Eastern Region. This Bill will lead them to the path of destruction. Therefore, the Hon'ble Minister should withdraw this Bill in order to safeguard the interests of the tribals in Tripura and the North Eastern Region

SHRI PRITHIBI MAJHI (Assam): Mr. Vice-Chairman, Sir, I rise to support the Sixth Schedule to the Constitution (Amendment) Bill, 1988. The Bill provides to save the interests of the tribal people of Tripura and Mizoram.

Sir, Tripura was included in the Sixth Schedule in 1984, having less power in the District Council. There were commitments in the Memorandum of Settlement of Tripura and Mizoram with a view to safeguarding the interests of the minority tribals in these States as well as restoration of peace and normalcy in Mizoram and Tripura. There were underground activities going on for years together. It was the feeling of the tribal people that they would lose their identity in course of time. So, it is an appropriate step for seeking to provide mere autonomy for the District Councils in Mizoram and Tripura for making speedier progress while preserving their identity. The Governor is bestowed with discretionary powers in dealing with certain provisions of the Sixth Schedule to the Constitution, which is appropriate, because in certain States the Government is not taking care in the matter of minority tribals who are deprived.

While supporting this Bill I would like to seek a clarification whether such kind of Bills are brought only after realization, by the Government, of the underground activities and disturbances by the tribes. Then, what about the other tribes of our country

About Manipur, for extension of the Sixth Schedule to the existing Autonomous District Councils, it was assured by the Home Minister that it would be taken up "At the appropriate time" and "at the earliest opportunity" in both the Houses in 1984, while the Constitution (Fifty-first Amendment) Bill was being passed for extension of the Sixth Schedule to the preexisting powerless Autonomous Hill District Councils of Tripura. But as per the assurance given by the Home Minister, the State of Manipur is not being clubbed now. What happens to that assurance?

What about the tribals living in the tea and ex-tea garden areas of Assam, those

who came from the other parts of the country like Orissa, West Bengal, Bihar, etc., during the British regime? Though they have their ethnic character they are not recognized as Scheduled Tribes and Scheduled Castes whereas their counterparts are having Constitutional rights as Scheduled Tribes and Scheduled Castes. What does the Government think about them for their upliftment. They are still deprived of their legitimate claims.

I would like to mention that in the tribal-dominated areas of most of the States of our country, particularly in the States of Orissa, West Bengal, Bihar, and Madhya Pradesh, their traditions, customs, languages and identity are dying day by day. The tribals living in these parts of India are, I think, extremely backward in comparison with the tribals of the North-Eastern region. So, what steps will the Government take to preserve their distinct languages, culture and identity? In this connection I would like to mention about the language of the Santhal Mundas. Some linguists say that this language is the oldest language in the world. However, it "has no place in those States or in the constitution.

Therefore, it is my suggestion to create Autonomous District Councils under the Sixth Schedule for every tribal district of bigger areas where substantially large areas of tribals exist in Orissa, West Bengal, Bihar, Madhya Pradesh, etc., as a means for speed / development of the tribals while preserving their identity.

With these words, Sir, I again support this Bill. Thank you.

DR. G. VIJAYA MOHAN REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir, after listening to the speeches of the Treasury Benches we feel that there is much more to it. Our friend and Leader, Mr. Gurupadaswamy has adequately, forcefully said that the Constitution should not be tinkered with. But when the ruling party has got other ideas, wants to become mischievous, I think, these things do come. It has been mentioned in the Statement of Objects and Reasons that "over a period of time the minority tribals of Mizoram covered under the Sixth Schedule have

[Dr. G. Vijaya Mohan Reddy] come to feel..." That feeling itself has brought an amendment. That is the feeling of the Mizos as has been explained in it. But the medicine is being given not only to the Mizos but to Tripura also. We do *not* know why. In the Objects and Reasons there is no mention of it. Why is this medicine being given to Tripura? Is it because the Left Front is having majority in the District Council, because the Left Front District Council has got two more years of life? This has to be thought about. It cannot be taken very easily because" of what has happened in Tripura and the experience that the popular movement in Tripura is facing repression I think, this has to be taken very seriously.

Then, Sir, the speakers from this side have adequately told that the powers of the State Legislature should be paramount. So also the powers of parliament as an elected body should be paramount. But where is this Governor?

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Narayan Kar has spoken something differently.

DR. G. VIJAYA MOHAN REDDY: The hon. Minister has stated about the 1935 Act. The Governor had certain discretionary powers. We quite agree. That was of the period of monkeys. Now we want to create more monkeys. There is friction between the State Legislature—the atmosphere has been created—and the autonomous District Council. The quarrel of the cats and the monkey will come into play. Like that, this amendment which now the Government is trying to pass will affect in future every State.

Already the Minister has spoken about Assam. After failing in many ways to break the people's movement in Assam—now they are thinking about this type of interference in Assam. Discretionary powers for the Governor for defence of tribal population, defence of poor people,

is the Constitution not sufficient? After all, doubting the patriotism of the State people, the State Legislature, by going in for this device, you create friction. What is the necessity of creating friction?

What about the Governor? What is the type of action which the Governor does take? In my own State till now no representative of people has got a single invitation for any of the functions in which the Governor has attended. My own town the Governor visited, but I did not get any invitation. My own district the Governor visited several times, but none of the elected representatives got any invitations. When the Governor's functions become private functions for private purposes, then, it becomes very difficult to have democracy. That is why frictions do take place. With these frictions in such areas in which people have been neglected, perforce they will have to rebel to see that their lives are bettered. In such a situation you try to interfere by naking such an Amendment. It will have disastrous consequences. If you make the Governor interfere, you create friction there. That friction may lead to confrontation. For this confrontation in the North-East the country is absolutely not prepared. Let the Treasury Bench realise the fact.

5.00 P.M.

Already you are having the trouble and the trouble is continuing. That is why I said that this amendment could have been avoided. Matters could have been dealt with under the existing provisions of the V and VI Schedules and the matter could have been settled. That is why I request once more the Government to take this matter very seriously to see that there is a rapport between the District Councils and the State Government. I can clearly see that in Tripura this amendment is going to get the District Council dissolved in the name of the discretionary power of the Governor. You cannot do through the State Gov-

Governor. This attitude of the Government cannot be appreciated. We oppose this amendment Bill tooth and nail. We want the House to reject it. We also want the Government to see the dangerous consequences of such an amendment Bill.

SHRI JERLIE E. TARIANG (Meghalaya)- I rise to support the Constitution (Amendment) Bill, 1988. I think it was long overdue and this, as the Minister has put it, will be meaningful for the smooth functioning of the District Council; in Tripura and Mizoram.

Shri Gurupadaswamy being a leader should have gone to these areas, studied the situation and the functioning of the Councils and come up with suggestions. Simply opposing it in one breath and saying that this could have been brought through other means of legislative measures means that he agrees to it but does not want it to be put under the Constitution.

I am confused by the speech of some Members that they do not seem to have studied the situation as it prevails in the District Councils of Mizoram and Tripura. In Tripura before independence the tribal population was two-thirds and the non-tribal population was one-third. Without protection what has happened? Tribal population has now become one-third and the non-tribal population is more than two-thirds.

As it has been enshrined in the Constitution, the Government of India should protect the minorities. They have done that, but it does not mean that whatever Bill has been passed in 1984, it will remain as it is with no further improvement. I am glad that the Minister has taken pains to study the situation. Although he belongs to the community that comprised the majority in Tripura, he feels concerned about the plight of minority community there.

The Government there is a Congress Government. Yet he has brought this Bill in the interest of making the District Councils functional.

There are a number of measures which he has brought although they are in a very

simple form. These measures would remove the conflict and friction that may arise between the State Government and the District Councils. The District Councils are autonomous bodies having legislative, executive and judiciary powers. If they are to function effectively, they must be given special powers. Now what we find here is amendment of clause 2 which defines the powers of the District Councils, this will help in making the councils to function more effectively. There is a division of subjects between the Centre and the State but we do not have clear division of powers between the District Councils and the State concerned to clearly define the powers of the Councils to make laws under paragraph 3 of the Sixth Schedule. That is why it is necessary that the Constitution has to define these powers. When a legislature measure has been taken and passed unanimously by the majority of the Members of the District Council, the Governor should accept the popular demand, otherwise it is meaningless. If this measure is to go through another process, that is, the State Legislature or the State Government which would sit over the file, then, nothing will move. What is the use of having the District Council? For what purpose? For whose interests?

Then, another thing is that there has to be some time-limit on the part of the State Government to release the funds and share of royalties on minerals, etc. This is very important because we have found over the years that the councils did not get their due share although it was apportioned by the State Government. Now, the Governor who does not belong to any political party and who is common both to Councils as well as the State Government, will be able to decide it in all fairness. I think, this is a right step. I am glad that the Minister has not entrusted this work to the Governor alone but would consult the State Government. I am also glad to note that the Bill is making mandatory for the State Government to make payments within a year. Otherwise how do these Councils run? You have to understand their real difficulties. As regards the functions of the District Councils, their functions are limited and they have to function within their own resources and these resources are tagged with the State

[Shri Jerlie E. Tariang] Governments. Unless somewhere you demarcate what are the resources to be given to the Councils and what are to be retained by the State Governments, it would be very difficult for them to function.

Regarding non-distilled alcoholic liquor as mentioned by a friend in the Opposition if they form part of the cultural and social functions of the people of the Tribe, however small they may be, a State Government may come and have a new policy and say that there will be a prohibition. Now they will have to do away with their religious functions, then, that is why they have to be protected and that protection is now embodied in the Constitution itself.

Sir then there is the case of nomination of members to the District Councils. As it is, it appears from the Constitution, the Governor will nominate those members, but who nominate? It is the State Government who nominate the members to the District Councils. The District Councils should be able to recommend members to the Governor and he can accept their recommendations because he has no political interest.

Regarding financial powers I would like to plead for the immediate consideration of the Government. The Council's subjects for resources are limited and they are to function with great restraints. What ever resources are there, they are mainly from the forests and minerals. Deforestation has gone to such an extent that *OUT* hills will soon become desert unless they are protected. Yet, if *YOU*, do not allow the timber to be exported outside the State, then, what happens? They will have no means of income. So, I request that for the District Council also, the State Government should be empowered to include specific budget proposals in their Plan Budgets, to be recommended specifically to the Planning Commission for incorporation of certain specific financial assistance to the District Councils. This will help in making them more functional and will serve the interest of the people. The Prime Minister has said very recently that (here should be decentrali-

zation of powers. What do we mean by this? This development process which has to go to the people, has to be channelised. In the plains, we channelise it through panchayats. In the hills, we have District Regional and village councils. Unless these are given financial support nothing is going to come out of this. If the Plan does not make specific provisions for these Councils, then the State Government should be authorised to include them in their State Plans and it should be mandatory for the Planning Commission also to allot funds specifically for the District Council in every sphere like all development programmes, which are undertaken by the District Councils. There are various factors I would like to make but due to paucity of time I have to curtail my speech (*Interruptions*).

THE VICE-CHAIRMAN (SHRI JAGESH DSI): Last point.

SHRI JERLIE E. TARIANG: "If you allow, Sir. I have so many things to speak about. If you do not, then, I have to be controlled by you. I would like to say that coming from that area. I am having knowledge of many tribal areas in the north eastern region. I think very few hon. Members here can say that they know as much as I know about the tribal areas of the North Eastern Region. Sir, what I would like to mention is about the issue of trading licences to the non-tribals. You all know if you go to the North Eastern region, whether it is Assam, whether it is Meghalaya or whether it is Manipur, who controls the economy? The people from outside, from Rajasthan from different places and even in Bengal. .. (*Interruption*). . . .

SOME HON'BLE MEMBERS: Why do you blame Rajasthan?

SHRI JERLIE E. TARIANG: I really praise them because they are controlling us. (*Interruptions*). Yes, you have got the power but I have to protect my people also. Unless the District Councils are empowered to control their licence and issue licence not indiscriminately, the people would not be able to know who are the non-tribal people, who are the local residents and who are the genuine

traders. We should not bring influx and competition between the Marwarisi, Sindhis and Punjabis and all that. We do not want to make those areas a place of competition for these big business tycoons. I praise them, I wish them well. I went to U.K. and I found there that the Marwaris, Sindhis and Gujaratis are controlling the economy in London. I am very proud of that. But what is happening in the North Eastern region? The people are subjected to poverty and interested persons in power would canvine with businessmen and exploit the people. This is where we need protection. I feel, the Minister has done very well and has been able to give a proper direction to the District Councils that they will issue licences to non-tribal traders so that it would be controlled. Sir, I do not want to take the time of the House but I am really sorry to say that while in Tripura, you have extended the Sixth Schedule in 1984, but in Manipur, nothing was done although they are very similar to each other. Sir, both of them were Princely States before independence. Both Manipur and Tripura were Princely States at the time of independence. In both the States tribals are minorities and they comprise one third of the total population. (*Interruption*). When Tripura was brought under the Schedule we were very happy. But now it is stated that the State Governments have not agreed to the idea of bringing the Councils in their States. We have an able Minister in Mr. Santosh Mohan Dev and I hope that he will be able to convince the people of Manipur, the people in authority there, and see that the tribal populations there have the same facilities and protection as other tribals. Mizoram has the majority of Mizo tribals. But there are smaller communities there like Chak-mas, Lakheras and Pawis who have their own Regional Councils and District Councils. I feel that the proposed measures in the Bill should be accepted by everybody. We should not politkalise the office of Governor. I do not know what functions are discharged by the Governor in Andhra Pradesh. The saying goes that love begets love and hate begets hate. I feel that one cannot be blamed without the other being blamed. I feel

that the hon. Member from Andhra Pradesh should kindly find out the way how to work together with the office of the Governor. The Centre has to have some representative there. People cannot be made to run to Delhi every time.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You are testing my patience. Just because the Chair is a liberal triba it does not mean that you should test its patience.

SHRI JERLIE E. TARIANG: I feel that the House should be unanimous and those Who oppose should kindly withdraw in the interests of tribal communities in the hill areas of the north-eastern region. Thank you, Sir.

SHRI ALADI ARUNA ALIAS V. ARUNACHALAM (Tamil Nadu): Mr. Vice-Chairman, Sir, in fact I welcome the object of the Bill. The object of the Bill is laudable. But the way in which the amendment is proposed is quite unsatisfactory, unwarranted and undemocratic. Sir, we are not against the constitution of any District Council or Regional Council for the welfare of the tribal race or to protect their individuality and nicety and identity of their character. Sir, that is why the founding-fathers of our Constitution, to protect the interests of the tribal race and to keep the diversities in unity, incorporated the Sixth Schedule in our Constitution. But, Sir, what is painful to point out is that the amendment has bypassed the jurisdiction of the State Government and the popularly elected Government. The State Legislature is undermined in this amendment. Sir, we are aware of the fact that in a federal set up there are two systems of Government. There is no room for a third tier. Either knowingly or unknowingly or with a deliberate design, here, a third tier has been created in the name of conferring special or more powers to the District Council subject to the approval of the Governor. Sir, to have co-ordination and cohesion between the District Council and the State Legislature, the State Legislature must be conferred with the power of scrutiny. If the District Council is to be free from the scrutiny of the State Legislature, then I say that this is a three-

[Shri Aladi Aruna *alias* V. Arunacha-lam]

tier system, that we are indirectly introducing now.

Under the present amendment, we have not given any absolute powers to the District Council. But what we have done is that we have given absolute power to the Governor and that is a dangerous thing. If you are very really interested in conferring more powers on the District Council, you could have allowed the District Council to be supreme within its area. But you have not conferred any such power on the District Council. But, at the same time you have given the power only to the Governor. Assignment of any power to the Governor means enjoyment of power by the Centre because the Governor is appointed by the Centre and he holds office during the pleasure of the President and the pleasure of the President is nothing but the pleasure of the party in power. So, within the State, by conferring more powers on the District Council, the Centre is transgressing the jurisdiction of the State. This is my first objection.

Actually, if we are very particular about this, as we have given special status to Kashmir, we can do so and you can come forward to give a special status to the tribal areas and I will welcome that. It is essential to keep their identity. But you are not for that. But you are for the colonial way of controlling the tribal area and that is why you have conferred more powers on the Governor. It is needless to say here now how the Governors are behaving in various States. Much information has been furnished to this august House about this and I am very sorry to mention that most of the Governors are unfit even to be the Presidents of panchayat boards! But you have elevated these people to the level of Governor. They are trampling upon our democratic values and institutions. But I do not want to elaborate on this subject more.

Before I conclude, I have to draw the attention of the honourable Minister through you to one point. You please see 2(3) of the Bill. It says:

"12AA(b) the Governor may, by

public notification, direct that any Act of the Legislature of the State of Tripura to which the provisions of clause (a) of this subparagraph do not apply, shall not apply to the autonomous district or an autonomous region in that State or shall apply to that district or such region or any part thereof subject to such exceptions or modifications, as he may specify in the notification."

Sq, by issuing a notification through the Governor, you seize and control the District Council and free it from the scrutiny of the State because any law is now enforceable within the area off the District Council by the notification of the Governor. Is it desirable? Is it necessary? you have specified certain areas and I can understand that. But this a wholesale prevention, wholesale prohibition. But the honourable Minister may argue that it is extended in the case of the President also. I can understand your argument. But I would like to remind you that as far as the President is concerned, he has to accept the aid and advice of the Council of Ministers. But, as far as the Governor is concerned, there is no such compelling clause in the Constitution. He may, and he may not.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI). Consultation is there.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: In the forty-seventh Amendment of the Constitution, a new provision was incorporated to the effect that the President must accept the aid and advice of the Cabinet. But that is not a compelling clause as far as the State Governor is concerned. That is why I say that this is a dangerous thing as far as this is concerned. As far as the President is concerned, you can control. But, as far as the Governor is concerned, the State has no control over the action of the Governor. Only you have got the control. That is why the wholesale way of prohibiting the rights of the States under the pretext of protecting the diversity and identity of District Council is highly objectionable, undemocratic and anti-federal.

With this note of warning, I conclude my speech.

DR. C SILVERA (Mizoram): Mr. Vice-Chairman, Sir, I rise to welcome the Sixth Schedule to the Constitution (Amendment) Bill, 1988. The purpose and the objective of this Bill is to give more powers to the autonomous District Councils of Mizoram and Tripura. Also the Bill will confer this discretionary power to the Governor of the State. This will protect the autonomy of the Hill District Councils from the harassment by the State Governments by means of dissolution, suspension or supersession of the District Councils, which usually has happened. A Bill of this type is needed because of experiences we have had in Mizoram during the MNF Ministry. And that is the very reason why a memorandum was submitted by the minority groups, that is, I-akher, Pawi and Chakma, to, safeguard their rights and privileges,

A lot of mention was made about Mizoram. I would like to enlighten the House what happened during the past few months in Mizoram. And I think this is the very reason why an amendment of this type is needed.

There are three autonomous District Councils in the southern most district of Mizoram known as Chhimitupui District, belonging to three minority communities of Kaher, Pawi and Chakma. The members of the Council are directly elected on the basis of adult suffrage for a period of five years. The majority party forms the Executive Committee with the Chief Executive Member as its head.

Contrary to his promise as contained in clause 9 of the Memorandum of settlement on Mizoram to protect the rights and privileges of the minority communities, the MNF Government has been constantly harassing them.

The rupees five crores given by the Centre directly to the autonomous District Councils for development of the area has been misused by the MNF Ministry, violating financial rules and regulations.

When Mr. Laldenga assumed office in February 1987, the Pawi and Chakma District Councils were the first target of hatred. Their terms were to expire in November. In spite of this, Mr. Laldenga constituted a one man inquiry commission on the basis of the allegations fabricated by his men. The inquiry commission did not find any substantial evidence to warrant dissolution of the Councils. The Rules require that the enquiry report should be placed before the Assembly, which Mr. Laldenga did not dare to do. However, in spite of this, he dissolved the Councils.

The election of Pawi and Chakma District Councils were, therefore, held in January 1988 after being postponed two times by the Mizoram Government. In Chakma District Council, Laldenga's party failed to secure a single seat out of eleven. The Congress party won 8 seats and 3 went to independents. In Pawi District Council, Laldenga's party won 8 seats as against 11 won by the Congress. There are 2 seats to be nominated by the State Government. Till now, Mr. Laldenga refused to fill up the nominated seats. He has constituted a one-man inquiry commission again on the basis of allegations fabricated by Laldenga's defeated men. Five Congress members were disqualified and unseated by the one-man Commission on 22nd July, 1988. The five men approached Guwahati High Court which issued interim order upholding the election of the five members. The Hema Ministry also advised the Mizoram Government to instruct the Pawi District Council not to transact any business under the circumstances. The High Court order and the Centre's advice were totally ignored by the Mizoram Government which appointed pro-tem Chairman to conduct the business. The Chairman resigned earlier to become the Executive Member and the Deputy Chairman was disqualified by the one-man Enquiry Commission. In contravention and sheer disregard of the Autonomous District Councils rules and regulations, the Council without any proper sittings and under the guidance of the pro-tem Chairman, backed by the Chief Minister, have been paralysing the functioning of the

[Dr. C. Silvera] Pawi District Council since 22nd July, 1988, till now. This was happening in Mizoram.

Sir, whenever the Regional parties come into power in the State, these District Councils run by the minorities have always been harassed. And Mr. Lal-denga, even after promising and signing the Memorandum of Settlement continued harassing. And he made the District Council in such a way that it was not possible to run the District Council. He wanted to run a minority Government in the District Council. And that is the very reason why these minorities need protection. Unless the Constitution is amended, there is nobody to interfere in the matter. The Governor has nothing to do with it because the Constitution does not give any power. But if the Regional parties and the State Government are going to harass the elected Government of the District Councils, there is no safeguard for them. And that is the very reason why this Amendment has been brought and it is very much welcomed by the whole of Mizos.

Sir, it is very clearly mentioned in the Bill that the Governor is not going to act like a dictator. Clause 20BB says: "The Governor shall, after consulting the Council of Ministers, and if he thinks it necessary, the District Council or the Regional Council concerned, take such action as he considers necessary in his discretion." So, he is not going to act on his own. He is going to consult the Council of Ministers or the District Council Members or the Regional Council Members. So, what our friends have said is not quite correct. And unless this type of safeguard is given to these minorities, it is not possible to run because State Governments are changing. And as I said, whenever the Regional party comes into power in Mizoram, all the District Councils are harassed.

Sir, substitution of Lakher district into Mara district and Pawi district into Lai district is very much welcomed because the Lakher feel that they are Maras

and the Pawis feel that they are Laish. So, this will suit the sentiments of Pawi and Lakher people.

Sir, I need not say anything much about this Bill because this Bill has been very much welcomed by the Mizos. I would like to request the other side also to support this Bill. And I must congratulate and thank Santoshji for bringing forward such a good Bill.

Thank you, very much, Sir.

DR. NAGEN SAIKIA (Assam); Vice-Chairman, *Sit!* The Sixth Schedule to the Constitution (Amendment) Bill, 1988, is a Bill to pave way for the Centre to centralise more and more powers for it and curb the powers of the State legislature. By bypassing the State legislature, the centre is going to take all powers in its hands. This is against the spirit of our Constitution and against democratic values and against democracy. The clause which is going to be inserted in para 9 of the original Bill, of course, can be supported. By this amendment, the district council is going to benefit and it would also be ensured that royalties made to district councils would be released in time, without delay. In case of some States where there is delay in release of royalties, this amendment will be of help.

But the aim of curbing powers of State legislature cannot be supported by any person who has faith in and respect for democracy. This is number one.

Any Act or resolution of the district council had to come for a scrutiny of the State legislature to ensure that it is not against the integrity and security of the country. This power of the legislature is now going to be taken away. Then, the legislature had to approve the decisions of the district councils or the regional councils. This power also is going to be taken away by this Bill. This is number two.

Thirdly, the Governors in Tripura and in Mizoram will be all in all, and the district council and the regional council will be run under the discretion of the

Governors. As the amendment says, he will consult the Council of Ministers, but there is no compulsion for him to act according to the suggestion or advice or decision of the Council of Ministers. This means, a nominated head will overpower and overshadow the elected government of a State. The institution of the Governor has already been degraded and now he would have to act as a direct agent of the Central Government openly.

My contention is that the Central Government which is supposed to be the guardian of democracy, is going to bring itself to the lowest strata in the country's policy-making. In the case of district councils and regional councils, Parliament and State legislatures will have nothing to do. These district and regional councils will be like centrally-sponsored or centrally-administered places though they will have their own representation in the State legislature and Parliament itself.

In the case of non-distilled alcohol, much has already been said. But in this case also, the order, or legislation of a State legislature, will have nothing to do. In this case, the State Governments are made ineffective on the plea to safeguard the tribal culture, as if the State Governments were, or are very much against the tribal culture and heritage. But the Bill does not confine itself to this much only. You are continuing to give indulgence to the tribal people to drink alcohol. This is very much against the Constitution and very much against the Gandhian spirit of which the ruling party proclaims itself to be the staunch follower.

Therefore, I urge upon the Government, I urge upon Shri Santosh Mohan Dev, to withdraw this Bill for the sake of democracy, for the sake of the Constitution and for the sake of the country. Thank you.

SHRI BAHARUL ISLAM (Assam): Mr. Vice-Chairman, Sir, I have been very carefully listening to the speeches made by hon. Members from the Opposition. Whatever they said can be summarised into only two points, two ques-

tions. Firstly, why this amendment? Secondly, it is absolutely obnoxious today to give discretionary powers to the Governor. These are the only two points made. These two points were very forcefully made by Mr. Aladi Aruna and Mr. Gurupadaswamy. These points were also made by other speakers, like Dr. Reddy and others.

My answer is, firstly, are they really amendments at all? Secondly, are really discretionary powers given to the Governor? In my respectful submission I do not think so. I have carefully read the provisions of the original Sixth Schedule as well as of the present Bill. I do not find any substantial changes. I do not find any substantive amendments made to the Sixth Schedule of the Constitution. Secondly, I will also show that no discretionary powers are newly being given to the Governor.

The first question is, are they really amendments at all? The confusion that has been created in the minds of the hon. Members from the Opposition is due to the last clause of the Bill, insertion of new paragraph 20BB. What discretionary powers have been given? I have summarised the powers given to the Governor after a careful reading of the Sixth Schedule. They are as follows;

Paragraph 1 (2): Division of area or areas into autonomous regions. If there are different Scheduled Tribes in an autonomous district, the Governor has been given the power, the discretionary power, to divide the areas. Paragraph 1(3); Creation of new districts, exclusion of areas, bringing in areas and so on. Paragraph 2(1): Nomination of four members to the District Council. Paragraph 2(4) and paragraph 2(7); The rules of the District Councils and the Regional Councils are to be approved by the Governor. Paragraph 5: Trial of suits and cases under the Civil and Criminal Procedure Codes—rules are to be made by the Governor. Paragraph 6(1); Establishment of primary schools, dispensaries, markets, cattle pounds for-

[Shri Baharul Islam]

ries, fisheries etc., these settlements are to be approved by the Governor. Paragraph 14(1); Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions. Paragraph 15(1): The Governor may annul or suspend the acts and resolutions of District and Regional Councils Paragraph 16(2): The Governor may assume the powers to him when the administration of the District and Regional Council cannot be carried on in accordance with the provisions of the sixth Schedule.

Sir, these provisions are already there in the Sixth Schedule. The new paragraph 20BB says that in these cases, the Governor will exercise the powers in his discretion. Now, it is a debatable point. Suppose you withdraw this clause, clause 20BB Let there be a dispute in a court of law, in the High Court or the Supreme Court. The lawyers on behalf of the District or the Regional Councils will argue that the powers to be exercised by the Governor are already there and he exercises them in his discretion. It is because the Sixth Schedule does not expressly say whether these powers have to be exercised by the Governor in his discretion or in his individual judgement, namely, whether these powers have to be exercised by the Governor on the aid and advice of the Council of Ministers. The Sixth Schedule is silent. Therefore, the court might very well interpret the clauses, go into the history and background of the Sixth Schedule. If we go into the background and history of the Sixth Schedule, we find, during the "British time these areas which are now covered by the Fifth and Sixth Schedules, were "backward tracts", the "excluded" and "partially excluded" areas, and were not within the purview of the administration of the State Government. Even under the Government of India Act, 1935, although there were governments constituted by the Congress and other parties, these powers were not with them. These powers were administered by the Governing Council through the Governor. In other words, these powers were exercised by

the Governor in his discretion. Therefore, that development came and the entire position was thoroughly discussed and examined in the Constituent Assembly. The Constituent Assembly constituted sub-committees. These sub-committee^ also examined this position. Certainly this Sixth Schedule was within the Constitution. Constitution of India is one thing, this Sixth Schedule is another Constitution. Some say, it is within the Constitution and some say it is outside the Constitution. It is a little debatable point for us. Anyway, it must be remembered that Sixth Schedule is a miniature constitution of India for the purposes of administering certain backward areas. Now, what was the use of Sixth Schedule? It was only to protect those people who were unfamiliar with the life being lived by people in other parts of the country. Their life was entirely different. Their way of life, their practices, their social life were entirely different from the life of the people in the rest of the country. Therefore, these areas had to be carved out. The tribal areas of other parts of the country are covered by Fifth schedule and the tribal areas of Assam were covered by the Sixth Schedule originally. Now Assam has been bifurcated into so many States. All these new States come under the Sixth Schedule. So, this is the background. My friend Mr. Aladi Aruna said it very well and Mr. Gurupadaswamy also said, "It is abnoxious that you give discretionary powers to the Governor in the modern days." It is true so far as your part and my part of the country are concerned, but it is not true to that part of the country to which Mr. Tariang belongs, to which Dr. Silvera belongs. There a different constitutional jurisdiction will apply. Therefore, when the court would have taken into account this history of the Sixth Schedule, certainly they might have come to the conclusion that the Governor had to exercise these powers which I have enumerated, which are already there in the Sixth Scheduled, in his own discretion. Today the Government has come with an amendment which tries to avoid ambiguity leaving it to implication which means dispute, which means court

litigation, and all that. In order to avoid those litigations, disputes etc. the Government has come forward with Section 20BB which clarifies the position. This will save the people from a number of litigations etc.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): That also after the consultation with the Council of Ministers.

SHRI BAHARUL ISLAM: Exactly utter the consultation of the Council of Ministers and also the local people and Dr. Silvera has very clearly explained the position in his own State. They felt that they were bulldozed by the majority around them. The Mizos themselves are tribals, but there are small socially, economically and culturally more backward communities, like Chakmas etc. therefore they must be protected. So my respectful submission is that no fresh power has been given to the Governor to be exercised in his discretion. They are already there. But the Government has only clarified it. That is my respectful submission.

Secondly, it has been said, why this amendment? The amendments are two, as I have already submitted. Section 20BB is now clear. As I have explained, in my respectful submission, it is a clarificatory provision.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): That you have made clear.

SHRI BAHARUL ISLAM: Secondly, another provision is there, the new Section 12AA and 12B which say that the Acts of Parliament and Acts of State Legislature are not applicable to these areas unless they can be made applicable, in the case of Acts of Parliament, by a notification by the President and in case of a law passed by the State Legislature by a notification by the Governor. These two sections also were originally in the Sixth Schedule itself. But they were worded in a different way. If such a law is passed, then the District Council or the Regional Council, as the case may be, could have rather consistent with the tribal conscious on

little incongruous in language. Instead of saying that if these Acts come, the District Council or the Regional Council could say "No", now they are saying that Acts of Parliament and the State Legislature will not apply to these areas unless the President or the Governor, as the case may be, would by notification say that these Acts only will be applicable to these areas for that purpose. In my respectful submission, there is no new amendment. In one case it is only a drafting change_ in the other case it is mere clarification and nothing else.

Thirdly it cannot be said that all the powers have been given to the Governor. Some powers—for example in the new Bill itself, powers with regard to min:s etc. and so many other powers are there, and then this new section 2(1)(3) says: "The Governor may, by order, direct that the share of royalties to be made over..." etc.—it is not to be exercised in his discretion, mind you; it is to be exercised by the Governor with the aid and advice of the Council of Ministers.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): That is all right. You have made your point.

SHRI BAHARUL ISLAM: So my respectful submission is that actually there is no substantive change in the law- The same law was already there which they have fully explained.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Shri Chitta Basu. Five minutes only. By 6 o'clock, I want to complete the discussion.

SHRI CHITTA BASU (West Bengal): Sir, I rise to oppose this amending Bill. I will explain why. Don't worry. But you should ask the Chair also to provide some time to me to explain it to your satisfaction.

Sir, I am quite happy to find that tribal consciousness in different parts of the country is increasing. That is a welcome sign for the country's unity and integrity. And this tribal consciousness is increasingly rather consistent with the tribal conscious o

[Shri Chitta Basu]

ness, based on the demand for preservation of ethnic and cultural identities and also-for the restoration of that identity in those areas where that identity has been lost.

As a matter of fact, the concept of Autonomous District Councils was accepted by the framers of the Constitution in order to meet the hopes and aspirations of the tribals of our country and they have given the Sixth Schedule of the Constitution which, I agree, is a mini-Constitution within the main Constitution. The Sixth Schedule has also assured the autonomy of the areas inhabited by the tribals, and I am one of those who feel that that autonomy should be further expanded, increased; it is not to be shrunk, it is not to be lessened. But, to my great disappointment, instead of further expanding it the right for autonomy is being restricted, limited, rather shrunk, by this amendment.

Of course, Mr. Baharul Islam maintained that this is no amendment. If this is no amendment, then what was the necessity of bringing in this Bill at all? ... (Interruptions) Now look at what you clarify today. All the clarification is based on three assumptions. One assumption is, allow me to say, that the Governors are paragons of impartiality and all the virtues on the earth. It is on this assumption that this clarification is being made. The second assumption is that autonomy of the tribal areas is synonymous with the expansion of the area of discretionary power of the Governor. Naturally, these two assumptions are wrong, antidemocratic and atrocious. The only historical thing that has been mentioned by way of justification for accepting that the Governors are paragons of all the virtues on the earth and they are paragons of impartiality is that this discretionary power of the Governor is synonymous with the autonomy of the tribals. I know, these are things of the British days and I don't like to take much time of the House on this. But, that is not the reality. The Governors are not paragons of all the virtues on the earth, nor are they impartial. In certain cases—I don't want to mention them because this is not the occasion—I there have been some instances where the

Governors were partial and partisan and, for narrow, selfish and individual interests they misused their Constitutional power, particularly this discretionary power. Therefore, I could say that these assumptions are not correct and, therefore, the conclusions also cannot be justified.

Now it has been said—if you would just allow me—that if we want that the autonomy now being enjoyed by the ADCs or the Regional Councils is to be further expanded, then paragraph 15 is also to be amended wherein it is stated—I don't want to read out the paragraph because it is known to the Minister and others—regarding annulment or suspension of acts and resolutions of District and Regional Councils. Here the Governor has been given the exclusive right to determine whether a particular resolution or a particular policy of the ADC is prejudicial to the public order and endangers the safety of India. As one individual in his discretion he can take a view that the decision of the ADC is prejudicial to the public order and dangerous to the unity of the country. 6.00 P.M.

Therefore, this kind of power cannot be given to an individual. If we are really to expand the autonomy, then, that has to be amended. But, instead of amending that, taking away that power of the Governor, exclusive power, as a matter of fact, Sir, I don't want to take much of your time ...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): One minute only.

SHRI CHITTA BASU: I will just refer to the clauses. You look at the amendment proposed to be made in paragraph 15 wherein "Legislature of the State" has been substituted by "him". That is, the Governor represents the State Legislature. Then, again, in paragraph 16 "subject to the previous approval of the Legislature of the State" has been omitted. Therefore, the area of the discretionary power has been extended. Naturally, that cannot be equated with the idea or the concept of the expansion of the autonomy.

My second point is!, it means, the whole B'H appears, at least to me, that

with a sense of vengeance they have adopted the attitude towards the State Legislature. As a matter of fact, the whole scheme of the Constitution is that the State Legislature and the A.D.C. are not mutually exclusive. There is no autonomy or there is no contradiction between an elected State Legislature and the elected A.D.C. The whole purpose is to invent rather discover, an element of dichotomy, an element of contradiction between the elected State Legislature and the elected A.D.C.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): That is all right.

SHRI CHITTA BASU: This is not a good trend. Therefore, Sir, I feel that this Bill is not for autonomy. Rather it is for centralisation of power.

Only one more point.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Not one point, but one sentence only.

SHRI CHITTA BASU: One sentence, all right I find that the Chief Executive Member of the Tripura District Council in a public statement has accused the Minister of Home Affairs, saying that the Minister had assured that before framing the Bill he would consult all the Chief Executive Officers of the ADCs of the North-Eastern region and now that assurance of consultation before the formulation of the Bill was not carried out. I hope, the hon. Minister will clarify this position.

Lastly, Sir, the whole purpose of this Bill is ...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): You oppose it.

SHRI CHITTA BASU: ... to disband the present ADC of Tripura which is now being manned by Left Front.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Basumatari. Are you very keen to speak? Mr. Basumatari?

SHRI DHARANIDHAR BASUMATARI: Yes, Sir, I will speak for only one second. I want to mention about only one point about the Sixth Schedule. I was a Member of the Constituent Assembly. It was the wisdom of Prime Minister Nehru who wanted the people covered under the Sixth Schedule to develop them according to their own genius. Nobody supported him on it. But when he explained with all his might, everybody realised (how this area has been; kept under darkness and those people were segregated and not allowed to come down nor the plains people go over there. It is an excluded area. So, Mizoram and Nagaland were excluded areas and Khasi Hills and Garo Hills were partially excluded areas. The Prime Minister wanted to consolidate them under the Sixth Schedule and to give the power to develop themselves in their own genius. That was a point which was accepted. Therefore, I have nothing to say except only one point.

[The Vice Chairman (Shri H. Hsuii-manthappa) in the Chair].

Now you are going to apply the Sixth Schedule to Tripura because Mrs. Gandhi announced in the other House that Tripura was a tribal State, but now the tribals have been reduced to minority. They should have done something enabling them to develop them in their own genius. Therefore, the Government had introduced Sixth Schedule in Tripura. Now, Hon'ble member belongs to Tripura. That means Tripura people themselves oppose it. I do not know why he opposes the tribal people to develop. I would request the Hon'ble Minister that he should do justice to the people of Manipur also. There are a lot of tribals. One-third population is there in the hills who comprise 90 per cent of the area. You should not deprive them of the benefit enjoyed by Tripura and Manipur and other areas the benefit of Sixth Schedule.

Now, I would like to speak on another point. Mr. Nagerii Saikia gave certain figures. I don't remember them exactly. The Hon'ble Minister knows when this

[Shri Dharaaidhar Basumatari]

regional Government did not allow election on the District Council of Karbia-tong, and North Cachar hills, as my friend Dr. Silvera has said even in the tribal areas these tribal people belonging to the ex-Chief Minister opposed the District Council when he gave order for it. Therefore, this injustice was considered to be an act of the Government of India. The Government of IndU has been now good enough to learn the lesson and they have to change it. Why do you object to the Governor where she is doing justice? Why are you opposing the popular Government? I am very sorry my friend, Mr. Gurupadaswamy, who is a senior Member, has said that the Government has been doing injustice to the tribal people. I submit what is being done by the Government of India is being done in a right direction and it should be supported wholeheartedly.

SHRI SANTOSH MOHAN DEV; At the very outset I thank all the hon. Members of the House who have participated in this debate. I am happy to see that those who are tribal members, especially from the North Eastern region like Shri S. C. Jamir, Prof. Tariang, Dr. Silvera and also those who do not belong to the Tribal community but they have their political base in the North-Eastern region like Shri Baharul Islam, Basumatari Ji and others, have supported this Bill. Shri Gurupadaswamy, though objected, did not like the way the Bill has been brought, but he has also agreed that the tribal interests should be protected. The only exception of opposition to the Bill is that of Mr. Narayan Kar, a member from CPM from Tripura and Mr. Chitta Basu, a member from Forward Block from West Bengal.

Mr. Chitta Basu has raised a question about the press report. The members of the autonomous District Council met me and gave a memorandum. Mr. Kar has in his speech said that the demands of the tribals have been overlooked and not protected. The District Council Members of Tripura are also signatories to the

memorandum. On the basis of this memorandum, the Government of India has brought this amendment. I assure them, if we do not accept some of their vital points I shall definitely call them and discuss with them. Except one point, the financial powers, that is, the Government of India should pay the money directly to the A.D.C. almost all the points which were demanded by the Autonomous District Council Organisation have been accepted by us. There is a fear psychosis in the mind of the CPM Members that this Bill has been brought to supersede the elected body in Tripura. I cannot vouch for the Tripura State Government here. Whatever is being done, is being done to enable the Tripura State Government to perform its duty and take a decision. I cannot confirm or deny, but with these amendments which are now coming the elected body not only in Tripura but anywhere in the country will have a forum in the Governor where they can go and lodge their appeal. Now, as per the existing Act, the Governor has to act on the advice of the Council of Ministers. But after giving his discretion, he will listen to both the aggrieved parties, that is, the District Council as well as the State Legislature or the Council of Ministers and in his wisdom he will give a decision. So rather they should be happy that this particular amendment has come.

A point was raised by certain Members as to why discretionary powers have been given to the Governor. Dr. Silvera from Mizoram has very elaborately stated the experience of Mizoram, has elaborately narrated the experience of Mizoram ADC. I from North-East know what has happened in Assam in the past. We have seen what has happened in other States also. The original creation of the District Council goes back to Mikir Hills in 1952 and now it is 1988. In the year 1981, the representatives of all the District Councils gave a memorandum to our late Prime Minister, Shrimati Indira Gandhi. As has been pointed out rightly by Mr. Basumatariji Pandit Jawaharlal Nehru, Shrimati Indira Gandhi and the present Prime Minister and our party in power always gave an assurance to the

Tribals that their culture, their heritage, their religion and their tradition will always be protected and by doing this, and by giving this Constitutional right to them, we have been able to keep the North-Eastern States and the Tribals together. We have nothing against any particular State Government. But from our experience we have seen in the past that many of the State Governments have not hesitated to share their power.

The hon. Member, Mr. Saikia, has referred to certain clauses but he will be pleased to know that in Assam already this clause exists and we have brought this clause 12AA. The existing clause of Assam already gives that 'sort of power to the Governor and the President that any rule that is passed in the District Council and if the same rule is passed in the Assembly, the District Council has always got over-riding authority to implement their rule. This rule is already in Assam. When we have brought these provisions for Tripura and Mizoram, we have only brought these States in conformity with Assam. So it is wrong to 'say that it is in conflict. From our experience we have never seen that in Assam, the District Council and the State Governments have come in conflict. But mutual discussion, it has been done.

DR. NAG EN SAIKIA: I did not speak about Assam. I spoke about Tripura.

SHRI SANTOSH MOHAN DEV: No, you being from Assam, what your Government has accepted, you are trying to say against it. This is what I am saying and trying to point out.

It has been rightly said by Shri Baha-rul Islamji that from our experience in the past we have seen some conflict always comes between the State Government and the ADC whether it is the Congress Government or non-Congress Government. As a result of this, in the past, unnecessary litigations have come. Now, we have only given powers to District Council by substituting a clause in 12 AA and 12B.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: It is not the Act of the District Council. It is a wholesale..

SHRI SANTOSH MOHAN DEV: It is not included in the power of the District Council. If such Acts are passed which in a way the Governor feels should not be implemented, then, the Governor has got discretion. I am answering his argument which he has said. I have not come to your argument.

What Mr. Aladi Aruna is saying is that by this Bill what we have done is that if any Act is passed by the State Assembly or by the Parliament, if the Governor or the President of India feel that this particular Act should not be enforced in the District Council, they have to give a notification. So, what is wrong? (*Interruptions*)

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Under the aid and advice of the Cabinet as far as the Centre is concerned. I would like to have a clear clarification from you. Does it come under the aid and advice of the Cabinet or the discretionary power of the Governor?... (*Interruptions*). ..

SHRI SANTOSH MOHAN DEV: The Governor will always .. (*Interruptions*).

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Governor is Governor.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): You have made your point now.

SHRI SANTOSH MOHAN DEV: Unfortunately you are suffering from phobia against all the Governors. (*Interruptions*)

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Governor is Governor.

SHRI SANTOSH MOHAN DEV: The Governor is a constitutional head of a particular State whether you accept it or not. Some of you have passed very derogatory remarks about the Governor. It is not expected of you people. I do not want

[Shri Santosh Mohan Dev]

to go into that particular debate. But what I say that we are committed to protect the interest, the heritage, the culture and the traditions of the tribals and this particular amendment has come. (M-lerruptions).

SHRI ALADI ARUNA *alias* V. ARU-NACHALAM: Sir, it is a very vital point. If the State Legislature passes any Act regarding the District Council, then all right. (Interruptions). . But is it the discretionary right of the Governor to implement or prohibit? It deals with the general Act of the State. That is why, I am asking.

SHRI SANTOSH MOHAN DEV: Probably, the hon. Member does not know that there is a Fifth Schedule in the Constitution. According to the Fifth Schedule of the Constitution, the tribals areas all over the country have got certain rights. The Sixth Schedule came as many Members have said, for a particular area in the north eastern region and according to that, we have, not gone to the extent of giving any special power to the Governor. That special power was already there. So, what you are trying to say is that we are giving a new power. But that is not correct. Your argument is that whether the State Legislature has been superseded. No. Previously, any order of the Governor has to be placed in the State Legislature and it can be revoked by the State Legislature. That power has been taken.

SHRI CHITTA BASU: Now, it is being done by the Governor.

SHRI SANTOSH MOHAN DEV: Why we have done *so*? From *my* experience of the last 25 years, I have not given a statement against any particular Government because this is a happy day for the tribals in the north eastern region. I do not want to go to this length. All that I can say is that the Prime Minister, Shri Rajiv Gandhi, during his tour to Mizoram

as well as Tripura has committed and the Government who keeps its commitment, has brought this Bill and we fully support it. We are fully aware that by giving the powers to the Governor, the protection of the tribals' interests will be there. We are not trying to do something to supersede the State Government. The Tripura Government has agreed to it. Mr. Laldenga, when he signed the Accord, one of his conditions was that all these ADCs should be abolished. But negotiations continued for a year. Ultimately, in the Accord, a para was included about the tribals—the whole Mizoram is tribal but Chakmas, Pawi and Lakher, they are minorities amongst the tribals: and he also agreed that the protection of the tribals will be given and according to that clause, we have come here with this Bill. Mr. Nara-yan Kar said that we have not discussed it with tribes. In fact we have received suggestions from the TUIS, the tribal students association and the Tripura Tribal Mahila Society. You are a party there but you have lost the mandate of the people. But you still want to pose that you have the only say in Tripura. "You 'should forget about it now. You have no say. Majority of the Tripura tribal unions have requested us to make this change. The statement which has been read by Shri Chitta Basu and which you have also mentioned is of a minority. So far as the State politics is concerned, yes, they are majority in the ADCs and I am sure, the Tripura Government will take care. If they are involved in any other irregular thing, I cannot vouch for that. But, unfortunately, the whole of your speech was wrong. You are trying to say that we are giving the power to the Legislature and not to the Governor. But we have given the power to the Governor. If I have understood you—you spoke in Bengali and I am also a Bengali—your conception of the Bill and your conception of Tripura are wrong because whatever we have done is to protect the interests of the tribal people of Tripura. The people of Tripura will welcome it. There was a clause in the agreement with the TNV

that the tribal people would be protected and we are fulfilling that.

I do not want to go into more details. Before I conclude ... (*Interruptions*)... I must say that the Bill is in the interest of tribals and should as such be supported. Thank you.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

"That the Bill further to amend the Sixth Schedule to the Constitution of India in its application to the States of Tripura and Mizoram, as passed by the Lok Sabha be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): We shall now take up clause-by-clause consideration of the Bill.

Clause—2 (Application of Sixth Schedule to the States of Tripura and Mizoram)

SHRI NARAYAN KAR: Sir, I move:

1. "That at page 1, lines 12 and 13, for the words 'a period of one year from the date of any agreement' the words 'the financial year of the date of any agreement' be substituted."

2. That at page 2, after line 11 the following be inserted, namely:—

'(e) prescribe that no person resident outside the district shall carry on any trade whether wholesale or retail except the Scheduled Tribes'.

3. "That at page 3, lines 33 to 45 be deleted".

4. "That at page 4, lines 16 and 17, the words 'the Council of Ministers, and if he thinks it necessary' be deleted".

The questions were put and the motion were negatived.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): I shall now put clause 2 to vote. The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI SANTOSH MOHAN DEV: I

move:

"that the Bill be passed". *The*

question was proposed.

SHRI M. S. GURUPADASWAMY: Sir, we in the Opposition hold the view that this Bill is a distortion. We are not against protecting or safeguarding the interests of tribals and their traditions. But we do sincerely feel that this piece of legislation is unnecessary and it is going to create a lot of problems in future. It is a total distortion of the spirit of the Constitution and because of this we cannot cooperate with the passing of the Bill. We walk out.

[At this stage some hon. Members
The motion was adopted.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

"That the Bill be passed".

The motion was adopted.

CONSTITUTION SIXTIETH AMENDMENT) BILL, 1988.

THE MINISTER OF FINANCE (SHRI S. B. CHAVAN): Mr. Vice-Chairman, Sir, I move:

"That the Bill further to amend the Constitution of India as passed by the Lok Sabha, be taken into consideration."

The Bill seeks to amend clause (2) of Article 276 of the Constitution to increase the ceiling of Profession Tax from two hundred and fifty rupees per person per annum, to two thousand and five hundred rupees per person per annum. (*Interruptions*). Hon. Members are aware that clause (2) of Article 276 of the Constitution provides that the Legislature of a State may levy tax in respect of professions trades, callings and employments but the total amount payable in respect of any