NATIONAL COMMISSION

FOR

SCHEDULED TRIBES

SPECIAL REPORT

GOOD GOVERNANCE
FOR
TRIBAL DEVELOPMENT AND ADMINISTRATION
MAY 2012

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D.O. No. 4/1/12-Coord.

Dated: 18 June, 2012

Respected Rashtrapati jee,

The National Commission for Scheduled Tribes was set up w.e.f. 19 February, 2004 by amending Article 338 of the Constitution and inserting a new Article 338A vide the Constitution (89th Amendment) Act, 2003. Article 338A, inter-alia, provides that it shall be the duty of the Commission to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of the safeguards available to the members of Scheduled Tribes and to make in such reports recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other measures for protection, welfare and socio-economic development of the Scheduled Tribes.

2. Tribal peoples' culture and identities form an integral part of their lives. Their ways of life, customs and traditions, institutions, customary laws, land use and forms of social organization, etc are usually different from those of the dominant population. Special measures are therefore, required to be taken to ensure that they are protected and appropriate participatory mechanisms are evolved and implemented in the governance of Scheduled Tribes and Scheduled Areas. Effective implementation of existing constitutional provisions specifically provided for the Scheduled Areas and strengthening of supporting mechanism is equally necessary to achieve the desired objectives.

3. As a part of its constitutional role of an advisor to the Government, the National Commission for Scheduled Tribes has been attempting to bring about greater sensitivity and responsiveness towards tribal concerns while examining policy and legislations affecting Scheduled Tribes. Some recent Bills which were of major concern for the tribals are (i)Land Acquisition and Resettlement & Rehabilitation Bill, 2010, (ii) Mines and Minerals (Development and Regulation) Bill, 2011 and (iii) the National Food Security Bill 2011.

4. In your address at the Conference of the Governors of the States held in September 2008, the Governors were urged to ponder on the role of Governors for the peace and good Government of the States having Scheduled Areas in consultation with their respective State Governments

5. In 2009, the Standing Committee on Inter-sectoral issues in its 3rd Report on "Standards of Administration and Governance in Scheduled Areas" had

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lamented that, while special provisions in Schedule V to the Constitution envisage that all Central and State Legislations would be fine-tuned by the Governor in accordance with the requirements of the tribals in the Scheduled Areas, these provisions had largely remained a dead letter during the last sixty years of the Republic.

6. The Commission, therefore, resolved to prepare a Special Report on Good Governance in Scheduled and Tribal Areas, which would aim to shed light on the actual working of some of the Constitutional safeguards enshrined in Schedule V and Schedule VI respectively, based on the documentation of experience across the country, an analysis of which forms the basis for expedient recommendations by the Commission in this Special Report.

7. While, in pursuance to the provision contained in Art. 338A(5)(d) of the Constitution, National Commission for Scheduled Tribes has already submitted 5 Annual Reports and preparation of the Sixth Annual Report is in progress, I am submitting this Special Report focusing on Good Governance in Scheduled Areas/Tribal Areas. The experiences of the Commission have been encapsulated in this Report, which has three main Chapters covering **(i) *GOOD GOVERNANCE IN SCHEDULED AND TRIBAL AREAS* (ii) *REGULATIONS REGARDING PEACE AND GOOD GOVERNANCE* and (iii) *NEED FOR MEANINGFUL CONSULTATIONS WITH COMMISSION.*** A summary of the recommendations made in each Chapter of the Report has been given in the Fourth Chapter titled **SUMMARY OF RECOMMENDATIONS**.

7. I would like to add that National Commission for Scheduled Tribes has presented Five Annual Reports to the President of India. Ist report relating to the period 2004-05 & 2006-07 was submitted on 08 August 2006, the 2nd Report has been submitted on 3rd September, 2008 while 3rd Report has been submitted on 29th March, 2010 and Fourth Report has been submitted to the President on 27th August 2010 and Fifth Report for 2009-10 has been submitted on 13th July, 2011. Not even First Report has been laid in Parliament, as provided under sub-Clause (e) of Article 338A(5) of the Constitution. Copies of the reports cannot be made public because reports have not been laid in both Houses of Parliament. This situation has led to dilution of the recommendations of this Constitutional Commission relating to the development of Scheduled Tribes Since this is a Special Report I request your honour to issue instructions that priority is accorded for laying this Special Report in both Houses of Parliament at the earliest.

With kind regards

Yours sincerely,

Rameshwar Oraon

(Rameshwar Oraon)

Smt. Pratibha Devi Singh Patil,
Hon'ble President of India,
Rashtrapati Bhavan,
New Delhi.

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CHAPTER 1

GOOD GOVERNANCE IN SCHEDULED AND TRIBAL AREAS

INTRODUCTION

Tribal peoples' culture and identities form an integral part of their lives. Their ways of life, customs and traditions, institutions, customary laws, land use and forms of social organization, etc are usually different from those of the dominant population. Special measures are therefore, required to be taken to ensure that they are protected and appropriate participatory mechanisms are evolved and implemented in the governance of Scheduled Tribes and Scheduled Areas. Effective implementation of existing constitutional provisions specifically provided for the Scheduled Areas and strengthening of supporting mechanism is equally necessary to achieve the desired objectives.

1.2 As a part of its constitutional role of an advisor to the Govt., the NCST has been attempting to bring about greater sensitivity and responsiveness towards tribal concerns while examining policy and legislations viz., Land Acquisition and Resettlement & Rehabilitation Bill, 2010, MMDR Bill 2011and the National Food Security Bill 2011, but with limited results. These Bills were of major concern for the tribals.

1.3 The President in her address at the Conference of the Governors of the States held in September 2008 had urged the Governors to ponder on the role of Governors for the peace and good Government of the States having Scheduled Areas in consultation with their respective State Governments

1.4 Coincidently, in 2009, the Standing Committee on Inter-sectoral issues in its 3rd Report on "Standards of Administration and Governance in Scheduled Areas" had lamented that, while special provisions in Schedule V to the Constitution envisage that all Central and State Legislations would be fine-tuned by the Governor in accordance with the requirements of the tribals in the Scheduled Areas, these provisions had largely remained a dead letter during the last sixty years of the Republic. The Commission, therefore, resolved to prepare a Special Report on good governance in Scheduled Areas/Tribal Areas, which would aim to shed light on the actual working of some of the Constitutional safeguards enshrined in Schedule V and Schedule VI respectively, based on the documentation of experience across the country, an analysis of which forms the basis for expedient recommendations by the Commission in this Special Report.

GOVERNANCE OF SCHEDULED AREAS: HISTORICAL BACKGROUND

A. The Scheduled Districts Act 1874

1.5 Before proceeding to analyse the present situation regarding governance in Scheduled Areas, it is necessary to have an evolutionary insight into the historical background. It may be recalled that the control of the Government of India from the East India Company to the British Crown was affected through the Government of India Act 1858, passed on August 2, 1858.

This paved the way for taking the first step in the direction of notifying certain (tribal) areas (mentioned in the Schedule annexed to the Act) as "Scheduled Districts" and declaring what enactments are in force (or not in force), in any Scheduled District through the enactment of the Scheduled Districts Act 1874 (Act 14 of 1874). A copy of the Act is at **ANNEXURE 1.I**

1.6 This Act further provides that

> "In declaring an enactment in force in a Scheduled District or part there of under Section 3 of this Act, or in extending an enactment to a Scheduled District, or part thereof under Section 5 of this Act, the Local Government may declare the operation of the enactment to be subject to such restrictions as that Government thinks fit".
>
> "The Local Government may from time to time:-
>
> Appoint officers to administer Civil and Criminal Justice and to superintendent the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts.
>
> Regulate the procedure of the officers so appointed: but not so as to restrict the operation of any enactment for the time being in force in any of said districts.
>
> Direct by what authority any jurisdiction, powers or duties incidental to the operation of any enactment for the time being in force in such district shall be exercised or performed".

B. The Government of India Act, 1919

1.7 The Government of India Act, 1919 followed suit and Section 15 of the Act (Relevant extracts at **ANNEXURE 1.II**) provided that :

> "(2) The Governor-General in Council may declare any territory in British India to be a "backward tract," and may, by notification, with such sanction as aforesaid, direct that the principal Act and this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian Legislature shall not apply to the territory in question or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorize the governor in council to give similar directions as respects any Act of the local legislature.

C. The Government of India Act, 1935

1.8 The genesis of the Fifth and Sixth Schedules of the Constitution can be traced to certain provisions of the Government of India Act 1935, under

which certain backward areas had to be administered by the Governor in the exercise of his personal discretion. Section 92 in Chapter V- PART III. EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS, of the Government of India Act, 1935 (Relevant extracts at **ANNEXURE 1.III**) provided that:

> "92.-(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to Government of India Act, 1935. any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.
>
> (2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature, or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question. ……..
>
> (3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion.

D. Draft Constitution discussed in the Constituent Assembly

1.9 The Draft Constitution prepared by the Drafting Committee and discussed in the Constituent Assembly adapted these provisions with regard to the administration of the scheduled and tribal areas. Articles 189 and 190 of the Draft Constitution dealt with the same and read as follows:

"Article 189

"In this Constitution –

(a) the expression "schedule areas" means the areas specified in Parts I to VII of the table appended to paragraph 18 of the Fifth Schedule in relation to the State to which those Parts respectively relate:

(b) the expression "tribal areas" means the areas specified in Part I and II of the table appended to paragraph 19 of the Sixth Schedule."

Article 190

"Administration of scheduled and tribal areas –

1. The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State for the time being specified in Part I of the Fifth Schedule.

2. The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam."

1.10 At the revision stage after the debates, Article 244 was brought in to encapsulate Articles 189 and 190 after incorporating the amendments passed by the Constituent Assembly.

E. SPECIAL SAFEGUARDS FOR SCHEDULED TRIBES AND SCHEDULED AREAS

1.11 The provisions of the Fifth and Sixth Schedules are placed at **ANNEXURE 1.IV** and **ANNEXURE 1.V** respectively. The specific safeguards provided for the Scheduled Tribes in relation to Governance are as mentioned below:

(i) **Article 244:** According to Clause (1) of Article 244, the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Mizoram and [Tripura][1].

According to Clause (2), the provisions of the **Sixth Schedule** shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Mizoram and Tripura[1].

(ii) The First Proviso to Article 275(1) of the Constitution of India enables grants from the Consolidated Fund of India each year for promoting the welfare of Scheduled Tribes and in pursuance of this Constitutional obligation, the Ministry of Tribal Affairs provides funds through the Central Sector Scheme "Grants under Article 275(1) of the Constitution". The objective of the scheme is to meet the cost of such projects for tribal development as may be undertaken by the State Governments for raising the level of administration of Scheduled Areas therein to that of the rest of the State.

(iii) **The Fifth Schedule** contains provisions regarding the administration and control of the Scheduled Areas in nine States having Scheduled Areas, viz., Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The Governors of these States, comprising Scheduled Areas, have special responsibilities and powers. These States have Tribe Advisory Councils (TACs). (In addition, Tamil Nadu and West Bengal, which have Scheduled Tribes but do not have any Scheduled Area, also have TACs). Beside the power to exclude or modify application of any Act of Parliament or the State legislature in its application to Scheduled areas, the Governors of

[1] Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985).

these States have the power to make regulations for the peace and good governance of any Scheduled Area particularly for the following purposes:-

(a) to prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such areas,
(b) to regulate the allotment of land to members of the Scheduled Tribes in such area,
(c) to regulate the carrying on of business as money lender by persons who lend money to members of the Scheduled Tribes in such area.

(iv) **The Sixth Schedule** contains provisions relating to the administration of the Tribal Areas in the States of Assam (North Cachar Hills District and Karbi Anglong District), Meghalaya, Mizoram and Tripura (Autonomous Hill District). There are Autonomous District Councils and Autonomous Regional Councils in these areas which have a long tradition of self-management systems. These Autonomous Councils not only administer the various Departments and developmental programmes but they also have powers to make laws on a variety of subjects, e.g., land, forest, shifting cultivation, village or town administration including village or town police and public health and sanitation, inheritance of property, marriage and divorce and social customs. The Sixth Schedule vests the Governors of the concerned State and the President of India with certain duties and powers in relation to legal enactments in the State States and the Vith Schedule Areas in those States. According to an important provision, in respect of role of Governors, which is common to the Sixth Schedule States of Assam, Meghalaya and Tripura:

> "the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State of ……. to which the provisions of clause (*a*) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification".

(v) Another specific provision in respect of the role of the President of India in relation to the States of Meghalaya, Mizoram and Tripura provides that

> "the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of ……., or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect".

PRESENT DEFINITION OF SCHEDULED AREAS

1.12 The term `Scheduled Areas' has been defined in the Indian Constitution as "such areas as the President may by order declare to be Scheduled Areas". **Paragraph 6 of the Fifth Schedule** of the Constitution

prescribes the following procedure for scheduling, rescheduling and alteration of Scheduled Areas.

SCHEDULED AREA[2] AND PROCEDURE FOR SCHEDULING, RESCHEDULING AND ALTERATION OF SCHEDULED AREAS

(1) In this Constitution, expression 'Scheduled Areas' means such areas as the President may by order declare to be Scheduled Areas.

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

(a) Direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area

(b) Increase the area of any Scheduled Area in a State after consultation with the Governor of that State.

(c) Alter, but only by way of rectification of boundaries, any Scheduled Area.

(d) On any alteration of the boundaries of a State on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area.

(e) Rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas.

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order".

Thus the specification of Scheduled Areas in relation to a particular State/Union Territory is by a notified Order of the President, after consultation with the State Governments concerned. The same procedure will apply while altering, increasing or rescinding any order(s) relating to Scheduled Areas.

1.13 The criteria followed for declaring an area as Scheduled Area are preponderance of tribal population; compactness and reasonable size of the area; under-developed nature of the area; and marked disparity in economic standard of the people. These criteria are not spelt out in the Constitution of India but have become well established. They embody principles followed in declaring `Excluded' and `Partially-Excluded Areas' under the Government of India Act 1935, Schedule `B' of recommendations of the Excluded and Partially Excluded Areas Sub Committee of Constituent Assembly and the Scheduled

[2] Source: Website of the Ministry of Tribal Affairs- www.tribal.gov.in

Areas and Scheduled Tribes Commission 1961. The Scheduled Tribes live in contiguous areas unlike other communities. It is, therefore, much simpler to have an area approach for development activities as well as regulatory provisions to protect their interests.

1.14. In exercise of the powers conferred by paragraph 6 of the Fifth Schedule to the Constitution, the President after consultation with the State governments concerned had by Orders called `the Scheduled Areas (Part A States) Order, 1950' and the Scheduled Areas (Part B States) Order 1950' set out the Scheduled Areas in the States. Further by Orders namely the Madras Scheduled Areas (Cesser) Order, 1951' and 'the Andhra Scheduled Areas (Cesser) Order, 1955' certain areas of the then east Godavari and Visakhapatnam districts were rescheduled. At the time of devising and adopting the strategy of Tribal sub Plan (TSP) for socioeconomic development of Scheduled Tribes during Fifth Five Year Plan (1974-79), certain areas besides Scheduled Areas, were also found having preponderance of tribal population. A review of protective measures available to the tribal of these newly identified areas vis-à-vis Scheduled Areas was made and it was observed that a systematic use of protective measures and other powers available to the executive under Fifth Schedule will help in effective implementation of the development programmes in sub-Plan Areas.

1.15 Therefore, in August 1976 it was decided to make the boundaries of the Scheduled Areas co-terminus with the Tribal Sub-Plan areas. Accordingly, Clause (2) of the paragraph 6 of the Fifth Schedule was amended vide the Constitution (Amendment) Act, 1976 to empower the President to increase the area of any Scheduled Areas in any State. Pursuant thereto the President has issued from time to time Orders specifying Scheduled Areas afresh in relation to the States of Bihar (now part of Jharkhand State), Gujarat, Madhya Pradesh (including present Chhattisgarh State), Maharashtra, Orissa and Rajasthan. The tribal areas. in Himachal Pradesh were scheduled on 27.11.1975. While scheduling the areas in Himachal Pradesh the principle of making the sub plan and the Fifth Schedule areas coterminous was kept in view. Thus, presently the Tribal Sub-Plan areas (Integrated Tribal Development Projects/Integrated Tribal Development Agency areas only) are coterminous with Scheduled Areas in the States of Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The State of Andhra Pradesh, where the Tribal Sub-Plan areas are not coterminous with Scheduled Areas, has also furnished a proposal to this effect which is under examination.

1.16 The following Orders are in operation at present in their original or amended form in respect of the Scheduled Areas:-

S.No.	Name of Order	Date of Notification	Name of State(s) for which applicable
1.	The Scheduled Areas (Part A States) Order, 1950 (C.O.9)	26.1.1950	Andhra Pradesh
2.	The Scheduled Areas (Part B States) Order, 1950 (C.O.26)	7.12.1950	Andhra Pradesh
3.	The Scheduled Areas (Himachal Pradesh) Order, 1975 (C.O.102)	21.11.1975	Himachal Pradesh

4.	The Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) 1977 (C.O. 109)	31.12.1977	Gujarat, and Orissa and then existing composite States of Bihar, and Madhya Pradesh
5.	The Scheduled Areas (State of Rajasthan) Order, 1981 (C.O.114)	12.2.1981	Rajasthan
6.	The Scheduled Areas (Maharashtra) Order, 1985 (C.O.123)	2.12.1985	Maharashtra
7.	The Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003 (C.O.192)	20.2.2003	Re-organised States of Chhattisgarh, Jharkhand and Madhya Pradesh
8.	The Scheduled Areas (State of Jharkhand) Order, 2007 (C.O. 229).	11.04.2007	Jharkhand

1.17 A list of Scheduled Areas[3] in each State under Fifth Schedule to the Constitution is placed at **ANNEXURE 1.VI**

TRIBAL AREAS UNDER SIXTH SCHEDULE

1.18 The term "Tribal Areas" has not been defined in the Constitution but Article 244(2) of the Constitution prescribes that the provisions of the Sixth Schedule to the Constitution shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Accordingly, certain areas in these States have been declared as “Tribal Areas” under the Sixth Schedule to the Constitution which provides for setting up District or Regional Autonomous Councils for such areas.

CURRENT PERSPECTIVE

ILO Conventions concerning Tribal people

1.19 There are various international treaties and conventions which also aim at uplifting the tribal communities and raising the level of administration in Tribal Areas bringing them to the level of the rest of the population/ areas. ILO conventions are some measures which aim at the development of tribal population and the tribal areas in the Member-countries.

1.20 It is noted from the website of the Ministry of Labour that India has ratified ILO Convention 107 on 29th September, 1958. However, ILO Convention C 169 (related to tribal population and tribal areas in the country) has not been ratif4142ied by the Govt. of India. A comparative Statement of the provisions contained in the two Conventions is at **ANNEXURE 1.VII**

1.21 The Convention No. 169 applies to tribal people in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated, wholly or partially, by their own customs or traditions or by special laws or regulations. It also applies to people in independent countries who are regarded as indigenous on account of their descent. The main Provisions of ILO Convention

[3] Source: Annual Report of Ministry of Tribal Affairs 2010-11

No. 169 concerning Indigenous and Tribal People in Independent Countries are given below:

- The Convention stipulates that indigenous and tribal people should enjoy full measures of human rights and fundamental freedoms without hindrance or discrimination and no form or force or coercion shall be used in violation of the human rights and fundamental freedoms.

- It also stipulates that indigenous and tribal people should have the right to decide their own priorities for the process of development and in addition they should participate in the formulation, implementation and evaluation of plans and programmes for national and regional development, which may affect them directly.

- It prescribed that while imposing penalties on indigenous and tribal people, account should be taken of their economic, social and cultural characteristics and preference should be given to methods of punishment other than confinement in prison.

- It envisages consultation, fair compensation, etc for any damages, which the indigenous and tribal people may sustain when the State retains the ownership of mineral or sub-surface resources.

- The Convention also envisages that the Government should, in cooperation with the people concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers to the extent they are not effectively protected by laws.

1.22 The Commission requested the Ministry of External Affairs, Ministry of Tribal Affairs, Ministry of Labour & Employment to apprise the Commission about the approach of the Govt. with regard to the various provisions in the ILO C169: concerning Indigenous and Tribal People in Independent Countries, The Ministry of Tribal Affairs did not furnish any reply while MEA informed that Ministry of Labour and Employment is the nodal Ministry for dealing with issues relating to ILO. The reply of the Ministry of Labour and Employment does not indicate the views of the Government of India communicated, if any, to the ILO. On the other hand Ministry of Labour and Employment furnished information about the stand of the Government of India (MEA, MHA and MTA) about ratification of ILO Convention 169.

(a) Comments of Ministry of External Affairs

(i) The concept of indigenous people provided in Article 1 para (b) of Convention 107 and Article 1, para (b) of Convention 169, does not apply in the India context as all Indians are considered indigenous. The definition is understood in the context of situations where the original inhabitants are markedly different from the colonial settlers such as in Australia, New Zealand and the American continent.

(ii) We need to, however, look at the Convention from the political angle. It is well known that in spite of the fact that government has taken a stand that the concept of indigenous people is not relevant to India, the international organizations and foreign governments, including the ILO have formulated projects to reach out to our tribal group in India, conferring on them a status identical to indigenous people in other parts of the world. Convention 169 calls on governments to take measures including by means of international agreements, to facilitate contacts and cooperation between indigenous peoples across borders including activities in the social-culture, economic, spiritual and environmental fields. The ratification of Convention 169 would, therefore, immediately open the gates to such offers of cooperation from other State parties to the Convention, in spite of any declaration/reservation Government of India might make on interpretation of who constitute "indigenous people".

(iii) Another aspect of the problem is that on ratification of an ILO Convention, Government of India would be subjected to the supervisory mechanism of the ILO on the implementation of the various provisions of the Convention in question. IT is felt that this process was likely to have strong political overtones, given the tripartite nature of the ILO and the various interest groups within the secretariat and from civil society who now are equal participants in the process. Therefore, in spite of legal protection provided nationally in our Constitution and under laws for the tribals, subjecting our laws to any such scrutiny is bound to bring to the fore a litany of motivated complaints. Such reports put government unnecessarily on the defensive and embarrass us in international fora.

(b) Comments of Ministry of Home Affairs

(i) The Government of India has all along taken the position that all Indians including the tribals are indigenous people and that our tribals alone cannot be equated as indigenous people. This is against the first article of the Convention.

(ii) Article 7 of C-169 stipulates that indigenous and tribal people should have the right to decide their own priorities for the purpose of development and in addition they should participate in the formulation, implementation and evaluation of plans and programmes for national and regional development, which may affect them directly. It is also felt that this Article would create administrative problems in the formulation of development plans and may distort the planning process in the country.

(iii) Article 10 suggests that while imposing penalties on indigenous and tribal people, preference should be given to methods of punishment other then confinement in prison. It is felt that this provision may also create problems for the criminal law administration.

(iv) Article 15 envisages fair compensation for the indigenous and tribal peoples when the State retains the ownership of mineral of sub-surface resources. The existing laws in the country safeguard the surface

resources rights and the owner of the land for the tribals as well as non-tribals. However, the existing laws do not recognize the right of the landholders, whether tribal or non-tribal, over sub-surface resources.

(v) Article 32 of the Convention envisages that the Government should take appropriate measures for promoting and facilitating contacts and cooperation between the indigenous and tribal peoples across the border in economic, social, cultural, spiritual and environmental fields. It has been felt that such measures will give rise to demand by different groups of tribals and indigenous people for special rights and dispensation which may lead to enhanced level of social and demographic problems. In view of the existing security environment and continuous flow of illegal migrants from across the border, the implementation of this Article would lead to greater social tension.

(c) Comments of Ministry of Tribal Affairs

(i) The ILO uses the word "indigenous people" whereas India, on behest of the Ministry of External Affairs, does not accept this term with reference to the tribes scheduled under our Constitution.

(ii) The Ministry of Tribal Affairs and the Planning Commission are very clear that we already have excellent safeguards of the rights of the Scheduled Tribes and what we need is good governance and the desire to carry out and supervise the laid down policies and programmes.

(iii) Therefore, if we accept the role suggested by the ILO, Government will be deluged with schedules for reporting, including by other international bodies. The Ministry of Tribal Affairs is already furnishing responses through Ministry of External Affairs to UN Committee on Economic, Social and Cultural Rights as well as ILO through the Ministry of Women and Child Development.

(iv) There is also no need for another UN body to evaluate our tribal development programmes. Enough material is available in the reports of the Planning Commission, National and State Institutions like the NIRD, and organizations like IFAD, who are actually taking up, and have taken up, tribal development projects in tribal dominated States of the country. Reports are also available in the Ministry of Panchayati Raj on the functioning of the Sixth Scheduled areas.

1.23 The Commission noted from the reply received from the Ministry of Labour & Employment that there has evidently been no concern/effort to harmonize our domestic safeguards with international best practices embedded in the Convention(s). While some of the best practices have been embedded through existing safeguards in our Constitution, in respect of remaining, a view needs to be taken for Constitutional/ legislative changes which may be appropriate for modern times/context. While we may accept the non-applicability of the concept of indigenous people (defined in C-169) in the Indian context, as highlighted by MEA, MHA and MTA, and also heed to political

overtones (MEA), indigenous citizen concerns (MHA) and the reporting load (MTA) arising out of ratification of C-169, and not subscribing to the Convention too on such considerations, it is certainly desirable to consider the best practices emerged from the Convention(s), for their adaption in relation to the tribals. In the context of prevailing unrest in Tribal Areas there may also be no serious objection to inclusion of a re-furbished TSP strategy predicated on GoI responsibility, in the Vth Schedule, which also aims at focussed development of Scheduled Areas. While the existing laws don't recognise the rights of the landholders, whether tribal or non-tribal, over sub-surface resources, it is mentioned that the Vth and VIth Schedule provide for separate regulations in respect of land rights of tribal not excluding sub-surface rights. The Administrative Reforms Commission and the Standing Committee on Inter-sectoral Issues has also argued for issue of directions by GoI/ discretionary powers to Governors to implement the spirit of Vth Schedule.

1.24 In view of the above, the Commission decided to discuss the matter in detail with the Secretaries of the MEA, Ministry of Home Affairs, Ministry of Tribal Affairs and Ministry of Home Affairs for which a Sitting was held on 16/02/2012. The sitting was chaired by the Chairperson, National Commission for Scheduled Tribes. During the Sitting, the Commission desired to know the views of the MTA on the need to incorporate international best practices into our constitutional safeguards for STs and also spell out these aspirations in a charter for Tribal Areas/ people. The Commission pointed out that after making monetary compensation to the tribals after acquiring their lands, the tribals become jobless as well as landless and the compensation received is not sufficient to secure peaceful livelihood to the tribals and this was a major cause for uprising and naxalism in various tribal/ scheduled areas in the country. The Commission mentioned that it has already recommended on the MMDR Bill,2011 that besides compensation for entrustment of land surface rights, future earnings from mining activity should also be shared with land owners in perpetuity. Therefore, while redesigning the quantum and nature of (sweat) equity participation to allay the apprehensions of promoters in respect of enterprise management, a sum equal to royalty be paid to the land rights holders for the duration of mineral extraction; and sweat equity holdings may be redeemed by the lessee to purchase lifelong annuity payments after mining operations have ceased in a particular location.

1.25 Secretary, MTA stated that the best practices could be incorporated in the related safeguards concerning Scheduled Tribes. The Secretary also informed that the Task Force under the Chairmanship of Dr. Narendra Jadhav, Member, Planning Commission has already examined the working of Tribal Sub-Plan in various States and by the Central Ministries/Departments; and given its recommendations for revised guidelines for preparing TSP by the Central Ministries. Recommendations of the Task Force relating to revised guidelines for TSP of States was in the process. He further informed regarding sub-surface rights over land that the proposed provisions by the Ministry of Mines in the MMDR Bill, 2011 may also be examined.

1.26 Secretary, Ministry of Labour and Employment stated that a draft Cabinet Note regarding ratification of ILO Convention (C 169) was mooted in

2003 which was not finalized taking into consideration the views expressed by the MEA, MHA and MTA. He further mentioned that, so far, only 22 countries have ratified ILO C 169. He also emphasized the need to adopt best practices out of ILO Conventions to improve our systems.

1.27 A copy of the Summary Record of the Sitting, placed at **ANNEXURE 1.VIII**, is also available on the Website of the Commission. It emerged from the Sitting that while some of the best practices have been embedded through existing safeguards in our Constitution, in respect of remaining, a view should be taken for Constitutional/ legislative changes which may be appropriate for modern times/context. **Based on the position emerged from the discussion, Commission recommends to the Govt. for considering the need for amendments of Schedule V and VI to provide a comprehensive Charter for tribal communities incorporating the best practices enumerated in the ILO Convention (s).**

VIEWS EXPRESSED BY THE PRESIDENT REGARDING ROLE OF THE GOVERNORS IN THE CONFERENCE OF GOVERNORS OF THE STATES HELD IN SEPTEMBER, 2008

1.28 In her address to the Conference of Governors the President remarked that:-

> "The Fifth Schedule of the Constitution dealing with the administration of Scheduled Areas and Scheduled tribes envisages a specific role for the Governors. It empowers the Governor to direct whether a particular enactment shall apply with or without modifications or be not applied to any scheduled area. It also empowers the Governor to make regulations for peace and good governance.
>
> In view of these special provisions, there is a feeling in certain quarters that the Governor should play a pro-active role. On the other hand, it is understood that court judgments and debates in the Constituent Assembly provide that the Governor is bound by the advice of the Council of Ministers in the exercise of his powers under the Fifth Schedule. This causes considerable uncertainty. The Government could seek authoritative legal opinion to set at rest this ambiguity. Annual Reports required to be submitted by the Governors under the Fifth Schedule requires streamlining. Further, the Tribes advisory Councils set up under this Schedule have not functioned with the vigour expected of them, thus warranting remedial action at your end. We would be keen to hear from you about your views and perception of making your role in this regard more meaningful.
>
> I understand that "The Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996", (PESA) has extended Panchayti Raj to the nine States, namely, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan under Fifth Schedule. However, they are yet to frame requisite local enactments to comply with the PESA Act. Since the quality of government-citizen interface at the grassroots level determines the quality

of governance, you may urge the State Governments to have informed discussions on this matter and chart out the most optimal path for the good of the people.

1.29 Summing up the deliberations, the President observed that:

"Taking into cognizance the special requirements of the North-East, the framers of our Constitution under Article 371 and the Sixth Schedule had cast a special responsibility on the Governors for providing peace, good Government and promotion of the welfare and advancement of the people. I would, therefore, urge upon all the Governors of the North-East to individually introspect how far the governance mechanism in each State has fulfilled the aims and aspirations of the locals and what more needs to be done and submit their recommendations. I hope the Prime Minister will agree with me on that.

A prime prerequisite of good Government is to have in place an administrative structure and ethos which is within the comprehension of the people and is responsive to their needs. We are aware that the North-Eastern States have effective customary institutions of governance right down to the village level. Your study could reflect on how far the indigenous good governance practices and traditional institutional mechanisms have been harmoniously intertwined with modern system of administration. Your recommendations may also envisage how best the two administrative systems can supplement and complement each other to make the delivery mechanism more responsive, efficient, prompt and people-friendly.

Our Constitution devolves power upon the elected autonomous District Councils in Assam, Meghalaya, Tripura and Mizoram under paras three and four of the Sixth Schedule to make laws and administer justice.

The Governors are empowered to decide whether legislative enactments, Central or State, are to be applied or not or applied with modifications in the Autonomous Regions. Para 14 also envisages setting up of Commissions by the Governor to review the functioning of the Authonomous Councils. Para 2 makes room for further decentralization by creation of units at sub-district level through Subordinate Local Councils. It needs serious consideration as to how the institutions under the Sixth Schedule can be strengthened to effectively fulfil their expected role as vehicles of self-governance. Equally important are the provisions contained in para 2 of the Fifth Schedule which envisages a specific role for Governors for the peace and good government of the States having Scheduled Areas. I would urge upon the Governors to ponder on these issues in consultation with their respective State Governments[4]."

[4] Source: Record of deliberations page 155

1.30 In the same Governor's Conference, the Prime Minister made the following observations:

> **"**It is not a coincidence that the areas affected by naxalite activity are also areas with a large representation of tribal communities. It was in recognition of this fact that many such States and areas were included in the Fifth Schedule of the Constitution. This provides for a special role for Governors. Our Government has enacted the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, which, I believe, is a path breaking initiative, which if implemented efficiently and honestly will empower tribal communities in a massive way. The efficient and effective implementation of the provisions made in this law needs close attention and monitoring. I urge Governors to take particular interest in the implementation of this law"[5].

PRESENTATION BY GOVERNORS OF THE STATES IN THE CONFERENCE

1.31 The Governors of the States made presentation on various aspects relating to administration in the concerned States, beside making written submissions for the Conference. The written submissions and presentations relating to the Role of the Governor under Fifth/ Sixth Schedule are recapitulated below:

(i) Chhattisgarh

> **"**In such a scenario, the role of the Governor in the administration of the scheduled areas becomes significant. A certain ambiguity exists on the actual role of the Governor in this field. Under Article 163 of the Constituion of the India the Governor is to exercise his functions on the Advice of the Council of Ministers except in so far as he is under of the Constitution read with Article 244 vests certain functions/powers on the Governors. There is a certain grey area herein which needs to be redefined keeping in view the interests of the tribals and their development"[6].

(ii) Jharkhand

> "[In respect of the special responsibility cast on Governors in administration of the Scheduled areas under the fifth Scheduled of the constitution I may inform that Jharkhand has 24 districts out of which 13 districts are totally under the scheduled areas whereas two districts are partially under the scheduled areas.
>
> I have been periodically reviewing issues central to the identity and well being of the scheduled tribes and it has been my experience that the Tribal Advisory Councils have been largely ineffective in performing the role assigned to them. Further, I would like to reiterate the point I had made during the last conference of Governors in 2005 that in areas where special

[5] Source: Record of deliberations- page 150
[6] Source: Record of deliberations- page 53

responsibility vests with the Governor under Schedule V there is need to provide such institutional arrangements in place that will enable the Governor to play a proactive role without coming into conflict with the elected government"][7].

XX XX XX

"Over the years the working of the Tribal Advisory Council especially in the context of Jharkhand has been rather disappointing. It is worth considering that the chairmanship of TAC be given to Governor to make it more responsive to its mandate. During the last conference of Governors I had suggested the need to institutionalize the arrangements in spheres where special responsibility vests with the Governor under Schedule V in such a manner that the Governor is able to perform his obligations without coming into conflict with the elected government. I think this suggestion even now merits serious consideration"[8].

(iii) Orissa

"The State has unfortunately witnessed communal violence in recent past, first during the Christmas last year and again, only a few days ago, during Janmastmi celebrations this year. But it should not be viewed only as a communal problem. This is an issue involving ethnicity, religious conversion, socio-economic status and the right over land a reservation in jobs. The Panas who belong to the Scheduled castes claim Scheduled Tribe status on the basis that they also speak Kui language. Those Panas (Scheduled Caste), who have managed to obtain ST certificates, get the benefits of land records and reservation even after conversion, at the cost of tribals. This hurts the Kandhas, who belong to the Scheduled Tribe. The Panas are economically a little better off"[9].

"Governor has powers of making regulation for peace and good governance of Scheduled Areas, to prohibit or restrict the transfer of land by or among the members of the Scheduled Tribes in such areas, to regulate the allotment of land to members of the Scheduled Tribes in such areas and to regulate the business of lending money by money-lenders to members of Scheduled Tribes in such area. Accordingly, laws and regulations have been enacted in the State"[10].

(iv) Meghalaya

"The District Councils are there in Meghalaya, as also in Nagaland and Mizoram. But, with the present Government, which is really a tribal Government in the three states, the need for the district Council itself is disputable because I have lot of input from the political leaders which make me think that this is the time that we should dispense with the District

[7] Source: Record of deliberations- page 33
[8] Source: Record of deliberations- page 115
[9] Source: Record of deliberations- page 54
[10] Source: Record of deliberations- page 206

Council and introduce the Panchayati Raj system instead. That will lead to the better development of the area"[11].

(v) Arunachal Pradesh

"In my opinion, good governance will help to solve most of the problems being faced by the people. In fact, I am of the opinion that the time has come for a complete "government process re-engineering", to ensure a more responsive and people friendly, developmental oriented administration. If this resource of government employees is motivated and systematically trained to increase their capabilities, they will be great assets".

"However, as of date, the postings in such areas are considered as a punishment posting, and the officers posted there either work half heartedly or remain away on one pretext or the other. At places, there is complete lack of feeling of oneness with the people amongst the administrators posted there".

"It is strongly recommended that we must change the personnel management policy for such areas. Willing, committed and competent officers should only be posted in these areas with more powers and flexibility, so that they can deliver the results. The presence of the government should be felt very obviously. As an incentive such 'achievers' should be rewarded with better emoluments, recognition, good accommodation and education for their children in some good centres, preferential treatment in promotion and empanelment, foreign training etc".

"Further, in such areas, the administration should not be kept as an exclusive domain of the administrative service officers only. We may call for voluntary deputation of outstanding highly committed officers from all other services including the armed forces for the coveted posts of District Collectors or Sub-divisional Magistrates. We need Verrier Elvin or Lawrence of Arabia type of individuals, who merge with the people and in turn the people begin to like them. This wil provide a cadre of good, dedicated and willing officers to serve in such areas. During the formative years of Arunachal Pradesh, the then NEFA, the Indian Frontier Service Officers (IFAS) drawn from various services had made a tremendous contribution"[12].

(vi) Assam

"The Sixth Schedule functioning in the State needs to be revamped in a major administrative manner since the financial rules are arcane and also monitoring of the projects is not up to the mark. This issue should be emphasized to the State Government by the Ministry of Home Affairs in the Government of India with a view to facilitate a sound mechanism at the district level and the State Government level for the twin hill districts of Karbi

[11] Source: Record of deliberations- page 68
[12] Source: Record of deliberation- page 18-19

Anglong and the North Cachar Hills and separately for the Bodaland Territorial Council".

"Apart from the three Autonomous Councils under the Sixth Schedule in the State, The State Government has set up six other Councils under State legislation for the areas predominantly inhabited by tribal people. The infrastructure in these Council areas is poor and needs substantial investment for development. To expeditiously develop these areas, a Special Package of Rs. 150 crores has been proposed on the pattern of the Economic Package provided to the Bodoland Territorial Council".

`"State Government has proposed for a Special Development Package with an outlay of Rs. 500 crore for the development of the areas inhabited by the six communities viz. Tai-Ahom, Chutia, Moran, Motok, Tea tribes and Koch Rajbongshis who are agitating for tribal status. The purpose of this package would be to provide them the benefits, which are critical for their social and economic upliftment"[13].

(vii) Manipur

"In item of Clause (2) under Article 371C of the Constitution, the Governor furnishes to the President a report annually regarding the administration of the Hill areas of Manipur"[14].

(viii) Mizoram

["Although the Constitution-makers intended and finally provided uniform pattern of administration for all the tribal Areas in the North-eat, still gradually with the reorganizations of the State of Assam and with subsequent amendments to be Sixth Schedule, the very nature of uniformity has got diluted. Now, the provisions of the Sixth Schedule are different for the tribal areas of Assam than those in Meghalay, Mizoram & Tripura and even the scopes of discretionary powers of the Governors of Mizoram and Tripura are phenomenally different from that of the Governor of Assam. The Governor of Meghalaya has no discretionary power in the administration of the tribal Areas in Meghalaya except in paragraph 9 of the Sixth Schedule. Paragraph 20 BA of the Sixth Schedule defines the discretionary powers of the Governor of Assam, while Paragraph 20BB of the Sixth Schedule defines the discretionary powers of the Governors of Mizoram and Tripura. These two Paragraphs again confer different types of discretionary powers on the respective Governors. For example, while the Governor of Assam well as removal of a nominated member of an Autonomous Council in do not have any discretionary powers in the removal of a nominated member of a District Council in their states. In these two states, they are normally bounded by the advice of their respective Council of Ministers is removing a nominated member. Such anomalies need immediate examination and rectification".

[13] Source: Record of deliberations- page 36
[14] Source: Record of deliberations- page 159

"Duplicities of functions in the Tribal Areas pose practical problems and it is the high time to arrest such overlapping functions and programmes. Paragraph 6(1) of the Sixth Schedule empowers an Autonomous District Council to establish, construct or mange primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways. Under Paragraph 6(2), administrative as well as developmental functions relating to agriculture, animal husbandry, community projects, cooperatives societies, social welfare, and village planning, etc. can be entrusted to the autonomous District Councils and have in fact been entrusted to them. While the District Councils have been undertaking these projects and managing the same, the concerned Departments in the state Government are also found to undertake the same developmental schemes in such autonomous districts. Like this, there are many occasions where the same developmental or administrative functions are being undertaken by the District Councils as well as by the state Government Departments. This needs to be rectified so that wasteful expenditures, manipulations in utilization of funds etc. can also checked to a large extent"][15].

(ix) Nagaland

"Nagaland is a fully tribal State with approximately 90% of the population being composed of Naga tribes. However, the people of Nagaland have chosen to remain outside the purview of Fifth & Sixth Schedule of the Constitution. Therefore there is no Autonomous District or Regional Council in Nagaland. We have Village Councils constituted as per the customary practices and usages of people which have been recognized by the State Government under the Nagaland Village Councils Act. We also have Village Development Boards (VDBs) in every village constituted by the respective Village Council and they function under the overall supervision and control of Deputy Commissioners and are responsible for the development of the villages. The State Government has been raising the issue of the State being deprived of funds from the Tribal Sub Plan inspite of the State being predominantly tribal"[16].

VIEWS OF THE ATTORNEY GENERAL FOR INDIA ON THE ROLE AND POWERS OF GOVERNOR

1.32 In view of the observations made by the President, in the Conference of the Governors, that the Government could seek authoritative legal opinion to set at rests this ambiguity, Ministry of Home Affairs sought this opinion of Attorney General for India on the nature of powers of the Governor under the fifth Schedule read with Article 244 of the Constitution of India in respect of administration of Scheduled Areas and Tribal Areas. A copy of the detailed opinion of the Attorney General for India on the subject is placed at **ANNEXURE 1.IX** The Attorney General for India made the following observations on the issues before him:

[15] Source: Record of deliberations- page 184
[16] Source: Record of deliberations- page 191

General observations

(i) 13. The Framers of our constitution were sensitive to the administration of scheduled areas and special provisions were carved for administration of the said areas.

(ii) 14. Under clause 2 of the Fifth schedule, the extent of executive power of the state in the scheduled areas has been made subject to the provisions of the Fifth Schedule. In other words, the exercise of the executive power of the state in scheduled areas in scheduled areas is subservient to the provisions of the Fifth schedule which grants important and crucial powers to the Governor in respect of scheduled areas.

(iii) 15. Under clause 3, the Governor is mandated to make a report to the president regarding the administration of scheduled areas and the Executive power of the Union extends to the giving of directions to the state as to the administration of the said areas. This provision categorically shows the overarching control of the union which the constitution Framers envisaged in respect of scheduled areas.

(iv) 16. Clause 5 deals with the legislative powers of the Governor . Clause 5 opens with a non-obstante clause stating that the Power exercisable under clause 5 overrides any other provisions in the constitution. Under clause 5, the Governor may, by a public notification, direct that any particular Act of parliament or of the Legislature of the state will not apply to a scheduled area or would apply subject to such exceptions and modifications as he may specify in the notification . The Governor is also empowered to make regulations for peace and good governance of any area in a state which is for the time being a scheduled area. The regulations made under clause 5 have to be submitted to the President and have no effect until assented to by the President

Executive and discretionary powers of the Governor

(i) 17. Under Article 163(1) of the constitution, the council of Ministers along with the Chief Minister, aid and advice the Governor in the exercise of his functions except in so far as he is by or under the constitution required to exercise his functions or any of them in his discretion.

Concluding Opinion of Attorney General of India

1.33 The Attorney General of India has opined that the nature of powers of the Governor under the 5th Schedule is discretionary, as has been held by the Hon'ble Supreme Court of India. The Attorney General of India has further mentioned that Clause 2 of 5th Schedule states that the executive power of the State is subject to the provisions of the 5th Schedule. Under Article 154, the executive power of the State is vested in the Governor. In so far exercise of

executive powers of the State are concerned, the Governor has to exercise the same on the aid and advice of the Council of Ministers along with the Chief Minister. However, the exercise of powers by the Governor under the 5th Schedule is not co-terminus with exercise of the executive power of the State but it is within the discretion of the Governor.

3RD REPORT TITLED "STANDARDS OF ADMINISTRATION AND GOVERNANCE IN THE SCHEDULED AREAS" BY THE STANDING COMMITTEE ON INTER-SECTORAL ISSUES RELATING TO TRIBAL DEVELOPMENT.

1.34 **The Standing Committee on Inter-Sectoral Issues relating to Tribal Development** headed by Dr. Bhalchandra Mungekar, Member, Planning Commission, with Secretaries of some key Ministries concerned with tribal development as Members, submitted its 3rd Report titled "Standards of Administration and Governance in the Scheduled Areas" by the Standing Committee on Inter-Sectoral Issues relating to Tribal Development. The Committee has recommended that in the Fifth Schedule areas, the office of the Governor must play a pro-active role for ensuing protection of tribal right and tribal welfare/development**.** The Mungekar committee of the Planning Commission,, vide page 8-28 of its Report, recommends that in the fifth schedule Areas, the office of the Governor must play a more pro-active role for ensuring the protection of tribal rights and for tribal welfare/development. It suggests that besides a critical review of the Governor's report, the Governor should also decide on the application central laws as well as notification of new laws in schedules areas as provided in schedule V of the constitution."

COMMENTS OF THE NATIONAL COMMISSION FOR SCHEDULED TRIBES ON THE OBSERVATION OF THE STANDING COMMITTEE

1.35 The Report of the Standing Committee was received in the National Commission for Scheduled Tribes from Ministry of Tribal Affairs for comments. The comments of the Commission on specific point relating to Governor's role in Scheduled Areas are recapitulated below:

a) It is desirable that all Acts and laws should be reviewed for their adaption to the Scheduled Areas, but this is not practically feasible by the concerned departments. The Law Commission (under the Ministry of Law) should be entrusted this responsibility of review of existing Laws and Acts for adaption to Scheduled Areas in consultation with Ministry of Tribal affairs, State Govts., NCST, etc.

b) Continuing demands for inclusion of new areas / communities would indicate that the political process in the country tends to increase the errors of inclusion. These are required to be reviewed objectively to at least eliminate such errors. Therefore, the task of review of Scheduled Areas/Tribes should be entrusted to the Scheduled Areas & Scheduled tribes Commission.

c) Further to an observation by the President of India in a conference of Governors was held on 16th and 17th September,2008, that the Government could seek authoritative legal opinion to set ambiguity in the

exercise of power by Governors under the Fifth Schedule, the Ministry of Home Affairs had sought the opinion of the Attorney General of India on the issue whether the powers conferred upon the Governor under Art. 244 read with the Fifth Schedule are to be exercised on the aid and advice of the Council of Ministers of the State or are discretionary powers of the Governor. While forwarding a copy of the advice, the Ministry of Home Affairs has informed that all the Governors of the States concerned have been apprised of the opinion of the Ld. Attorney General of India and that the Ministry of Home Affairs has no proposal under consideration for review of the role and powers of the Governors in respect of Scheduled Areas. Nevertheless, by forwarding the opinion of the Attorney General to the Governors of the State, the Ministry of Home Affairs may have unwittingly stoked ambitions of executive power, which may have unpleasant repercussions on the relationship between Centre and States in a fractious polity which is increasingly apt to take positions based on political expediency rather than long-term public interest.

a) While rendering his opinion, the Attorney General of India has referred to the historical background, various court judgments, including judgments delivered by Hon'ble Supreme Court of India, the proceedings of the Constituent Assembly and quotes from various books on the subject, particularly genesis of Scheduled Areas and the provisions relating to administration in those areas in the Government of India Act, 1935, and developments thereafter. The Attorney General of India has opined that the nature of powers of the Governor under the 5th Schedule is discretionary, as has been held by the Hon'ble Supreme Court of India. The Attorney General of India has further mentioned that Clause 2 of 5th Scheduled States that the executive power of the State is subject to the provisions of the 5th Schedule. Under Article 154, the executive power of the State is vested in the Governor. In so far exercise of executive powers of the State are concerned, the Governor has to exercise the same on the aid and advice of the Council of Ministers along with the Chief Minister. However, the exercise of powers by the Governor under the 5th Schedule is not co-terminus with exercise of the executive power of the State but it is within the discretion of the Governor.

b) It may be noted that Clause 3 of the 5th Schedule is one such provision which seeks to make the Governor a vital link and an agency of the Centre at the State level. The Governor is expected to make an assessment of the administration of scheduled areas and report to the President so that the appropriate directions can be passed by the Centre in relation to the same, since under Clause 3 the executive power of the Union extends to the giving of directions to the State for administration of Scheduled areas. This is a clear indication that the framers of the Constitution had intended that overarching power to administer the Scheduled area would vest with the Centre. It is thus appropriate for the Ministry of Tribal Affairs which is the nodal Ministry in the Central Government, for matters relating to the Scheduled Tribes may, keeping in view the provisions under Clauses 3 and 5 of the 5th Schedule, issue

appropriate directions, w.r.t. administration of Scheduled Areas, in exercise of the Executive Power of the Union.

c) However, it is difficult to endorse the contention of the Attorney General that the Constitution also envisages an executive power of the Governor acting in his own discretions in the Scheduled Areas (apart from the executive power of the Union by virtue of clause 3 of the Fifth Schedule) since SAs are not any excluded areas outside the territory of the States, and such an arrangement similar to that in clause 5 of the Fifth Schedule does not exist even for the Union Territories under the Constitution. It is certainly not good governance to create multiple power centres, since their mechanics will ultimately lead to paralysis of decision making through contradictory interpretations. Since the Scheduled Areas comprise significantly large extent of the country, the hypothesis is portent enough to cause administrative apprehension and turbulence in many States; and should logically be referred to the current Centre – State Commission so that experts and jurists can debate it extensively and design appropriate safeguards regarding the use of such discretionary authority (which has not been evidenced in the history of the working of the Indian Constitution in the last sixty years).

SECOND ADMINISTRATIVE REFORMS COMMISSION

1.36 The Second Administrative Reforms Commission set up by Department of Administrative Reforms & Public Grievances in August 2005 submitted 15 Reports during its tenure. The Fifteenth report on **STATE AND DISTRICT ADMINISTRATION** was submitted in April 2009. A List of Reports submitted by the Administrative Reforms Commission and information about decision taken by the Government on the consideration of the Reports, as available on the website of the Department of Administrative Reforms & Public Grievances is given at **ANNEXURE 1.X**. It was noted that 7th Report (Capacity Building for Conflict Resolution - Friction to Fusion), 8th Report (Combating Terrorism - The report is being handled by Ministry of Home Affairs), 10th Report (Refurbishing Personnel Administration - Scaling New Heights) and 15th Report (State and District Administration) Reports contain recommendations relating to Scheduled Tribes and Administration in Scheduled Areas in the country.

1.37 Since many of the recommendations made in various Reports of the ARC relating to Scheduled Tribes and Scheduled Areas had been accepted, the National Commission for Scheduled Tribes decided to know the manner in which decisions taken by the Government on the recommendations made in the above mentioned Reports have been implemented by the Governments of the Union and the concerned States. The Department of Administrative Reforms & Public Grievances which had set up the Administrative Reforms Commission and the Ministry of Home Affairs which was concerned with the recommendations relating to Scheduled Areas under 6th Schedule to the Constitution were requested to inform the method/ status of implementation of the recommendations which had been accepted by the Government. Copies of letters sent to Department of Administrative Reforms & Public Grievances and

Ministry of Home Affairs for providing information in respect of specific recommendations of the Reports are placed at **ANNEXURE 1.XI** The Chairperson, National Commission for Scheduled Tribes also discussed the matter with Department of Administrative Reforms & Public Grievances and the Ministry of Home Affairs in a Sitting on 21/02/2012.

1.38 The Secretary, Department of Administrative Reforms & Public Grievances attended the Sitting and informed that the role of Department of Administrative Reforms and Public Grievances is to monitor / expedite the implementation of the accepted recommendations of 2nd ARC by concerned Ministries / Departments. He further informed that the Second Administrative Reforms Commission (ARC) was constituted to suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the Government. The Secretary, further informed that the 15th Report of 2nd Administrative Reforms Commission (2nd ARC) tilted 'State and District Administration' deals with issues of modernization, increased devolution of functions and powers, effective grievance handling system, people's participation, enhancing responsiveness, process simplification and delegation of power. The Commission was further informed that the Report contains 158 recommendations under 57 sub-headings. The meeting of the Core Group on Administrative Reforms (CGAR) headed by Cabinet Secretary on this Report took place on 08.12.2009 and submitted their views. The meeting of the Group of Ministers (GoM) on this report took place on 17.06.2010 to give final decision. Out of 158 recommendations, 134 recommendations were accepted and 24 recommendations were not found to be feasible. The Government's decisions on the said Report have been circulated to concerned Ministries / Departments and all States / UTs for necessary action and implementation. The following Central Ministries / Departments are involved in this Report alongwith all the State Governments -

(a) Ministry of Home Affairs (MHA),
(b) Inter- State Council Secretariat,
(c) Ministry of Panchayati Raj,
(d) Department of Personnel and Training,
(e) Ministry of Urban Development,
(f) Ministry of Rural Development,
(g) Ministry of Finance,
(h) Planning Commission and
(i) Ministry of Development of North Eastern Region.

1.39 The Chapter 5 of the 15th Report is on 'Governance Issues in the North Eastern States. A Statement containing the Action Taken Reports (ATRs) received by the Department of AR & PG from Ministry of Home Affairs as well as from North Eastern States for Paras 5.3.6, 5.4.8,5.5.5 , 5.7.3, 5.8.6, 5.11.5, 5.12.6, 5.15. 5.15.2.5.5 and 5.15.3.9.3 of the 15th Report furnished by the Secretary, Department of Administrative Reforms & Public Grievances are given at **ANNEXURE 1.XII** These recommendations were stated to be still under implementation.

1.40 In addition, the 7th Report of 2nd ARC titled "Capacity Building For Conflict Resolution – Friction To Fusion" which has touched upon ' Issues Related to Scheduled Tribes' Paragraph 7.10 of the Report tries to examine the background and the emerging facets of many conflicts that plague India. The Report contains 126 recommendations under 27 sections. CGAR considered the views of the concerned ministries/ departments in its meetings on 19th & 26th May, 2009. A meeting of the GoM to consider the recommendations was held on 8.12.2009. Out of the 126 recommendations GoM accepted 111 recommendations while 15 recommendations were not found feasible to be accepted, principal among them being the issue of directions by the Union Government to the States regarding the administration of Tribal Areas under Fifth Schedule to the Constitution. The Ministries concerned with this Report along with State Governments are:

(i) Ministry of Panchayati Raj,

(ii) Ministry of Tribal Affairs,

(iii) Department of Land Resources,

(iv) Ministry of Home Affairs,

(v) Ministry of Environment & Forests and

(vi) State Governments.

1.41 Four recommendations (numbers– 38, 39, 42 and 45) under Para 7.10 have been treated as 'Implemented'. Most are still under implementation. The status of implementation on the said Para is given at **ANNEXURE 1.XIII**

1.42 The 10th Report tilted 'Refurbishing of Personnel Administration – The Scaling New Heights' is relating to issues pertaining to the Civil Services. It makes recommendations regarding recruitment, training, enhancing performance and ensuring accountability, placement of civil servants. The 10th Report contains 97 recommendations under 22 sub-headings. This Report was considered by CGAR in its meeting held on 27th July, 2009 and 27th October, 2009. It was stated that the meeting of GoM was yet to be held and therefore, the government decisions on this Report were stated to be still pending.

1.43 The Deputy Secretary (NE Division), Ministry of Home Affairs, who attended the Sitting since the Secretary, Ministry of Home Affairs could not attend due to his engagement in the Meeting with the Parliamentary Committee. He further informed that Chapter-5 of the 15th Report relates to GOVERNANCE ISSUES IN NORTH-EASTERN STATES and the Commission made several recommendations relating to the subject matter. He submitted a Statement giving Action Taken Report on the Accepted Recommendations of the 15th Report of 2nd Administrative Reforms Commission – "State And District Administration", which is placed at **ANNEXURE 1.XIV**. In respect of some of the recommendations it was mentioned that the recommendations were referred to the concerned Ministry/ State Government and action was being taken by them. Since the Report was submitted in April 2009, this type of information did not

provide the actual status about implementation of the recommendations. The Commission advised that statement regarding upto date status about implementation and manner of implementation of the recommendations may be furnished to the Commission urgently. The Deputy Secretary, Ministry of Home Affairs assured that the revised Statement will be furnished to the Commission shortly.

1.44 It would be evident that mere communication of the recommendation to the concerned State Governments will not ensure implementation of even those suggestions which are considered desirable. The special requirement of governance of Scheduled Areas cannot be mortgaged to administrative lethargy or political sensibilities, because the special Constitutional safeguards have been provided only to overcome such tendency of the governance system. Elsewhere (para 1.49) the NCST have recommended the issue of guideline for implementing a Tribal Charter of Rights; and the Commission recommend that administrative reference also be viewed in similar light.

1.45 The Commission has noted that the Government has not taken any decision on the 10th Report of Administrative Reforms Commission- "Refurbishing of Personnel Administration, Scaling New Heights" (November, 2008)- which has important recommendations relating to the Scheduled Tribes. The NCST has noted that general reluctance on the part of the officers and staff for posting in Scheduled Areas/ Tribal Areas on account of lack of housing, medical and education facilities has been exponentially compounded by the general climate of permissiveness fostered by rampant political interference and collusive abandonment of responsibilities in search of greener pastures**. In order to address these problems, the Commission is of the view that Government should formulate specific regulations in respect of Scheduled Areas for personnel management with the formation of a State level Civil Services Authority for Scheduled Areas, which would deal with matters of assignment of functional domains to officers, preparing a panel for posting of officers, fixing tenures for senior posts etc., in line with the Central Civil Services Authority proposed by the ARC. In order to improve personnel management in respect of all category of employees, it is necessary to fix a minimum tenure for various cadre posts, which be filled on the basis of merit, suitability and experience, prescribe norms and guidelines for transfers and posting to maintain continuity and predictability in career advancement and acquisition of necessary skills and experiences as well as promotion of good governance. The normal tenure of all public servants may not be less than two years and Transfers before the specified tenure should only be for valid reasons to be recorded in writing. These recommendations are in accordance with the observations contained in para 8.5.11, 8.5.12 and 8.5.14 of the 10th Report. Department of Personnel and Training may consider the above views of the Commission and issue detailed guidelines for improvement of personnel policies and systems in Tribal Areas in the interest of peace and good governance under intimation to the Commission.**

REVIEW OF THE WORKING OF CONSTITUTIONAL POWERS OF THE GOVERNORS SINCE THE INCEPTION OF THE CONSTITUTION

1.46 It has been mentioned earlier that separate laws /systems for Tribal Areas had a long history, in India beginning with the provision in the Scheduled Areas Act, 1874, to extend general laws with modification to Scheduled Districts. The Government of India Act, 1919 divided Scheduled Districts into "Excluded Areas" and "Partially Excluded Areas". Subsequently, the Government of India Act, 1935 empowered Governors to make regulations with the approval of the Governor General. This arrangement has been incorporated in and as Schedule V and Schedule VI to the Constitution for specific adaption of general laws to Scheduled Area/Tribes; but its effectiveness appears to have paled, since, judging from the infrequent resort to the relevant provisions despite a plethora of Central/State Legislation impacting Scheduled Areas/Tribes. To this end, the Commission, vide NCST letter dated 23-11-2011 and 30-12-2011, had sought information from Schedule V and Schedule VI States on three issues viz:

a. The instances in which Central/State legislation(s) had been adapted in its application to Scheduled Areas/Tribal Areas,
b. Regulations promulgated for peace and good governance in different States, which have the force of law; and
c. Experience of the functioning of advisory mechanisms (Tribes Advisory Council)

1.47 Since the responses received from the State Governments in the matter had revealed that the State Governments were experiencing some difficulties in appreciating the requirements conveyed by the Commission, a meeting was convened by the Secretary, NCSTon 11/01/2012 with the MHA, MTA and the Secretaries in charge of Tribal Development/Welfare in the States having Scheduled Areas to facilitate clearer understanding of the requirements of the Commission, ascertain the status of implementation of the provisions under Fifth and Sixth Schedule to the Constitution for adaption of laws applicable to Scheduled Areas/Tribes and seek ideas for the way forward.

1.48 It was noted in the meeting that possibly because of infrequent resort to the Constitutional scheme, the State Governments had not submitted / presented the requisite information/ details, as requested vide NCST letter dated 23-11-2011 and 30-12-2011. The factual position in the matter was also not pre-confirmed from the Governor's Secretariat and the Law Deptt. by most of the States, which was necessary for the purpose of ensuring reliability of the information being furnished in the Commission's Report to the President. Besides, the MHA and the MTA were requested to furnish the requisite information in respect of Schedule VI and Schedule V States respectively, while Schedule V and Schedule VI States were requested vide letter dated 17/01/2012 to submit the requisite information after re-confirming facts in the matter from the Governor's Secretariat/ Law Department of the respective States. The State Governments were also requested to communicate the Rules prescribed for the conduct of meetings of the Tribes Advisory Council , the type of issues included in the agenda and the nature of the recommendations of the TAC and its

effectiveness in addressing concerns pertaining to the welfare and advancement of Scheduled Tribes.

1.49 The position submitted by the MTA, MHA, Schedule V and Schedule VI States is placed at **ANNEXURE 1.XV, ANNEXURE 1.XVI ANNEXURE 1.XVII** and **ANNEXURE 1.XVIII** respectively. It is revealed that no instance regarding use of any of the discretionary powers of the Governor regarding applicability or adaptation of an Act of Parliament or State legislation as provided under para v of the Fifth Schedule and para 12,12A, 12AA and 12B of the Sixth Schedule has been reported. Further, the Regulations, promulgated by Governors of the States, had been mainly restricted to land transfer alienation, restrictions on money landing and reservation of local STs in recruitment at local level etc. Specific regulations necessary for peace and good governance in important areas like social rights, educational, environmental, mineral and cultural rights, compensatory relocation/ exemption from acquisition of tribal lands for public purposes, protection of customary laws and inheritance development strategy, (which are international best practices emerging from ILO Conventions) etc. had not been promulgated.

1.50 Regarding the functioning of the Tribes Advisory Council, it emerged that, in general its meetings were an annual/ bi-annual features; the nature of issues largely pertain to local development related matters, reservation of local STs in recruitment at local level and general issues. The Rules prescribed for the conduct of meeting did not specify the type of issues included in the agenda and the nature of the recommendations of the TAC and its effectiveness in addressing concerns pertaining to the welfare and advancement of Scheduled Tribes. Detailed proceedings of the meeting held on 11/01/2012 is placed at **ANNEXURE 1.XIX**

1.51 It would be apparent from the replies submitted by the States that wherever specific attention has been paid in the State legislative process to the needs of tribal areas/ Communities, it has taken the form of incorporation of a specific exclusion provision in the "extent" clause of the legislation, or special provisions relating to them. This may be because the Constitutional prescription in Schedules V & VI of adaptation of laws, subsequent to their enactment, has been considered too cumbersome or tedious; or, it may well be because the framework established for the Advisory Councils could not cultivate the regular and purposive introspection necessary for triggering of the Constitutional safeguards. Quite evidently **robust "pre-facto" mechanism have to be grafted to Constitutional provisions which would ensure requisite attention to tribal concerns- foremost of which would be the mandatory inclusion of a separate chapter on Special Provisions for Scheduled Areas/ Scheduled Tribes in every Central or State Legislation affecting the habitat tribals' property rights and enjoyment of lands occupied, the religion, customs and culture of these people and traditional relationship with their environment (as obligated under UN Conventions). Beside establishing Advisory Councils for all States with Scheduled Tribe Population, the Advisory Mechanism should be restructured to ensure meaningful deliberation on the above issues with purposefulness and alacrity. To this end, the Union Government should issue directions under the Constitution**

providing a more active role for the Governor of the State in the affairs of the Advisory Councils, to require him to preside over its meetings (and also afford "arms-length" distance from the executive arm of the State Government in its deliberations). Further, **it should direct that its membership will not be limited to political functionaries alone, who are perhaps constrained in legislative introspection by their political applications/ obligations; and adequate representation in the Councils be given to Social Scientist, Anthropologists and persons with administrative experience. The review of legislative enactments in the interregnum should also be mandated as a "standing" item of the Council's agenda for discussion, together with issues of Governance, administration of justice and creation/ provision of infrastructure/ services under Central aegis-so that local development matters do not crowd out others with long term consequences for the tribal community.**

SUGGESTIONS FOR AMENDMENT OF CONSTITUTION

1.52 From the foregoing it is also apparent that the Constitutional provisions in the Vth/ VIth Schedule require to be reviewed and refreshed in the light of past experience, international best practices and necessary administrative reforms. It appears high time that a comprehensive, universal **Charter of Rights of Tribal communities** was incorporated into the Fifth Schedule (also declaring tribal areas to be Scheduled Areas), incorporating the best practices emerging from the ILO Conventions as well as various bodies like the Administrative Reforms Commission, etc.

- **(i) Protection of religious, social, cultural and educational rights**
- **(ii) Sustaining traditional means of livelihood and special protection regarding employment**
- **(iii) Protection of customary laws and inheritance rights**
- **(iv) Protection of habitat and environment**
- **(v) Protection of land (surface and sub-surface) rights**
- **(vi) Protection from removal from occupied lands for public purposes**
- **(vii) Right to Relocation from occupied lands with appropriate compensation/ guarantees**
- **(viii) Protection of traditional community institutions**
- **(ix) Strengthening of Administrative mechanisms for tribal areas (under Union oversight)**
- **(x) Development and Planning for Scheduled Tribes (refurbished development strategy predicated on primary financial and administrative responsibility of the Union Government)**

1.53 In order that this Charter may not remain a dead letter, the Union Government should use its discretionary powers under the existing Schedule to directing promulgation in the form of regulations for peace and good government of Schedule/ Tribal Areas. The proposed regulations may ensure (i) adaptation of Rules, Regulations and Instructions for reorienting administration in Scheduled Areas to make it clean, transparent, sensitive and responsive administration (ii) maintenance of transparency in appointments postings, and transfers of officers and staff in tribal and Scheduled Areas, and (iii) overseeing

implementation of rapid/ upgradation of infrastructure and services in Scheduled areas

1.54 Considering the special provisions of the Constitution relating to Schedule V and Schedule VI in relation to the Scheduled Tribes and Scheduled Areas, opinion of the Attorney General regarding Governors' role in Scheduled Areas and the inadequacy in formulation and implementation of Tribal Sub-plan both at the State as well as at the Centre, the National Commission for Scheduled Tribes makes the **following recommendations** in relation to good governance in tribal development administration and administration in Scheduled Areas.

(i) Robust "pre-facto" mechanism have to be grafted to Constitutional provisions which would ensure requisite attention to tribal concerns- foremost of which would be the mandatory inclusion of a separate chapter on Special Provisions for Scheduled Areas/ Scheduled Tribes in every Central or State Legislation affecting the habitat tribals' property rights and enjoyment of lands occupied, the religion, customs and culture of these people and traditional relationship with their environment (as obligated under UN Conventions)

(ii) There is a need to evolve a mechanism headed by Governor in the States having Scheduled Areas under Fifth and Sixth Schedule, to monitor and ensure implementation, in letter and spirit, the provisions contained in Fifth and Sixth Schedule to the Constitution, so that Governor may play an oversight role in the matter.

(iii) The Tribes Advisory Councils (TAC) for all States with Scheduled Areas as well as tribal areas may be headed by the Governor as Chairperson of the Council, while Secretariat support may continue to be provided by the Tribal Development Deptt. of the State, till requisite machinery is created in the Governor's Sectt. The Chief Minister of the State may act as Vice Chairperson of the TAC. The TAC should be reconstituted regularly as per the provisions and the meetings of the TAC should be held at least twice in a year or as expedient, as provided in the Constitution.

(iv) The Governors should promulgate detailed regulations for peace and good governance as suggested in para 1.51 above.

(v) It is desirable that all Acts and laws should be reviewed for their adaption to the Scheduled Areas, but this is not practically feasible by the concerned departments. The Law Commission (under the Ministry of Law) should be entrusted this responsibility of review of existing Laws affecting property rights, succession, marriage, land holdings, indebtedness, constitution and management of public/administrative services for adaption to Scheduled Areas in consultation with Ministry of Tribal affairs, State Govts., NCST, etc. Any weak areas in schemes / policies for Tribal areas should be got remedied either directly or indirectly by MTA

(vi) The strategy for all programmes, particularly the major missions/schemes of the Ministries/Deptt.s, should comprise sub-Chapters for accelerated development of the Scheduled Area. In particular, it is necessary to have specific Tribal Sub Plan (TSP) component in all the major missions/ schemes/ programmes of all Ministries/Deptts to have a clear focus on formulation of schemes/programmes concerning the STs and their effective implementation and monitoring. The TSP component should not be per population share but according to "problem-share"; and "need-based" taking into account the extent of deprivation, or even more than that to make up the backwardness/ negligence experienced over the years. Unless the earmarking of TSP outlays exceeds the relative share of incidence of residual problems eg. drinking water, primary health care and education, nutritional support, unemployment etc., the relative gap in physical quality of life is likely to persist.

(vii) The National Tribes Advisory Council should be established with clear definition of scope and terms & condition. It should also co-ordinate the governance of Scheduled Areas.

(viii) The Ministry of Tribal Affairs should prescribe a uniform format for preparation and submission of the reports by the Governors in respect of 5th Schedule States with particular reference to its contents. The Ministry of Tribal Affairs should also issue the following instructions to the State Governments to the effect that:

(a) The Report relating to the financial year should reach the Govt. of India (Ministry of Tribal Affairs) within a period of six months of closing of the financial year.

(b) The reports should contain a detailed note on the implementation of the constitutional safeguards for promotion of educational and socio-economic development of the Scheduled Tribes. These reports should also contain a brief on problems relating to law and order, naxal movements and tribal unrest. The reports should also make a mention about Central and State laws enacted in the State during the report period, and action taken regarding extension/applicability of those laws to Scheduled Areas in the light of the powers of the President, Governor under Fifth and Sixth Schedule. Working of PESA Act in the State should also be integral part of the Governor's report.

(c) Considering the comprehensive nature of the task, it is not pragmatic to expect the desired report to be compiled by the Governor. Every department in the State should submit a report about the schemes/policies being run by them to the Tribal Welfare department of the State, which in turn should compile these reports to identify the strong areas and weak points for presentation to the Governor.

(d) In case the reports do not contain the observations of TAC, they may be sent back to the State Governments advising them to apprise the Central Government of the observations of the TACs and action taken on the observations of TAC.

(e) The reports should be thoroughly examined in the Ministry of Tribal Affairs on the basis of the material contained in them and the State Governments should be apprised of the assessment to enable them to take necessary follow-up action.

(g) A copy of the Governor's Report should be made available to the National Commission for Scheduled Tribes immediately after receipt of the Report in the Ministry to enable the Commission to examine the same and offer its comments thereon.

(h) The States, which have TACs, should ensure that TACs are constituted/ reconstituted timely and that their meetings are held regularly as per Constitutional provisions. The agenda of the TAC should inevitably include the subject of adaptation of Central or State laws enacted during the interregnum of its meetings so that the same are not routinely extended to Scheduled Areas/Tribes. A similar mechanism (like TAC) should be established for Schedule VI States also.

(ix) Not withstanding the specific provisions in the Fifth and the Sixth Schedule, the legislative proposals mooted by the Union and the State Governments especially those relating to Tribal Rights Charter should have a separate Chapter "Applicability to Scheduled Tribes and the Scheduled Areas (under Fifth and Sixth Schedule)" This would compulsorily require consultations with all the stake holders, including States having Scheduled Areas under Fifth and Sixth Schedule, Ministry of Tribal Affairs and the National Commission for Scheduled Tribes also and the question relating to adaptation of any Act to Scheduled Tribes and the Scheduled Areas may not be always necessary.

CHAPTER 2

REGULATIONS REGARDING PEACE AND GOOD GOVERNANCE

INTRODUCTION

The Constitution of India seeks to secure for all its citizens, among other things, social and economic justice, equality of status and opportunity and assures the dignity of the individual. The Constitution further provides social, economic and political guarantees to the disadvantaged sections of people. Some provisions are specific to both Scheduled Castes and Scheduled Tribes and some are specific to only Scheduled Tribes. These special provisions aim at safeguarding and promoting the rights of Scheduled Tribes along with development of tribal areas. The Constitutional provisions have also authorized the Government of India to issue guidelines and directions on these matters to the States; and also release Grants-in-aid in various forms and for various purposes depending upon the nature of schemes and measures to be taken up by the State Governments.

2.2 In the preceding Chapter, the Commission has recommended that a comprehensive, universal Charter of Rights of Tribal communities be incorporated into the Fifth Schedule (simultaneously declaring all tribal areas to be Scheduled Areas), incorporating the best practices emerging from the ILO Conventions as well as recommendations made by various bodies like the Administrative Reforms Commission, etc. In order that this Charter may not remain a dead letter, the Union Government should use its discretionary powers under the (existing) Fifth Schedule to direct the promulgation of the regulations for peace and good government of Scheduled/ tribal areas on the following subjects:

(i) Protection of religious, social, cultural and educational rights
(ii) Sustaining traditional means of livelihood and special protection regarding employment
(iii) Protection of customary laws and inheritance rights
(iv) Protection of habitat and environment
(v) Protection of land (surface and sub-surface) rights
(vi) Protection from removal from occupied lands for public purposes
(vii) Right to Relocation from occupied lands with appropriate compensation/ guarantees
(viii) Protection of traditional community institutions
(ix) Strengthening of Administrative mechanisms for tribal areas (under Union oversight)
(x) Development and Planning for Scheduled Tribes (refurbished development strategy predicated on primary financial and administrative responsibility of the Union Government)

2.3 The proposed regulations should ensure (i) adaptation of existing laws, Rules, and instructions for reorienting governance in Scheduled Areas to make it simple, transparent, sensitive and responsive (ii) cleaner administration through transparency in appointments, postings and transfers of officers and

staff in tribal and Scheduled Areas, and (iii) implementation of rapid upgradation of infrastructure and services in Scheduled areas. In its previous Annual Reports, the Commission has made observations/ recommendations on related issues which are re-capitulated below for contextual reference.

IDENTIFICATION OF SCHEDULED AREAS AND SCHEDULED TRIBES

2.4. The increasing Competition for political power, resources and opportunities in the Indian State has witnessed strident demand from the relatively more developed sections of society in different parts of the country to be declared as Scheduled Tribes, defying earlier norms for such identification viz; backwardness and isolation. These demands are stoked by political parties in order to derive political advantage without care for their deleterious impact on the rights of tribal communities as well as erosion of Constitutional safeguards. **Commission recommends that in the context of continuing demand for inclusion of new areas /communities, there is a need to review the list of Scheduled Areas/ Scheduled Tribes objectively in a time-bound manner. Appropriately, therefore, the Scheduled Area & Scheduled Tribes Commission should be constituted every 10 years to look into such demands under Article 339 of the Constitution. SA & ST Commission should be entrusted the review of Scheduled Areas, Scheduled Tribes list and Laws and rules relating to administrative and financial structure.**

2.5. **De-scheduling of certain ST communities as a whole would not be in the interests of still poor and backward families among those Scheduled Tribe communities. The Government may, however, devise measures to ensure that share of the weakest amongst the Scheduled Tribes in the development schemes and economic upliftment programmes are not cornered by those members of Scheduled Tribes who have already availed the benefits and have risen to the average of the society. Moreover, the criteria for identifying a community as Scheduled Tribes as adopted so far needs to be followed strictly so that only deserving communities and economically weaker among those deserving communities are able to reap the benefits.**

2.6. **Involuntary relocation of tribal communities because of calamity, insurgency, and large development projects has also entailed forfeiture of Constitutional Safeguards because their tribal status is not legally maintainable. There is need to advise the State Governments that:-**

(a) they should issue instructions to provide that the families and children of the in-voluntarily migrated ST parents will continue to enjoy the same status in the State where they are resettled in case the community/ communities to which they belong has already been notified as Scheduled Tribe/ Scheduled Tribes in that State, and avail the benefits admissible to the Scheduled Tribes in that State.

(b) **In case the community/ communities to which the resettled tribals belong has/ have not been notified as Scheduled Tribes in the State of resettlement, they (i.e. the State Govts.) should immediately initiate**

action to get that/ those community/ communities notified as Scheduled Tribe/ Scheduled Tribes effective from the date of resettlement; and also ensure that pending the issue of said notification, the resettled tribals are allowed to avail the benefits admissible to Scheduled Tribes in that State.

(i) Protection of religious, social, cultural and educational rights

2.7. Whilst reservation for Scheduled Tribes in educational institutions and public employment is not restricted by religious beliefs, and there are other safeguards for Legislative and religious minorities also in the Indian Constitution, specific rights of tribal communities need to be enumerated to focus legislative/ administrative treatment.

(A). IMPLEMENTATION/ AMENDMENT OF SCs & STs (POA), ACT, 1989

2.8. Despite greater interaction between Communities and increased social acceptance of communal diversity, it has not been possible to eleminate social prejudice against backward communities. The experience relating to the implementation of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities), Act, 1989 revealed that in many cases it took several years to dispose the cases which, possibly, leading to acquittal in large number of cases. The Consumer Protection Act, 1986 (Section 3A) provided for time-bound disposal of the cases by the Consumer Forums (within 3 to 5 months). The National Commission for Women had also recommended that the Courts may dispose the cases relating to rape in a time-bound manner (within 6 months). It was felt that since the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is a special Act for protection of the Scheduled Tribes, similar provision should be incorporated in this Act also. While the provision for setting up Special Courts in the Act was aimed at speedy disposal of cases registered under the Act, experience so far had belied this expectation. **The Commission, therefore, suggested that the cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 should be disposed by the Special Courts within 6 months. To meet this objective, the Act could also be amended to provide for setting up exclusive Special Courts (instead of designating a Session Court as a Special Court) for trial of cases under this Act. (The recommendation of the Commission was forwarded to the Ministry of Social Justice and Empowerment vide letter, dated 16/07/2009).**

2.9. A proposal of Ministry of Social Justice & Empowerment inter-alia, sought amendment in Rule 7 of SCs and STs (Prevention of Atrocities) Rules, 1995 to insert clause 7-A to obtain timely information in respect of the cases of atrocities, especially pertaining to heinous offences. The proposal mentioned that whenever a FIR is registered under clause (i), (iv) or (v) of sub section (2) of section 3, the concerned District Magistrate shall submit a preliminary report in the matter, within 4 days, to the State Govt, MHA, MoSJ&E/MTA and NCSC/NCST as per the case (whether SC or ST). Proposed amendment further mentioned that State Govt. shall submit a detailed report within 45 days to the Ministries and the concerned National Commission. The Commission

noted that at present, there is no definition of heinous offences in the Indian Penal Code. It is also not mandatory under the Criminal Procedure Code to register an FIR immediately when a complaint is made. **The Commission has also observed that a large number of atrocities against Scheduled Tribes primarily pertain to grabbing of tribal land and crimes against (their) women folk. Therefore, it is advisable to report cases registered under sub-clause (iii), (v), (xi) or (xii) of sub-section (1) of Section 3 too for monitoring purposes. The Commission also feels that there should be prompt reporting of all such complaints made to the police, without awaiting the registration of an FIR.**

(B) DEVELOPMENT OF PARTICULARLY VULNERABLE TRIBAL GROUPS (PTGs)

2.10. **The policy should aim at the development of the most vulnerable PTGs, while protecting them from cross infection and exploitation by the outside world. They should be regularly provided with food items and health services beside special schools for education of their children. The following measures may also be suitably incorporated in the policy :**

(a) The number of regulated contact points may be increased suitably.

(b) Instead of keeping PTGs entirely dependent on forest for livelihood, they may also be introduced to settled agriculture (by supplying them improved seeds, agricultural kits, plough bullocks, bullock carts etc.), horticulture and animal husbandry (by supplying them crossbreed cows, she buffaloes, sheep/piggery units etc. and providing suitable training therefor).

(c) Efforts may also be made to provide education and play way/ sports activities to children of PTG community for which the staff and officers may have to make special efforts to make sporting contacts with them and persuade them to send their children to the special residential schools where every need of the children should be fulfilled free of cost. This may also help in checking the trend of diminishing population. This would certainly need careful selection of the staff and giving them suitable training for enabling them to have peaceful and fruitful relations with the PTGs. As and when possible, local eligible and suitably trained youth/women should be appointed as Teacher in the special schools.

(d) The Primary Health Centres (PHCs) are generally located far away from the inhabitations of sparse PTG population and, therefore, they are not in a position to avail of medical facilities in the time of emergency. In order to provide emergency and regular treatment facilities, one Medical Mobile Van equipped with primary treatment facilities and medicines along with minor surgical equipments should be arranged at each contact point

for the PTGs.

(e) The local administration may be advised to arrange free distribution of food and consumer items available under PDS to needy persons.

2.11 **In order to increase the attendance and also to decrease the drop-out rates of PTGs students in the schools, one Primary school for each village may be opened in each PTG village/hamlet.**

2.12 **One mini deep tube well for each PTG village/hamlet may be installed to make safe drinking water available to the PTGs throughout the year. In areas where there is no supply of electricity, hand pumps may be installed. The Commission further recommends that till such time the facilities of tube well/hand pumps are provided in the PTGs villages/hamlets, arrangements should be made for disinfecting of drinking wells during rainy seasons.**

2.13 **In order to provide emergency and regular treatment facilities to the PTGs, one Medical Mobile Van equipped with primary treatment facilities and medicines along with minor surgical equipments should be arranged for each block in the interior areas. The State Govts. having PTGs should also make special arrangements to provide nutrition-rich items like ragi, minor millets, tubers etc. to lactating and expectant mothers to combat malnutrition.**

2.14 **The State Govts. should arrange distribution of consumer items available under PDS through mobile vans in respect of such PTGs who live in inaccessible forest/hilly areas where PDS outlets within reasonable distance are not available. The Commission further recommends that the State Govt. should make arrangements for organizing weekly markets (haat bazaar) where PTGs could come, sell the products crafted by them and purchase items of their needs.**

2.15 **The State Govts. are advised to provide financial assistance to the PTGs families to enable them to construct houses as per their needs.**

2.16 **Almost all the PTG families are BPL families and, therefore, there is an imperative need to involve them in income generating activities. Efforts should be made to encourage them to take to settled agriculture. They should also be provided training in cane and bamboo craft, carpentry, LMV driving, tailoring and coir craft to generate self-employment among them.**

2.17 **The State Governments which have PTGs should be advised to formulate schemes for recruitment of candidates belonging to PTGs in Group C & D posts of Teaching category in various grades without subjecting them to the recruitment process provided they posses the minimum qualification prescribed for the posts**

(C) EDUCATION

(I) Primary and Secondary Education

2.18 **Educational standards and pattern of examination should be comparable throughout the country so that ST students who generally join local Govt. schools are not put to disadvantage and are able to compete for admissions in institutes for higher studies.**

2.19 **The National Council of Educational Research and Training (N.C.E.R.T.) and State Council of Educational Research and Training (S.C.E.R.T), Non-Governmental Organisations (NGOs) should take up preparation and induction of bi-lingual text books in first two standards wherever that particular dialect is the mother tongue of a sizeable population. N.C.E.R.T should be made responsible for the introduction of such text books in all the States and Union Territories of the country at least by the end of next plan period.**

2.20 **As each region of tribal areas follow their own ritual and agricultural calendar, the concerned tribal research institutes should prepare teaching calendars either region-wise or tribe-wise and furnish the same to the education department for taking necessary action.**

2.21 **Mid-Day Meal programmes in tribal areas should take into account the locally available food material and culinary habits of the local tribals, besides ensuring that food items served under the programme are hygienic and contain necessary nutrients.**

2.22 **Teaching-aids should be prepared based on local culture and environment. Local Tribal Folk dances, and Music-both Vocal and Instrumental, should be included in the curricular and co-curricular activities.**

2.23 **Most of primary schools in tribal areas are run by a single teacher. In case he/ she takes leave due to illness or for any other domestic reason, there is no teacher left in the school with the result the education of the children suffers. There is therefore, an urgent need to post one more teacher in all the single teacher schools in tribal areas. The State Govts./UT Administrations should fill up vacancies of teachers by evolving schemes of giving various incentives; such as decent accommodation, medical facilities etc. to teachers and also by ensuring that the posts of teachers in schools in tribal areas are filled, as far as possible, by appointing teachers from amongst local tribal candidates.**

2.24 **The basic reason behind the drop out of ST students can be attributed to the poor economic condition of the family and this situation compels the tribals to utilize their children as an economic unit to bring some income to the family. It is also necessary that some National Scheme of economic incentives are given to such parents of the children whose income is below the poverty line with a view to wean them away**

from the compulsion of using their children as economic support instead of sending them to schools.

2.25 **Another reason for dropouts is the repeated failure of tribal children in a class, which may be reduced by identifying weak and below average tribal students and making arrangements for providing them remedial instructions/ coaching on the holidays or at night by providing some cash incentives to the teachers. Additional incentives in the form of cash award should also be granted to each student having more than 75% attendance/ work done in the school note books. Besides, those students who secure 60% or above marks in the examinations should also be given cash awards.**

2.26 **There is a need to provide attractive incentives to the parents of the girls for sending them to the schools, apart from the existing incentives which are being given to the ST children in the form of free textbooks, uniforms, stationery, school bags, cooked food through mid-day-meal Scheme etc.**

(II) Higher Education

2.27 **The State Governments which have schemes for providing scholarships to tribal students at pre-matric levels should abolish the income ceiling in respect of the parents of all the tribal children studying in Classes from I to X.**

2.28 **The Central assistance for cooked mid-day meal during summer vacations to school children in drought affected areas should be extended to the children in tribal areas as about 60% or more ST children are undernourished in the States like Gujarat, Himachal Pradesh, Karnataka, Kerala, Andhra Pradesh, Madhya Pradesh and Maharashtra.**

2.29 **One of the major constraints in the dissemination of education among STs is that their parents resort to seasonal migration to other places in search of livelihood during the period from April to middle of June and this is the period for the school examinations. When the parents move out of their habitations to other places, they have to take their children along with them leading to dropouts. State Govts. may be advised to formulate suitable schemes for boarding and lodging of children of those ST families who decide to temporarily migrate to other places in search of their livelihood. Alternatively, special arrangements be made for conducting special examinations of the ST children when they return to their original habitations from the places of their temporary migration.**

2.30 **The income ceiling in respect of the parents of the students for the purpose of grant of the Post-Matric Scholarship may be raised.**

2.31 **The tribal students who are day-scholars but who reside in rented accommodation due to non-availability of hostel accommodation**

should be treated on par with hostellers and the amount of scholarship in their case also should not be less than to that of hostellers.

2.32 **The disbursement of Post-Matric Scholarship in most of the States is being delayed due to non release of funds both from the Govt. of India (over and above the committed liability of the State Govts.) and the State Govts. Ministry of Tribal Affairs should also ensure timely release of the funds to the State Govts. The State Governments should release their share of funds to the district authorities (upto the committed liability) in time to ensure timely disbursement of these scholarships and explore the possibilities of disbursing the scholarship money to the students through their Bank Accounts.**

2.33 **There should be 8.2% (proportion of STs to the total population of the country as per 2001 Census) reservation for Scheduled Tribes in awarding fellowships and/or in granting scholarships in the schools, colleges, Universities, Educational and Technical Institutions etc. The Ministry of HRD and the Ministry of Minority Affairs should consider suitable amendment in the Central Educational Institutions (Reservation in Admission) Act, 2006 to ensure that reservation for STs is made applicable in admissions to those Govt. run educational institutions also which have been granted minority status. The scope of reservation should also be extended to such educational institutions, hospitals etc. which though not funded by the Government had received/continue to receive concessions from the Government in respect of acquisition of lands, buildings electricity, water, provision of public transport etc.**

2.34 **Scheme of Mid -day meals should be extended up to high-school level at least for ST girl students. This will provide huge relief to the family of the ST girl students and it will improve enrolment of ST girl students and also reduce their dropout.**

2.35 **In tribal areas, the capacity of hostels particularly for ST girls is much less than the requirement and this is one of the major reasons for less enrolment and increased dropout of ST girl students. There is an urgent need of construction of more hostels for ST girls. The number of Ashram Schools, Kasturba Gandhi Balika Vidyalayas in ST concentration blocks should be increased.**

2.36 **There is a genuine need to increase the number of Government. schools of excellence/ Central Schools/ Eklavaya Modal Residential Schools (EMRS) in States/UTs which have sizeable number of ST population. Norms of opening of EMRS should be urgently reviewed.**

(ii) Sustaining traditional means of livelihood and special protection regarding employment

(A) MGNREGA

2.37 **In a rapidly changing development perspective which relies heavily on private initiatives and investments, the marginal sections of**

the economy need specific attention and efforts to sustain employment and incomes. The higher participation of the STs among the beneficiaries of the MGNREGA scheme is the indication of the fact that this section of the society needs more attention in this regard. There is need to incorporate a TSP component in the implementation of the Scheme in order to meet the objective of inclusive growth, which should not be based merely on the population share, but rather on the extent of deprivation. Considering the fragile economic condition of the tribals, and their poor agricultural practices including single crop culture, rather than relying on capricious demand estimates, it is desirable to ensure a minimum 100 days of employment to all tribal families as per the latest census in the tribal areas; and earmark sufficient funds, under the TSP component of the Scheme to ensure adequate livelihood opportunity in these areas. The Scheme should be designed for providing sustainable rural livelihood in respect of STs, strengthening its convergence with use of natural resources, productivity, human development, etc. It should also be ensured that the focus on the unemployed poor is not diluted by enlarging coverage to other groups in the guise of promoting skill development graduating to semi-skilled to skilled work, etc.

2.38 **Keeping in view the lack of managerial capacity in the Panchayats, the MGNREGA Scheme should develop a need based approach/plan of implementation based upon pro-active assessment of the demand for work in tribal areas. The demand for the work should be properly anticipated through local surveys in ST areas and villages having ST population, taking into account all factors such as availability of work on account of industries, agriculture and other seasonal activity, schooling of children, wage level of households, etc. The communication with tribals should also be strengthened to build up their capacity to articulate and demand rights.**

2.39 **The limit of providing maximum 100 days employment to a household in a given financial year under MGNREGA should be removed, as in tribal areas agriculture work is available only for a period of 2-3 months during the year. If need be, the concerned Ministry may bring amendments in the Act to this effect/ necessary adaption may be made by State Governors using the powers given in the Fifth Schedule.**

2.40 **The Commission has noted that requisite entries relating to the work demanded by the MGNREGA Job Card Holders and the details of work done by him/ her and the amount paid/ due to be paid to him/ her are not made in the Job Cards as also in the Rozgar Registers maintained in the Gram Panchayats. In most of the cases pages in the Job Cards were blank while Rozgar Registers carried some entries but not all the entries corresponding to the entries in the concerned Muster Rolls. Consequently, the Job Card Holder has no Certificate about any work having been done by him/ her in a particular week/ fortnight and therefore, in absence of the Certificate, he/ she may not be able to claim payment of wages for the work done. In order to ensure effective implementation of the Act it is necessary to maintain transparency in**

every field of action envisaged under the Act. It has also been noted with concern that adequate mandays of work have not been generated under several Gram Panchayats. This is despite the fact that each Panchayat is also assisted by an Assistant Secretary or the Village Rozgar Sahayak specifically in matters relating to MGNREGA. This indicates lack of action on the part of Gram Panchayat and the Panchayat Secretariat in anticipating and creation of the works required for development of the villages and for creation of employment/ man days in the villages for the needy wage earners/ Job Card holders. This requires immediate amendment to the MIS under MGNREGA.

2.41 **MoRD may consider amending MGNREGA for partial reimbursement (out of GoI funds) of payment of unemployment allowance, while instituting controls to minimize chances of persons drawing unemployment allowance. This is required to be implemented in the tribal districts on priority as the tribals are generally illiterate, don't know their rights and are easily victimized. In the present scenario, since State Govts. have to provide funds for payment of unemployment allowance, there is an incentive for non-transparent recording of employment demand.**

2.42 **There is a need to strengthen existing mechanism in MGNREGA for enforcing accountability in respect of the following in ST dominated areas:**

- **(i) Section 25: Fine for failure to perform duty under the Act.**
- **(ii) Schedule II Section 30: Compensating workers for delays in payment.**
- **(iii) Section 19: Urgent framing of Grievance and Redressal Rules.**
- **(iv) Need for independent grievance Redressal Mechanism.**
- **(v) STs' participation in Social Audit**

(B) Migration.

2.43 **As per 'The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979', no principal employer of an establishment to which the Act applies shall employ inter-State migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force. Further, a contractor has to obtain a license to employ inter-State workmen. A contractor is required to issue a pass-book to every inter-State migrant workman with a passport size photograph, name and place of establishment, period of employment, the proposed rates and modes of payment of wages, displacement allowance payable, return fare payable on expiry of period of employment, deductions made and other such particulars. As per provisions, inter-State migrant workman shall in no case be paid less than wages fixed under the Minimum Wages Act, 1948. However, this Act is applicable only to inter-State migrant workman employed in an establishment. The Commission, therefore, recommended that provision of the Act should also be made applicable to the placement**

agencies in respect of Migrant Domestic Workers from tribal areas, which are being driven by indigence to seek traditional employment.

2.44 **After the commencement of 'The Bonded labour System (Abolition) Act, 1976, the bonded labour system stands abolished and every bonded labour stands freed and discharged from any obligation to render any bonded labour. Any custom or tradition or any contract, agreement or other instrument leading to bonded labour is also void and inoperative. Every obligation of a bonded labourer to repay any bonded debt shall be deemed to have been extinguished. All the property of vested in a bonded labourer mortgaged in connection with any bonded debt shall stand freed and discharged. No creditor shall accept any payment against any bonded debt, which has been fully satisfied by virtue of the provisions of this Act. These provisions need to be adapted for overseeing contract labour to ensure humane treatment of Migrant workers who are easily exploited by greedy contractors.**

(C) Food Security

2.45 **Food security in Scheduled Areas is especially fragile because of primitive agricultural practices/low production, difficult access, poor infrastructure and logistical services and underdeveloped markets, besides endemic poverty and lack of opportunities for livelihood maintenance. Both availability of food grains and affordability are inter-meshed problems; and food security is not merely a question of subsidizing the prices for the poorer sections of the populace in these areas. Therefore, there is compelling reason to recognize these special characteristics; and have a differentiated approach for Scheduled Areas by way of provision of adequate entitlement of requisite food stocks, strengthening of warehousing and logistics, financial resources and responsibilities.**

2.46 **The public distribution system must assure reasonable food availability to all residents in Scheduled Areas keeping in view their special problems of availability and affordability. The number of priority households should not be arbitrarily determined; and they should be identified on the basis of discernible wealth/income-related criterion. Special arrangements, including build-up of inventory have to be made for remote, inaccessible areas, so that food availability is not often compromised by logistical failures. It is not sufficient, or desirable, to provide an allowance in lieu thereof because that leaves availability issues unresolved.**

2.47 **Since remote tribal areas also have acute problems of availability/ marketing infrastructure, foodgrain entitlements should not be differentiated according to economic status, which is relevant only for the quantum of eligible subsidy. Food entitlement should be specified on the basis of recommended nutritional requirements to enable purchase of needed quantity at option; or yearly aggregate entitlements may by specified instead, since the average off-take may fluctuate at different**

times of the year depending upon prices or alternate sources of supply, and it may be more relevant for planning subsidy/ logistic requirements.

2.48 **Besides, use of information technology for increasing transparency of transactions, the monitoring mechanisms in Scheduled Areas should be strengthened through reliable reporting systems to enable rapid awareness of related transactions – stocks, movement, issues, etc - at all locations upto fair price shop level, and providing timely feedback for prompt remedial action to rectify logistical failures which imperil food security in remote areas.**

2.49 **In view of the special Constitutional mandate to the Union Govt. for Scheduled Areas, and the persisting poor health and economic standards of tribals, full financial/ logistical responsibility to ensure food security in such areas should vest in the Union Government. It is not appropriate to cast such responsibility on the State Governments, also because they have limited capacity to mobilize foodgrains from low-production regions, arrange credit and subsidize logistical/ distribution costs.**

2.50 **The special obligations of the Central Government in Scheduled Areas should include provision of food grains in desired quantity (as per nutritional requirements) for all residents, supplemental logistical arrangements (road/rail transportation, depots/ issue points and increased inventory) as well as priority in food grain allocations, (since resort to payment of allowance is not a feasible option because the same will compromise food security)**

(iii) Protection of customary laws and inheritance rights

2.51 The Hindu Succession Act, 1956 governs and prescribes rules of succession applicable to Hindus, Sikhs, Budhhists, Jains etc. whereunder, since 1956, if not earlier, the female heir is put at par with a male heir. Under the Shariat Law, applicable to Muslims, the female heir has an unequal share in the inheritance, by and large half of what a male gets. The Indian Succession Act, 1925 which applies to Christians and people not covered under the aforesaid two laws, confers in a certain manner, heir ship on females as also males. Certain chapters thereof are not made applicable to certain communities. Sub-section (2) of Section 2 of the Hindu Succession Act significantly provides that (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of Clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

2.52 Further, Section 3 of the Indian Succession Act,1925 provides as follows:

> " (1) The State Government may, by notification in the Official Gazette, either retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any of the following

provisions of this Act, namely, sections 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe in the State, or of any part of such race, sect or tribe, to whom the State Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order."

2.53 Thus the tribes of Mundas, Oraons, Santals etc. in the State of Bihar (now Jharkhand) have been so exempted. The customs of tribal inheritance are also declared to be in consonance with the provisions of Articles 14, 15 and 21 of the Constitution. However, **custom, as is well-recognised, varies from people to people and region to region; and needs to be codified for the guidance of legal forums/ practitioners as has been done in the State of Madhya Pradesh, where customary laws have been codified as "Madhya Pradesh Rajya Ki Anusuchit Janjatiyon Ki Roodijanya Vidhi Sanhita,1992".**

(iv) Protection of habitat and environment

2.54 The globalization of the Indian economy has serious impact on tribals relating to their environment due to exploitation of its rich natural resources, forests, mining etc, health, livelihood, including employment and the availability of essential commodities, socio-cultural life, including their cultural and religious practices, and has resulted in particular problems relating to their marginalization due to displacement, forced migration and land alienation. The recommendations of the Commission in the related areas are as under:

(A) Forest Rights

2.55 **Suitable amendments should be made in the Indian Forest Act, 1927 to make its provision consistent with the provisions of PESA Act, 1996 in respect of endowing Panchayats at the appropriate level and the Gram Sabhas with necessary powers with respect to conferring ownership of minor forest produce.**

2.56 **All the cases of alleged encroachment of forest land by the Scheduled Tribes which were registered prior to 31.12.2007 may be withdrawn by the concerned authorities and their claims on forest lands may be settled as per provisions under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.**

2.57 **The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules provide for settlement of individual as well as community claims. The claim of community over land and resources is of much relevance to all the inhabitants of the area and therefore, distribution of title deeds about community rights also has same relevance as the settlement of individual claims. The Ministry of Tribal Affairs and the State Governments should evolve a strategy (i) for disposal of all the claims within a prescribed time frame, (ii) ensuring that**

genuine claims are not rejected, (iii) title deeds are distributed to all the approved claimants within the set time frame and (iv) furnishing full details in respect of individual claims as well as community claims separately under Forest Right Act.

(B) Restoration of Mining areas

2.58 Land used for mining should be returned to the owners after ecological reclamation of mined areas.

2.59 **It is necessary to incorporate an essential, specifically delineated provision for rehabilitation & resettlement for the project affected/ displaced persons under the obligations set out in a mining lease. (It may be mentioned that the draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011, which is awaiting approval of the Parliament, has integrated the provisions of rehabilitation and resettlement with the land acquisition process, but doesn't explicitly cover R & R in respect of the project-affected/ displaced persons as a result of diversion of forest land/ private lands leased for mining). The R & R obligations also need to be ensured in respect of incremental leasing of adjacent areas and extension of current leases in perpetuity also. Rehabilitation and Resettlement (R & R) plans should be linked to the Mining Plan, so that R & R activities are satisfactorily completed before the lessee ceases operations in a specified area. Similar to the corporate social responsibility document, there should also be a R & R document which should document the obligation/ efforts and outcomes achieved. Before granting approval for extension of a mining lease, special report regarding implementation of R & R obligation should also be sought. Besides failure or delay in commencement of mining operations, leases should also lapse in case R & R obligations have not been discharged.**

(v) Protection of land (surface and sub-surface) rights

(A) Land alienation

2.60 In most States, (laws/ regulations) already exist to prevent alienation of tribal land, which should be implemented with greater sincerity. Pending cases should be settled on the priority and illegally alienated land restored to the tribals.

2.61 **Land is the only asset tribals are having and is also the source of their livelihood. Tribals are facing difficulties in meeting special needs like marriages, educational needs, housing etc. To meet their requirements they are taking loans from the public financial institutions by mortgaging their land. The Commission has impressed the need to find other solutions to ensure that public financial institutions do not lose their money and the Scheduled Tribes also do not lose their ownership over land. If necessary, the Government should step in as a "purchaser of the last resort" in these cases. On the lines of the Credit Guarantee Fund set up for the comfort of the lenders under the scheme of Ministry of Micro, Small and Medium Enterprises, a similar scheme may also be**

considered for the benefit of the tribals. To safeguard the livelihood of tribal farmers, the Government could consider setting up Land Banks comprising lands resumed by the Govt. in cases of mortgage default; and such lands may be leased to the previous ST owners with the opportunity/ right to re-purchase the same at any subsequent stage of time, beside rights to additional potential compensation due to change in land use pattern in future.

(B) Mineral Rights

2.62 In SLP (civil) 4601-02 of 1997, Samatha Vs. Govt. Of Andhra Pradesh and Ors, the Supreme Court had observed that Minerals in Scheduled Areas have to be exploited by the tribals or State instrumentalities alone. If mineral extraction is authorized by private entities in case of the Scheduled Areas, the Govt. should be willing to shoulder vicarious responsibility for providing habitat and livelihood security in such areas. The State is one of the principal beneficiaries of the mineral extraction projects, as the royalty levied by the State on minerals extracted far exceeds the rents paid by the lessee to the tribal owners. To ensure livelihood security to tribals, the State must ensure alternative land in case they will be substantially deprived of their holdings, as well as give them a due share of the profits to be derived from mining.

2.63 **Since mineral extraction is generally destructive of soil surface, it can't usually be restored to original land use subsequently. An effective and equitable compensation arrangement should ensure lifelong annuities sufficient to substitute income deprivation for the land owners (adjusted for likely inflation), besides creating alternative vocations for them. The land owners should also get a reasonable share in the profits distributed/ retained by the mining enterprise. Besides annual compensation in lieu of land surface rights, future (and sometimes windfall) earnings from mining activity should also be shared with land rights holders in reasonable measure. If some land rights are being ceded in perpetuity, the retained earnings from the project activity should also be shared with the land owners in the forms of "sweat-equity" (beside compensation for denial of use of land surface). Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature. Benefits/privileges available to mineral right holders may also be accorded to ordinary landholders also in Scheduled areas.**

(vi) Protection from removal from occupied lands for public purposes

2.64 A general law for acquisition of private land for public purposes doesn't make suitable discrimination between the nature of land rights of tribals vis-à-vis other categories of landholders. Land is generally owned by the State, and held on the basis heritable tenures in most parts of the country – the concept of freehold being limited to certain urban pockets. Tribals, however, have traditionally enjoyed full ownership of land, which practice is still prevalent in the North – East. Tribal lands are also not transferable to non-tribals – whether by sale, lease or mortgage, etc. In SLP (civil) 4601-02 of 1997, Samatha Vs. Govt. Of Andhra Pradesh and Ors. the Supreme Court had

observed that in the light of the provisions contained in Clause a of sub-para 2 of Para 5 of Scheduled V of the Constitution, there is implied prohibition on the State's power on allotment of its land to non-tribals, in the Scheduled areas, which also limits the State's power to acquire tribal land for subsequent allotment to non-tribals whether for incidental public purposes or otherwise. Any law which seeks to expropriate tribal rights over land must recognize these differences; and provide appropriate and equitable circumstances as well as compensation of rights.

2.65 Land being the primary means of production in the tribal society, acquisition of tribal land, leading to their landlessness, is both socially and economically depriving the tribals, who have limited capacity to earn their livelihood outside their habitat and pursue economic activity not involving agricultural land. Sensitivity to these tribal needs must be incorporated into legislative treatment; and only leasehold rights may be demanded from them for developmental needs rather than expropriation of ownership. Diligent effort is essential to comprehensively identify all the environmental / displacement risks which tribals would be exposed, consequent to displacement; and to establish the overriding public interest which demands such sacrifice from them. All land acquisition process in Scheduled Areas must be preceded by settlement of tribal rights (including community rights) under the Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 (which should be kept recorded/updated) and land regularized under this Act must not be dispossessed/acquired except in the case of emergency, wherein same category of land rights must be provided.

2.66 The prevailing governance deficit requires that the availability of safeguards for Scheduled Tribes is not dependent on the mercy or alertness of Govt. functionaries, or become fodder for interpretation by legal luminaries. In Scheduled Areas, therefore, 'Public purpose' should, therefore, be determined through a participatory and transparent process incorporating additional safeguards for tribals including judicial review.

2.67 In Scheduled Areas, concern with tribals being primary, all other needs should be considered of secondary importance. Therefore, the need for land acquisition and displacement, even for the Govt. under strategic considerations, should be well proven/amply justified through the benefits of the project option outweighing the costs of loss of land, livelihood, shelter, habitat/culture, environment, capital and operating costs incurred and any public interest value accruing from the existing use of the land and everything attached to it.

2.68 To limit deprivation of tribal land for all other non-strategic purposes, while determining "Public purpose', the general interest of the community as opposed to the particular/commercial interest of individuals should be clearly demonstrated, and the livelihood of the tribals should also be adequately protected by providing land in lieu of land (even by purchase of private land/diversion of forest areas) in all cases. Keeping in view the limits on allotment of Govt. land to non-tribals flowing from the Samatha judgment, in Scheduled Areas, instead of general usefulness, public purpose may be

restricted to developmental activities or redevelopment in the interests of area planning wherein the Govt. owns at least 51 %. Even for such purposes **considering current life cycles of investments, tribal land should be mortgaged/ given on lease rather than transfer of ownership, with provision for continued sharing of cost appreciation/windfall gains. Since profit is their overriding consideration, PPP/privately owned projects necessarily embed tribal hazard, in that they cannot eschew temptation to substitute cheaply obtained land for more expensive capital requirements. In order to discourage circumventing of constitutional safeguards, the declaration of public purpose should also be justifiable in respect of Scheduled Areas.**

2.69 Social Impact Assessment (SIA) / Economic Impact Assessment (EIA) are necessary to provide a good substrate for resettlement planning to address/ mitigate ensuing problems and also to identify all the environmental / displacement risks which tribals would be exposed to consequential to displacement; and establish the overriding public interest in Scheduled Areas (with record of specific findings on different issues to facilitate testing during judicial review), which demands such sacrifice from them. It is possible that the quantum of land proposed to be secured will be understated (or arranged in creeping increments) to escape R&R obligations. Therefore, in Scheduled Areas, SIA (including emotional and psychological impacts) should be mandatory for all projects / land transfers / change in land use of agricultural / forest land for a different purpose which will result in the displacement of tribal owners / occupiers, irrespective of the quantum of land involved and the number of families it displaces or the voluntary / involuntary nature of the displacement. **SIA should also identify affected areas (including contiguous forest lands wherein tribals have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections and subsequent determination of 'public purpose'. Individual notices may be issued in Scheduled Areas to all persons known to have an interest in the land besides public notice, so that they may also be enabled to seek judicial determination regarding the public purpose of acquisition.**

2.70 Projects involving land proposed to be acquired under urgency provisions are also accompanied by the same irreversible adverse effects of environmental degradation / displacement; and should not be exempted from the requirements of EIA / SIA or the need to comprehensively weigh public purpose. This is especially important for Scheduled Areas, because the regularity with which “exceptions” become a “routine” appendage of bureaucratic processes and decision-makers’ apathy obscures citizens’ miseries by fanciful interpretations of national imperatives have been amply commented upon by the Supreme Court in recent decisions on the subject. Other legislations providing for acquisition of land and/or occupation of the land under emergency in times of conflict, calamity, etc. without prior payment of compensation should also be reviewed/ amended to provide rehabilitation and resettlement.

2.71 In Scheduled Areas, since data regarding land transfers may be scanty, the Net Present Value (NPV) of the expected accruals from the

current/future use of the land for 30 years should also be compared while arriving at the market value. **Compensation should also be given for forest rights which may become unavailable because of displacement and also sub-surface rights (water/minerals etc.) as Scheduled Tribes have been (and also continue to be so in Schedule VI areas) traditional owners of land (rather than tenure holders with heritable rights to cultivate land). Multiple uses of the land acquired must also be accounted for in the compensation. For example, if agricultural land is to be used for mining, then besides compensation for use of land surface, the future earnings from mining activity should also be shared with land owners. Further, where land is acquired by the Govt. for projects meant for production of goods and services, compensation for land acquired has to be supplemented with (and not adjusted against) allotment of shares and debentures, as part of the long-term profit sharing of the project derivable from land as a factor of production. The quantum of such "sweat" equity must be reasonably relatable to the nature of economic activity of the project and the equity base. 50% developed land/sweat equity/share in the future profits should be provided for land owners in case of land development projects, because land is the principal ingredient of the activity and its value continues to rise exponentially while other appurtenances depreciate. Development costs should not be charged as part of the profit-sharing mechanism in respect of the land acquired for urbanization purposes, since such costs are open to manipulation.**

2.72 **In the event of the acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the re-payment of the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received (as is done on expiry of a lease). In case the land is subsequently utilized by the Govt. for a different purpose (e.g. for real estate development after mining, etc.), the earnings from such activity should also be shared with the original land owners in similar fashion for appreciation in land values.**

2.73 **There is a need to specify to fix timelines for the entire process, involving land acquisition and R &R. The (maximum) period entailed in the process (from SIA upto award) needs to be shortened to 3 years through larger involvement and devolution of responsibility to the Requiring body for rehabilitation planning and implementation in the interest of project implementation as well as speedy resettlement of affected persons.**

(vii) Right to Relocation from occupied lands with appropriate compensation/ guarantees in extra ordinary circumstances

2.74 The exercise of the principle of eminent domain for acquisition of private land has been leading to involuntary displacement of people, depriving them of their land, livelihood and shelter; restricting their access to traditional resource base; and uprooting them from their socio-culture environment. This has resulted in an imperative need to recognized resettlement and rehabilitation

issues as intrinsic to the development process formulated with the active participation of the affected persons, rather than as externally-imposed requirements. The socio-economic impact of displacement has also called for a broader concerted effort on the part of the planners to include in the displacement, resettlement and rehabilitation process framework not only those who directly lose land and other assets but also those who are affected by such acquisition of assets.

2.75 The displacement of tribals from their habitats raises issues not just of monetary compensation but other related issues too which pertain to their sustainable livelihood, preservation of the traditional sense of community, trauma of dislocation and alienation, deforestation and its related social and psychological impacts. Such adverse effects on tribals, as a result of loss of their land and consequent collateral damages are not exclusive to the nature/ type of displacement viz. voluntary or involuntary or even to the existing land use, viz agriculture or forest. Further potential risks of landlessness, joblessness, homelessness, marginalization, increasing morbidity and mortality, loss of acess to common services and social (community) disarticulation are also invariably associated with both voluntary and involuntary displacements. Therefore, besides land acquired by the appropriate Govt., all land transfers or change in land use of agricultural/ forest land for a different purpose which will result in displacement of tribal owners/ occupiers should be accompanied by comprehensive rehabilitation plans. Involuntary displacement of permanent nature due to disasters/ natural calamity, external/ internal and conflicts should also be treated in similar fashion. **In case of displacement due to disasters/ natural calamity and conflicts, the responsibility for resettlement and rehabilitation lies on the appropriate Government, while in the case of displacement occasioned by development projects, this responsibility should be of the requiring body (individual/ corporate house/ Govt.). In the case of displacement arising from projects implemented by non-government/ corporate bodies, the entire onus of implementing rehabilitation and resettlement plans should be that of the requiring body (individual/ corporate house) to avoid fragmentation/ dereliction of responsibility. Only in default, the appropriate Govt. may undertake rehabilitation/ resettlement (as for Govt. investments) at their cost.**

2.76 The need for diversion of forest area for non-forest use for development and infrastructural projects like mining, construction of hydro power projects, highways, SEZ etc, involving displacement of tribals will continue as in the past. The adverse effects on tribals, as a result of loss of their land and consequent collateral damages, as well as potential risks are also relevant to their displacement arising from diversion of forest area for non-forest use for development and infrastructural projects, involving displacement of tribals. In all such cases, it is also necessary that rights of the tribal people should be settled as per the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act before implementation of the project.

2.77 Since the tribal way of life has close attachment with the environment, habitat and traditional occupation, assessment of social impact

(SIA) on tribals due to their displacement from scheduled areas, irrespective of the number of the displaced families, is essential. Therefore, SIA should:

(i) be mandatory for all projects/ land transfers/ change in land use of agricultural/ forest land for a different purpose which will result in the displacement of tribal owners/ occupiers, irrespective of the number of families it displaces or the voluntary/ involuntary nature of the displacement,

(ii) be conducted by multi-disciplinary teams considering the impact that the project will have in terms of landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common resources and services and social disarticulation,

(iii) identify affected areas (including contiguous forest lands, water bodies, wherein tribals have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections (and subsequent determination of 'public purpose' under concerned LA Act),

(iv) SIA/EIA should identify collateral effects and remedial measures, which should be undertaken in the short, medium and long-term by the requiring body,

(v) focus first on measures to prevent the adverse social and environmental impact of the projects, then measures to minimize, mitigate or compensate for them,

(vi) incorporate views of the concerned elected local bodies in the Scheduled areas.

2.78 SIA/ EIAs are necessary to provide a good substrate for resettlement planning to address/ mitigate ensuing problems. Barring emergencies beyond control, projects involving land proposed to be acquired under urgency provisions should, not be exempted from the requirements of EIA/ SIA. To be a participatory exercise, the expert group to review the SIA and accord clearance should also include a representative of the displaced families. The implications of the SIA/ EIA should also be explained to the persons likely to be displaced in public hearings, besides obtaining the views of the concerned elected local bodies, so that their informed concerns are comprehensively deliberated by the expert group.

2.79 **The responsibility for SIA, preparation of RR plans and implementation should be that of the requiring body which may do the job itself or outsource it to other agencies. Baseline survey should essentially aim to enumerate all the affected persons, nature of rights affected by displacement and resettlement requirements which could form the basis of the R & R plan. The RR plan should be approved and implemented under the supervision of an RR Committee constituted at the local level.**

2.80 **The Resettlement site should aim to offer better living conditions to families affected and should recognize subsequent division of joint families/ separation of adult members in the matter of benefits till**

the RR plan is published. Forest dwellers affected by diversion of forest land should be resettled in the forest. Compensation in lieu of land should be discouraged. Resettled tribals should also continue to enjoy reservation benefits in the resettlement area by concurrent modification of the Scheduled Tribes Reservation Orders.

(viii) Protection of traditional community institutions

2.81 **The State legislations on Panchayats should conform with the customary law, social and religious practices and traditional management practices of community resources. In terms of Section 4(n) of the PESA Act, 1996 Panchayats should be equipped with requisite powers and authority to enable them to function as institution of self-government.**

2.82 The elections to the lowest body of the administration i.e. Gram Panchayat are fought on party lines or influenced by the political parties. Therefore, these institutions are incapable of functioning on the basis of bipartisan interest, as was the case with the traditional system. Therefore, the elections to the lower bodies should be conducted keeping in view only the interest of inhabitants without any overt political involvement.

2.83 Modern society faces many economic/social issues which confound decision makers who struggle with capacity constraints. Oversight mechanisms are also necessary along with devolution of powers.

2.84 **PESA envisaged democratic institutions of administration. To provide sustained co-ordinated emphasis to the problems of Scheduled Tribes/Areas, multiplicity of agencies should be avoided and ITDAs should be merged with ZPs.**

2.85 **There is a need to devise a mechanism, which would enable the field formations to receive funds directly instead of being routed through State Hqrs. by enforcing on them a system of accountability for proper utilization of those funds.**

(ix) Strengthening of Administrative mechanism for tribal areas (under Union oversight)

2.86 A single-line administration, in which head of the district is head of all the departments / local bodies in the district, (which was followed in earlier days), is an effective form of administration for robust decision-making in times when the administrators enjoy high personal credibility. Nowadays, administrators also lack self- confidence, due to high degree of politicization, intrusive oversight mechanisms and heightened expectations. The current environment is not conducive for Single line administration, as specialized and more refined administrative practices have come to be followed, which may not be easily reversible. For single-line administration to be effective, besides PESA, operating / legal frame work is required to be simplified, in addition to

ensuring availability of administrators committed to rule of law and public interest.

2.87 There is general reluctance on the part of the officers and staff for posting in Scheduled Areas/ Tribal Areas on account of lack of housing, medical and education facilities, which has been exponentially compounded by the general climate of permissiveness fostered by rampant political interference and collusive abandonment of responsibilities in search of greener pastures. In order to address these problems, **the Commission is of the view that Government should formulate specific regulations in respect of Scheduled Areas for personnel management with the formation of a State level Civil Services Authority for Scheduled Areas, which would deal with matters of assignment of functional domains to officers, preparing a panel for posting of officers, fixing tenures for senior posts etc., in line with the Central Civil Services Authority proposed by the ARC. In order to improve personnel management in respect of all category of employees, it is necessary to fix a minimum tenure for various cadre posts, which be filled on the basis of merit, suitability and experience, prescribe norms and guidelines for transfers and posting to maintain continuity and predictability in career advancement and acquisition of necessary skills and experiences as well as promotion of good governance. The normal tenure of all public servants may not be less than two years and Transfers before the specified tenure should only be for valid reasons to be recorded in writing. These recommendations are in accordance with the observations contained in para 8.5.11, 8.5.12 and 8.5.14 of the 10th Report of the 2nd Administrative Reforms Commission. Department of Personnel and Training may issue detailed guidelines for improvement of personnel policies and systems in Tribal Areas in the interest of peace and good governance. Defence forces, financial institutions etc have formulated personnel policies for "hardship areas" prescribing minimum periods of mandatory service in such locations during their career – which can be emulated to pool services of personnel from all Central/ All-India Services (irrespective of other service conditions) and meet skilled personnel/ managerial requirements in tribal/ Scheduled areas.**

(x) Development and Planning for Scheduled Tribes-refurbished development strategy predicated on primary Union Government financial and administrative responsibility

A. THE TRIBAL SUB-PLAN STRATEGY

2.88 The Tribal Sub-Plan strategy for tribal development adopted since Fouth Five Year Plan comprised:

(i) Identification of development block in the State where tribal population was in majority and their constitution into ITDPs with a view to adopting therein an integrated and project based approach for development,

(ii) Earmarking of funds for the Tribal Sub-Plan and ensuring flow of funds from the State and Central Plan sectoral outlays, Special Central Assistance and from Financial Institutions; and

(iii) Creation of appropriate administrative structure in tribal areas and adoption of appropriate personnel policy.

2.89 The salient features in respect of the State/ UT Tribal Sub-Plan are:

(i) Preparation of a plan meant for the welfare and development of tribals within the ambit of a State or a UT plan is a part of the overall plan of a State or UT, and is therefore called a Sub-Plan.

(ii) The funds provided under the Tribal Sub- Plan out of State Plan have to be at least equal in proportion to the ST population of each State or UT.

(iii) Tribals and tribal areas of a State or a UT are given benefits under the Tribal Sub-Plan, in addition to what percolates from the overall Plan of a State/ UT.

(iv) The Tribal Sub-Plan is expected to:

a.) Identify the resources for TSP areas;

b.) Prepare a broad policy framework for development; and,

c.) Define a suitable administrative strategy for its implementation

(v) The TSP funds, comprising the TSP component of various departments/ sectors of the States, have to be aggregated in a separate demand head in the budget of the Tribal Development Department of the State.

2.90 To focus on the needs of the tribal population under the new Tribal Sub-Plan strategy in a coordinated manner, Integrated Tribal Development Projects (ITDP) were conceived during the Fifth Five Year Plan. The Tribal development strategy now comprises the following multi-prong approach:

(i) Integrated Tribal Development Project (ITDP) areas : These are generally contiguous areas of the size of a block or a tehsil or more within a district, in which the ST population is 50% or more of the total population.

(ii) Modified Area Development Approach (MADA) pockets : These are identified pockets having 50% or more ST population of a total population of 10,000 or more.

(iii) Clusters : These are identified clusters of villages, altogether having ST population of 5000 or more, which constitutes 50% or more of the total population of the cluster.

(iv) Primitive Tribal Groups : These are characterized by a low rate of growth of population, pre-agricultural level of technology and extremely low level of literacy. Keeping in view the need for special attention towards these communities these Groups have been rechristened as Particularly Vulnerable Tribal Groups.

(v) Dispersed tribal population outside the categories at Sr. No.(i) to (iv) above

(B) Consolidated Guidelines for Tribal Sub-Plan (and SCSP)

2.91 The Planning Commission issued consolidated guidelines to all State Governments/UTs vide D.O. No. 13011/3/2005-SP-Co dated 31/10/2005.

(a) For States and UTs

(i) Earmarking of funds for (SCSP and) TSP from the total State Plan outlay should at least be proportionate to the (SC and) ST population of the State/UT.

(ii) Making the Social Welfare/Tribal Welfare Department—which are concerned with the well-being and development of (SCs and) STs—the nodal department for formulation and implementation of (SCSP and) TSP.

(iii) Placing the funds earmarked for (SCSP and) TSP at the disposal of the Principal Secretary/Secretary, Social Welfare/Tribal Welfare, who will work as Planning Secretary and have exclusive authority for the reallocation of funds to other line departments in respect of (SC and) ST development schemes.

(iv) Placing the funds earmarked for (SCSP and) TSP under separate budget head/sub-head for each development department.

(v) Backing the (SCSP and) TSP earmarked funds by 100% budget provision, sanctions and timely release of funds to the line departments and implementing agencies.

(vi) Including only those schemes under (SCSP and) TSP that ensure direct benefits to individuals or families belonging to(Scheduled Castes or) Scheduled Tribes.

(vii) Preparing a detailed (SCSP and) TSP document with physical and financial targets against each Scheme with the objective of bridging the gap between the rest of the population and the (SCs and) STs within 10 years.

(viii) Ensuring that the other line departments cooperate in the proper implementation of the (SCSP and) TSP schemes allocated to them and put up the schemes to the nodal departments for sanction and release of funds.

(ix) To circumvent the problem of non-divisible nature of funds for certain sectors like major irrigation, power, roads, and so on, (SCSP and) TSP funds may be accounted only to the extent of about 5% or the actual area (belonging to STs) being covered or benefited by the projects and not the population percentage. The percentage of (SC and) ST beneficiaries and the area being covered/ benefited is always less than the population percentage of the (SC and) ST population in the State/UT.

(x) Preventing the diversion and lapse of funds allocated to (SCSP and) TSP in the Annual Plans. (SCSP and) TSP should not be allowed to be changed at revised estimate (RE) stage by the Planning Commission.

(xi) Carrying forward the lapsed/unutilized (SCSP and) TSP amount to the next Annual Plan of the State/UT as an additional fund for SCSP and TSP.

(xii) All the CSS and SCA Schemes of the Centre necessarily should have a (SCSP and) TSP component in them as per the proportion of (SCs and) STs in the States/UTs.

(b) For Central Ministries/Departments

(i) Earmarking of funds by every Central Ministry/Department towards (SCSP and) TSP should be as per the proportion of (SC and) ST population in the country. Non-earmarking of (SCSP and) TSP funds by the Ministry/ Department will result in non-approval of their Annual plan.

(ii) (SCSP and) TSP funds should be non-divertible. Creation of separate budget heads and minor heads ([789 for SCSP and] 796 for TSP).

(iii) A dedicated (SCSP and) TSP unit should be created for the formulation and implementation of (SCSP and) TSP schemes and programmes.

(iv) Only those schemes/programmes should be implemented which accrue direct benefit to (SCs and) STs.

(v) All the other guidelines issued to Central Ministries/Departments should be followed strictly.

2.92 A Planning Commission Task Force under the Chairmanship of Dr. Narendra Jadhav, Member, Planning Commission made certain recommendations with respect to preparation of Tribal Sub-Plan by Central Ministries/ Departments. The Task Force has recommended that 68 Ministries / Departments of the Central Government can be grouped into four categories:

I) No Obligation;

II) Earmarking less than 15 % for Scheduled Castes and 7.5 % for Scheduled Tribes ;

III) Earmarking outlays between 15%-16.2% for Scheduled Castes and 7.5% - 8.2% for Scheduled Tribes ;

IV) Earmarking more than 16.2% for Scheduled Castes and 8.2% for Scheduled Tribes.

2.93 Observing the problem to be more acute at the Central level, the Task Force has, in the first instance, recommended that, from the financial year 2011-12, substantial reforms be introduced in the SCSP/TSP system, for Central Ministries/Departments, which can be further refined from the XII Five Year Plan commencing in 2012- 13.

2.94 The Task Force is of the view that the Plan outlay and expenditure falling under the following two broad categories will be eligible for being classified in SCSP/TSP:-:

(i) Expenditure on Poverty Alleviation and individual beneficiary oriented schemes, e.g. MGNREGA, IAY, NRLM, SGSRY, PMEGP etc., and

(ii) Expenditure on other schemes which is incurred in:

a) SC and ST concentration areas respectively, i.e. in the villages, blocks and districts having more than 40% SC/ST population respectively, and largely benefiting such villages, blocks and districts, and

b) in other areas, but which demonstrably benefits Scheduled Castes /Scheduled Tribes respectively

2.95 Following from the above broad principles, detailed criteria for categorization of plan expenditure under SCSP/TSP and the extent to which this may be done, with reference to some major schemes, has been recommended by the Task Force **(ANNEXURE 2.I)**

2.96 The Task Force has further recommended that the SCSP and TSP funds (shown respectively under the Minor Head 789 and 796 of all Ministries) remaining unutilized at the end of a financial year may be transferred, on the lines of the Non-lapsable Central Pool of Resources (NLCPR) for the North Eastern Region, to two Pools to be named as "Non-lapsable Central Pool of SCSP Funds (NLCPSF)" and "Non-lapsable Central Pool of Tribal Sub-Plan Funds (NLCPTF)" - two Heads to be created in the Public Account similar to that created for NER. The funds from these non-lapsable pools may be allocated to the Ministry of SJ&E and Ministry of Tribal Affairs respectively for implementing schemes for SCs and STs Development as well as for providing incentives to State Governments for effective implementation of SCSP and TSP, which may form a part of Central Assistance for State Plans.

2.97 The Ministry of Finance, in its Budget Circular for 2011-12 has incorporated the following instructions:

"From 2011-12 Budget, the Planning Commission will be making separate allocations for the SC Sub-Plan/Tribal Sub Plan as part of the Plan allocations, and the same will also be indicated clearly in the Memorandum of Understanding signed between the Planning Commission and the concerned Ministry/Department. *The Ministries/Departments for which such allocations are made by the Planning Commission as part of the Plan Agreement in Budget 2011-12, must ensure that the provisions are accurately reflected in the concerned Minor Heads relating to Scheduled Caste Sub-Plan and Tribal Sub Plan in their Detailed Demands for Grants by opening a minor head "Special Component Plan for Scheduled Castes" Code '789' for SCSP and a minor head 'Tribal Sub Plan' Code '796' below the functional major/sub-major heads whenever necessary, in terms of the instructions under Para 3.8 of the General Directions to the List of Major and Minor Heads of Accounts."*

B. REFURBISHED TRIBAL SUB-PLAN STRATEGY FOR SCHEDULED/ TRIBAL AREAS

2.98 The Tribal Development (TD) Division was created during 5th Five-Year Plan in MHA, after acceptance of the TSP strategy by the Government with a view to ensure implementation of Tribal Sub-Plan guidelines and programmes. The TD Division has later been upgraded into a full-fledged Ministry of Tribal Affairs. Similar steps were taken in Planning Commission also by restructuring the then BC Division (now BC&TD Division). **Both Planning Commission and Ministry of Tribal Affairs should take immediate steps to ensure strict formulation and implementation of Tribal Sub-Plan by States/ UTS as well as Central Ministries/ Departments.**

2.99 **The strategy for all development programmes, particularly the major missions/ schemes of the Ministries/ Departments, should comprise sub-Chapters for accelerated development of the tribal areas. In particular, it is necessary to have specific Tribal Sub Plan (TSP) component in all the major missions/ schemes/ programmes of all Ministries/ Deptts to have a clear focus on formulation of schemes/ programmes concerning the STs and their effective implementation and monitoring. The TSP component should not be per population share but according to "problem-share"; and "need-based" taking into account the extent of deprivation, or even more than that to make up the backwardness/ negligence experienced over the years. Unless the earmarking of TSP outlays exceeds the relative share of incidence of residual problems eg. drinking water, primary health care and education, nutritional support, unemployment etc., the relative gap in physical quality of life is likely to persist.**

2.100 **Constitutional provisions have to be interpreted in proper context. Since no regulatory matter is involved, it is quite niggardly for the Union Govt. to confine its development support for Scheduled / tribal Areas to the issue of directions. Appropriately, it must shoulder direct financial responsibility for the accelerated development of scheduled areas/their population through all the Ministries and Departments.**

2.101 **The Government of India should bear the responsibility for infrastructure development/ upgradation of Administration in Scheduled Areas under Art. 275 of the Constitution. The costs of governance framework/ manpower in tribal areas should also be funded under Article 275(i) grants. Besides, financial support for Tribal Sub-Plan should not be per population share but according to "problem-share" and "need-based"**.

2.102 **The funds allocated under Tribal Sub-Plan of the States should be non-divertible and non-lapsable with the objective of bridging the gap in socio-economic development of the Scheduled Tribes/ Scheduled Areas and other areas in a time bound manner. The Ministry of Finance, Ministry of Tribal Affairs and the Planning Commission may take necessary steps for creation of a non-lapsable Tribal Sub-Plan fund under**

each State/ UT having Tribal Sub-Plan and formulate guidelines for utilisation of such funds. Infrastructure development aimed at accelerated development of the Tribal Sub-Plan areas should be a priority area for expenditure from the non-lapsable fund.

2.103 **The Planning Commission, in its communication to the State Governments, regarding preparation of Annual Plan and Five Year Plan should invariably emphasize that the Plan proposals of the State Government for Annual Plan as well as Five Year Plan will not be considered unless Tribal Sub-Plan document is also received. The communication should also clearly specify that the State Governments will simultaneously sent the copies of State Plan documents and Tribal Sub-Plan documents to the National Commission for Scheduled Tribes.**

2.104 As has been the practice in the past, **the draft Tribal Sub-Plan of the State should also be discussed by the Planning Commission in the first phase by the Ministry of Tribal Affairs and the revised Tribal Sub-Plan document may be discussed for final approval in the Planning Commission, after finalization of the Five Year Plan/ Annual Plan size of the State. The Tribal Sub-Plan outlays approved in the meeting in the Planning Commission should be adhered by the State Government.**

2.105 **In order to ensure non-diversion of Tribal Sub-Plan funds, the Planning Commission and the Ministry of Tribal Affairs should ensure that each State Government budgets the earmarked TSP funds under a single budget demand head under the control of the State Tribal Welfare/ Development Department of the State, (as envisaged in the Maharashtra Model and advocated by Planning Commission as well as Ministry of Tribal Affairs from time to time).**

2.106 **The Commission has noted that some of the Ministries/ Departments which have been listed by the task force in 'No Obligation' category for the Tribal Sub-Plan are responsible for infrastructure development and public services in critical areas. The Commission, therefore, recommend that appropriate outlays for TSP should also be earmarked in respect of all these Ministries/ Departments, to ensure that TSP areas/ Scheduled Areas don't continue to be hamstrung by poor infrastructure/services.**

2.107 In the recent past various Ministries concerned with development and services have formulated National Missions on crucial services like National Rural Health Mission, National Drinking Water Mission, MGNREGA. These missions have direct impact on the life of Scheduled Tribes but do not make specific provisions for Scheduled Tribe beneficiaries. **The Commission recommends that the Ministries/ Departments administering the National Missions must ensure that adequate investments/ benefits are earmarked for Scheduled Tribes under Tribal Sub-Plan of the Ministry/ Department during each plan period so as to provide for their accelerated development and in general each Ministry/ Department should consult the**

National Commission for Scheduled Tribes in all policy matters affecting Scheduled Tribes, as provided under Article 338A(9) of the Constitution.

2.108 **It is suggested that unutilized TSP funds should be placed by Central Ministries in a non-lapsable infrastructure development fund administered by the MTA. For this purpose, appropriate guidelines should be formulated, on the lines of the guidelines issued by the Ministry of Development of North Eastern Region for administration of non-lapsable central pool of resources, to ensure utilization consistent with objectives.**

2.109 **The Planning Commission should not consider the Five Year Plan/ Annual Plan proposal of any Ministry/ Department which is not accompanied by the Tribal Sub-Plan, which should be finalized after discussion with the representatives of the Ministry of Tribal Affairs.**

2.110 **Each Ministry should set up TSP Cell as in the past. The TSP Cell should be functional throughout the year like the Official Language Section in each Ministry/ Department. The TSP Cell will monitor implementation of TSP schemes of the Ministry and, by using the inputs received through monitoring, prepare the TSP component, of Annual Plan and Five Year Plan of the Ministry/ Department in terms of financial and physical aspects. The TSP Cells should be manned by personnel having special background and expertise in various fields of Tribal development and Administration. In order to ensure continuous monitoring of TSP, the posts in TSP Cell should not be allowed to remain unfilled. This will be possible only if the personnel for these Cells belong to an organised cadre of specialised experts. Personnel for Tribal Sub-Plan Cells in the Ministries/ Departments should be drawn from the separate specialised Organised Cadre proposed for the National Commission for Scheduled Tribes and its Regional Offices (presently part of Joint Cadre of National Commission for Scheduled Tribes, National Commission for Scheduled Castes, Ministry of Social Justice & Empowerment and the Ministry of Tribal Affairs). This Cadre should be developed and function on the lines of the specialised cadre of Official Language Department of Ministry of Home Affairs and personnel for TSP Cell in each Ministry/ Department should be made available from the above mentioned organised specialised Cadre.**

CHAPTER 3

NEED FOR MEANINGFUL CONSULTATIONS WITH COMMISSION

INTRODUCTION

In order to buttress Constitutional protection for Tribal Rights, the Commission has recommended that a separate Chapter be incorporated in all legislations materially impinging on the suggested Charter of Tribal Rights. However, constant vigilance is necessary to ensure that Tribal Rights are not eroded through cavalier treatment; or worse still, by benign neglect which has been observed to be the defining characteristic of legislative attention to tribal concerns in the last sixty years of the Indian Constitution. Therefore, it is equally necessary to strengthen the mechanisms for monitoring Constitutional safeguards, which are in grave danger of becoming dysfunctional on account of administrative apathy which also lapses into perfidious obstinacy on occasion.

3.2 It may be recalled that Clause 9 of Article 338A of the Constitution provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes. The views proffered by the Commission on policy-related issues fall in 3 categories as under:

I Proposals received from the Central and the State Governments/UT Administrations pursuant to Clause 9 of Article 338A of the Constitution.

Ii Suo-motu recommendations by the Commission on various tribal concerns.

Iii Submissions made in Court cases in which the Commission is one of the Respondents.

3.3 The policy matters referred to the Commission are discussed in detail in the meetings of the Commission on the basis of the views expressed by the Members and the notes on the subject matter, indicating historical background, current status and relevant Rules etc., prepared by the Commission's Secretariat; and the views of the Commission are communicated in substantive fashion, also seeking feedback regarding the outcome of such consideration. However, all Ministries/ Departments and the State Governments do not refer all such matters for advice of the Commission. Generally, matters for advice of the Commission are received through the Ministry of Tribal Affairs, at the time when the concerned Ministry is seeking the comments of the Ministry of Tribal Affairs (and not those of the National Commission for Scheduled Tribes) during the process of Inter-Ministerial consultations on the proposal. Advice is thus sought from this Commission much before finalising the draft proposal/ note for placing the same before the Parliamentary Committee, the Cabinet Committee or similar body as per process for finalisation of policy or legislative

matters - treating the Commission as a subordinate office of the Ministry of Tribal Affairs and not a Constitutional body. Further, from the feedback received in the Commission, it is noted that the views of the Commission/ advice rendered by it was not placed by the Ministry of Tribal Affairs or the concerned Ministry before the Apex decision-making Committees considering the matter; and, consequently the views of this Constitutional Commission, vested with the duty to safeguard the rights of the Scheduled Tribes, could not be reflected while finalizing decisions. Even in a matter in which comments were sought from the NCST regarding problems being faced in efficient functioning and performance of the Commission, the views of the Commission were not placed before the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes *in-extenso*. Consequently, the factual position got suppressed; and the Committee was left to arrive at a decision on the basis of the perception of the Ministry of Tribal Affairs.

3.4 Similar is the position in regard to drafting of legislative Bills by the Government. It is observed that all legislative proposals affecting Scheduled Tribes are not received for advice in the Commission. Legislative Bills, when received, are generally being referred to the Commission at the preliminary drafting stage. It is not appropriate for the Commission to comment on draft legislations received from any intermediate level organization of the Government, because the autonomy conferred by the Constitution does not require the Commission to work as a subordinate line functionary of the Government. Besides, in the interest of the Scheduled Tribes, it is necessary to ensure that the views of this Constitutional Commission on the Bill receive proper attention at the highest decision-making levels of the Government; and do not loose definition in the maelstrom of the Government's internal processes. This matter has earlier been discussed in the past Reports of the Commission also (Para 1.4.15 and 7.8 of the 5th annual Report for 2009-10).

3.5 While the Constitutional provisions regarding consultation with the Commission on policy matters (which would include legislative matters) affecting Scheduled Tribes and the Scheduled Areas have been in existence for a long period (a similar provision existed regarding the predecessor National Commission for Scheduled Castes and Scheduled Tribes since 1990), it has been noted by the Commission that various Ministries/ Departments of the Government of India have not respected this mandate in desired spirit. Ministries/ Departments are often wanting in proper understanding of the Constitutional provisions (Clause 9 of Article 338A) – in particular, the obligation to consult the Commission in a meaningful manner, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes and exhibiting sensitivity of approach in respect of matters affecting the Scheduled Tribes and Scheduled Areas specified under Schedule V and Schedule VI to the Constitution. Their apathy is demonstrably revealed from the processes adopted by the Ministry of Tribal Affairs, Ministry of Rural

Development, Ministry of Mines and the Ministry of Consumer Affairs (Department of Food & Public Distribution) in the context of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 and National Food Security Bill, 2011 respectively, which are briefly recounted below.

(A) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

3.6 No formal reference was made by the Ministry of Tribal Affairs (MTA) seeking the views of the Commission on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 to the National Commission for Scheduled Tribes (NCST) as required under Article 338A (9). The Commission, however, considered it appropriate to make a detailed mention in its First Report (submitted to the President on 8/8/2006) about its observations on the various provisions included in the draft Bill, that was available in public domain through the website of the Ministry of Tribal Affairs. However, by the time the First Report of the Commission was finalized, it was learnt that the Bill had already been introduced in the Parliament and referred to the Joint Parliamentary Committee (JPC) headed by Shri V Kishore Chandra S Deo for further examination. MTA did not consult the Commission while framing the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 also.

3.7 The case illustrates that the Ministry of Tribal Affairs, which amended the Constitution, making provision therein that the Union and every State Government shall consult the NCST on policy matters affecting the Scheduled Tribes, completely disregarded the mandate of the NCST while finalising the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill; and also while drafting the Rules thereunder, viz. the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2007.

(B) Mines and Minerals (Development and Regulation) Bill, 2011

3.8 The National Commission for Scheduled Tribes noticed from news Reports that the Group of Ministers (GoM) had approved the new draft Mines and Minerals (Development & Regulation) Bill, 2010 (MMDR Bill, 2010). As mining affects tribals in a large measure, particularly their livelihood, settlements, environment and culture, this Commission felt anxious that certain important concerns need to be adequately addressed in the Bill, notwithstanding the fact that the Ministry of Mines had not referred the draft Bill for advice of the Commission before its submission to the GoM. Accordingly, the comments of this Commission, regarding safeguards of the Scheduled Tribes, on the MMDR Bill, 2010 were communicated to Hon'ble Minister for Mines vide DO letter No.12/2/2009-Coord dated 11/10/2010. The Ministry, however, did not inform the

Commission regarding the action taken on the comments/ suggestions made by the Commission.

3.9 In the meanwhile, a DO letter on the subject was also sent to the Union Minister of Mines on 13/07/2011 with the request to have the views of the Commission in the matter considered by the Council of Ministers before re-introducing the Bill in the Parliament. In pursuance of the observations of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its 33rd Report, wherein the Committee had desired feedback regarding action taken by the concerned Ministries/ Departments/ Organizations on the recommendations/ observations of the Commission of various policy related matters, the Chairperson, NCST decided to have discussions on the subject with the Secretary, Ministry of Mines on 25/07/2011. The Secretary, Ministry of Mines, who attended the Sitting on 25/07/2011 along with other senior officers, was informed that Clause (9) of the Article 338 A of the Constitution makes it obligatory on the part of all the Ministries/ Departments/Organizations to consult the Commission on all major policy matters affecting Scheduled Tribes; but, the Ministry of Mines had not so far sought views/ comments of the Commission on the draft MMDR Bill,2010. Representative of the Ministry of Mines clarified during the Sitting that the draft MMDR Bill was formulated in terms of the National Mineral Policy, 2008, which had been approved by the Government in March, 2008. Further, since the present proposal pertained to legislation and not a policy matter, the draft MMDR Bill was not referred to the NCST. However, once the concerns of the NCST were received, the same were considered suitably for incorporation. As the draft MMDR Bill had been referred by the Cabinet Secretariat to a Group of Ministers, and the GoM had held two rounds of meetings, Vice-Chairman, NCST was so informed by Hon'ble Minister of Mines vide his D.O dated 27/9/2010. The Draft MMDR Bill, 2010 after consideration by the Group of Ministers (GoM) had been recommended by the GoM to the Cabinet after legal vetting for consideration and the concerns of the Commission on various provisions of the draft Bill had been appropriately taken care of.

3.10 The Commission observed that since the draft MMDR Bill, as finalized and being processed had not been referred to the National Commission for Scheduled Tribes for comments by the Ministry of Mines, the Commission was not in a position to discharge its mandated function in regard to an important legislation relating to STs. A copy of the draft MMDR Bill, as recommended by the Group of Ministers, was also called for from the Ministry of Mines. The Joint Secretary, Ministry of Mines, promptly informed vide letter dated 11/08/2011 as follows:

> ***"2 While appreciating the need to share the draft MMDR Bill with the Commission, since the draft Bill is presently under Cabinet process, and in order that no violation of the established process is committed, a clarification has been sought from the Department of Legal Affairs in the matter on:***
>
> ***(i) Whether the draft MMDR Bill, 2011, as a legislation based on National***

Mineral Policy, 2008, qualifies as a policy matter affecting Scheduled Tribes in terms of the provisions of clause (9) of Article 338A of the Constitution of India, and

(ii) Whether the draft MMDR Bill, 2011, can be shared at this stage with the National Commission for Scheduled Tribes, when the Group of Ministers has recommended the draft Bill to be placed before the Cabinet (since it is a part of the Cabinet process)

3. Based on the outcome of the advice of the Department of Legal Affairs, further action in the matter is intended."

3.11 Disagreeing with the contention of the Ministry of Mines, the Commission decided to hold another Sitting with the Secretary, Ministry of Mines on 17/08/2011 wherein it was informed that the reference to the Ministry of Law in the matter and their views, if received, would be made available to the Commission. Vide DO letter dated 09/09/2011, addressed to the Secretary, the Ministry of Mines was again apprised of the need to to forward the draft Bill finalized in the Ministry to the Commission. As the views of the Ministry of Law, and action taken by the Ministry of Mines in the matter was not received, another Sitting was held on 15/09/2011,which was attended by the Secretary, Ministry of Mines and the Joint Secretary, Deptt. of Legal Affairs, Ministry of Law and Justice on behalf of the Secretary. The Joint Secretary (Legal Affairs) informed that the Ministry of Law was in the process of finalization of its views in the matter and its opinion would be communicated shortly. Vide his letter dated 22/09/2011 the Joint Secretary (Legal Affairs), informed the Commission that opinion of his Department had been sent to the Ministry of Mines per FTS No.3120/11/Adv.A on 15/09/2011. A copy of the advice sent to the Ministry of Mines was also received from the Department of Legal Affairs, relevant extracts from which are reproduced below:

"5. From the above, it may be seen that the draft Mines and Minerals (Development and Regulation) Bill, 2011 is yet to be submitted to the Cabinet as recommended by the GOM. The administrative Ministry has neither disclosed nor placed on file any instructions/guidelines prohibiting to share the draft Bill with the NCST which is under the constitutional obligation to participate and advise on the planning process Socio-economic development of the Scheduled Tribes and to evaluate the progress of their development in terms of Article 338A(5)(c). The Commission also possesses powers of Civil Court under Article 338(8). Further, in terms of Clause (9) of Article 338A, the Union and every State Government are under an obligation to consult the Commission on all major policy matters affecting Scheduled Tribes.

6. In view of above, we are of the opinion that the concerns expressed by the National Commission for Scheduled Tribes in their letters dated 06/08/2010 (p.23/c.) and 11/10/2010 (p.96-97/c) relate to the safeguards of the Scheduled Tribes and the provisions of the draft Bill may likely to affect the Scheduled Tribes and as such, may be a major policy matter affecting Scheduled Tribes. Hence in our opinion, the Ministry of Mines is under constitutional obligation to consult the

Commission. Thus, there may be no legal or constitutional objection in sharing the draft Bill the Commission before its submission to the Cabinet."

3.12 Since the Bill was approved by the Cabinet on 30/09/2011, without referring the same to the Commission, the above position was brought to the notice of the Hon'ble Prime Minister vide D.O. letter dated 17/10/2011 from the Chairperson, NCST (**ANNEXURE 3. I**) requesting the Prime Minister to have the views of the Commission considered by the Government even while the matter was engaging the attention of the Standing Committee of the Parliament. It was also requested that the Ministry of Rural Development (MoRD) and Ministry of Mines and their senior officials should be counselled suitably to adopt a more sensitive approach towards the problems of Scheduled Tribes/ Scheduled Areas and respect for relevant Constitutional safeguards. The Commission also recommended that the Cabinet Secretariat and the Ministry of Law and Legal Affairs should be tasked with the responsibility of ensuring consultation with the National Commission for Scheduled Tribes before such proposals affecting Scheduled Tribes are placed for consideration before the Council of Ministers; and the Cabinet Secretariat may issue appropriate instructions in this regard under the Rules of Business of the Government.

3.13 Further, in view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, to Shri S. Vijay Kumar, then Secretary, Ministry of Mines, was requested vide letter dated 13/10/2011 (**ANNEXURE 3.II**) to:

a) produce a chronological record of the action taken on the request made by the Commission regarding the MMDR Bill, 2010,
b) explain the reasons to avoid meaningful consultations with the Commission on the important legislation concerning the STs; and
c) explain why legal action should not be instituted against him for repeated disregard of the Commission's requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

3.14 In response to the communication, the Ministry of Mines vide their OM dated 24/10/2011 furnished a background brief on the observations of the NCST and the action taken on various references from the NCST in the matter, in which they urged that neither the Ministry nor the Secretary, Ministry of Mines sought to deny the NCST a finalized copy of the MMDR Bill, as approved by the Government. Further, neither the Ministry nor the Secretary Ministry of Mines had any intention to disregard the NCST or avoid meaningful consultations with the NCST and Secretary, Ministry of Mines had, in fact, appeared before the Commission three times and explained in detail the extent to which the concerns of the Commission were being addressed.

3.15 In the Sitting held by the Chairperson on 3/11/2011, Under Secretary, Ministry of Mines also handed over a letter dated 3/11/2011 enclosing a modified version of the background brief (with addition of para 3.4 and modification of para 4 of their earlier brief communicated vide their OM dated 24/10/2011) as the statement of the Secretary, Ministry of Mines to be taken on record. Para 3.4 stated that Cabinet Sectt., with reference to a similar reference from the MoRD regarding mandatory consultations with the Commission, had informed (Cabinet Sectt. letter dated 21/10/2011) that the sponsoring Ministry may consult the administrative Ministry/ Department dealing with the relevant Constitutional Body/ Commission. Chairman, NCST again clarified to Shri S. Vijay Kumar, then Secretary, Ministry of Mines that the Commission, in particular, desired a chronological statement of the manner in which the request of the Commission for submitting a copy of the draft Bill had been dealt with by different officials at different stages, so that the case can be included in the Annual Report of the Commission and appropriate legal action taken against the delinquent. In the Sitting, Shri S. Vijay Kumar, Secretary, Ministry of Mines was also requested to furnish his comments along with documentary evidence within a fortnight in respect of the following:

(i) Why he had disregarded to his obligation under Rule 11 of the Transactions of Business Rules to ensure proper transaction of business and failed to observe due diligence in the discharge of his duties according to Rule of Law.

(ii) Reasons of his failure to understand the problem of STs and deal with them sympathetically as expected of all India Service officers.

3.16 In pursuance of the discussions held in the meeting on 03/11/2011, Under Secretary, Ministry of Mines vide OM dated 21/11/2011 forwarded a Statement on behalf of the Ministry of Mines. Along with the Statement was attached a revised Note (with addition of para 3.4 and modification of para 4 of their earlier brief communicated vide their OM dated 24/10/2011). The OM dated 21/11/2011 mentioned that Secretary, Ministry of Mines in the meeting taken on 3/11/2011 had affirmed that he did not disregard obligations under Transactions of Business Rules, nor did he fail to observe due diligence since instructions on the subject referred for Cabinet process were duly followed; and that he had also elaborated the provisions included in the draft MMDR Act which showed adequate understanding of the problems of STs, especially in relation to mining sector. In the (further) modified para 4 of their communication dated 21/11/2011, the Ministry of Mines expressed that consultation through Administrative Ministries would lead to not only a comprehensive coordinated and meaningful consultation, but would also ensure that the administrative Ministry viz. MTA and the Commission (NCST) do not work at cross-purposes. Ministry of Mines did not furnish any documentary evidence as emphasized in the meeting taken by the Chairperson on 3/11/2011.

3.17 Examination of the reply of the Ministry of Mines vide their OM dated 24/10/2011 reveals that:

(i) Though the letter was addressed by name to Shri S. Vijay Kumar, then Secretary, Ministry of Mines, reply has been received from some other person (Shri Anil Subramaniam, US, Ministry of Mines), which was not even authenticated by Shri S. Vijay Kumar, then Secretary, Ministry of Mines. (Vide letter No. Secy(RD)/Misc/ 2012(NCST) dated 09/02/2012, Shri Vijay Kumar, now Secretary, Department of Rural Development subsequently affirmed that the same was "my written statement for taking it on record, but refused to comment "on any official action which occurred during my tenure in the Ministry of Mines".)

(ii) The reply furnished by the Ministry of Mines vide OM dated 24/10/2011 and 21/11/2011 only details the action taken by the Ministry of Mines in the matter but doesn't furnish any related record/ documentary evidence, as requested. In its absence, the manner in which the request of the Commission for submitting a copy of the draft Bill had been dealt with by different officials at different stages cannot be ascertained for documenting the factual position in this regard, and also for recommending action against the delinquents and remedial measures to avoid recurrences of such cases in future.

(iii) No reasons were stated by the Under Secretary, Ministry of Mines or Shri S. Vijay Kumar, then Secretary, Ministry of Mines as to why a copy of the Bill was not sent to the NCST immediately after receiving the opinion of the Ministry of Law on 22/09/2011. The gratuitous opinion of the Ministry of Mines (para 4 of their modified Note received alongwith OM dated 21/11/2011), that the clarification given to Department of Land Resources by the Cabinet Secretariat (vide their OM dated 21/10/2011) that "the sponsoring Ministry for any draft legislation or policy should consult the concerned administrative Ministry/ Department dealing with the relevant Constitutional body/Commission is appropriate for the reason this would lead to not only a comprehensive, coordinated and meaningful consultation but would also ensure that the Administrative Ministry (here Ministry of Tribal Affairs) and the Commission (here National Commission for Scheduled Tribes) do not work at cross purposes" is not only an insolent afterthought, but also betrays complete lack of understanding of the role of the Commission, as observations and views of the NCST on various issues concerning the STs may often be at variance with the views of the MTA. Also, Cabinet Secretariat guidelines cannot supersede NCST's request for production of documents, which has the force of law as a direction from a Civil Court.

(iv) Shri S. Vijay Kumar, currently Secretary, Department of Land Resources (then Secretary, Ministry of Mines) has not effectively complied with the advice rendered in the meeting taken on 3/11/2011 to submit his comments

in the matter with documentary evidence within a fortnight, preferring to raise extraneous and illusory questions of procedure instead of replying to substantive points. It is debatable whether he would take these pleas when giving evidence before a regular Civil court.

3.18 Consequently, vide NCST letter dated 3/02/2012, Shri S. Vijay Kumar former Secretary Ministry of Mines (now Secretary, Ministry of Rural Development) was offered a final opportunity to discuss his reply and explain his position on the above issues in another Sitting on 13/2/2012. Shri S. Vijay Kumar, Secretary, MoRD, in his statement dated 13/2/2012, (**ANNEXURE 3.III**) while drawing attention to his response communicated vide MoRD letter no. Secy 1(RD)/Misc/2012(NCST) dated 9/2/2012, clarified as under:

(i) All letters/requests of the NCST regarding consultation with NCST in terms of clause (9) of Article 338A of the Constitution have been promptly responded from the Ministry of Mines (reference letters dated 11/8/2011, 17/8/2011, 13/9/2011, 30/9/2011, 24/10/2011, 3/11/2011 and 21/11/2011). In addition Hon'ble Minister of Mines has also written to NCST on 27/9/2010;

(ii) All meetings of the NCST have been attended by me as requested (meetings dated 25/7/2011, 17/8/2011, 15/9/2011 and 3/11/2011);

(iii) In the meeting with the Commission on 3/11/2011, in my then capacity as Secretary, Ministry of Mines, I explained the entire matter in detail and also left a written copy of my statement vide letter no. 16/83/2009-M(VI)(Part V) dated 3/11/2011 which may be taken on record;

(iv) Based on the minutes of the meeting held on 3/11/2011, a further response was given vide Ministry of Mines OM No. 16/83/2009-MVI (Part V) dated 21/11/2011;

(v) It has been reiterated in the letters and meetings that there was no intention of disregarding obligations under the Transaction of Business Rules, and that due diligence was observed at all times in terms of the instructions on a subject referred for Cabinet process, as is evident from the chronology provided in response to the requests of the NCST.

(vi) The matter relates to Clause (9) of Article 338A of the Constitution of India which enjoins mandatory consultation of Government of India with the NCST on matters of policy. Since all proceedings of the Commission in this matter have been under Clause (9) of the Article, any further requests in the matter need to be made to the Ministry of Mines, Government of India. In case the NCST requires any specific document pursuant to Clause (9) of Article 338A of the Constitution, they may make a specific request to the Ministry of Mines. I am no longer in the Ministry of Mines and am therefore not in a position to assist the NCST in the matter.

3.19. The Commission has noted that despite repeated exhortations, the draft Mines and Mineral (Development & Regulation Bill) 2011, as finalized by the Ministry of Mines, was withheld from the Commission till after consideration was completed by the Council of Ministers on 30/09/2011; and, its directions mentioned in the NCST communication dated 13/10/2011 to produce

documents/ a chronological record of the action taken on the request of the Commission to forward the draft Bill for its views/ comments, and in the Sitting taken on 3/11/2011 to submit comments in the matter with documentary evidence within a fortnight have not been complied. Further, instead of responding substantively to the issues raised by the Commission, extraneous and illusory questions of procedure have been urged. The Commission has, therefore, viewed these transgressions as a flagrant disregard of the authority vested with the Commission under Clause (8) (b) of Article 338 A, whereby the Commission, while investigating any matter, inter- alia, referred to in sub-clause (a) has all the powers of a Civil Court in regard to production of documents. The Commission has further noted that in the treatment of the case, Shri S. Vijay Kumar, in his capacity as the Secretary, Ministry of Mines has reflected lack of proper understanding of Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution; which in the context of non-production of documents, has been viewed by the Commission as deliberate attempt to evade repeated persuasions by the Commission to submit the draft Bill for Commission's views/comments. The Commission is distressed to observe that inspite of receiving Ministry of Law's unambiguous advice on the subject, the Bill was forwarded to the NCST only on the day it was considered by the Cabinet, effectively forestalling the consideration of NCST's comments by the Council of Ministers.

3.20 The Commission has viewed that such perfidious actions on the part of a very senior officer of the level of Secretary to the Government are to be deprecated as deliberate failure to maintain transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes; and the same do not exhibit the expected sensitivity of approach/attitude towards weaker sections. These findings of the Commission have been communicated to Shri S. Vijay Kumar, Secretary, MoRD vide letter dated 6/03/2012, with a copy to the Secretary, DoPT and the Cabinet Secretary (**ANNEXURE 3.IV)**. However, taking a lenient view of the matter Shri S. Vijay Kumar has been informed that the Commission has decided to advise the DoPT, (which is the Cadre Controlling Authority for the All India Services (IAS)) , as well as the Cabinet Secretariat, to take appropriate action in the matter; and also take requisite measures to avoid recurrence of such cases in future keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998, relevant extracts of which are re-produced below:

DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998

"The Court also held that the powers of the Commission in terms of Article 338(8) of the Constitution are all the procedural powers of a civil court for the purpose of investigating and inquiring into the matters and that too for that limited purpose only".

DoPT O.M. No.36036/2/97-Estt (Res) dated 30/11/1998:

> **"The National Commission for Scheduled Castes and Scheduled Tribes is assigned the important role of safeguarding the interests of the Scheduled Castes and the Scheduled Tribes and has been vested with certain powers in discharge of its role in terms of Article 338 of the Constitution. The Ministries/Departments, etc. are therefore expected to extend maximum cooperation to the commission in the discharge of its role and to give its recommendations/ suggestions due consideration".**

3.21 Since there was no information from the Ministry of Personnel and Training (Department of Personnel and Training) about action taken on the recommendation made in the Commission's letter dated 06/03/2012, a Sitting was held with the Secretary, Department of Personnel and Training in the Chamber of Hon'ble Chairperson NCST on 16/05/2012. The Secretary, Department of Personnel and Training informed during the Sitting that the Commission's letter dated 06/03/2012 regarding complaint against Shri S. Vijay Kumar Secretary, Ministry of Rural Development had been forwarded to the Cabinet Secretariat, vide their UO No.104/92/2012-AVD.I on 14/04/2012 for taking action in terms of instructions contained in DoPT OM No. 104/100/2009-AVD.I dated 14/01/2010. There is, however, no information about further action taken by the Cabinet Secretariat in this matter.

3.22 In this case also, MTA, the administrative Ministry dealing with NCST has not consulted the Commission on the Bill. The views expressed by the Secretary, Ministry of Mines, that MMDR Bill 2010 being a legislation based on National Mineral Policy 2008 may not qualify as a policy matter affecting STs in terms of the provision of Clause (9) of Article 338A of the Constitution, and proceeding to seek the opinion of the Ministry of Law in the matter is by itself a reflection of the poor understanding of the Constitutional provisions regarding mandatory consultation with the Commission; and the subsequent delay to act according to the advice received from the Ministry of Law sharply demonstrates the need for modifying the Transaction of Business Rules of the Government to unambiguously implement this Constitutional obligation in terms of the legal advice tendered by the Ministry of Law.

(C) Land Acquisition, Rehabilitation & Resettlement Bill, 2011

3.23 The Commission learnt from news reports that the Government had formulated/ introduced the new Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 in Parliament in December, 2007. These Bills were passed by the Lok Sabha, but could not be tabled in the Rajya Sabha. The Commission noted that the Ministry of Rural Development did not consult the National Commission for Scheduled Tribes before introducing the Bill in the Parliament. However, considering the imperative need for normative definition/ implementation of rehabilitation and resettlement measures through law, the Commission conveyed detailed comments on the proposed legislation to

the Ministry of Rural Development and Ministry of Tribal Affairs vide d.o. letter dated 6/08/2010 and 25/8/2010 respectively from Shri Maurice Kujur, Vice-Chairperson, and acting Chairperson, National Commission for Scheduled Tribes.

3.24 As there was no communication from the MoRD, the Chairperson, NCST again addressed the Union Minister of Rural Development vide letter dated 20/05/2011. Since it elicited no response from the MoRD, the Chairperson, NCST vide his letter dated 13/07/2011 again invited the attention of the new Union Minister for Rural Development towards the concern of the NCST regarding the draft Bills of 2007. The Union Minister for Rural Development vide his letter dated 15/07/2011 assured the Chairperson that the views of the NCST would be fully considered before finalizing a new legislation on Land Acquisition.

3.25 In order to follow up the matter, a Sitting was held by the Chairperson NCST with the Secretary, Deptt. of Land Resources (DoLR), on 29/07/2011, in which the Secretary, DoLR mentioned that the Department was processing an integrated Bill covering both land acquisition and resettlement and the Bill had special provision for the Scheduled Tribes. The Commission was also informed that the draft Integrated Bill was being hosted on the website; and after examination of suggestions/ comments, the Department will initiate inter-Ministerial consultations and at that stage the views of the Commission will also be sought. The Commission emphasized that the matter (for advice under the provisions of Article 338A(9)) may be referred to the Commission after completion of internal process of drafting the Bill and before submission to the Cabinet. The Commission also observed that in view of the various issues highlighted during the discussion, a separate Chapter, mentioning the manner in which the provisions of the draft Bill will be applicable to the Scheduled Tribes and the Scheduled Areas, should be included in the Bill. The Secretary, DoLR mentioned that the Department would consider the observations of the NCST and, if considered necessary, the mater will be decided in consultation with the Ministry of Law.

3.26 As land acquisition effectively transfers ownership of tribal land to others, the Commission was anxious that certain important concerns be adequately addressed in the Bill, and requested the Department of Land Resources, Ministry of Rural Development, on several occasions to submit the Bill as finalized for obtaining the views/ comments of the Commission under Article 338A(9) of the Constitution. The Ministry of Rural Development vide letter dated 19/08/2011 informed the Commission that a draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been prepared and put in the public domain; and sought the comments and suggestions of the Commission thereon. The NCST vide letter dated 30/08/2011 highlighted that for a meaningful consultation, the Commission would be able to furnish the comments only after the draft Bill has been finalised by the Ministry of Rural Development. A reminder

to the Secretary, Department of Land Resources was sent on 09/09/2011, (with a copy to the Secretary, Department of Legal Affairs, Ministry of Law) for apprising the Commission about the progress in the matter in pursuance of the discussions in the Sitting held on 29/07/2011 but without result.

3.27 Since the Bill was introduced in the Lok Sabha on 07/09/2011, without referring the same to the Commission, the above position was brought to the notice of the Hon'ble Prime Minister vide D.O. letter dated 17/10/2011 from the Chairperson, NCST requesting the Prime Minister to have the views of the Commission considered by the Government even while the matter was engaging the attention of the Standing Committee of the Parliament. It was also requested that the Ministry of Rural Development (MoRD) and Ministry of Mines and their senior officials should be counselled suitably to adopt a more sensitive approach towards the problems of Scheduled Tribes/ Scheduled Areas and respect for relevant Constitutional safeguards. The Commission also recommended that the Cabinet Secretariat and the Ministry of Law and Legal Affairs should be tasked with the responsibility of ensuring consultation with the National Commission for Scheduled Tribes before such proposals affecting Scheduled Tribes are placed for consideration before the Council of Ministers; and the Cabinet Secretariat may issue appropriate instructions in this regard under the Rules of Business of the Government. In addition, the Chairperson, National Commission for Scheduled Tribes vide letter dated 14/10/2011 decided to call the Secretary, Department of Land Resources, Ministry of Rural Development for discussions on 3/11/2011 to:

- Produce a chronological record of the action taken on the requests made by the Commission regarding the (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011.

- Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs; and

- Explain why legal action should not be instituted against the Secretary, Deptt. of Land Resources, MoRD, for repeated disregard of the Commission’s requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

3.28 In the NCST communication dated 14/10/2011 it was also mentioned that the Deptt. of Legal Affairs, in response to a reference by the Ministry of Mines have opined vide letter No.FTS/2878/LS/11 dated 22/09/2011 that the Ministry were under constitutional obligation to consult the Commission. Further, there may no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet. In the Sitting held by the

Chairperson on 3/11/2011 (attended by the then Secretary DoLR) it was requested to furnish comments also in respect of the following:

(i) Why the Secretary, DoLR had disregarded to his obligation under Rule 11 of the Transactions of Business Rules to ensure proper transaction of business and failed to observe due diligence in the discharge of his duties according to Rule of Law.

(ii) Reasons for the Secretary's failure to understand the problem of STs and deal with them sympathetically as expected of all India Service officers.

3.29 Chairman, NCST had also clarified to the then Secretary, DoLR that the Commission desired, in particular, a chronological statement of the manner in which the request of the Commission for submitting a copy of the draft Bill had been dealt with by different officials at different stages so that the case can be included in the Annual Report of the Commission and appropriate legal action taken against the delinquent. The then Secretary, DoLR was also requested to submit comments on the above mentioned issues with documentary evidence within a fortnight.

3.30 The Deptt. of Land Resources (DoLR) vide letter dated 21/11/2011 (**ANNEXURE 3.V**), furnished a reply, inter-alia stating that the Department had followed the guidelines/ instructions of the Cabinet Secretariat regarding inter-ministerial consultations. It was also highlighted in the letter that the Cabinet Secretariat vide its letter dated 21/10/2011 has informed that "the sponsoring ministry/ department may consult the administrative Ministry/ Department dealing with the relevant Constitutional body/ Commission/ Statutory body etc. except in cases where there is no administrative Ministry/ Department specified for such bodies/Commission etc." DoLR did not communicate details of their reference to the Ministry of Law, if any, in the matter as mentioned in the meeting held on 29/07/2011.

3.31 While the Department's reply was a clear afterthought (Cabinet Secretariat letter is dated 21/10/2011 while the Bill was introduced in Parliament on 07/09/2011), the case reveals that the DoLR disregarded the provision under Article 338A(9) of the Constitution, despite several communications from this Commission, and also contravening the advice of the Ministry of Law that Ministries are obligated by the Constitution to consult the Commission on the provision of the draft bill affecting Scheduled Tribes. It would also appear that the Cabinet Secretariat have not been fully cognizant of the import of Constitutional obligations. The Law Secretary, vide his letter dated 26/10/2007 (**ANNEXURE 3.VI**), had written to the Cabinet Secretary requesting him to advise all Ministries/ Departments to follow strictly the provision contained in the said Article 338A(9). This advice of the Law Secretary is not correctly reflected in the clarification issued to the DoLR, which attempts to transfer this obligation to "Administrative Ministries". Interestingly, MTA, the administrative Ministry dealing with the NCST, also did not refer the Bill to NCST for consultations.

3.32 Examination of the reply of the DoLR vide their OM dated 21/11/2011 reveals that:

(i)	Though the letter was addressed by name to Ms. Anita Chaudhary, Secretary, DoLR, reply has been received from some other person (Shri Surendra Kumar, Joint Secretary, DoLR) vide DoLR OM No. 210111/04/2011-LRD dated 21/11/2011, which does not even purport to be authorized by her.
(ii)	DoLR's reply is a clear afterthought, since the Bill was introduced on 7/9/2011 and the advice of the Cabinet Secretariat was issued on 21/10/2011.
(iii)	No reasons have been stated in DoLR letter dated 21/11/2011 as to why a copy of the Bill, as finalized before submission to the Cabinet could not have been communicated to the Commission.

3.33 Therefore, Chairman, NCST called another sitting on 03/02/2012 to offer a final opportunity to Ms. Anita Chaudhary, Secretary, DoLR to explain her position on the above issues. Since it was learnt that Ms. Anita Chaudhary had been on long leave due to her illness, the sitting was re-scheduled for 16/02/2012. In the Sitting held on 16/02/2012, Ms. Anita Chaudhary, Secretary, DoLR mentioned that she had been on leave from August 2011 to February 2012. She also clarified that copies of the relevant documents had already been enclosed to the Department's letter dated 21/11/2011. However, if NCST wishes to peruse any other records in this regard, DoLR will be willing to provide the same. Subsequently, vide letter dated 17/02/2012, Mrs Chaudhary confirmed this position. (**ANNEXURE 3.VII**)

3.34 The Commission has noted that non-compliance/non-receipt of any response from Ms. Chaudhary to the NCST communication dated 14/10/2011, asking her to produce a chronological record of the action taken on the request of the Commission, has been occasioned as a result of her absence on long medical leave during the period. The Commission has, therefore, decided not to proceed with any action in this regard. The Commission has, however, noted that despite exhortations, the draft Land Acquisition and Rehabilitation & Resettlement Bill, 2011 was not forwarded to the Commission for its views/ comments even at the time of inter-Ministerial consultations, as assured by Ms. Chaudhary in the meeting taken by the Chairperson on 29/07/2011. In the treatment of the case in her capacity as the Secretary of the DoLR, Ms. Chaudhary has reflected lack of proper understanding of Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution. Further, instead of responding substantively to the issues raised by the Commission in the meeting taken by the Chairperson on 29/07/2011, extraneous and illusory questions had been raised by Ms. Chaudhary regarding the powers of the Commission (refer para 6 of minutes of the Meeting held on 29/07/2011(**ANNEXURE 3.VIII**). These

transgressions are viewed as deliberate disregard of the authority vested with the Commission under Clause (8) (b) of Article 338 A, whereby the Commission, while investigating any matter, inter- alia, referred to in sub-clause (a) has all the powers of a Civil Court in regard to production of documents. The Commission has viewed that such perfidious actions on the part of a very senior officer of the level of Secretary to the Government are to be deprecated as deliberate failure to maintain transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes; and the same do not exhibit the expected sensitivity of approach/attitude towards weaker sections. These findings have been communicated to Ms. Anita Chaudhary, Secretary, MoRD vide letter dated 14/03/2012, with a copy to the Secretary, DoPT and the Cabinet Secretary (**ANNEXURE 3.IX**). However, taking a lenient view of the matter, Ms. Anita Chaudhary has been informed that the Commission has decided to advise the DoPT, which is the Cadre Controlling Authority for the All India Services (IAS), as well as the Cabinet Secretariat, to take appropriate action in the matter; and also take requisite measures to avoid recurrence of such cases in future, keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998 (**ANNEXURE 3.X**) and (**ANNEXURE 3.XI**) respectively, relevant extracts of which are quoted in para 3.26 above.

3.35 Since there was no information from the Ministry of Personnel and Training (Department of Personnel and Training) about action taken on the recommendation made in the Commission's letter dated 14/03/2012, a Sitting was held with the Secretary, Department of Personnel and Training in the Chamber of Hon'ble Chairperson NCST on 16/05/2012. The Secretary, Department of Personnel and Training informed during the Sitting that the Commission's letter dated 14/03/2012 regarding complaint against Ms. Anita Chaudhary Secretary, Department of Land Resources, Ministry of Rural Development had been forwarded to the Cabinet Secretariat, vide their UO No.104/92/2012-AVD.I on 14/05/2012 for taking action in terms of instructions contained in DoPT OM No. 104/100/2009-AVD.I dated 14/01/2010. There is, however, no information about further action taken by the Cabinet Secretariat in this matter.

(D) National Food Security Bill, 2011

3.36 It was learnt from the news reports that the Department of Food & Public Distribution, Ministry of Consumer Affairs is processing the Draft National Food Security Bill and it has been hosted on the Ministry's website. This Commission vide D.O. letter dated 18/10/2011 requested the Secretary, Deptt of F & PD, Ministry of Consumer Affairs, Government of India to forward a copy of the Bill, as finalized, for seeking the views of the Commission in accordance with the provisions of Clause 9 of Article 338A of the Constitution. In this connection, the opinion of the Ministry of Law emphasizing that the Ministries are obliged by

the Constitution to consult the Commission on the provision of a draft Bill affecting STs, was also forwarded to the Department.

3.37 In response, the Department of F& PD vide letter dated 21/10/2011 sought the views of the Commission on the Bill as available in the public domain only. Subsequently, the Secr`etary, Department of F & PD was informed vide D.O. letter dated 27/10/2011 that the Deptt. of F& PD had failed to appreciate the purport of NCST's communication, wherein it was clearly mentioned that views of the Commission were required to be sought on the Bill, as finalized by the Ministry, for meaningful consultation with the NCST as envisaged under Article 338A(9) of the Constitution. The Secretary, Department of F&PD was also informed that seeking views of the Commission at this stage, when the Ministry has not finalized its views on the Bill, does not serve the intended purpose and the spirit of the Constitution.

3.38 It was further understood from the news reports that the draft Bill, after incorporating certain changes to the version provided in the public domain would be drafted by the Department of F & PD shortly. The matter was placed before the Chairperson, National Commission for Scheduled Tribes and he decided to discuss the matter with the Secretary, Deptt. of F & PD, Ministry of Consumer Affairs, F & PD, on 11/11/2011. The Sitting held by the Chairperson, National Commission for Scheduled Tribes on 11/11/2011 was attended by the Joint Secretary, Department of F & PD as the Secretary was stated to be away who informed the Commission that first round of discussion on the Bill was already over and inter-Ministerial consultations were being held on the Bill. At this stage, the Ministry of Consumer Affairs, F&PD, was also separately referring the Bill to the National Commission for Scheduled Tribes for their comments.The Commission again emphasized that seeking views of the Commission at this stage, when the Ministry has not finalized its views on the Bill, does not serve the intended purpose and the spirit of the Constitution, as envisaged under Article 338A(9) of the Constitution. Attention was also invited to the opinion of the Ministry of Law & Justice in the matter. The Joint Secretary, Department of F&PD mentioned that after receipt of comments from the various Ministries on the Bill, the Deptt. of F& PD is expected to finalize it within a very short period. He assured that the draft Bill after its finalization by the Ministry, and before consideration of the Cabinet, would be referred to the Commission for seeking views/ comments. He, however, requested the Chairperson, NCST to have views/ comments of the Commission on the draft Bill, as finalized by Ministry of Consumer Affairs, F & PD, within one or two days.

3.39 Pending receipt of final draft Bill from the Department of F & PD, the observations of the Commission on the draft Food Security Bill, 2011 (as circulated for inter-ministerial consultations) were also forwarded to the Department of F&PD, Ministry of Consumer Affairs vide letter dated 22/11/2011. It was pointed out to the Ministry that the revised Bill circulated for inter-ministerial consultations was not substantially different from the earlier version

available in the public domain. The Ministry was, therefore, requested to forward by 28/11/2011 a copy of the Bill as finalized by the Ministry for consideration of the Cabinet. The Chairperson, NCST also held a Sitting with the Secretary, Department of F&PD, Ministry of Consumer Affairs on 28/11/2011. During the Sitting, Secretary, F&PD assured the Chairperson that the final draft Bill would be made available to the Commission by hand by 10:00 AM on 01/12/2011 and requested that the views/ comments of the Commission may be made available to the Ministry at the earliest as the Bill was slated to be submitted to the Cabinet shortly. The Department of F&PD, Ministry of Consumer Affairs F &PD, vide letter dated 01/12/2011 forwarded for views/ comments of the Commission, a copy of the revised National Food Security Bill, 2011 as finalized by the Department before its submission to the Cabinet. The Commission held a special meeting on 01/12/2011 to consider the final draft of the National Food Security Bill, 2011as received from the Ministry.

3.40 The Commission noted that the Bill, as finalised by the Department of F&PD was not much different in substance than the earlier draft and the views/comments of the Commission, communicated earlier vide letter dated 22/11/2011 did not appear to have been considered while finalizing the final version forwarded by the Ministry on 01/12/2011 for comments of the Commission. These views/ Comments, of the Commission on the final version of the Bill were forwarded to the Deptt of F &PD, Ministry of Consumer Affairs, F & PD, on the same day i.e. 01/12/2011, with the request to communicate the action taken on the recommendations for its inclusion in the forthcoming Report to be submitted by the Commission to the President. As information about the action taken on the recommendations made by the Commission on the Bill was not forthcoming from the Deptt. of F & PD, Chairperson, NCST held another Sitting with the Secretary, Deptt. of F & PD on 05/1/2012 to ascertain the position. The Secretary, Deptt. of F & PD informed in the meeting that a major concern of the NCST incorporating a separate chapter on STs in the NFSB were met by inclusion of a new section (Section38) in the NFSB for special focus on tribal area in implementation of the Act. Other comments of the NCST alongwith responses of the Deptt. of F & PD were also enclosed with the final Note on the Bill for the Cabinet. Deptt. of F &PD also informed that in pursuance to the discussion held in the meeting on 11/11/2011, Deptt. of F & PD had also sought legal opinion from the Department of Legal Affairs on the points of mandatory consultation with the NCST on NFSB and the stage at which the consultation should be held. Deptt. of F&PD, also informed that Deptt. of Legal Affairs vide their note, approved by the Minister of Law and Justice on 25/11/2011 have, inter-alia, opined that in view of the provisions of the Constitution, the NCST may be consulted on the draft NFSB. Ministry of Law further stated that in the absence of any statutory provision or any provision in the 'Manual of Parliamentary Procedures in the Government of India', it is for the administrative department to take an appropriate decision as at which stage, the Commissions (NCST and NCSC) should be consulted. (**ANNEXURE 3.XII**)

3.41 The case reveals that despite the Constitutional provisions MTA, the administrative Ministry for the Commission did not seek consultation with the Commission on the Bill. The Ministry of Consumer Affairs, Deptt. of F&PD also did not seek views/comments on the Bill; and a copy was forwarded to the Commission only after repeated persuasion through letters and Sittings at the level of the Chairperson and after obtaining legal opinion by the Ministry of F&PD in the matter. Finally, the views of the Commission were sought by the concerned Department but with a condition that the comments may be communicated to them same day. Further, though the Commission had specifically requested the Ministry to inform the consideration, if any, given by the Ministry to the views/ comments furnished by the Commission, also highlighting that this was required for incorporation in the forthcoming reports of the Commission to be presented to the President, the Ministry, on their own, did not communicate the same. These were submitted by the Ministry only when the Commission held a Sitting with the Secretary, F & PD.

Mandatory Consultations with NCST under Art 338 A(9) – Amendment In Handbook Of Instruction of Cabinet Secretariat.

3.42 The Commission's experience highlighted following major areas of concern:

i. Ministry of Tribal Affairs, the administrative Ministry for the NCST, did not consult the Commission even on important legislation concerning the Scheduled Tribes like the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Land Acquisition (Amendment) Bill, 2007, Rehabilitation and Resettlement Bill, 2007, Land Acquisition and Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011, National Food Security Bill, 2011.

ii. Notwithstanding the explicit provisions in the Constitution, none of the Ministries dealing with the above Bills sought the comments of the Commission.

iii. Even when the Commission communicated its recommendations *suo-moto*, in respect of the Land Acquisition (Amendment) Bill, 2007, Rehabilitation and Resettlement Bill, 2007, Land Acquisition Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011, the concerned Ministries do not seem to have placed the Commission's recommendations for consideration by the Cabinet.

iv. Even after being reminded of Constitutional obligations by the NCST, the concerned Ministries dealing with Rehabilitation and Resettlement Bill, 2007, Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 sought views of the Commission on the draft Bill as available in the public domain, which negated the purpose, because for a meaningful consultation as envisaged under Article 338A(9) of the Constitution, it is desirable for the concerned Ministry to seek consultation with the Commission after completion of the

internal processes of drafting/ inter-Ministerial consultations.

v. The repeated efforts by the Commission to impress upon the concerned Ministry dealing with these Bills to incorporate the recommendations of the Commission for consideration of the Cabinet did not yield any result; and the Ministries indulged in wasting time and finding ways and means to avoid consultations with NCST by seeking clarifications (from the Cabinet Secretariat and the Ministry of Law) on a provision incorporated into Constitution over 20 years ago.

vi. Though after repeated communications/ Sittings taken by the Chairperson, Department of F&PD referred the Bill to the Commission for its views/ comments indicating that these are required within a day. Thus, adequate time was not given to the Commission in the matter. Further, though the Commission, while communicating their comments on the Bill had specifically requested the Ministry to communicate the consideration, if any, given by the Ministry to the views/ comments furnished by the Commission, also highlighting that this was required for incorporation in the forthcoming reports of the Commission to be presented to the President, the Ministry, on their own, did not communicate the same. These were submitted by the Ministry only when the Commission convened a Sitting with the Secretary, F & PD to obtain the same.

vii. The existing instructions (as well as the clarifications issued to the Ministry of Rural Development by the Cabinet Secretariat. vide letter dated 21-10-2011) have not been able to serve the intended objective regarding mandatory consultation enshrined under Article 338A (9) of the Constitution, which have also been emphasized by the Ministry of Law and Justice.

viii There appears to be a vast gulf of understanding amongst the Ministries of the Government/ Cabinet Secretariat regarding the constitutional responsibility of the NCST and the constitutional obligation of the Union Government under Article 338A(9) of the Constitution; and also considerable lack of sensitivity towards the needs and problems of the Scheduled Tribes and the Scheduled Areas in the country, for which special provisions have been incorporated in the Constitution.

ix. The National Commission for Scheduled Tribes is a Constitutional body and it cannot be treated by the Cabinet Secretariat/ Ministries of the Government as a subordinate organization. Further, the views/ recommendations made by the Commission are required to be laid in both Houses of Parliament along with action taken Memorandum explaining the acceptance/ non-acceptance of those recommendations. Therefore, Ministry of Tribal Affairs, or for that purpose any other Ministry, has no “oversight role” to play in the context of recommendations made by the Commission, or amending those recommendations. The direction to seek consultation with the Ministry/ Department only, (as per existing instruction 39 of Hand Book on "Writing Cabinet Notes"), and consultation with the Commission through the concerned Ministry/Department (as per the clarifications issued to the Ministry of Rural Development by the Cabinet Secretariat. vide letter dated 21-10-2011 refer) circumscribe the role of the Commission and dilute the provisions regarding mandatory consultation enshrined in Article 338 (A)(9) of the Constitution.

x. The Commission has recommended in its earlier reports that whenever

matters are referred to this Commission for advice or comments, the views expressed by this Commission should invariably be placed, without any oversight or modification, before the concerned authorities for their consideration, as the final decision on the issue rests with the concerned authority. The instructions no.39 of the consolidated instructions applicable to Notes for the Cabinet/ Cabinet Committees/ EGoM/ GoMs issued by the Cabinet Secretariat, viz. the views of the consulted Ministries/ Departments need to be faithfully reflected in the main note to ensure that the Cabinet/ Cabinet Committees could peruse them before arriving at a decision. The comments of the consulted Ministry should not be edited or para-phrased in a manner as to alter their connotation and all the comments/ conditionalities should be incorporated in the note/ annexures, should therefore, be strictly followed in respect of the recommendations of the Commission too.

xi. The Commission is expected to indicate the Action taken on its recommendations on the matters concerning the Scheduled Tribes in the Report to be submitted to the President as required under Article 338A of the Constitution. The recalcitrance/ absence of feed-back from the concerned Ministries in this regard has incapacitated the Commission to discharge its constitutional duties in such an important area.

3.43 The Commission has been perturbed by the cavalier disregard exhibited by some Ministries, specifically those dealing with social issues, in respect of meaningful consultation with the Commission, while drafting legislation affecting the land rights of tribals, etc. which are specifically protected under the Constitution; and the issue was commented upon at length in the Fourth Annual Report of the Commission for the year 2008-09 and Fifth Annual Report for the period 2009-10, which unfortunately have still to be placed in Parliament. In those Reports, the Commission had specifically recommended to the President that the Cabinet Secretariat and the Ministry of Law, Justice and Legal Affairs should be tasked with the responsibility of ensuring meaningful consultations with the Commission before legislative proposals are placed for consideration by the Council of Ministers. The matter was also specifically brought to kind attention of the Prime Minister after submitting these reports to the President (D.O. letters No 4/5/2010-Coord dated 09/09/2010 and No 4/2/11/11-Coord dated 20/07/2011 refer). Accordingly, the Chairperson, National Commission for Scheduled Tribes decided to hold a Sitting at 12:00 Hrs. on 04/01/2012 to discuss the matter with the Cabinet Secretary in person. A detailed note on the subject matter was also forwarded to the Cabinet Secretary. (**ANNEXURE 3.XIII**) Shri Alok Rawat, Secretary (Coord.), along with Shri Rajive Kumar Additional Secretary and Smt. Nivedita Shukla Verma, Joint Secretary in the Cabinet Secretariat, attended the Sitting. During the Sitting, the Commission was informed that after receipt of the NCST communication, the concern raised by the Commission was considered at the highest level in the Cabinet Secretariat and the lapse on the part of the Ministries by not consulting the Commission in policy matters including legislative matters affecting the Scheduled Tribes and the Scheduled Areas was viewed as a serious matter indicating violation of the provisions of Article 338A(9) of the Constitution.

3.44 The Commission was further informed that in order to ensure that all Ministries strictly follow the provisions laid down in the said Article, the Cabinet Secretary, vide his D.O. letter No. 703/1/1/2011-CA.V dated 04/01/2012, addressed to the Secretaries of all the Ministries and Departments has requested them to strictly follow the provisions of Article 338A(9) of the Constitution (**ANNEXURE 3.XIV**) . A copy of the D.O. letter was also placed before the Commission. The Commission invited the attention towards Instructions for Inter-Ministerial Consultations in the HANDBOOK of INSTRUTIONS of the Cabinet Secretariat, specifically towards Instructions No.46 to 49 relating to mandatory consultations with certain Ministries/ Departments/ Organisations on specified policy issues. Instruction No. 49 envisages that "*in respect of social sector schemes, the Ministries/Departments should necessarily consult the Ministry of Panchayati Raj to enable empowerment of these democratic institutions at grass root level. The Ministry of Panchayati Raj should also be consulted in all cases relating to centrally sponsored Programmes`/ Schemes"*. The Commission also observed that, past experience shows that instructions issued through letters do not have lasting effect unless these instructions are incorporated in the Handbook of Instructions of the Cabinet Secretariat through suitable amendments issued by the Cabinet Secretariat. The Commission, therefore, advised the Secretary (Coord.), Cabinet Secretariat to review the position in the matter and inform the Commission. The Secretary (Coord.) assured the Commission that action taken in the matter will be submitted shortly.

3.45 Subsequently, in the Sitting held by the Hon'ble Chairperson, NCST on 21/02/2012 with the officials of the Cabinet Secretariat, Commission noted that the Secretary (Coord. & PG) vide D. O. letter No.703/1/1/2011-CA.V dated 10/02/2012 (**ANNEXURE 3.XV)** had reiterated the instructions contained in the D.O. letter dated 4th Jan., 2012. The letter further clarified that such consultations with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes in respect of major policies are to be carried out through the concerned administrative Ministries in respect of all major policy issues including those placed before the Cabinet/ Cabinet Committees as required under the Constitution. Further, according to the revised instructions issued vide OM dated 16/2/2012, (**ANNEXURE 3.XVI**), the sponsoring Ministries/ Departments were advised to ensure that the National Commission for the Scheduled Castes, and the National Commission for the Scheduled Tribes, as the case may be, shall mandatorily be consulted by them through the Ministry/Department administratively concerned with the Commission before finalization of such notes for consideration of the Cabinet/Cabinet Committees. In all such cases, the administrative Ministry/Department concerned will place the views of the concerned National Commission, as the case may be, as received by them, before the Minister-in-charge of the Ministry/ Department concerned before their final views/ comments on such issues were

communicated to the sponsoring Ministry/ Department. Further, the unabridged/ unedited views of the concerned Commission along with the views of the Ministry/ Department administratively concerned with the Commission be included in/ enclosed with the note for consideration of the Cabinet/ Cabinet Committees along with responses thereon by the sponsoring Ministry/ Department.

3.46 The Commission pointed out to the officers from the Cabinet Secretariat that the revised procedure for consulting the Commission through the Ministry of Tribal Affairs creates a dilatory mechanism, which circumscribes and dilutes the responsibility of all Ministries the Govt., under Article 338A of the Constitution, to ensure mandatory meaningful consultation with the Commission on policy related matters concerning STs. Further, none of the Bills viz. the (Integrated) Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 were forwarded to this Commission by the sponsoring Ministries or the Administrative Ministry, and the Commission had suo-moto advised these Ministries to seek consultation with the Commission. Yet, these Ministries resorted to seeking opinion of the Ministry of Law for seeking legal opinion in such matters deliberately thwarting the process of consultation. These cases clearly reflected (i) *lack of proper understanding of the Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution, (ii) maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes and (iii) and lack of expected sensitivity of approach/ attitude towards weaker sections.* The Commission, therefore emphasized that the revised instructions/ procedures are also fraught with risk of such failures as noticed in the past and therefore, a fool proof system should be designed to avoid recurrence of such cases in future. The Commission invited the attention of the Cabinet Secretariat towards instructions No. 46 to 49 of the Handbook of instructions issued by the Cabinet Secretariat. These instructions read as follows:-

46. National Manufacturing Competitiveness Council should be consulted in all cases relating to manufacturing sector.

47. All proposals concerning revival or restructuring of public sector undertakings should be first referred to BRPSE and thereafter brought up before the Cabinet/Cabinet Committees after necessary inter-ministerial consultations.

3.47 Instructions no. 46 and 47 specifically require consultation with the NMCC and BRPSE respectively without mentioning that such consultations will be done through their administrative Ministry/ Department. In this context it is worth mentioning that the NMCC, which is to be consulted in all cases relating to manufacturing sector ,is an autonomous body set up in October 2004, by a Government Order, under the Department of Industrial Policy and Promotions in

the Ministry of Commerce and Industry and similarly, BRPSE, to which proposals concerning revival or restructuring of public sector undertakings should be first referred to, is an Advisory Body set up in December, 2004, by a Resolution of the Government, under the Department of Public Enterprises in the Ministry of heavy Industries & Public Enterprises. In contrast, the National Commission for Scheduled Tribes is a Constitutional Commission having legendary existence since the adoption of the Constitution. Therefore, in view of the above, the Cabinet Secretariat should have no problem in issuing an instruction directing all Ministries for meaningful consultation with the National Commission for Scheduled Tribes in all major policy matters (including Notes for Cabinet Committees and the Legislative proposals) affecting Scheduled Tribes. The sponsoring Ministries may also be required to specifically mention in their Note/ proposal that the National Commission for Scheduled Tribes have been consulted and the views/ comments furnished by the concerned Commission were appended to the Note/ proposal. The Cabinet Secretariat assured the Commission that the revised instruction/procedures would be reviewed after sometime and requisite corrections, if necessary, will be issued and incorporated in the Handbook of Instructions. Proceedings of the Sitting held on 21/02/2012 is placed at **ANNEXURE 3.XVII**

3.48 The Commission regret to observe that since the obligations of the Government are now sought to be fastened to a (nodal) Administrative Ministry, such bureaucratic obfuscation of Constitutional responsibilities only bodes ill for further interaction between the Commission and other Ministries of the Govt; who would be seen from the experience, (as highlighted in para 27 & 28, 42 and 52 above), to be apathetic, recalcitrant, and even perfidious at times in the discharge of Constitutional obligations towards Scheduled Tribes; and resulting stand-offs may have to be arbitrated in the Courts – to the embarrassment and ridicule of all concerned.

3.49 **The Commission therefore recommends that the revised instructions issued by the Cabinet Sect. vide OM dated 16/02/2012 should be amended, on the lines of directions contained in Instruction No. 46 and 47 of the Handbook of Instructions, with advise to the sponsoring Ministries, to provide for directly seeking the advice of the NCST on policy related matters/ legislative proposals under Article 338A(9) of the Constitution and not through the Administrative Ministry as that Ministry has a role different from that of the NCST and the Ministry cannot play an oversight role in obliging/ restricting the Commission to make a particular recommendation or in a particular manner.**

CHAPTER 4

SUMMARY OF RECOMMENDATIONS

The recommendations of the Commission on various aspects have been highlighted in the respective Chapters to facilitate convenient identification for the purpose of taking up follow up action on them. A summary of these recommendations is given as below:-

CHAPTER-1: *GOOD GOVERNANCE IN SCHEDULED AND TRIBAL AREAS*

1. Based on the position emerged from the discussion, Commission recommends to the Govt. for considering the need for amendments of Schedule V and VI to provide a comprehensive Charter for tribal communities incorporating the best practices enumerated in the ILO Convention (s)

[Ref. Para 1.27]

2. The Commission has noted that the Government has not taken any decision on the 10th Report of Administrative Reforms Commission- "Refurbishing of Personnel Administration, Scaling New Heights" (November, 2008)- which has important recommendations relating to the Scheduled Tribes. The NCST has noted that general reluctance on the part of the officers and staff for posting in Scheduled Areas/ Tribal Areas on account of lack of housing, medical and education facilities has been exponentially compounded by the general climate of permissiveness fostered by rampant political interference and collusive abandonment of responsibilities in search of greener pastures**.** In order to address these problems, the Commission is of the view that Government should formulate specific regulations in respect of Scheduled Areas for personnel management with the formation of a State level Civil Services Authority for Scheduled Areas, which would deal with matters of assignment of functional domains to officers, preparing a panel for posting of officers, fixing tenures for senior posts etc., in line with the Central Civil Services Authority proposed by the ARC. In order to improve personnel management in respect of all category of employees, it is necessary to fix a minimum tenure for various cadre posts, which be filled on the basis of merit, suitability and experience, prescribe norms and guidelines for transfers and posting to maintain continuity and predictability in career advancement and acquisition of necessary skills and experiences as well as promotion of good governance. The normal tenure of all public servants may not be less than two years and Transfers before the specified tenure should only be for valid reasons to be recorded in writing. These recommendations are in accordance with the observations contained in para 8.5.11, 8.5.12 and 8.5.14 of the 10th Report. Department of Personnel and Training may consider the above views of the Commission and issue detailed guidelines for improvement of personnel policies and systems in Tribal Areas in the interest of peace and good governance under intimation to the Commission.

[Ref Para 1.45]

3. The Constitutional provisions in the Vth/ VIth Schedule require to be reviewed and refreshed in the light of past experience, international best practices and necessary administrative reforms. It appears high time that a comprehensive, universal **Charter of Rights of Tribal communities** was incorporated into the Fifth Schedule (also declaring tribal areas to be Scheduled Areas), incorporating the best practices emerging from the ILO Conventions as well as various bodies like the Administrative Reforms Commission, etc.

(i) Protection of religious, social, cultural and educational rights

(ii) Sustaining traditional means of livelihood and special protection regarding employment

(iii) Protection of customary laws and inheritance rights

(iv) Protection of habitat and environment

(v) Protection of land (surface and sub-surface) rights

(vi) Protection from removal from occupied lands for public purposes

(vii) Right to Relocation from occupied lands with appropriate compensation/ guarantees

(viii) Protection of traditional community institutions

(ix) Strengthening of Administrative mechanisms for tribal areas (under Union oversight)

(x) Development and Planning for Scheduled Tribes (refurbished development strategy predicated on primary financial and administrative responsibility of the Union Government)

[Ref Para 1.52]

4. Considering the special provisions of the Constitution relating to Schedule V and Schedule VI in relation to the Scheduled Tribes and Scheduled Areas, opinion of the Attorney General regarding Governors' role in Scheduled Areas and the inadequacy in formulation and implementation of Tribal Sub-plan both at the State as well as at the Centre, the National Commission for Scheduled Tribes makes the **following recommendations** in relation to good governance in tribal development administration and administration in Scheduled Areas.

(i) Robust "pre-facto" mechanism have to be grafted to Constitutional provisions which would ensure requisite attention to tribal concerns- foremost of which would be the mandatory inclusion of a separate chapter on Special Provisions for Scheduled Areas/ Scheduled Tribes in every Central or State Legislation affecting the habitat tribals' property rights and enjoyment of lands occupied, the religion, customs and culture of these people and traditional relationship with their environment (as obligated under UN Conventions)

(ii) There is a need to evolve a mechanism headed by Governor in the States having Scheduled Areas under Fifth and Sixth Schedule, to monitor and ensure implementation, in letter and spirit, the provisions contained in Fifth and Sixth Schedule to the Constitution, so that Governor may play an oversight role in the matter.

(iii) The Tribes Advisory Councils (TAC) for all States with Scheduled Areas as well as tribal areas may be headed by the Governor as Chairperson of the Council, while Secretariat support may continue to be provided by the Tribal Development Deptt. of the State, till requisite machinery is created in the Governor's Sectt. The Chief Minister of the State may act as Vice Chairperson of the TAC. The TAC should be reconstituted regularly as per the provisions and the meetings of the TAC should be held at least twice in a year or as expedient, as provided in the Constitution.

(iv) The Governors should promulgate detailed regulations for peace and good governance as suggested in para 1.51 above.

(v) It is desirable that all Acts and laws should be reviewed for their adaption to the Scheduled Areas, but this is not practically feasible by the concerned departments. The Law Commission (under the Ministry of Law) should be entrusted this responsibility of review of existing Laws affecting property rights, succession, marriage, land holdings, indebtedness, constitution and management of public/administrative services for adaption to Scheduled Areas in consultation with Ministry of Tribal affairs, State Govts., NCST, etc. Any weak areas in schemes / policies for Tribal areas should be got remedied either directly or indirectly by MTA

(vi) The strategy for all programmes, particularly the major missions/schemes of the Ministries/Deptt.s, should comprise sub-Chapters for accelerated development of the Scheduled Area. In particular, it is necessary to have specific Tribal Sub Plan (TSP) component in all the major missions/ schemes/ programmes of all Ministries/Deptts to have a clear focus on formulation of schemes/programmes concerning the STs and their effective implementation and monitoring. The TSP component should not be per population share but according to "problem-share"; and "need-based" taking into account the extent of deprivation, or even more than that to make up the backwardness/ negligence experienced over the years. Unless the earmarking of TSP outlays exceeds the relative share of incidence of residual problems eg. drinking water, primary health care and education, nutritional support, unemployment etc., the relative gap in physical quality of life is likely to persist.

(vii) The National Tribes Advisory Council should be established with clear definition of scope and terms & condition. It should also co-ordinate the governance of Scheduled Areas.

(viii) The Ministry of Tribal Affairs should prescribe a uniform format for preparation and submission of the reports by the Governors in respect of 5th Schedule States with particular reference to its contents. The Ministry of Tribal Affairs should also issue the following instructions to the State Governments to the effect that:

(a) The Report relating to the financial year should reach the Govt. of India (Ministry of Tribal Affairs) within a period of six months of closing of the financial year.

(b) The reports should contain a detailed note on the implementation of the constitutional safeguards for promotion of educational and socio-economic development of the Scheduled Tribes. These reports

should also contain a brief on problems relating to law and order, naxal movements and tribal unrest. The reports should also make a mention about Central and State laws enacted in the State during the report period, and action taken regarding extension/applicability of those laws to Scheduled Areas in the light of the powers of the President, Governor under Fifth and Sixth Schedule. Working of PESA Act in the State should also be integral part of the Governor's report.

(c) Considering the comprehensive nature of the task, it is not pragmatic to expect the desired report to be compiled by the Governor. Every department in the State should submit a report about the schemes/policies being run by them to the Tribal Welfare department of the State, which in turn should compile these reports to identify the strong areas and weak points for presentation to the Governor.

(d) In case the reports do not contain the observations of TAC, they may be sent back to the State Governments advising them to apprise the Central Government of the observations of the TACs and action taken on the observations of TAC.

(e) The reports should be thoroughly examined in the Ministry of Tribal Affairs on the basis of the material contained in them and the State Governments should be apprised of the assessment to enable them to take necessary follow-up action.

(g) A copy of the Governor's Report should be made available to the National Commission for Scheduled Tribes immediately after receipt of the Report in the Ministry to enable the Commission to examine the same and offer its comments thereon.

(h) The States, which have TACs, should ensure that TACs are constituted/ reconstituted timely and that their meetings are held regularly as per Constitutional provisions. The agenda of the TAC should inevitably include the subject of adaptation of Central or State laws enacted during the interregnum of its meetings so that the same are not routinely extended to Scheduled Areas/Tribes. A similar mechanism (like TAC) should be established for Schedule VI States also.

(ix) Not withstanding the specific provisions in the Fifth and the Sixth Schedule, the legislative proposals mooted by the Union and the State Governments especially those relating to Tribal Rights Charter should have a separate Chapter "Applicability to Scheduled Tribes and the Scheduled Areas (under Fifth and Sixth Schedule)" This would compulsorily require consultations with all the stake holders, including States having Scheduled Areas under Fifth and Sixth Schedule, Ministry of Tribal Affairs and the National Commission for Scheduled Tribes also and the question relating to adaptation of any Act to Scheduled Tribes and the Scheduled Areas may not be always necessary.

[Ref Para 1.42]

CHAPTER-2: *REGULATIONS REGARDING PEACE AND GOOD GOVERNANCE*

1. The increasing Competition for political power, resources and opportunities in the Indian State has witnessed strident demand from the relatively more developed sections of society in different parts of the country to be declared as Scheduled Tribes, defying earlier norms for such identification viz; backwardness and isolation. These demands are stoked by political parties in order to derive political advantage without care for their deleterious impact on the rights of tribal communities as well as erosion of Constitutional safeguards. Commission recommends that in the context of continuing demand for inclusion of new areas /communities, there is a need to review the list of Scheduled Areas/ Scheduled Tribes objectively in a time-bound manner. Appropriately, therefore, the Scheduled Area & Scheduled Tribes Commission should be constituted every 10 years to look into such demands under Article 339 of the Constitution. SA & ST Commission should be entrusted the review of Scheduled Areas, Scheduled Tribes list and Laws and rules relating to administrative and financial structure.

[Ref Para 2.4]

2. Involuntary relocation of tribal communities because of calamity, insurgency, and large development projects has also entailed forfeiture of Constitutional Safeguards because their tribal status is not legally maintainable. There is need to advise the State Governments that:-

   (a) they should issue instructions to provide that the families and children of the in-voluntarily migrated ST parents will continue to enjoy the same status in the State where they are resettled in case the community/ communities to which they belong has already been notified as Scheduled Tribe/ Scheduled Tribes in that State, and avail the benefits admissible to the Scheduled Tribes in that State.

   (b) In case the community/ communities to which the resettled tribals belong has/ have not been notified as Scheduled Tribes in the State of resettlement, they (i.e. the State Govts.) should immediately initiate action to get that/ those community/ communities notified as Scheduled Tribe/ Scheduled Tribes effective from the date of resettlement; and also ensure that pending the issue of said notification, the resettled tribals are allowed to avail the benefits admissible to Scheduled Tribes in that State.

[Ref Para 2.6]

3. It was felt that since the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is a special Act for protection of the Scheduled Tribes, similar provision should be incorporated in this Act also. While the provision for setting up Special Courts in the Act was aimed at speedy disposal of cases registered under the Act, experience so far had belied this expectation. The Commission, therefore, suggested that the cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 should be disposed by the Special Courts within 6 months. To meet this objective, the Act could also be amended to provide for setting up exclusive Special Courts (instead of

designating a Session Court as a Special Court) for trial of cases under this Act. (The recommendation of the Commission was forwarded to the Ministry of Social Justice and Empowerment vide letter, dated 16/07/2009).

[Ref Para 2.8]

4. The Commission noted that at present, there is no definition of heinous offences in the Indian Penal Code. It is also not mandatory under the Criminal Procedure Code to register an FIR immediately when a complaint is made. The Commission has also observed that a large number of atrocities against Scheduled Tribes primarily pertain to grabbing of tribal land and crimes against (their) women folk. Therefore, it is advisable to report cases registered under sub-clause (iii), (v), (xi) or (xii) of sub-section (1) of Section 3 too for monitoring purposes. The Commission also feels that there should be prompt reporting of all such complaints made to the police, without awaiting the registration of an FIR.

[Ref Para 2.9]

5. The policy should aim at the development of the most vulnerable PTGs, while protecting them from cross infection and exploitation by the outside world. They should be regularly provided with food items and health services beside special schools for education of their children. The following measures may also be suitably incorporated in the policy :

   (a) The number of regulated contact points may be increased suitably.

   (b) Instead of keeping PTGs entirely dependent on forest for livelihood, they may also be introduced to settled agriculture (by supplying them improved seeds, agricultural kits, plough bullocks, bullock carts etc.), horticulture and animal husbandry (by supplying them crossbreed cows, she buffaloes, sheep/piggery units etc. and providing suitable training therefor).

   (c) Efforts may also be made to provide education and play way/ sports activities to children of PTG community for which the staff and officers may have to make special efforts to make sporting contacts with them and persuade them to send their children to the special residential schools where every need of the children should be fulfilled free of cost. This may also help in checking the trend of diminishing population. This would certainly need careful selection of the staff and giving them suitable training for enabling them to have peaceful and fruitful relations with the PTGs. As and when possible, local eligible and suitably trained youth/women should be appointed as Teacher in the special schools.

   (d) The Primary Health Centres (PHCs) are generally located far away from the inhabitations of sparse PTG population and, therefore, they are not in a position to avail of medical facilities in the time of emergency. In order to provide emergency and regular treatment facilities, one Medical Mobile Van equipped with primary treatment facilities and medicines along with minor surgical equipments should be arranged at each contact point for the PTGs.

   (e) The local administration may be advised to arrange free distribution of food and consumer items available under PDS to needy persons.

[Ref Para 2.10]

6. In order to increase the attendance and also to decrease the drop-out rates of PTGs students in the schools, one Primary school for each village may be opened in each PTG village/hamlet.

[Ref Para 2.11]

7. One mini deep tube well for each PTG village/hamlet may be installed to make safe drinking water available to the PTGs throughout the year. In areas where there is no supply of electricity, hand pumps may be installed. The Commission further recommends that till such time the facilities of tube well/hand pumps are provided in the PTGs villages/hamlets, arrangements should be made for disinfecting of drinking wells during rainy seasons.

[Ref Para 2.12]

8. In order to provide emergency and regular treatment facilities to the PTGs, one Medical Mobile Van equipped with primary treatment facilities and medicines along with minor surgical equipments should be arranged for each block in the interior areas. The State Govts. having PTGs should also make special arrangements to provide nutrition-rich items like ragi, minor millets, tubers etc. to lactating and expectant mothers to combat malnutrition.

[Ref Para 2.13]

9. The State Govts. should arrange distribution of consumer items available under PDS through mobile vans in respect of such PTGs who live in inaccessible forest/hilly areas where PDS outlets within reasonable distance are not available. The Commission further recommends that the State Govt. should make arrangements for organizing weekly markets (haat bazaar) where PTGs could come, sell the products crafted by them and purchase items of their needs.

[Ref Para 2.14]

10. The State Govts. are advised to provide financial assistance to the PTGs families to enable them to construct houses as per their needs.

[Ref Para 2.15]

11. Almost all the PTG families are BPL families and, therefore, there is an imperative need to involve them in income generating activities. Efforts should be made to encourage them to take to settled agriculture. They should also be provided training in cane and bamboo craft, carpentry, LMV driving, tailoring and coir craft to generate self-employment among them.

[Ref Para 2.16]

12. The State Governments which have PTGs should be advised to formulate schemes for recruitment of candidates belonging to PTGs in Group C & D posts of Teaching category in various grades without subjecting them to the recruitment process provided they posses the minimum qualification prescribed for the posts

[Ref Para 2.17]

13. Educational standards and pattern of examination should be comparable throughout the country so that ST students who generally join local Govt. schools are not put to disadvantage and are able to compete for admissions in institutes for higher studies.

[Ref Para 2.18]

14. The National Council of Educational Research and Training (N.C.E.R.T.)

and State Council of Educational Research and Training (S.C.E.R.T), Non-Governmental Organisations (NGOs) should take up preparation and induction of bi-lingual text books in first two standards wherever that particular dialect is the mother tongue of a sizeable population. N.C.E.R.T should be made responsible for the introduction of such text books in all the States and Union Territories of the country at least by the end of next plan period.

[Ref Para 2.19]

15. As each region of tribal areas follow their own ritual and agricultural calendar, the concerned tribal research institutes should prepare teaching calendars either region-wise or tribe-wise and furnish the same to the education department for taking necessary action.

[Ref Para 2.20]

16. Mid-Day Meal programmes in tribal areas should take into account the locally available food material and culinary habits of the local tribals, besides ensuring that food items served under the programme are hygienic and contain necessary nutrients.

[Ref Para 2.21]

17. Teaching-aids should be prepared based on local culture and environment. Local Tribal Folk dances, and Music-both Vocal and Instrumental, should be included in the curricular and co-curricular activities.

[Ref Para 2.22]

18. Most of primary schools in tribal areas are run by a single teacher. In case he/ she takes leave due to illness or for any other domestic reason, there is no teacher left in the school with the result the education of the children suffers. There is therefore, an urgent need to post one more teacher in all the single teacher schools in tribal areas. The State Govts./UT Administrations should fill up vacancies of teachers by evolving schemes of giving various incentives; such as decent accommodation, medical facilities etc. to teachers and also by ensuring that the posts of teachers in schools in tribal areas are filled, as far as possible, by appointing teachers from amongst local tribal candidates.

[Ref Para 2.23]

19. The basic reason behind the drop out of ST students can be attributed to the poor economic condition of the family and this situation compels the tribals to utilize their children as an economic unit to bring some income to the family. It is also necessary that some National Scheme of economic incentives are given to such parents of the children whose income is below the poverty line with a view to wean them away from the compulsion of using their children as economic support instead of sending them to schools.

[Ref Para 2.24]

20. Another reason for dropouts is the repeated failure of tribal children in a class, which may be reduced by identifying weak and below average tribal students and making arrangements for providing them remedial instructions/ coaching on the holidays or at night by providing some cash incentives to the teachers. Additional incentives in the form of cash award should also be granted to each student having more than 75% attendance/ work done in the school note books. Besides, those students who secure 60% or above

marks in the examinations should also be given cash awards.

[Ref Para 2.25]

21. There is a need to provide attractive incentives to the parents of the girls for sending them to the schools, apart from the existing incentives which are being given to the ST children in the form of free textbooks, uniforms, stationery, school bags, cooked food through mid-day-meal Scheme etc.

[Ref Para 2.26]

22. The State Governments which have schemes for providing scholarships to tribal students at pre-matric levels should abolish the income ceiling in respect of the parents of all the tribal children studying in Classes from I to X.

[Ref Para 2.27]

23. The Central assistance for cooked mid-day meal during summer vacations to school children in drought affected areas should be extended to the children in tribal areas as about 60% or more ST children are undernourished in the States like Gujarat, Himachal Pradesh, Karnataka, Kerala, Andhra Pradesh, Madhya Pradesh and Maharashtra.

[Ref Para 2.28]

24. One of the major constraints in the dissemination of education among STs is that their parents resort to seasonal migration to other places in search of livelihood during the period from April to middle of June and this is the period for the school examinations. When the parents move out of their habitations to other places, they have to take their children along with them leading to dropouts. State Govts. may be advised to formulate suitable schemes for boarding and lodging of children of those ST families who decide to temporarily migrate to other places in search of their livelihood. Alternatively, special arrangements be made for conducting special examinations of the ST children when they return to their original habitations from the places of their temporary migration.

[Ref Para 2.29]

25. The income ceiling in respect of the parents of the students for the purpose of grant of the Post-Matric Scholarship may be raised.

[Ref Para 2.30]

26. The tribal students who are day-scholars but who reside in rented accommodation due to non-availability of hostel accommodation should be treated on par with hostellers and the amount of scholarship in their case also should not be less than to that of hostellers.

[Ref Para 2.31]

27. The disbursement of Post-Matric Scholarship in most of the States is being delayed due to non release of funds both from the Govt. of India (over and above the committed liability of the State Govts.) and the State Govts. Ministry of Tribal Affairs should also ensure timely release of the funds to the State Govts. The State Governments should release their share of funds to the district authorities (upto the committed liability) in time to ensure timely disbursement of these scholarships and explore the possibilities of disbursing the scholarship money to the students through their Bank Accounts.

[Ref Para 2.32]

28. There should be 8.2% (proportion of STs to the total population of the

country as per 2001 Census) reservation for Scheduled Tribes in awarding fellowships and/or in granting scholarships in the schools, colleges, Universities, Educational and Technical Institutions etc. The Ministry of HRD and the Ministry of Minority Affairs should consider suitable amendment in the Central Educational Institutions (Reservation in Admission) Act, 2006 to ensure that reservation for STs is made applicable in admissions to those Govt. run educational institutions also which have been granted minority status. The scope of reservation should also be extended to such educational institutions, hospitals etc. which though not funded by the Government had received/continue to receive concessions from the Government in respect of acquisition of lands, buildings electricity, water, provision of public transport etc.

[Ref Para 2.33]

29. Scheme of Mid -day meals should be extended up to high-school level at least for ST girl students. This will provide huge relief to the family of the ST girl students and it will improve enrolment of ST girl students and also reduce their dropout.

[Ref Para 2.34]

30. In tribal areas, the capacity of hostels particularly for ST girls is much less than the requirement and this is one of the major reasons for less enrolment and increased dropout of ST girl students. There is an urgent need of construction of more hostels for ST girls. The number of Ashram Schools, Kasturba Gandhi Balika Vidyalayas in ST concentration blocks should be increased.

[Ref Para 2.35]

31. There is a genuine need to increase the number of Government. schools of excellence/ Central Schools/ Eklavaya Modal Residential Schools (EMRS) in States/UTs which have sizeable number of ST population. Norms of opening of EMRS should be urgently reviewed.

[Ref Para 2.36]

32. The higher participation of the STs among the beneficiaries of the MGNREGA scheme is the indication of the fact that this section of the society needs more attention in this regard. There is need to incorporate a TSP component in the implementation of the Scheme in order to meet the objective of inclusive growth, which should not be based merely on the population share, but rather on the extent of deprivation. Considering the fragile economic condition of the tribals, and their poor agricultural practices including single crop culture, rather than relying on capricious demand estimates, it is desirable to ensure a minimum 100 days of employment to all tribal families as per the latest census in the tribal areas; and earmark sufficient funds, under the TSP component of the Scheme to ensure adequate livelihood opportunity in these areas. The Scheme should be designed for providing sustainable rural livelihood in respect of STs, strengthening its convergence with use of natural resources, productivity, human development, etc. It should also be ensured that the focus on the unemployed poor is not diluted by enlarging coverage to other groups in the guise of promoting skill development graduating to semi-skilled to skilled work, etc.

[Ref Para 2.37]

33. Keeping in view the lack of managerial capacity in the Panchayats, the

MGNREGA Scheme should develop a need based approach/plan of implementation based upon pro-active assessment of the demand for work in tribal areas. The demand for the work should be properly anticipated through local surveys in ST areas and villages having ST population, taking into account all factors such as availability of work on account of industries, agriculture and other seasonal activity, schooling of children, wage level of households, etc. The communication with tribals should also be strengthened to build up their capacity to articulate and demand rights.

[Ref Para 2.38]

34. The limit of providing maximum 100 days employment to a household in a given financial year under MGNREGA should be removed, as in tribal areas agriculture work is available only for a period of 2-3 months during the year. If need be, the concerned Ministry may bring amendments in the Act to this effect/ necessary adaption may be made by State Governors using the powers given in the Fifth Schedule.

[Ref Para 2.39]

35. The Commission has noted that requisite entries relating to the work demanded by the MGNREGA Job Card Holders and the details of work done by him/ her and the amount paid/ due to be paid to him/ her are not made in the Job Cards as also in the Rozgar Registers maintained in the Gram Panchayats. In most of the cases pages in the Job Cards were blank while Rozgar Registers carried some entries but not all the entries corresponding to the entries in the concerned Muster Rolls. Consequently, the Job Card Holder has no Certificate about any work having been done by him/ her in a particular week/ fortnight and therefore, in absence of the Certificate, he/ she may not be able to claim payment of wages for the work done. In order to ensure effective implementation of the Act it is necessary to maintain transparency in every field of action envisaged under the Act. It has also been noted with concern that adequate mandays of work have not been generated under several Gram Panchayats. This is despite the fact that each Panchayat is also assisted by an Assistant Secretary or the Village Rozgar Sahayak specifically in matters relating to MGNREGA. This indicates lack of action on the part of Gram Panchayat and the Panchayat Secretariat in anticipating and creation of the works required for development of the villages and for creation of employment/ man days in the villages for the needy wage earners/ Job Card holders. This requires immediate amendment to the MIS under MGNREGA.

[Ref Para 2.40]

36. MoRD may consider amending MGNREGA for partial reimbursement (out of GoI funds) of payment of unemployment allowance, while instituting controls to minimize chances of persons drawing unemployment allowance. This is required to be implemented in the tribal districts on priority as the tribals are generally illiterate, don't know their rights and are easily victimized. In the present scenario, since State Govts. have to provide funds for payment of unemployment allowance, there is an incentive for non-transparent recording of employment demand.

[Ref Para 2.41]

37. There is a need to strengthen existing mechanism in MGNREGA for

enforcing accountability in respect of the following in ST dominated areas:

(i) Section 25: Fine for failure to perform duty under the Act.
(ii) Schedule II Section 30: Compensating workers for delays in payment.
(iii) Section 19: Urgent framing of Grievance and Redressal Rules.
(iv) Need for independent grievance Redressal Mechanism.
(v) STs' participation in Social Audit

[Ref Para 2.42]

38. As per 'The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979', no principal employer of an establishment to which the Act applies shall employ inter-State migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force. Further, a contractor has to obtain a license to employ inter-State workmen. A contractor is required to issue a pass-book to every inter-State migrant workman with a passport size photograph, name and place of establishment, period of employment, the proposed rates and modes of payment of wages, displacement allowance payable, return fare payable on expiry of period of employment, deductions made and other such particulars. As per provisions, inter-State migrant workman shall in no case be paid less than wages fixed under the Minimum Wages Act, 1948. However, this Act is applicable only to inter-State migrant workman employed in an establishment. The Commission, therefore, recommended that provision of the Act should also be made applicable to the placement agencies in respect of Migrant Domestic Workers from tribal areas, which are being driven by indigence to seek traditional employment.

[Ref Para 2.43]

39. After the commencement of 'The Bonded labour System (Abolition) Act, 1976, every obligation of a bonded labourer to repay any bonded debt shall be deemed to have been extinguished. All the property of bonded labourer mortgaged in connection with any bonded debt shall stand freed and discharged. No creditor shall accept any payment against any bonded debt, which has been fully satisfied by virtue of the provisions of this Act. These provisions need to be adapted for overseeing contract labour to ensure humane treatment of Migrant workers who are easily exploited by greedy contractors.

[Ref Para 2.44]

40. Both availability of food grains and affordability are inter-meshed problems; and food security is not merely a question of subsidizing the prices for the poorer sections of the populace in these areas. Therefore, there is compelling reason to recognize these special characteristics; and have a differentiated approach for Scheduled Areas by way of provision of adequate entitlement of requisite food stocks, strengthening of warehousing and logistics, financial resources and responsibilities.

[Ref Para 2.45]

41. The public distribution system must assure reasonable food availability to all residents in Scheduled Areas keeping in view their special problems of availability and affordability. The number of priority households should not be arbitrarily determined; and they should be identified on the basis of

discernible wealth/income-related criterion. Special arrangements, including build-up of inventory have to be made for remote, inaccessible areas, so that food availability is not often compromised by logistical failures. It is not sufficient, or desirable, to provide an allowance in lieu thereof because that leaves availability issues unresolved.

[Ref Para 2.46]

42. Since remote tribal areas also have acute problems of availability/ marketing infrastructure, food grain entitlements should not be differentiated according to economic status, which is relevant only for the quantum of eligible subsidy. Food entitlement should be specified on the basis of recommended nutritional requirements to enable purchase of needed quantity at option; or yearly aggregate entitlements may by specified instead, since the average off-take may fluctuate at different times of the year depending upon prices or alternate sources of supply, and it may be more relevant for planning subsidy/ logistic requirements.

[Ref Para 2.47]

43. Use of information technology for increasing transparency of transactions, the monitoring mechanisms in Scheduled Areas should be strengthened through reliable reporting systems to enable rapid awareness of related transactions – stocks, movement, issues, etc - at all locations upto fair price shop level, and providing timely feedback for prompt remedial action to rectify logistical failures which imperil food security in remote areas.

[Ref Para 2.48]

44. In view of the special Constitutional mandate to the Union Govt. for Scheduled Areas, and the persisting poor health and economic standards of tribals, full financial/ logistical responsibility to ensure food security in such areas should vest in the Union Government. It is not appropriate to cast such responsibility on the State Governments, also because they have limited capacity to mobilize food grains from low-production regions, arrange credit and subsidize logistical/ distribution costs.

[Ref Para 2.49]

45. The special obligations of the Central Government in Scheduled Areas should include provision of food grains in desired quantity (as per nutritional requirements) for all residents, supplemental logistical arrangements (road/rail transportation, depots/ issue points and increased inventory) as well as priority in food grain allocations, (since resort to payment of allowance is not a feasible option because the same will compromise food security)

[Ref Para 2.50]

46. Custom, as is well-recognised, varies from people to people and region to region; and needs to be codified for the guidance of legal forums/ practitioners as has been done in the State of Madhya Pradesh, where customary laws have been codified as "Madhya Pradesh Rajya Ki Anusuchit Janjatiyon Ki Roodijanya Vidhi Sanhita,1992".

[Ref Para 2.53]

47. Suitable amendments should be made in the Indian Forest Act, 1927 to make its provision consistent with the provisions of PESA Act, 1996 in respect of endowing Panchayats at the appropriate level and the Gram

Sabhas with necessary powers with respect to conferring ownership of minor forest produce

[Ref Para 2.55]

48. All the cases of alleged encroachment of forest land by the Scheduled Tribes which were registered prior to 31.12.2007 may be withdrawn by the concerned authorities and their claims on forest lands may be settled as per provisions under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.

[Ref Para 2.56]

49. The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules provide for settlement of individual as well as community claims. The claim of community over land and resources is of much relevance to all the inhabitants of the area and therefore, distribution of title deeds about community rights also has same relevance as the settlement of individual claims. The Ministry of Tribal Affairs and the State Governments should evolve a strategy (i) for disposal of all the claims within a prescribed time frame, (ii) ensuring that genuine claims are not rejected, (iii) title deeds are distributed to all the approved claimants within the set time frame and (iv) furnishing full details in respect of individual claims as well as community claims separately under Forest Right Act.

[Ref Para 2.57]

50. It is necessary to incorporate an essential, specifically delineated provision for rehabilitation & resettlement for the project affected/ displaced persons under the obligations set out in a mining lease. (It may be mentioned that the draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011, which is awaiting approval of the Parliament, has integrated the provisions of rehabilitation and resettlement with the land acquisition process, but doesn't explicitly cover R & R in respect of the project-affected/ displaced persons as a result of diversion of forest land/ private lands leased for mining). The R & R obligations also need to be ensured in respect of incremental leasing of adjacent areas and extension of current leases in perpetuity also. Rehabilitation and Resettlement (R & R) plans should be linked to the Mining Plan, so that R & R activities are satisfactorily completed before the lessee ceases operations in a specified area. Similar to the corporate social responsibility document, there should also be a R & R document which should document the obligation/ efforts and outcomes achieved. Before granting approval for extension of a mining lease, special report regarding implementation of R & R obligation should also be sought. Besides failure or delay in commencement of mining operations, leases should also lapse in case R & R obligations have not been discharged.

[Ref Para 2.59]

51. Land is the only asset tribals are having and is also the source of their livelihood. Tribals are facing difficulties in meeting special needs like marriages, educational needs, housing etc. On the lines of the Credit Guarantee Fund set up for the comfort of the lenders under the scheme of Ministry of Micro, Small and Medium Enterprises, a similar scheme may also be considered for the benefit of the tribals. To safeguard the livelihood

of tribal farmers, the Government could consider setting up Land Banks comprising lands resumed by the Govt. in cases of mortgage default; and such lands may be leased to the previous ST owners with the opportunity/ right to re-purchase the same at any subsequent stage of time, beside rights to additional potential compensation due to change in land use pattern in future.

[Ref Para 2.61]

52. Since mineral extraction is generally destructive of soil surface, it can't usually be restored to original land use subsequently. An effective and equitable compensation arrangement should ensure lifelong annuities sufficient to substitute income deprivation for the land owners (adjusted for likely inflation), besides creating alternative vocations for them. The land owners should also get a reasonable share in the profits distributed/ retained by the mining enterprise. Besides annual compensation in lieu of land surface rights, future (and sometimes windfall) earnings from mining activity should also be shared with land rights holders in reasonable measure. If some land rights are being ceded in perpetuity, the retained earnings from the project activity should also be shared with the land owners in the forms of "sweat-equity" (beside compensation for denial of use of land surface). Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature. Benefits/privileges available to mineral right holders may also be accorded to ordinary landholders also in Scheduled areas.

[Ref Para 2.63]

53. Considering current life cycles of investments, tribal land should be mortgaged/ given on lease rather than transfer of ownership, with provision for continued sharing of cost appreciation/windfall gains. Since profit is their overriding consideration, PPP/privately owned projects necessarily embed tribal hazard, in that they cannot eschew temptation to substitute cheaply obtained land for more expensive capital requirements. In order to discourage circumventing of constitutional safeguards, the declaration of public purpose should also be justifiable in respect of Scheduled Areas.

[Ref Para 2.68]

54. Social Impact Assessment (SIA) should also identify affected areas (including contiguous forest lands wherein tribals have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections and subsequent determination of 'public purpose'. Individual notices may be issued in Scheduled Areas to all persons known to have an interest in the land besides public notice, so that they may also be enabled to seek judicial determination regarding the public purpose of acquisition.

[Ref Para 2.69]

55. Compensation should also be given for forest rights which may become unavailable because of displacement and also sub-surface rights (water/minerals etc.) as Scheduled Tribes have been (and also continue to be so in Schedule VI areas) traditional owners of land (rather than tenure holders with heritable rights to cultivate land). Multiple uses of the land acquired must also be accounted for in the compensation. If agricultural land is to be used for mining, then besides compensation for use of land surface, the future earnings from mining activity should also be shared with land owners. Further, where land is acquired by the Govt. for projects meant

for production of goods and services, compensation for land acquired has to be supplemented with (and not adjusted against) allotment of shares and debentures, as part of the long-term profit sharing of the project derivable from land as a factor of production. The quantum of such "sweat" equity must be reasonably relatable to the nature of economic activity of the project and the equity base.

50% developed land/sweat equity/share in the future profits should be provided for land owners in case of land development projects, because land is the principal ingredient of the activity and its value continues to rise exponentially while other appurtenances depreciate.

[Ref Para 2.71]

56. In the event of the acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the re-payment of the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received (as is done on expiry of a lease). In case the land is subsequently utilized by the Govt. for a different purpose (e.g. for real estate development after mining, etc.), the earnings from such activity should also be shared with the original land owners in similar fashion for appreciation in land values.

[Ref Para 2.72]

57. There is a need to specify to fix timelines for the entire process, involving land acquisition and R &R. The (maximum) period entailed in the process (from SIA upto award) needs to be shortened to 3 years through larger involvement and devolution of responsibility to the Requiring body for rehabilitation planning and implementation in the interest of project implementation as well as speedy resettlement of affected persons.

[Ref Para 2.73]

58. In case of displacement due to disasters/ natural calamity and conflicts, the responsibility for resettlement and rehabilitation lies on the appropriate Government, while in the case of displacement occasioned by development projects, this responsibility should be of the requiring body (individual/ corporate house/ Govt.). In the case of displacement arising from projects implemented by non-government/ corporate bodies, the entire onus of implementing rehabilitation and resettlement plans should be that of the requiring body (individual/ corporate house) to avoid fragmentation/ dereliction of responsibility. Only in default, the appropriate Govt. may undertake rehabilitation/ resettlement (as for Govt. investments) at their cost.

[Ref Para 2.75]

59. The responsibility for SIA, preparation of RR plans and implementation should be that of the requiring body which may do the job itself or outsource it to other agencies. Baseline survey should essentially aim to enumerate all the affected persons, nature of rights affected by displacement and resettlement requirements which could form the basis of the R & R plan. The RR plan should be approved and implemented under the supervision of an RR Committee constituted at the local level.

[Ref Para 2.79]

60. The Resettlement site should aim to offer better living conditions to families affected and should recognize subsequent division of joint families/ separation of adult members in the matter of benefits till the RR plan is

published. Forest dwellers affected by diversion of forest land should be resettled in the forest. Compensation in lieu of land should be discouraged. Resettled tribals should also continue to enjoy reservation benefits in the resettlement area by concurrent modification of the Scheduled Tribes Reservation Orders.

[Ref Para 2.80]

61. The State legislations on Panchayats should conform with the customary law, social and religious practices and traditional management practices of community resources. In terms of Section 4(n) of the PESA Act, 1996 Panchayats should be equipped with requisite powers and authority to enable them to function as institution of self-government.

[Ref Para 2.81]

62. PESA envisaged democratic institutions of administration. To provide sustained co-ordinated emphasis to the problems of Scheduled Tribes/Areas, multiplicity of agencies should be avoided and ITDAs should be merged with ZPs.

[Ref Para 2.84]

63. There is a need to devise a mechanism, which would enable the field formations to receive funds directly instead of being routed through State Hqrs. by enforcing on them a system of accountability for proper utilization of those funds.

[Ref Para 2.85]

64. Commission is of the view that Government should formulate specific regulations in respect of Scheduled Areas for personnel management with the formation of a State level Civil Services Authority for Scheduled Areas, which would deal with matters of assignment of functional domains to officers, preparing a panel for posting of officers, fixing tenures for senior posts etc., in line with the Central Civil Services Authority proposed by the ARC. In order to improve personnel management in respect of all category of employees, it is necessary to fix a minimum tenure for various cadre posts, which be filled on the basis of merit, suitability and experience, prescribe norms and guidelines for transfers and posting to maintain continuity and predictability in career advancement and acquisition of necessary skills and experiences as well as promotion of good governance. The normal tenure of all public servants may not be less than two years and Transfers before the specified tenure should only be for valid reasons to be recorded in writing. These recommendations are in accordance with the observations contained in para 8.5.11, 8.5.12 and 8.5.14 of the 10th Report of the 2nd Administrative Reforms Commission. Department of Personnel and Training may issue detailed guidelines for improvement of personnel policies and systems in Tribal Areas in the interest of peace and good governance. Defence forces, financial institutions etc have formulated personnel policies for “hardship areas” prescribing minimum periods of mandatory service in such locations during their career – which can be emulated to pool services of personnel from all Central/ All-India Services (irrespective of other service conditions) and meet skilled personnel/ managerial requirements in tribal/ Scheduled areas.

[Ref Para 2.87]

65. Both Planning Commission and Ministry of Tribal Affairs should take immediate steps to ensure strict formulation and implementation of Tribal Sub-Plan by States/ UTS as well as Central Ministries/ Departments.

[Ref Para 2.98]

66. The strategy for all development programmes, particularly the major missions/ schemes of the Ministries/ Departments, should comprise sub-Chapters for accelerated development of the tribal areas. In particular, it is necessary to have specific Tribal Sub Plan (TSP) component in all the major missions/ schemes/ programmes of all Ministries/ Deptts to have a clear focus on formulation of schemes/ programmes concerning the STs and their effective implementation and monitoring. The TSP component should not be per population share but according to "problem-share"; and "need-based" taking into account the extent of deprivation, or even more than that to make up the backwardness/ negligence experienced over the years. Unless the earmarking of TSP outlays exceeds the relative share of incidence of residual problems eg. drinking water, primary health care and education, nutritional support, unemployment etc., the relative gap in physical quality of life is likely to persist.

[Ref Para 2.99]

67. Constitutional provisions have to be interpreted in proper context. Since no regulatory matter is involved, it is quite niggardly for the Union Govt. to confine its development support for Scheduled / tribal Areas to the issue of directions. Appropriately, it must shoulder direct financial responsibility for the accelerated development of scheduled areas/their population through all the Ministries and Departments.

[Ref Para 2.100]

68. The Government of India should bear the responsibility for infrastructure development/ upgradation of Administration in Scheduled Areas under Art. 275 of the Constitution. The costs of governance framework/ manpower in tribal areas should also be funded under Article 275(i) grants. Besides, financial support for Tribal Sub-Plan should not be per population share but according to "problem-share" and "need-based".

[Ref Para 2.101]

69. The funds allocated under Tribal Sub-Plan of the States should be non-divertible and non-lapsable with the objective of bridging the gap in socio-economic development of the Scheduled Tribes/ Scheduled Areas and other areas in a time bound manner. The Ministry of Finance, Ministry of Tribal Affairs and the Planning Commission may take necessary steps for creation of a non-lapsable Tribal Sub-Plan fund under each State/ UT having Tribal Sub-Plan and formulate guidelines for utilisation of such funds. Infrastructure development aimed at accelerated development of the Tribal Sub-Plan areas should be a priority area for expenditure from the non-lapsable fund.

[Ref Para 2.102]

70. The Planning Commission, in its communication to the State Governments, regarding preparation of Annual Plan and Five Year Plan should invariably emphasize that the Plan proposals of the State Government for Annual Plan as well as Five Year Plan will not be considered unless Tribal Sub-Plan document is also received. The communication should also clearly specify that the State Governments will simultaneously sent the copies of State

Plan documents and Tribal Sub-Plan documents to the National Commission for Scheduled Tribes.

[Ref Para 2.103]

71. As has been the practice in the past, the draft Tribal Sub-Plan of the State should also be discussed by the Planning Commission in the first phase by the Ministry of Tribal Affairs and the revised Tribal Sub-Plan document may be discussed for final approval in the Planning Commission, after finalization of the Five Year Plan/ Annual Plan size of the State. The Tribal Sub-Plan outlays approved in the meeting in the Planning Commission should be adhered by the State Government.

[Ref Para 2.104]

72. In order to ensure non-diversion of Tribal Sub-Plan funds, the Planning Commission and the Ministry of Tribal Affairs should ensure that each State Government budgets the earmarked TSP funds under a single budget demand head under the control of the State Tribal Welfare/ Development Department of the State, (as envisaged in the Maharashtra Model and advocated by Planning Commission as well as Ministry of Tribal Affairs from time to time).

[Ref Para 2.105]

73. The Commission has noted that some of the Ministries/ Departments which have been listed by the task force in 'No Obligation' category for the Tribal Sub-Plan are responsible for infrastructure development and public services in critical areas. The Commission, therefore, recommend that appropriate outlays for TSP should also be earmarked in respect of all these Ministries/ Departments, to ensure that TSP areas/ Scheduled Areas don't continue to be hamstrung by poor infrastructure/services.

[Ref Para 2.106]

74. In the recent past various Ministries concerned with development and services have formulated National Missions on crucial services like National Rural Health Mission, National Drinking Water Mission, MGNREGA. These missions have direct impact on the life of Scheduled Tribes but do not make specific provisions for Scheduled Tribe beneficiaries. The Commission recommends that the Ministries/ Departments administering the National Missions must ensure that adequate investments/ benefits are earmarked for Scheduled Tribes under Tribal Sub-Plan of the Ministry/ Department during each plan period so as to provide for their accelerated development and in general each Ministry/ Department should consult the National Commission for Scheduled Tribes in all policy matters affecting Scheduled Tribes, as provided under Article 338A(9) of the Constitution.

[Ref Para 2.107]

75. It is suggested that unutilized TSP funds should be placed by Central Ministries in a non-lapsable infrastructure development fund administered by the MTA. For this purpose, appropriate guidelines should be formulated, on the lines of the guidelines issued by the Ministry of Development of North Eastern Region for administration of non-lapsable central pool of resources, to ensure utilization consistent with objectives.

[Ref Para 2.108]

76. The Planning Commission should not consider the Five Year Plan/ Annual Plan proposal of any Ministry/ Department which is not accompanied by the Tribal Sub-Plan, which should be finalized after discussion with the representatives of the Ministry of Tribal Affairs.

[Ref Para 2.109]

77. Each Ministry should set up TSP Cell as in the past. The TSP Cell should be functional throughout the year like the Official Language Section in each Ministry/ Department. The TSP Cell will monitor implementation of TSP schemes of the Ministry and, by using the inputs received through monitoring, prepare the TSP component, of Annual Plan and Five Year Plan of the Ministry/ Department in terms of financial and physical aspects. The TSP Cells should be manned by personnel having special background and expertise in various fields of Tribal development and Administration. In order to ensure continuous monitoring of TSP, the posts in TSP Cell should not be allowed to remain unfilled. This will be possible only if the personnel for these Cells belong to an organised cadre of specialised experts. Personnel for Tribal Sub-Plan Cells in the Ministries/ Departments should be drawn from the separate specialised Organised Cadre proposed for the National Commission for Scheduled Tribes and its Regional Offices (presently part of Joint Cadre of National Commission for Scheduled Tribes, National Commission for Scheduled Castes, Ministry of Social Justice & Empowerment and the Ministry of Tribal Affairs). This Cadre should be developed and function on the lines of the specialised cadre of Official Language Department of Ministry of Home Affairs and personnel for TSP Cell in each Ministry/ Department should be made available from the above mentioned organised specialised Cadre.

[Ref Para 2.110]

CHAPTER-3: *NEED FOR MEANINGFUL CONSULTATIONS WITH COMMISSION*

1 The Commission therefore recommends that the revised instructions issued by the Cabinet Sect. vide OM dated 16/02/2012 should be amended, on the lines of directions contained in Instruction No. 46 and 47 of the Handbook of Instructions, with advise to the sponsoring Ministries, to provide for directly seeking the advice` of the NCST on policy related matters/ legislative proposals under Article 338A(9) of the Constitution and not through the Administrative Ministry as that Ministry has a role different from that of the NCST and the Ministry cannot play an oversight role in obliging/ restricting the Commission to make a particular recommendation or in a particular manner.

[Ref Para 3.49]

ANNEXURE 1.I
(Ref. para 1.5, Ch 1)

The Scheduled Districts Act 1874 (Act XIV of 1874)
(Act No. 14 of 1874)

Sections :

- Short title
- Repeal of enactment
- Notification of enactments in force in Scheduled Districts
- Effect of notification under Section 3.
- Powers to extend enactments to Scheduled Districts.

  5-A. Modification of enactments and their application to Scheduled Districts
- Appointment of Officers and regulation of their procedure 7. Continuance of existing rules and Officers.
- Settlement of question as to boundary
- Place of imprisonment or transportation
- Extension to Satna strip of Act relating to public gambling and Salt Acts No.III of 1867 and No.XXV of 1869.
- Saving of criminal jurisdiction over European, British subjects.

The Schedule

STATEMENT OF OBJECTS AND REASONS

An Act to ascertain the enactments in force in various parts of British India, and for other purposes.

Whereas various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature.

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts; and in other cases as to what are the boundaries of such parts: and whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readler means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof and for administering the law therein.

And whereas it is expedient to declare that certain Acts are in force in a tracts of land lying between the Railway Station at Satna and the eastern boundary of the Jabalpur division.

It is hereby enacted as follows:-

1. Short title:-

- This Act may be called the Scheduled Districts Act, 1874.
- **Local extent**:- This Act extends in the first instance to the whole of British India, other than the territories mentioned in the first Schedule hereto annexed, and it shall come into force in each of the Scheduled Districts on the issue of a notification under Section 3 relating to such district.

» Interpretation clause:- In this Act, the term "Scheduled Districts" means the territories mentioned in the first Schedule hereto annexed; and from the date fixed in the resolution next hereinafter mentioned, it shall also include any other territory to which the Secretary of State for India, by resolution in Council, may declare the provisions of the 33 rd of Victoria Chapter 3, Section 1, to be applicable.

2. Repeal of enactments:-

» The enactments mentioned in the second Schedule here to annexed shall be repealed.

3. Notification of enactment in force in Scheduled Districts:-

The local Government may from time to time, by notification in the Local Gazette.

» Declare what enactments are actually in force in any of the Scheduled District, or in any part of any such districts.

» Declare of any enactment that it is not actually in force in any of the said districts or in any such district.

» Correct any mistake of fact in any notification issued under this section

» Correct any mistake of fact in any notification issued under this section

Provided that a declaration once made under clause (a) or clause (b) of the section shall not be altered by any subsequent declaration other than a declaration under clause (c) of this section.

4. Effect of notification under Section 3:-

» On the issue, under Section 3, of notification declaring what enactments are in force or not in force, in any Scheduled District, the enactments so notified shall be deemed to be in force or not in force according to the tenor of the notification, in such district, and every such notification, shall be binding on all Courts of law.

5. Power to extend enactment to Scheduled District:-

» The Local Government may, from time to time by notification in the local Gazette extend to any of the Scheduled Districts, or to any part of any such district, any enactment which is in force in any part of British India at the date of such extension.

5-A. Modification of enactment in their application to Scheduled Districts:-

» In declaring an enactment in force in a Scheduled District or part thereunder Section 3 of this Act, or in extending an enactment to a Scheduled District, or part thereof under Section 5 of this Act, the Local Government may declare the operation of the enactment to be subject to such restrictions as that Government thinks fit].

6. Appointment of officers and regulation of their procedure:-

» The Local Government may from time to time:-

Appoint officers to administer Civil and Criminal Justice and to superintendent the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts.

» regulate the procedure of the officers so appointed: but not so as to restrict the operation of any enactment for the time being in force in any of said districts.

» Direct by what authority any jurisdiction, powers or duties incidental to the operation of any enactment for the time being in force in such district shall be exercised or performed.

7. Continuance of existing rules and officers:-

» All rules heretofore prescribed by the Governor- General-in-Council or the local government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in Section 6, and in force at the time of passing of this Act, shall continue to be force unless and until the Governor-General-in-Council or the Local Government, as the case may be, otherwise directs.

» All existing officers so appointed previous to the date on which this Act comes into force in such district shall be deemed to have been appointed here under.

8. Settlement of questions as to boundary: -

» Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory, such officer as the Local Government or (Where the said district and the other territory are not subject to the same local government) as the Governor-General-in-Council from time to time appoints, may consider and determine such line of boundary; and the other made thereon by such officer, if confirmed by the Government which appointed him, shall be conclusive in all courts of Justice.

9. Place of imprisonment or transportation:-

» Any person liable to be imprisoned or to be transported beyond sea under any order or sentence passed by any officer appointed under Section 6 may (subject to such rules as the Local Government may from time to time prescribe in this behalf) be imprisoned in such jail or transported to such place as the Local Government districts.

10.Extension to Satna strip of Act relating to public gambling and salt Acts:-

» Nos. III of 1967 and XXV of 1869 are hereby declared to be in force in the tract of land ceded to the British Government in the year 1863 and lying between the Railway Station at Satna and the eastern boundary of the Jabalpur District.

11.Saving of criminal jurisdiction over European British Subjects:-

» And saving of other laws. Nothing contained in this Act or in any notification issued under the powers hereby conferred shall be deemed-

» to affect the criminal jurisdiction of any Court over European British subjects; or

» to affect any law other than laws contained in Acts or Regulation or in rules made in exercise of powers conferred by such Acts or Regulations.

THE FIRST SCHEDULE
(See Section 1)

PART - 1

Scheduled District, Madras.

Part-II - IN VISAKHAPATNAM

- The Jaypur Zamindari
- Golconda Hills west of the River Boderu
- The Madugol Maliahs
- The Kasipur Zamindari
- The Panchipenta Maliahs.
- Mondemkilla, in the Merangi Zamindari
- The Konda Mutta of Merangi
- The Gumma and Konda Muttas of Kurupam
- The Kottam, Ram and Konda Muttas of Palkonda

Part- III - IN THE GODAVARI DISTRICT

- The Bhadrachalam Taluq
- The Rakapilli Taluq
- The Rampa Country.

APPENDEX-A

Scheduled Districts in which the Scheduled districts act, 1874, has been brought into force by notification under Section 3, of the Act.

Presidency or Province	Scheduled districts	No. and Date of Notification	Gazette in which the Notification is published
(1)	(2)	(3)	(4)
Madras	The Taluqs of Bhadrachalam and Rakapilli and the Rampa Country. The remaining Scheduled disrticts of Madras, as existing on the 19 th February, 1889.	728, dated 26 th June.1879. Dated 20 th June, 1879, 82, dated 19 th February, 1889.	India 1879, Pt. 1.P.437, Fort St. George. 1879, Pt.1P. 462, India 1889, Pt,1,P.151.
		83, dated 19 th February, 1889.	Fort St. George, 1889, Pt.1,P.121
	The villages in the Godavari District to	1604, dated 11 th August, 1893.	India , 1893, Pt.1,P.516.

	which, by Resolution dated the 4 th April, 1891, the provisions of 33 Vict., Chap.3, Sec.1, were made applicable	330, dated 11 th August, 1893	Fort St.George , Pt.St.George, Pt.1,P 1000

APPENDIX - B

Territories which have become Scheduled Districts by virtue of the concluding portion of the third paragraph of S.1 of the Scheduled District Act, 1874, namely, those to which the Secretary of State for India has, by Resolution in council, declared the provisions of Government of India Act, 1870 (33 Vict., Chap.3), S.1, to be applicable

Presidency or Province	Territories	Date from which the Resolution took effect	Gazette of India in which the Resolution is published
(1)	(2)	(3)	(4)
Madras	In the Godavari District- 1. the unsettled Government villages in the Yerangudem Taluk; 2. the villages of the ex-Mansab of Jab dengi, and 3. the foloiwng petty proprietary estates namely, Bayanagudem, Billamilli, Jangamreddigudem, Gutala Gangolu, Patteshim, Polavaram, Petta Dangengi, Viravaram and Davipatram, In the Godavari District- 1. The following villages of the Ernagudem Taluk- (a) the settled Government villages of Ganapavaram, Taduvaya and Parimpudi; (b) the Agraharams of Ragolopalli, Saggonda, Dondapudi, Palacherla Rajavaram, Ayyanani, polavaram, Srinivasapuram, Palipudi, Ramanujapuram and Krishnapuram; 2. the following villages of the		

	Rajahmundry Taluq; (a) the Lakkonda sima of Gangaram, Lakkon-da, Pidatamamidi, Vanayapudi, Vojubanda, Potamdorapaliem, Jaggampalam, Jiyyampaliam, Rajaram, Neladonalapadu, Kondalapallam, Kumarapadu, Rajupeta Loddi, Yamnapalli, Vunmetta, Chodaram, Loddipallam, Rajampallem Botiredi Sivain Patnam, Gadichinampallem Mattapadu, Kundumulapallem Vemmalana, Autagondi Bandam, Vuyyalamadugu, Agraharapadu, Pedagarlapadu, Goragumovi, Pundapotipallem, Kusamaranji, Amudalabandu, Doramamidi, Yerrampallem, Kottada, Donalpalli, Surampalem, Chinagarlapadu; (b) the unsettled independent village of Boyyanapalli, Kotta Ramavaram, Pattarmavaram, Uppvlapudu, Narassapuram, Ravilanka, Pedda Bhimpali, Nellaudi, Lingavaram, Moller, Kattumlli Ramadevipuram, and Dokulamanda, Krishnavaram.		

ANNEXURE 1.II
(Ref. para 1.7, Ch 1)

Government of India Act, 1919

EXTRACTS

15.-(1) The Governor-General in Council may, after obtaining an expression of opinion from the local government and the local legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new governor's province, or place part of a governor's province under the administration of a deputy-governor to be appointed by the Governor-General, and may in any such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of the principal Act or this Act relating to governors' provinces, or provinces under a lieutenant-governor or chief commissioner, to any such new province or part of a province.

(2) The Governor-General in Council may declare any territory in British India to be a "backward tract," and may, by notification, with such sanction as aforesaid, direct that the principal Act and this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian Legislature shall not apply to the territory in question or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorize the governor in council to give similar directions as respects any Act of the local legislature.

ANNEXURE 1.III
(Ref. para 1.8, Ch 1)

Government of India Act, 1935.

EXTRACTS

CHAPTER V.

PART III. EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS.

. Excluded areas and partially excluded areas

91.-(1) In this Act the expressions "excluded area" and "partially, excluded area " mean respectively such areas as His Majesty may by Order, in Council declare to be excluded areas or partially excluded areas.

The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this subsection before Parliament within six months from the passing of this Act.

(2) His Majesty may at any time by Order in Council-

(a) direct that the whole or any specified 'part of an excluded area shall become, or become part of, a partially excluded area;

(b) direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area ;

(c) alter, but only by way of rectification of boundaries, any excluded or partially excluded area ;

(d) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area,

and any, such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper, but save as aforesaid 'the Order in Council made under subsection (1) of this section shall not be varied by any subsequent Order.

Administration of excluded areas and partially excluded areas.

92.-(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to Government of India Act, 1935. any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature, or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question.

Regulations made under this subsection shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion.

ANNEXURE 1.IV

(Ref. para 1.11, Ch 1)

FIFTH SCHEDULE

[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A

GENERAL

1. **Interpretation**.—In this Schedule, unless the context otherwise requires, the expression "State" does not include the States of Assam, Meghalaya, Tripura and Mizoram.

2. Executive power of a State in Scheduled Areas.—Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. Report by the Governor to the President regarding the administration of Scheduled Areas.—The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. Tribes Advisory Council.—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

> Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be,—

(*a*) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;

(*b*) the conduct of its meetings and its procedure in general; and

(*c*) all other incidental matters.

5. Law applicable to Scheduled Areas.—(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(*a*) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(*b*) regulate the allotment of land to members of the Scheduled Tribes in such area;

(*c*) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C

SCHEDULED AREAS

6. Scheduled Areas.—(1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order[1] declare to be Scheduled Areas.

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

(*a*) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(*aa*) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(*b*) alter, but only by way of rectification of boundaries, any Scheduled Area;

(*c*) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

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[1] *See* the Scheduled Areas (Part A States) Order, 1950 (C.O. 9), the Scheduled Areas (Part B States) Order, 1950 (C.O.26), the Scheduled Areas (Himachal Pradesh) Order, 1975 (C.O. 102) and the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 (C.O. 109).

[2] *See* the Madras Scheduled Areas (Cessor) Order, 1950 (C.O. 30) and the Andhra Scheduled Areas (Cessor) Order, 1955 (C.O. 50).

(*d*) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D

AMENDMENT OF THE SCHEDULE

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

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

छठी अनुसूची

[अनुच्छेद 244(2) और अनुच्छेद 275(1)]

[1][असम, मेघालय, त्रिपुरा और मिजोरम राज्यों] के जनजाति क्षेत्रों के प्रशासन के बारे में उपबंध

[2]**1. स्वशासी जिले और स्वशासी प्रदेश**--(1) इस पैरा के उपबंधों के अधीन रहते हुए, इस अनुसूची के पैरा 20 से संलग्न सारणी के [3][[4][भाग 1, भाग 2 और भाग 2क] की प्रत्येक मद के और भाग 3] के जनजाति क्षेत्रों का एक स्वशासी जिला होगा ।

(2) यदि किसी स्वशासी जिले में भिन्न-भिन्न अनुसूचित जनजातियां हैं तो राज्यपाल, लोक अधिसूचना द्वारा, ऐसे क्षेत्र या क्षेत्रों को, जिनमें वे बसे हुए हैं, स्वशासी प्रदेशों में विभाजित कर सकेगा ।

(3) राज्यपाल, लोक अधिसूचना द्वारा,--

(क) उक्त सारणी के [3][किसी भाग] में किसी क्षेत्र को सम्मिलित कर सकेगा ;

(ख) उक्त सारणी के [3][किसी भाग] में किसी क्षेत्र को अपवर्जित कर सकेगा ;

(ग) नया स्वशासी जिला बना सकेगा ;

(घ) किसी स्वशासी जिले का क्षेत्र बढ़ा सकेगा ;

(ङ) किसी स्वशासी जिले का क्षेत्र घटा सकेगा ;

(च) दो या अधिक स्वशासी जिलों या उनके भागों को मिला सकेगा जिससे एक स्वशासी जिला बन सके ;

[5][(चच) किसी स्वशासी जिले के नाम में परिवर्तन कर सकेगा ;]

(छ) किसी स्वशासी जिले की सीमाएं परिनिश्चित कर सकेगा :

परंतु राज्यपाल इस उपपैरा के खंड (ग), खंड (घ), खंड (ङ) और खंड (च) के अधीन कोई आदेश इस अनुसूची के पैरा 14 के उपपैरा (1) के अधीन नियुक्त आयोग के प्रतिवेदन पर विचार करने के पश्चात् ही करेगा, अन्यथा नहीं :

[6][परंतु यह और कि राज्यपाल द्वारा इस उपपैरा के अधीन किए गए आदेश में ऐसे आनुषंगिक और पारिणामिक उपबंध (जिनके अंतर्गत पैरा 20 का और उक्त सारणी के किसी भाग की किसी मद का कोई संशोधन है) अंतर्विष्ट हो सकेंगे जो राज्यपाल को उस आदेश के उपबंधों को प्रभावी करने के लिए आवश्यक प्रतीत हों ।

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[1] मिजोरम राज्य अधिनियम, 1986 (1986 का 34) की धारा 39 द्वारा कुछ शब्दों के स्थान पर (20-2-1987 से) प्रतिस्थापित ।

[2] संविधान (छठी अनुसूची) संशोधन अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा असम में लागू होने के लिए पैरा 1 में उपपैरा (2) के पश्चात् निम्नलिखित परंतुक अंतःस्थापित कर संशोधित किया गया, अर्थात् :--

"परन्तु इस उपपैरा की कोई बात, बोडोलैंड प्रादेशिक क्षेत्र जिले को लागू नहीं होगी ।"।

[3] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71(i) और आठवीं अनुसूची द्वारा (21-1-1972 से) "भाग क" के स्थान पर प्रतिस्थापित ।

[4] संविधान (उनचासवां संशोधन) अधिनियम, 1984 की धारा 4 द्वारा (1-4-1985 से) "भाग 1 और भाग 2" के स्थान पर प्रतिस्थापित ।

[5] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) अंतःस्थापित ।

[6] पूर्वोत्तर क्षेत्र पुनर्गठन अधिनियम, 1971 (1971 का 81) की धारा 71(i) और आठवीं अनुसूची द्वारा (21-1-1972 से) अंतःस्थापित ।

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in [1][the States of Assam, Meghalaya, Tripura and Mizoram]

[2]1. Autonomous districts and autonomous regions.—(1) Subject to the provisions of this paragraph, the tribal areas in each item of [3][[4][Parts I, II and IIA] and in Part III] of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

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

(*a*) include any area in [3][any of the Parts] of the said table,

(*b*) exclude any area from [3][any of the Parts] of the said table,

(*c*) create a new autonomous district,

(*d*) increase the area of any autonomous district,

(*e*) diminish the area of any autonomous district,

(*f*) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

[5][(*ff*) alter the name of any autonomous district,]

(*g*) define the boundaries of any autonomous district:

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

[6][Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the Parts of the said Table) as appear to the Governor to be necessary for giving effect to the provisions of the order.]

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[1] Subs. by the State of Mizoram Act, 1986 (34 of 1986) s. 39, for certain words (w.e.f. 20-2-1987).

[2] Paragraph 1 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following proviso after sub-paragraph (2), namely: -

"Provided that nothing in this sub-paragraph shall apply to the Bodoland Territorial Areas District.

[3] Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for "Part A" (w.e.f. 21-1-1972).

[4] Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4, for "Part I and II" (w.e.f. 1-4-1985).

[5] Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

[6] Ins. by the North- Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch. (w.e.f. 21-1-1972).

[1-2]**2. जिला परिषदों और प्रादेशिक परिषदों का गठन**-- [3][(1) प्रत्येक स्वशासी जिले के लिए एक जिलास परिषद् होगी जो तीस से अनधिक सदस्यों से मिलकर बनेगी जिनमें से चार से अनधिक व्यक्ति राज्यपाल द्वारा नामनिर्देशित किए जाएंगे और शेष वयस्क मताधिकार के आधार पर निर्वाचित किए जाएंगे ।

(2) इस अनुसूची के पैरा 1 के उपपैरा (2) के अधीन स्वशासी प्रदेश के रूप में गठित प्रत्येक क्षेत्र के लिए पृथक् प्रादेशिक परिषद् होगी ।

(3) प्रत्येक जिला परिषद् और प्रत्येक प्रादेशिक परिषद् क्रमशः "(जिले का नाम) की जिला परिषद्" और "(प्रदेश का नाम) की प्रादेशिक परिषद्" नामक निगमित निकाय होगी, उसका शाश्वत उत्तराधिकार होगा और उसकी सामान्य मुद्रा होगी और उक्त नाम से वह वाद लाएगी और उस पर वाद लाया जाएगा ।

(4) इस अनुसूची के उपबंधों के अधीन रहते हुए, स्वशासी जिले का प्रशासन ऐसे जिले की जिला परिषद् में वहां तक निहित होगा जहां तक वह इस अनूसूची के अधीन ऐसे जिले के भीतर किसी प्रादेशिक परिषद् में निहित नहीं हैं और स्वशासी प्रदेश का प्रशासन ऐसे प्रदेश की प्रादेशिक परिषद् में निहित होगा ।

(5) प्रादेशिक परिषद् वाले स्वशासी जिले में प्रादेशिक परिषद् के प्राधिकारी के अधीन क्षेत्रों के संबंध में जिला परिषद् को, इस अनूसूची द्वारा ऐसे क्षेत्रों के संबंध में प्रदत्त शक्तियों के अतिरिक्त केवल ऐसी शक्तियां होंगी जो उसे प्रादेशिक परिषद् द्वारा प्रत्यायोजित की जाएं ।

(6) राज्यपाल, संबंधित स्वशासी जिलों या प्रदेशों के भीतर विद्यमान जनजाति परिषदों या अन्य प्रतिनिधि जनजाति संगठनों से परामर्श करके, जिला परिषदों और प्रादेशिक परिषदों के प्रथम गठन के लिए नियम बनाएगा और ऐसे नियमों में निम्नलिखित के लिए उपबंध किए जाएंगे, अर्थात् :--

(क) जिला परिषदों और प्रादेशिक परिषदों की संरचना तथा उनमें स्थानों का आबंटन ;

(ख) उन परिषदों के लिए निर्वाचनों के प्रयोजन के लिए प्रादेशिक निर्वाचन-क्षेत्रों का परिसीमन ;

(ग) ऐसे निर्वाचनों में मतदान के लिए अर्हताएं और उनके लिए निर्वाचक नामावलियों की तैयारी ;

(घ) ऐसे निर्वाचनों में ऐसी परिषदों के सदस्य निर्वाचित होने के लिए अर्हताएं ;

(ङ) [4][प्रादेशिक परिषदों] के सदस्यों की पदावधि ;

(च) ऐसी परिषदों के लिए निर्वाचन या नामनिर्देशन से संबंधित या संसक्त कोई अन्य विषय ;

(छ) जिला परिषदों और प्रादेशिक परिषदों की प्रक्रिया और उनका कार्य संचालन [5][(जिसके अंतर्गत किसी रिक्ति के होते हुए भी कार्य करने की शक्ति है)] ;

(ज) जिला और प्रादेशिक परिषदों के अधिकारियों और कर्मचारिवृंद की नियुक्ति ।

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[1] संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा असम में लागू होने के लिए पैरा 2 में उपपैरा (1) के पश्चात् तथा उपपैरा (3) में परन्तुक के पश्चात् क्रमशः निम्नलिखित परंतुक अंतःस्थापित कर संशोधित किया गया, अर्थात् :--

परंतु यह कि बोडोलैंड प्रादेशिक परिषद् छियालीस से अनधिक सदस्यों से मिलकर बनेगी जिनमें से चालीस सदस्यों को व्यस्क मताधिकार के आधार पर निर्वाचित किया जाएगा, जिनमें से तीस अनुसूचित जनजातियों के लिए, पांच गैर जनजातीय समुदायों के लिए, पांच सभी समुदायों के लिए आरक्षित होंगे तथा शेष छह राज्यपाल द्वारा नामनिर्देशित किए जाएंगे जिनके अधिकार और विशेषाधिकार, जिनके अंतर्गत मत देने के अधिकार भी हैं, वही होंगे जो अन्य सदस्यों के हैं, बोडोलैंड प्रादेशिक क्षेत्र जिले के उन समुदायों में से, जिनका प्रतिनिधित्व नहीं है, कम से कम दो महिलाएं होंगी ।" ।

परंतु यह और कि बोडोलैंड प्रादेशिक क्षेत्र जिले के लिए गठित जिला परिषद् बोडोलैंड प्रादेशिक परिषद् कहलाएगी ।" ।

[2] संविधान छठी अनुसूची (संशोधन) अधिनियम, 1995 (1995 का 42) की धारा 2 द्वारा असम में लागू होने के लिए पैरा 2 में उपपैरा (3) के पश्चात् निम्नलिखित परंतुक अंतःस्थापित किया गया, अर्थात् :--

"परंतु उत्तरी कछार पहाड़ी जिले के लिए गठित जिला परिषद्, उत्तरी कछार पहाड़ी स्वशासी परिषद् कहलाएगी और कार्बी आलांग जिले के लिए गठित जिला परिषद्, कार्बी आलांग स्वशासी परिषद् कहलाएगी ।";

[3] "आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) उपपैरा (1) के स्थान पर प्रतिस्थापित ।

[4] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) "ऐसी परिषदों" के स्थान पर प्रतिस्थापित ।

[5] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) अंतःस्थापित ।

[1-2]2. Constitution of District Councils and Regional Councils.—[3][(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.]

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (*name of district*)" and "the Regional Council of (*name of region*)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

(*a*) the composition of the District Councils and Regional Councils and the allocation of seats therein;

(*b*) the delimitation of territorial constituencies for the purpose of elections to those Councils;

(*c*) the qualifications for voting at such elections and the preparation of electoral rolls therefor;

(*d*) the qualifications for being elected at such elections as members of such Councils;

(*e*) the term of office of members of [4][Regional Councils;]

(*f*) any other matter relating to or connected with elections or nominations to such Councils;

(*g*) the procedure and the conduct of business [5][(including the power to act notwithstanding any vacancy)] in the District and Regional Councils;

(*h*) the appointment of officers and staff of the District and Regional Councils.

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[1] Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s.2 so as to insert the following proviso after sub-paragraph (3), namely,-

"Provided that the District Council constituted for the North Cachar Hills District shall be called as the North Cachar Hills Autonomous Council and the District Council constituted for the Karbi Anglong District shall be called as the Karbi Anglong Autonomous Council."

[2] Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following provisos after sub-paragraph (1), namely: —

"Provided that the Bodoland Territorial Council shall consist of not more than forty-six members of whom forty shall be elected on the basis of adult suffrage, of whom thirty shall be reserved for the Scheduled Tribes, five for non-tribal communities, five open for all communities and the remaining six shall be nominated by the Governor having same rights and privileges as other members, including voting rights, from amongst the un-represented communities of the Bodoland Territorial Areas District, of which at least two shall be women :

Provided further that the District Council constituted for the Bodoland Territorial Areas District shall be called the Bodoland Territorial Council." .

[3] Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for sub-paragraph (1) (w.e.f. 2-4-1970).

[4] Subs. by s. 74 and Fourth Sch. Ibid., for " such Councils" (w.e.f. 2-4-1970).

[5] Ins. by s. 74 and Fourth Sch., ibid. (w.e.f. 2-4-1970).

[1][(6क) जिला परिषद् के निर्वाचित सदस्य, यदि जिला परिषद पैरा 16 के अधीन पहले ही विघटित नहीं कर दी जाती है तो, परिषद् के लिए साधारण निर्वाचन के पश्चात् परिषद् के प्रथम अधिवेशन के लिए नियत तारीख से पांच वर्ष की अवधि तक पद धारण करेंगे और नामनिर्देशित सदस्य राज्यपाल के प्रसाद पर्यंत पद धारण करेगा :

परंतु पांच वर्ष की उक्त अवधि को, जब आपात की उद्घोषणा प्रवर्तन में है तब या यदि ऐसी परिस्थितियां विद्यमान हैं जिनके कारण निर्वाचन कराना राज्यपाल की राय में असाध्य है तो, राज्यपाल ऐसी अवधि के लिए बढ़ा सकेगा जो एक बार में एक वर्ष से अधिक नहीं होगी और जब आपात की उद्घोषणा प्रवर्तन में है तब उद्घोषणा के प्रवृत्त न रह जाने के पश्चात् किसी भी दशा में उसका विस्तार छह मास की अवधि से अधिक नहीं होगा :

परंतु यह और कि आकस्मिक रिक्ति को भरने के लिए निर्वाचित सदस्य उस सदस्य की, जिसका स्थान वह लेता है, शेष पदावधि के लिए पद धारण करेगा ।]

(7) जिला परिषद् या प्रादेशिक परिषद् अपने प्रथम गठन के पश्चात् [1][राज्यपाल के अनुमोदन से] इस पैरा के उपपैरा (6) में विनिर्दिष्ट विषयों के लिए नियम बना सकेगी और [1][वैसे ही अनुमोदन से]--

(क) अधीनस्थ स्थानीय परिषदों या बोर्डों के बनाए जाने तथा उनकी प्रक्रिया और उनके कार्य संचालन का, और

(ख) यथास्थिति, जिले या प्रदेश के प्रशासन विषयक कार्य करने से संबंधित साधारणतया सभी विषयों का, विनियमन करने वाले नियम भी, बना सकेगी :

परंतु जब तक जिला परिषद या प्रादेशिक परिषद् द्वारा इस उपपैरा के अधीन नियम नहीं बनाए जाते हैं तब तक राज्यपाल द्वारा इस पैरा के उपपैरा (6) के अधीन बनाए गए नियम, प्रत्येक ऐसी परिषद् के लिए निर्वाचनों, उसके अधिकारियों और कर्मचारियों तथा उसकी प्रक्रिया और उसके कार्य संचालन के संबंध में प्रभावी होंगे ।

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[3-4]**3. विधि बनाने की जिला परिषदों और प्रादेशिक परिषदों की शक्ति**--(1) स्वशासी प्रदेश की प्रादेशिक परिषद् को ऐसे प्रदेश के भीतर के सभी क्षेत्रों के संबंध में और स्वशासी जिले की जिला परिषद् को ऐसे क्षेत्रों को छोड़कर जो

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[1] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) अंतःस्थापित ।

[2] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) द्वितीय परंतुक का लोप किया गया ।

[3] संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा पैरा 3 असम राज्य को लागू करने में निम्नलिखित रूप से संशोधित किया गया जिससे उपपैरा (3) निम्नलिखित रूप से प्रतिस्थापित हो सके, अर्थात् :--

"(3) पैरा 3क के उपपैरा (2) या पैरा 3ख के उपपैरा (2) में जैसा अन्यथा उपबंधित है, उसके सिवाय इस पैरा या पैरा 3क के उपपैरा (1) या पैरा 3ख के उपपैरा (1) के अधीन बनाई गई सभी विधियां राज्यपाल के समक्ष तुरंत प्रस्तुत की जाएंगी और जब तक वह उन पर अनुमति नहीं दे देता है तब तक प्रभावी नहीं होंगी ।"।

[4] संविधान (छठी अनुसूची) संशोधन अधिनियम, 1995 (1995 का 42) की धारा 2 द्वारा असम में लागू होने के लिए पैरा 3 के पश्चात् तथा संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 की धारा 2 द्वारा पैरा 3क के पश्चात् क्रमशः निम्नलिखित अंतःस्थापित किया गया, अर्थात् :--

"3क. उत्तरी कछार पहाड़ी स्वशासी परिषद् और कार्बी आलांग स्वशासी परिषद् की विधि बनाने की अतिरिक्त शक्तियां--(1) पैरा 3 के उपबंधों पर प्रतिकूल प्रभाव डाले बिना, उत्तरी कछार पहाड़ी/स्वशासी परिषद् और कार्बी आलांग स्वशासी परिषद् को, संबंधित जिलों के भीतर निम्नलिखित की बाबत विधियां बनाने की शक्ति होगी, अर्थात् :--

(क) सातवीं अनुसूची की सूची 1 की प्रविष्टि 7 और प्रविष्टि 52 के उपबंधों के अधीन रहते हुए, उद्योग ;

(ख) संचार, अर्थात्, सड़कें, पुल, फेरी और अन्य संचार साधन, जो सातवीं अनुसूची की सूची 1 में विनिर्दिष्ट नहीं हैं, नगरपालिक ट्राम, राज्जुमार्ग, अंतर्देशीय जलमार्गों के संबंध में सातवीं अनुसूची की सूची 1 और सूची 3 के उपबंधों के अधीन रहते हुए, अंतर्देशीय जलमार्ग और उन पर यातायात, यंत्र नोदित यानों से भिन्न यान ;

(ग) पशुधन का परिरक्षण, संरक्षण और सुधार तथा जीवजंतुओं के रोगों का निवारण, पशु चिकित्सा प्रशिक्षण और व्यवसाय ; कांजी हाउस ;

(घ) प्राथमिक और माध्यमिक शिक्षा ;

(ङ) कृषि जिसके अंतर्गत कृषि शिक्षा और अनुसंधान, नाशक जीवों से संरक्षण और पादप रोगों का निवारण है ;

(च) मत्स्य उद्योग ;

(छ) सातवीं अनुसूची की सूची 1 की प्रविष्टि 56 के उपबंधों के अधीन रहते हुए, जल, अर्थात्, जल प्रदाय, सिंचाई और नहरें, जल निकासी और तटबंध, जल भंडारण और जल शक्ति ;

(ज) सामाजिक सुरक्षा और सामाजिक बीमा ; नियोजन और बेकारी ;

(झ) ग्रामों, धान के खेतों, बाजारों, शहरों आदि के संरक्षण के लिए बाढ़ नियंत्रण स्कीमें (जो तकनीकी प्रकृति की न हों) ;

(ञ) नाट्यशाला और नाट्य प्रदर्शन ; सातवीं अनुसूची की सूची 1 की प्रविष्टि 60 के उपबंधों के अधीन रहते हुए, सिनेमा, खेल-कूद, मनोरंजन और आमोद ;

(ट) लोक स्वास्थ्य और स्वच्छता, अस्पताल और औषधालय ;

(ठ) लघु सिंचाईं ;

(ड) खाद्य पदार्थ, पशुओं के चारे, कच्ची कपास और कच्चे जूट का व्यापार और वाणिज्य तथा उनका उत्पादन, प्रदाय और वितरण ;

(ढ) राज्य द्वारा नियंत्रित या वित्तपोषित पुस्तकालय, संग्रहालय और वैसी ही अन्य संस्थाएं संसद् द्वारा बनाई गई विधि द्वारा या उसके अधीन राष्ट्रीय महत्व के घोषित किए गए प्राचीन और ऐतिहासिक संस्मारकों और अभिलेखों से भिन्न प्राचीन और ऐतिहासिक संस्मारक और अभिलेख ; और

(ण) भूमि का अन्य संक्रामण ।

(2) पैरा 3 के अधीन या इस पैरा के अधीन उत्तरी कछार पहाड़ी स्वशासी परिषद् और कार्बी आलांग स्वशासी परिषद् द्वारा बनाई गई सभी विधियां, जहां तक उनका संबंध सातवीं अनुसूची की सूची 3 में विनिर्दिष्ट विषयों से है, राज्यपाल के समक्ष तुरंत प्रस्तुत की जाएंगी, जो उन्हें राष्ट्रपति के विचार के लिए आरक्षित रखेगा ।

(3) जब कोई विधि राष्ट्रपति के विचार के लिए आरक्षित रख ली जाती है तब राष्ट्रपति घोषित करेगा कि वह उक्त विधि पर अनुमति देता है या अनुमति रोक लेता है :

परंतु राष्ट्रपति राज्यपाल को यह निदेश दे सकेगा कि वह विधि को, यथास्थिति, उत्तरी कछार पहाड़ी स्वशासी परिषद् या कार्बी आलांग स्वशासी परिषद् को ऐसे संदेश के साथ यह अनुरोध करते हुए लौटा दे कि उक्त परिषद् विधि या उसके किन्हीं विनिर्दिष्ट उपबंधों पर पुनर्विचार करे और विशिष्टतया, किन्हीं ऐसे संशोधनों के पुरःस्थापन की वांछनीयता पर विचार करे जिनकी उसने अपने संदेश में सिफारिश की है और जब विधि इस प्रकार लौटा दी जाती है तब ऐसा संदेश मिलने की तारीख से छह मास की अवधि के भीतर परिषद् ऐसी विधि पर तदनुसार विचार करेगी और यदि विधि उक्त परिषद् द्वारा संशोधन सहित या उसके बिना फिर से पारित कर दी जाती है तो उसे राष्ट्रपति के समक्ष उसके विचार के लिए फिर से प्रस्तुत किया जाएगा ।"।

"3ख--बोडोलैंड प्रादेशिक परिषद् की विधियां बनाने की अतिरिक्त शक्तियां -- (1) पैरा 3 के उपबंधों पर प्रतिकूल प्रभाव डाले बिना, बोडोलैंड प्रादेशिक परिषद् को, अपने क्षेत्रों में, निम्नलिखित के संबंध में विधियां बनाने की शक्ति होगी, अर्थात् : --

(i) कृषि, जिसके अंतर्गत कृषि शिक्षा और अनुसंधान, नाशक जीवों से संरक्षण और पादप रोगों का निवारण है ;

(ii) पशुपालन और पशु चिकित्सा अर्थात् पशुधन का परिरक्षण, सरंक्षण और सुधार तथा जीव जंतुओं के रोगों का निवारण, पशु चिकित्सा प्रशिक्षण और व्यवसाय, कांजी हाऊस ;

(iii) सहकारिता ;

(iv) सांस्कृतिक कार्य ;

(v) शिक्षा अर्थात् प्राइमरी शिक्षा, उच्चतर माध्यमिक शिक्षा जिसमें वृत्तिक प्रशिक्षण, प्रौढ़ शिक्षा, महाविद्यालय शिक्षा (साधारण) भी है ;

(vi) मत्स्य उद्योग ;

(vii) ग्राम, धान के खेतों, बाजारों और शहरों के संरक्षण के लिए बाढ़ नियंत्रण (जो तकनीकी प्रकृति का न हो) ;

(viii) खाद्य और सिविल आपूर्ति ;

(ix) वन (आरक्षित वनों को छोड़कर) ;

(x) हथकरघा और वस्त्र ;

(xi) स्वास्थ्य और परिवार कल्याण ;

(xii) सातवीं अनुसूची की सूची 1 की प्रविष्टि 84 के उपबंधों के अधीन रहते हुए मादक लिकर, अफीम और युत्पन्न ;

(xiii) सिंचाई ;

(xiv) श्रम और रोजगार ;

(xv) भूमि और राजस्व ;

(xvi) पुस्तकालय सेवाएं (राज्य सरकार द्वारा वित्तपोषित और नियंत्रित) ;

(xvii) लाटरी (सातवीं अनुसूची की सूची 1 की प्रविष्टि 40 के उपबंधों के अधीन रहते हुए), नाट्यशाला, नाट्य प्रदर्शन और सिनेमा (सातवीं अनुसूची की सूची 1 की प्रविष्टि 60 के उपबंधों के अधीन रहते हुए) ;

(xviii) बाजार और मेले ;

(xix) नगर निगम, सुधार न्यास, जिला बोर्ड और अन्य स्थानीय प्राधिकारी ;

(xx) राज्य द्वारा नियंत्रित या वित्तपोषित संग्रहालय और पुरातत्व विज्ञान संस्थान, संसद् द्वारा बनाई गई किसी विधि द्वारा या उसके राष्ट्रीय महत्व के घोषित किए गए प्राचीन और ऐतिहासिक संस्मारकों और अभिलेखों से भिन्न, प्राचीन और ऐतिहासिक संस्मारक और अभिलेख ;

(xxi) ंचायत और ग्रामीण विकास ;

(xxii) योजना और विकास ;

(xxiii) मुद्रण और लेखन सामग्री ;

उस जिले के भीतर की प्रादेशिक परिषदों के, यदि कोई हों, प्राधिकार के अधीन हैं, उस जिले के भीतर के अन्य सभी क्षेत्रों के संबंध में निम्नलिखित विषयों के लिए विधि बनाने की शक्ति होगी, अर्थात् :--

(क) किसी आरक्षित वन की भूमि से भिन्न अन्य भूमि का, कृषि या चराई के प्रयोजनों के लिए अथवा निवास के या कृषि से भिन्न अन्य प्रयोजनों के लिए अथवा किसी ऐसे अन्य प्रयोजन के लिए जिससे किसी ग्राम या नगर के निवासियों के हितों की अभिवृद्धि संभाव्य है, आंबटन, अधिभोग या उपयोग अथवा अलग रखा जाना :

परंतु ऐसी विधियों की कोई बात [1][संबंधित राज्य की सरकार को] अनिवार्य अर्जन प्राधिकृत करने वाली तत्समय प्रवृत्त विधि के अनुसार किसी भूमि का, चाहे वह अधिभोग में हो या नहीं, लोक प्रयोजनों के लिए अनिवार्य अर्जन करने से निवारित नहीं करेगी ;

(ख) किसी ऐसे वन का प्रबंध जो आरक्षित वन नहीं है ;

(ग) कृषि के प्रयोजन के लिए किसी नहर या जलसरणी का उपयोग ;

(घ) झूम की पद्धति का या परिवर्ती खेती की अन्य पद्धतियों का विनियमन ;

(xxiv) लोक स्वास्थ्य इंजीनियरी ;

(xxv) लोक निर्माण विभाग ;

(xxvi) प्रचार और लोक संपर्क ;

(xxvii) जन्म और मृत्यु का रजिस्ट्रीकरण ;

(xxviii) सहायता और पुनर्वास ;

(xxix) रेशम उत्पादन ;

(xxx) सातवीं अनुसूची की सूची 1 की प्रविष्टि 7 और प्रविष्टि 52 के उपबंधों के अधीन रहते हुए, लघु, कुटीर और ग्रामीण उद्योग ;

(xxxi) समाज कल्याण ;

(xxxii) मृदा संरक्षण ;

(xxxiii) खेलकूद और युवा कल्याण ;

(xxxiv) सांख्यिकी ;

(xxxv) पर्यटन ;

(xxxvi) परिवहन (सड़कें, पुल, फेरी और अन्य संचार साधन, जो सातवीं अनुसूची की सूची 1 में विनिर्दिष्ट नहीं हैं, नगरपालिका ट्राम, रज्जुमार्ग, अन्तरदेशीय जलमार्गों के संबंध में सातवीं अनुसूची की सूची 1 और सूची 3 के उपबंधों के अधीन रहते हुए, अन्तरदेशीय जलमार्ग और उन पर यातायात, यंत्र नोदित यानों से भिन्न यान ;

(xxxvii) राज्य सरकार द्वारा नियंत्रित और वित्त पोषित जनजाति अनुसंधान संस्थान ;

(xxxviii) शहरी विकास-नगर और ग्रामीण योजना ;

(xxxix) सातवीं अनुसूची की सूची 1 की प्रविष्टि 50 के उपबंधों के अधीन रहते हुए बाट और माप ; और

(xl) मैदानी जनजातियों और पिछड़े वर्गों का कल्याण :

परंतु ऐसी विधियों की कोई बात,--

(क) इस अधिनियम के प्रारंभ की तारीख पर किसी नागरिक के उसकी भूमि के संबंध में विद्यमान अधिकारों और विशेषाधिकारों को समाप्त या उपांतरित नहीं करेगी ; और

(ख) किसी नागरिक को विरासत, आबंटन, व्यवस्थापन के रूप में या अंतरण की किसी अन्य रीति से भूमि अर्जित करने से अनुज्ञात करने से अनुज्ञात नहीं करेगी यदि ऐसा नागरिक बोडोलैंड प्रादेशिक क्षेत्र जिले के भीतर भूमि के ऐसे अर्जन के लिए अन्यथा पात्र है ।

(2) पैरा 3 के अधीन या इस पैरा के अधीन बनाई गई सभी विधियां, जहां तक उनका संबंध सातवीं अनुसूची की सूची 3 में विनिर्दिष्ट विषयों से है, राज्यपाल के समक्ष तुरंत प्रस्तुत की जाएंगी जो उन्हें राष्ट्रपति के विचार के लिए आरक्षित रखेगा।

(3) जब कोई विधि राष्ट्रपति के विचार के लिए आरक्षित रख ली जाती है, तब राष्ट्रपति घोषित करेगा कि वह उक्त विधि पर अनुमति देता है या अनुमति रोक लेता है :

परंतु राष्ट्रपति राज्यपाल को यह संदेश दे सकेगा कि वह विधि को, बोडोलैंड प्रादेशिक परिषद् को ऐसे संदेश के साथ यह अनुरोध करते हुए लौटा दे कि उक्त परिषद् विधि या उसके किन्हीं विनिर्दिष्ट उपबंधों पर पुनर्विचार करे और विशिष्टियां, किन्हीं ऐसे संशोधनों को पुरःस्थापित करने की वांछनीयता पर विचार करे जिनकी उसने अपने संदेश में सिफारिश की है और जब विधि इस प्रकार लौटा दी जाती है तब उक्त परिषद्, ऐसे संदेश की प्राप्ति की तारीख से छह मास की अवधि के भीतर ऐसी विधि पर तदनुसार विचार करेगी और यदि विधि उक्त परिषद् द्वारा, संशोधन सहित या उसके बिना, फिर से पारित कर दी जाती है तो उसे राष्ट्रपति के समक्ष उसके विचार के लिए फिर से प्रस्तुत किया जाएगा ।" ।

[1] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71(i) और आठवीं अनुसूची द्वारा (21-1-1972 से) कुछ शब्दों के स्थान पर प्रतिस्थापित ।

(ङ) ग्राम या नगर समितियों या परिषदों की स्थापना और उनकी शक्तियां ;

(च) ग्राम या नगर प्रशासन से संबंधित कोई अन्य विषय जिसके अंतर्गत ग्राम या नगर पुलिस और लोक स्वास्थ्य और स्वच्छता है ;

(छ) प्रमुखों या मुखियों की नियुक्ति या उत्तराधिकार ;

(ज) संपत्ति की विरासत ;

[1][(झ) विवाह और विवाह-विच्छेद ;]

(ञ) सामाजिक रुढ़ियां ।

(2) इस पैरा में, "आरक्षित वन" से ऐसा क्षेत्र अभिप्रेत है जो असम वन विनियम, 1891 के अधीन या प्रश्नगत क्षेत्र में तत्समय प्रवृत्त किसी अन्य विधि के अधीन आरक्षित वन है ।

(3) इस पैरा के अधीन बनाई गई सभी विधियां राज्यपाल के समक्ष तुरंत प्रस्तुत की जाएंगी और जब तक वह उन पर अनुमति नहीं दे देता है तब तक प्रभावी नहीं होंगी ।

[2]4. स्वशासी जिलों और स्वशासी प्रदेशों में न्याय प्रशासन--(1) स्वशासी प्रदेश की प्रादेशिक परिषद् ऐसे प्रदेश के भीतर के क्षेत्रों के संबंध में और स्वशासी जिले की जिला परिषद् ऐसे क्षेत्रों से भिन्न जो उस जिले के भीतर की प्रादेशिक परिषदों के, यदि कोई हों, प्राधिकार के अधीन हैं, उस जिले के भीतर के अन्य क्षेत्रों के संबंध में, ऐसे वादों और मामलों के विचारण के लिए जो ऐसे पक्षकारों के बीच हैं जिनमें से सभी पक्षकार ऐसे क्षेत्रों के भीतर की अनुसूचित जनजातियों के हैं तथा जो उन वादों और मामलों से भिन्न हैं जिनको इस अनुसूची के पैरा 5 के उपपैरा (1) के उपबंध लागू होते हैं, उस राज्य के किसी न्यायालय का अपवर्जन करके ग्राम परिषदों या न्यायालयों का गठन कर सकेगी और उपुयक्त व्यक्तियों को ऐसी ग्राम परिषद के सदस्य या ऐसे न्यायालयों के पीठासीन अधिकारी नियुक्त कर सकेगी और ऐसे अधिकारी भी नियुक्त कर सकेगी जो इस अनुसूची के पैरा 3 के अधीन बनाई गई विधियों के प्रशासन के लिए आवश्यक हों ।

(2) इस संविधान में किसी बात के होते हुए भी, स्वशासी प्रदेश की प्रादेशिक परिषद् या उस प्रादेशिक परिषद् द्वारा इस निमित्त गठित कोई न्यायालय या यदि किसी स्वशासी जिले के भीतर के किसी क्षेत्र के लिए कोई प्रादेशिक परिषद् नहीं है तो, ऐसे जिले की जिला परिषद् या उस जिला परिषद् द्वारा इस निमित्त गठित कोई न्यायालय ऐसे सभी वादों और मामलों के संबंध में जो, यथास्थिति, ऐसे प्रदेश या क्षेत्र के भीतर इस पैरा के उपपैरा (1) के अधीन गठित किसी ग्राम परिषद् या न्यायालय द्वारा विचारणीय हैं तथा जो उन वादों और मामलों से भिन्न हैं जिनको इस अनुसूची के पैरा 5 के उपपैरा (1) के उपबंध लागू होते हैं अपील न्यायालय की शक्तियों का प्रयोग करेगा तथा उच्च न्यायालय और उच्चतम न्यायालय से भिन्न किसी अन्य न्यायालय को ऐसे वादों या मामलों में अधिकारिता नहीं होगी ।

(3) [3]*** उच्च न्यायालय को, उन वादों और मामलों में जिनको इस पैरा के उपपैरा (2) के उपबंध लागू होते हैं, ऐसी अधिकारिता होगी और वह उसका प्रयोग करेगा जो राज्यपाल समय-समय पर आदेश द्वारा विनिर्दिष्ट करे ।

(4) यथास्थिति, प्रादेशिक परिषद् या जिला परिषद् राज्यपाल के पूर्व अनुमोदन से निम्नलिखित के विनियमन के लिए नियम बना सकेगी, अर्थात् :--

(क) ग्राम परिषदों और न्यायालयों का गठन और इस पैरा के अधीन उनके द्वारा प्रयोक्तव्य शक्तियां ;

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[1] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) खंड (झ) के स्थान पर प्रतिस्थापित ।

[2] संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा पैरा 4 असम राज्य को लागू करने में निम्नलिखित रूप से संशोधित किया गया जिससे उपपैरा (5) के पश्चात् निम्नलिखित अंतःस्थापित किया जा सके, अर्थात् :--

"(6) इस पैरा की कोई बात, इस अनुसूची के पैरा 2 के उपपैरा (3) के परंतुक के अधीन गठित बोडोलैंड प्रादेशिक परिषद् को लागू नहीं होगी ।"।

[3] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71(i) और आठवीं अनुसूची द्वारा (21-1-1972 से) "आसाम के" शब्दों का लोप किया गया ।

[1-2]2. Constitution of District Councils and Regional Councils.—[3][(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.]

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (*name of district*)" and "the Regional Council of (*name of region*)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

(*a*) the composition of the District Councils and Regional Councils and the allocation of seats therein;

(*b*) the delimitation of territorial constituencies for the purpose of elections to those Councils;

(*c*) the qualifications for voting at such elections and the preparation of electoral rolls therefor;

(*d*) the qualifications for being elected at such elections as members of such Councils;

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[1] Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s.2 so as to insert the following proviso after sub-paragraph (3), namely,-

"Provided that the District Council constituted for the North Cachar Hills District shall be called as the North Cachar Hills Autonomous Council and the District Council constituted for the Karbi Anglong District shall be called as the Karbi Anglong Autonomous Council."

[2] Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following provisos after sub-paragraph (1), namely: —

"Provided that the Bodoland Territorial Council shall consist of not more than forty-six members of whom forty shall be elected on the basis of adult suffrage, of whom thirty shall be reserved for the Scheduled Tribes, five for non-tribal communities, five open for all communities and the remaining six shall be nominated by the Governor having same rights and privileges as other members, including voting rights, from amongst the un-represented communities of the Bodoland Territorial Areas District, of which at least two shall be women :

Provided further that the District Council constituted for the Bodoland Territorial Areas District shall be called the Bodoland Territorial Council." .

[3] Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for sub-paragraph (1) (w.e.f. 2-4-1970).

(*e*) the term of office of members of [1][Regional Councils;]

(*f*) any other matter relating to or connected with elections or nominations to such Councils;

(*g*) the procedure and the conduct of business [2][(including the power to act notwithstanding any vacancy)] in the District and Regional Councils;

(*h*) the appointment of officers and staff of the District and Regional Councils.

[3][(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.]

(7) The District or the Regional Council may after its first constitution make rules with the approval of the Governor with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules with like approval regulating—

(*a*) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

(*b*) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be:

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council.

[4]* * * * *

[5-6]**3. Powers of the District Councils and Regional Councils to make laws.—**(1) The Regional Council for an autonomous region in respect of all areas within such region and the

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[1] Subs. by s. 74 and Fourth Sch. Ibid., for " such Councils" (w.e.f. 2-4-1970).

[2] Ins. by s. 74 and Fourth Sch., ibid. (w.e.f. 2-4-1970).

[3] Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

[4] Second proviso omitted by s. 74 and Fourth Sch., *ibid.* (w.e.f. 2-4-1970).

[5] Paragraph 3 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2 , so as to substitute sub-paragraph (3) as under, -

"(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3A or sub-paragraph (2) of paragraph 3B, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A or sub-paragraph (1) of paragraph 3B shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect." .

[6] After paragraph 3, the following paragraph has been inserted in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2 and after paragraph 3A, the following paragraph has been inserted in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, namely: —

"3A. Additional powers of the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council to make laws.—(1) Without prejudice to the provisions of paragraph 3, the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council within their respective districts, shall have power to make laws with respect to—

(*a*) industries, subject to the provisions of entries 7 and 52 of List I of the Seventh Schedule;

(*b*) communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I of the Seventh Schedule; municipal tramways, ropeways, inland waterways and traffic thereon subject to the provisions of List I and List III of the

Seventh Schedule with regard to such waterways; vehicles other than mechanically propelled vehicles;

(*c*) preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; cattle pounds;

(*d*) primary and secondary education;

(*e*) agriculture, including agricultural education and research, protection against pests and prevention of plant diseases;

(*f*) fisheries;

(*g*) water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I of the Seventh Schedule;

(*h*) social security and social insurance; employment and unemployment;

(*i*) flood control schemes for protection of villages, paddy fields, markets, towns, etc. (not of technical nature);

(*j*) theatre and dramatic performances, cinemas subject to the provisions of entry 60 of List I of the Seventh Schedule; sports, entertainments and amusements;

(*k*) public health and sanitation, hospitals and dispensaries;

(*l*) minor irrigation;

(*m*) trade and commerce in, and the production supply and distribution of, food stuffs, cattle fodder, raw cotton and raw jute;

(*n*) libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under any law made by Parliament to be of national importance; and

(*o*) alienation of land.

(2) All laws made by the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council under paragraph 3 or under this paragraph shall, in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.

(3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom:

Provided that the President may direct the Governor to return the law to the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, together with a message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six months from the date of receipt of such message and, if the law is again passed by the said Council with or without amendment it shall be presented again to the President for his consideration.

3B. **Additional powers of the Bodoland Territorial Council to make laws.**—(1) Without prejudice to the provisions of paragraph 3, the Bodoland Territorial Council within its areas shall have power to make laws with respect to :-

(i) agriculture, including agricultural education and research, protection against pests and prevention of plant diseases;

(ii) animal husbandry and veterinary, that is to say, preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice, cattle pounds;

(iii) co-operation;

(iv) cultural affairs;

(v) education, that is to say, primary education, higher secondary including vocational training, adult education, college education (general);

(vi) fisheries;

(vii) flood control for protection of village, paddy fields, markets and towns (not of technical nature); (viii) Food and civil supply;

(ix) forests (other than reserved forests);

(x) handloom and textile;

(xi) health and family welfare,

(xii) intoxicating liquors, opium and derivatives, subject to the provisions of entry 84 of List I of the Seventh Schedule;

(xiii) irrigation;

(xiv) labour and employment;

(xv) land and revenue;

(xvi) library services (financed and controlled by the State Government);

(xvii) lotteries (subject to the provisions of entry 40 of List I of the Seventh Schedule), theatres, dramatic performances and cinemas (subject to the provisions of entry 60 of List I of the Seventh Schedule);

(xviii) markets and fairs;

(xix) municipal corporation, improvement trust, district boards and other local authorities;

(xx) museum and archaeology institutions controlled or financed by the State, ancient and historical monuments and records other than those declared by or under any law made by Parliament to be of national importance;

(xxi) panchayat and rural development;

(xxii) planning and development;

(xxiii) printing and stationery;

(xxiv) pubic health engineering;

(xxv) public works department;

(xxvi) publicity and public relations;

(xxvii) registration of births and deaths;

(xxviii) relief and rehabilitation;

(xxix) sericulture;

(xxx) small, cottage and rural industry subject to the provisions of entries 7 and 52 of List I of the Seventh Schedule;

(xxxi) social Welfare;

(xxxii) soil conservation;

(xxxiii) sports and youth welfare;

(xxxiv) statistics;

(xxxv) tourism;

(xxxvi) transport (roads, bridges, ferries and other means of communications not specified in List I of the Seventh Schedule, municipal tramways, ropeways, inland waterways and traffic thereon subject to the provision of List I and List III of the Seventh Schedule with regard to such waterways, vehicles other than mechanically propelled vehicles);

(xxxvii) tribal research institute controlled and financed by the State Government;

(xxxviii) urban development—town and country planning;

(xxxix) weights and measures subject to the provisions of entry 50 of List I of the Seventh Schedule; and (xl) Welfare of plain tribes and backward classes:

Provided that nothing in such laws shall--

(a) extinguish or modify the existing rights and privileges of any citizen in respect of his land at the date of commencement of this Act; and

(b) disallow and citizen from acquiring land either by way of inheritance, allotment, settlement or by any other way of transfer if such citizen is otherwise eligible for such acquisition of land within the Bodoland Territorial Areas District.

(2) All laws made under paragraph 3 or under this paragraph shall in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.

(3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom:

Provided that the President may direct the Governor to return the law to the Bodoland Territorial Council, together with the message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six month from the date of receipt of such message and, if the law is again passéd by the said Council with or without amendments it shall be presented again to the President for his consideration."

District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(*a*) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes [1][by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;

(*b*) the management of any forest not being a reserved forest;

(*c*) the use of any canal or water-course for the purpose of agriculture;

(*d*) the regulation of the practice of *jhum* or other forms of shifting cultivation;

(*e*) the establishment of village or town committees or councils and their powers;

(*f*) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(*g*) the appointment or succession of Chiefs or Headmen;

(*h*) the inheritance of property;

[2][(*i*) marriage and divorce;]

(*j*) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

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

[3]**4. Administration of justice in autonomous districts and autonomous regions.—**(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute

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[1] Subs. by the North -Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for cetain words (w.e.f. 21-1-1972).

[2] Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for cl. (i) (w.e.f. 2-4-1970).

[3] Paragraph 4 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following sub-paragraph after sub-paragraph (5), namely :—

"(6) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule." .

village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court [1]*** shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating —

(a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;

[1] The words "of Assam" omitted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., (w.e.f. 21-1-1972).

(ख) इस पैरा के उपपैरा (1) के अधीन वादों और मामलों के विचारण में ग्राम परिषदों या न्यायालयों द्वारा अनुसरण की जाने वाले प्रक्रिया ;

(ग) इस पैरा के उपपैरा (2) के अधीन अपीलों और अन्य कार्यवाहियों में प्रादेशिक परिषद् या जिला परिषद् अथवा ऐसी परिषद् द्वारा गठित किसी न्यायालय द्वारा अनुसरण की जाने वाली प्रक्रिया ;

(घ) ऐसी परिषदों और न्यायालयों के विनिश्चयों और आदेशों का प्रवर्तन ;

(ङ) इस पैरा के उपपैरा (1) और उपपैरा (2) के उपबंधों को कार्यान्वित करने के लिए अन्य सभी आनुषंगिक विषय ।

[1][(5) उस तारीख को और से जो राष्ट्रपति [2][संबंधित राज्य की सरकार से परामर्श करने के पश्चात्] अधिसूचना द्वारा, इस निमित्त नियत करे, यह पैरा ऐसे स्वशासी जिले या स्वशासी प्रदेश के संबंध में, जो उस अधिसूचना में विनिर्दिष्ट किया जाए, इस प्रकार प्रभावी होगा मानो--

(i) उपपैरा (1) में, "जो ऐसे पक्षकारों के बीच हैं जिनमें से सभी पक्षकार ऐसे क्षेत्रों के भीतर की अनुसूचित जनजातियों के हैं तथा जो उन वादों और मामलों से भिन्न हैं जिनको इस अनुसूची के पैरा 5 के उपपैरा (1) के उपबंध लागू होते हैं," शब्दों के स्थान पर, "जो इस अनुसूची के पैरा 5 के उपपैरा (1) में निर्दिष्ट प्रकृति के ऐसे वाद और मामले नहीं है जिन्हें राज्यपाल इस निमित्त विनिर्दिष्ट करें," शब्द रख दिए गए हों ;

(ii) उपपैरा (2) और उपपैरा (3) का लोप कर दिया गया हो ;

(iii) उपपैरा (4) में--

(क) "यथास्थिति, प्रादेशिक परिषद् या जिला परिषद्, राज्यपाल के पूर्व अनुमोदन से, निम्नलिखित के विनियमन के लिए नियम बना सकेगी, अर्थात् :--" शब्दों के स्थान पर, "राज्यपाल निम्नलिखित के विनियमन के लिए नियम बना सकेगा, अर्थात् :--" शब्द रख दिए गए हों ; और

(ख) खंड (क) के स्थान पर, निम्नलिखित खंड रख दिया गया हो, अर्थात् :--

"(क) ग्राम परिषदों और न्यायालयों का गठन, इस पैरा के अधीन उनके द्वारा प्रयोक्तव्य शक्तियां और वे न्यायालय जिनको ग्राम परिषदों और न्यायालयों के विनिश्चयों से अपीलें हो सकेंगी ;";

(ग) खंड (ग) के स्थान पर, निम्नलिखित खंड रख दिया गया हो, अर्थात् :--

"(ग) प्रादेशिक परिषद् या जिला परिषद् अथवा ऐसी परिषद् द्वारा गठित किसी न्यायालय के समक्ष उपपैरा (5) के अधीन राष्ट्रपति द्वारा नियत तारीख से ठीक पहले लंबित अपीलों और अन्य कार्यवाहियों का अंतरण,"; और

(घ) खंड (ङ) में "उपपैरा (1) और उपपैरा (2)" शब्दों, कोष्ठकों और अंकों के स्थान पर, "उपपैरा (1)" शब्द, कोष्ठक और अंक रख दिए गए हों ।]

5. कुछ वादों, मामलों और अपराधों के विचारण के लिए प्रादेशिक परिषदों और जिला परिषदों को तथा किन्हीं न्यायालयों और अधिकारियों को सिविल प्रक्रिया संहिता, 1908 और दंड प्रक्रिया संहिता, 1898[3] के अधीन शक्तियों का प्रदान किया जाना--(1) राज्यपाल, किसी स्वशासी जिले या स्वशासी प्रदेश में किसी ऐसी प्रवृत्त विधि से, जो ऐसी विधि है जिसे राज्यपाल इस निमित्त विनिर्दिष्ट करे, उद्भूत वादों या मामलों के विचारण के लिए अथवा भारतीय दंड संहिता के अधीन या ऐसे जिले या प्रदेश में तत्समय लागू किसी अन्य विधि के अधीन मृत्यु से, आजीवन निर्वासन से या पांच वर्ष से अन्यून अवधि के लिए कारावास से दंडनीय अपराधों के विचारण के लिए, ऐसे जिले या प्रदेश पर प्राधिकार रखने वाली जिला परिषद् या प्रादेशिक परिषद् को अथवा ऐसी जिला परिषद् द्वारा गठित न्यायालयों को अथवा राज्यपाल द्वारा इस निमित्त नियुक्त किसी अधिकारी को, यथास्थिति, सिविल प्रक्रिया संहिता, 1908 या दंड प्रक्रिया संहिता, 1898[4] के अधीन ऐसी शक्तियां प्रदान कर सकेगा जो वह समुचित समझे और तब उक्त परिषद्, न्यायालय या अधिकारी इस प्रकार प्रदत्त शक्तियों का प्रयोग करते हुए वादों, मामलों या अपराधों का विचारण करेगा ।

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[1] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) अंतःस्थापित ।

[2] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71(i) और आठवीं अनुसूची द्वारा (21-1-1972 से) कुछ शब्दों के स्थान पर प्रतिस्थापित ।

[3] अब दंड प्रक्रिया संहिता, 1973 (1974 का 2) देखें ।

[4] अब दंड प्रक्रिया संहिता, 1973 (1974 का 2) देखें ।

(*b*) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;

(*c*) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;

(*d*) the enforcement of decisions and orders of such councils and courts;

(*e*) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

[1][(5) On and from such date as the President may, [2][after consulting the Government of the State concerned], by notification appoint in this behalf, this paragraph shall have effect in relation to such autonomous district or region as may be specified in the notification, as if—

(*i*) in sub-paragraph (1), for the words "between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply,", the words "not being suits and cases of the nature referred to in sub-paragraph (1) of paragraph (5) of this Schedule, which the Governor may specify in this behalf," had been substituted;

(*ii*) sub-paragraphs (2) and (3) had been omitted;

(*iii*) in sub-paragraph (4)—

(*a*) for the words "A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating", the words "the Governor may make rules regulating" had been substituted; and

(*b*) for clause (*a*), the following clause had been substituted, namely:—

"(*a*) the constitution of village councils and courts, the powers to be exercised by them under this paragraph and the courts to which appeals from the decisions of village councils and courts shall lie;";

(*c*) for clause (*c*), the following clause had been substituted, namely:—

"(*c*) the transfer of appeals and other proceedings pending before the Regional or District Council or any court constituted by such Council immediately before the date appointed by the President under sub-paragraph (5);"; and

(*d*) in clause (*e*), for the words, brackets and figures "sub-paragraphs (1) and (2)", the word, brackets and figure "sub-paragraph (1)" had been substituted.]

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898[3], on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.—(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898[4], as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

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[1] Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

[2] subs. by the North- Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for certain words (w.e.f. 21-1-1972).

[3] *See* now the Code of Criminal Procedure, 1973 (Act 2 of 1974).

[4] *See* now the Code of Criminal Procedure, 1973 (Act 2 of 1974).

(2) राज्यपाल, इस पैरा के उपपैरा (1) के अधीन किसी जिला परिषद्, प्रादेशिक परिषद्, न्यायालय या अधिकारी को प्रदत्त शक्तियों में से किसी शक्ति को वापस ले सकेगा या उपांतरित कर सकेगा ।

(3) इस पैरा में अभिव्यक्त रूप से यथा उपबंधित के सिवाय, सिविल प्रक्रिया संहिता, 1908 और दंड प्रक्रिया संहिता, 1898[1] किसी स्वशासी जिले में या किसी स्वशासी प्रदेश में, जिसको इस पैरा के उपबंध लागू होते हैं, किन्हीं वादों, मामलों या अपराधों के विचारण को लागू नहीं होगी ।

[1][(4) राष्ट्रपति द्वारा किसी स्वशासी जिले या स्वशासी प्रदेश के संबंध में पैरा 4 के उपपैरा (5) के अधीन नियत तारीख को और से, उस जिले या प्रदेश को लागू होने में इस पैरा की किसी बात के बारे में यह नहीं समझा जाएगा कि वह किसी जिला परिषद् या प्रादेशिक परिषद् को या जिला परिषद् द्वारा गठित न्यायालयों को इस पैरा के उपपैरा (1) में निर्दिष्ट शक्तियों में से कोई शक्ति प्रदान करने के लिए राज्यपाल को प्राधिकृत करती है ।]

[2][**6. प्राथमिक विद्यालय आदि स्थापित करने की जिला परिषद् की शक्ति**--(1) स्वशासी जिले की जिला परिषद् जिले में प्राथमिक विद्यालयों, औषधालयों, बाजारों, [3][कांजी हाउसों], फेरी, मीन क्षेत्रों, सड़कों, सड़क परिवहन और जल मार्गों की स्थापना, निर्माण और प्रबंध कर सकेगी तथा राज्यपाल के पूर्व अनुमोदन से, उनके विनियमन और नियंत्रण के लिए विनियम बना सकेगी और, विशिष्टतया, वह भाषा और वह रीति विहित कर सकेगी, जिससे जिले के प्राथमिक विद्यालयों में प्राथमिक शिक्षा दी जाएगी ।

(2) राज्यपाल, जिला परिषद् की सहमति से उस परिषद् को या उसके अधिकारियों को कृषि, पशुपालन, सामुदायिक परियोजनाओं, सहकारी सोसाइटियों, समाज कल्याण, ग्राम योजना या किसी अन्य ऐसे विषय के संबंध में, जिस पर [4]*** राज्य की कार्यपालिका शक्ति का विस्तार है, कृत्य सशर्त या बिना शर्त सौंप सकेगा ।]

7. जिला और प्रादेशिक निधियां--(1) प्रत्येक स्वशासी जिले के लिए एक जिला निधि और प्रत्येक स्वशासी प्रदेश के लिए एक प्रादेशिक निधि गठित की जाएगी जिसमें क्रमशः उस जिले की जिला परिषद् द्वारा और उस प्रदेश की प्रादेशिक परिषद् द्वारा इस संविधान के उपबंधों के अनुसार, यथास्थिति, उस जिले या प्रदेश के प्रशासन के अनुक्रम में प्राप्त सभी धनराशियां जमा की जाएंगी ।

[5][(2) राज्यपाल, यथास्थिति, जिला निधि या प्रादेशिक निधि के प्रबंध के लिए और उक्त निधि में धन जमा करने, उसमें से धनराशियां निकालने, उसके धन की अभिरक्षा और पूर्वोक्त विषयों से संबंधित या आनुषंगिक किसी अन्य विषय के संबंध में अनुसरण की जाने वाली प्रक्रिया के लिए नियम बना सकेगा ।

(3) यथास्थिति, जिला परिषद् या प्रादेशिक परिषद् के लेखे ऐसे प्ररूप में रखे जाएंगे जो भारत का नियंत्रक-महालेखापरीक्षक राष्ट्रपति के अनुमोदन से, विहित करे ।

(4) नियंत्रक-महालेखापरीक्षक जिला परिषदों और प्रादेशिक परिषदों के लेखाओं की संपरीक्षा ऐसी रीति से कराएगा जो वह ठीक समझे और नियंत्रक-महालेखापरीक्षक के ऐसे लेखाओं से संबंधित प्रतिवेदन राज्यपाल के समक्ष प्रस्तुत किए जाएंगे जो उन्हें परिषद् के समक्ष रखवाएगा ।]

8. भू-राजस्व का निर्धारण और संग्रहण करने तथा कर का अधिरोपण करने की शक्तियां--(1) स्वशासी प्रदेश के भीतर की सभी भूमियों के संबंध में ऐसे प्रदेश की प्रादेशिक परिषद् को और यदि जिले में कोई प्रादेशिक परिषद् हैं तो उनके प्राधिकार के अधीन आने वाले क्षेत्रों में स्थित भूमियों को छोड़कर जिले के भीतर की सभी भूमियों के संबंध में स्वशासी जिले की जिला परिषद् को ऐसी भूमियों की बाबत, उन सिद्धांतों के अनुसार राजस्व का निर्धारण और संग्रहण करने की शक्ति जिनका [6][साधारणतया राज्य में भू-राजस्व के प्रयोजन के लिए भूमि के निर्धारण में राज्य की सरकार द्वारा तत्समय अनुसरण किया जाता है]।

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[1] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) अंतःस्थापित ।

[2] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) पैरा 6 के स्थान पर प्रतिस्थापित ।

[3] निरसन और संशोधन अधिनियम, 1974 (1974 का 56) की धारा 4 द्वारा "कांजी हाउस" के स्थान पर प्रतिस्थापित ।

[4] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71(i) और आठवीं अनुसूची द्वारा (21-1-1972 से) "यथास्थिति, आसाम या मेघालय" शब्दों का लोप किया गया ।

[5] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) उपपैरा (2) के स्थान पर प्रतिस्थापित ।

[6] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71(i) और आठवीं अनुसूची द्वारा (21-1-1972 से) कुछ शब्दों के स्थान पर प्रतिस्थापित ।

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898[1], shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

[1][(4) On and from the date appointed by the President under sub-paragraph (5) of paragraph 4 in relation to any autonomous district or autonomous region, nothing contained in this paragraph shall, in its application to that district or region, be deemed to authorise the Governor to confer on the District Council or Regional Council or on courts constituted by the District Council any of the powers referred to in sub-paragraph (1) of this paragraph.]

[2][6. Powers of the District Council to establish primary schools, etc.— (1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, [3][cattle pounds], ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

(2) The Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State [4]*** extends.]

7. District and Regional Funds.—(1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

[5][(2) The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

(3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

(4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think fit, and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.]

8. Powers to assess and collect land revenue and to impose taxes.—(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed [6][by the Government of the State in assessing lands for the purpose of land revenue in the State generally].

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[1] Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).
[2] Subs. by s. 74 and Fourth Sch., ibid., for paragraph 6 (w.e.f. 2-4-1970).
[3] Subs. by Repealing and Amending Act, 1974 (56 of 1974), s. 4, for "cattle ponds" .
[4] The words "of Assam or Meghalaya, as the case may be" omitted by the North -Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., (w.e.f. 21-1-1972).
[5] Subs. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch., for sub-paragraph 2 (w.e.f. 2-4-1970).
[6] Subs. by the North Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for certain words (w.e.f. 21-1-1972).

(2) स्वशासी प्रदेश के भीतर के क्षेत्रों के संबंध में ऐसे प्रदेश की प्रादेशिक परिषद् को और यदि जिले में कोई प्रादेशिक परिषद् हैं तो उनके प्राधिकार के अधीन आने वाले क्षेत्रों को छोड़कर जिले के भीतर के सभी क्षेत्रों के संबंध में स्वशासी जिले की जिला परिषद् को, भूमि और भवनों पर करों का तथा ऐसे क्षेत्रों में निवासी व्यक्तियों पर पथकर का उद्ग्रहण और संग्रहण करने की शक्ति होगी ।

(3) स्वशासी जिले की जिला परिषद् को ऐसे जिले के भीतर निम्नलिखित सभी या किन्हीं करों का उद्ग्रहण और संग्रहण करने की शक्ति होगी, अर्थात् :--

(क) वृत्ति, व्यापार, आजीविका और नियोजन पर कर ;

(ख) जीवजंतुओं, यानों और नौकाओं पर कर ;

(ग) किसी बाजार में विक्रय के लिए माल के प्रवेश पर कर और फेरी से ले जाए जाने वाले यात्रियों और माल पर पथकर ; और

(घ) विद्यालयों, औषधालयों या सड़कों को बनाए रखने के लिए कर ।

(4) इस पैरा के उपपैरा (2) और उपपैरा (3) में विनिर्दिष्ट करों में से किसी कर के उद्ग्रहण और संग्रहण का उपबंध करने के लिए, यथास्थिति, प्रादेशिक परिषद् या जिला परिषद् विनियम बना सकेगी और [1][ऐसा प्रत्येक विनियम राज्यपाल के समक्ष तुरंत प्रस्तुत किया जाएगा और जब तक वह उस पर अनुमति नहीं दे देता है तब तक उसका कोई प्रभाव नहीं होगा]।

[2]9. खनिजों के पूर्वेक्षण या निष्कर्षण के प्रयोजन के लिए अनुज्ञप्तियां या पट्टे--(1) किसी स्वशासी जिले के भीतर के किसी क्षेत्र के संबंध में [3][राज्य की सरकार] द्वारा खनिजों के पूर्वेक्षण या निष्कर्षण के प्रयोजन के लिए दी गई अनुज्ञप्तियों या पट्टों से प्रत्येक वर्ष प्रोद्भूत होने वाले स्वामिस्व का ऐसा अंश, जिला परिषद् को दिया जाएगा जो उस [4][राज्य की सरकार] और ऐसे जिले की जिला परिषद् के बीच करार पाया जाए ।

(2) यदि जिला परिषद् को दिए जाने वाले ऐसे स्वामिस्व के अंश के बारे में कोई विवाद उत्पन्न होता है तो वह राज्यपाल को अवधारण के लिए निर्देशित किया जाएगा और राज्यपाल द्वारा अपने विवेक के अनुसार अवधारित रकम इस पैरा के उपपैरा (1) के अधीन जिला परिषद् को संदेय रकम समझी जाएगी और राज्यपाल का विनिश्चय अंतिम होगा ।

[4,5]10. जनजातियों से भिन्न व्यक्तियों की साहूकारी और व्यापार के नियंत्रण के लिए विनियम बनाने की जिला परिषद् की शक्ति--(1) स्वशासी जिले की जिला परिषद् उस जिले में निवासी जनजातियों से भिन्न व्यक्तियों की उस जिले के भीतर साहूकारी या व्यापार के विनियमन और नियंत्रण के लिए विनियम बना सकेगी ।

(2) विशिष्टतया और पूर्वगामी शक्ति की व्यापकता पर प्रतिकूल प्रभाव डाले बिना, ऐसे विनियम--

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[1] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) अंतःस्थापित ।

[2] संविधान (छठी अनुसूची) संशोधन अधिनियम, 1988 (1988 का 67) की धारा 2 द्वारा पैरा 9 त्रिपुरा और मिजोरम राज्यों को लागू करने में निम्नलिखित रूप से संशोधित किया गया जिससे उपपैरा (2) के पश्चात् निम्नलिखित उपपैरा अंतःस्थापित किया जा सके, अर्थात् :--

"(3) राज्यपाल, आदेश द्वारा, यह निदेश दे सकेगा कि इस पैरा के अधीन जिला परिषद् को दिया जाने वाला स्वामिस्व का अंश उस परिषद् को, यथास्थिति, उपपैरा (1) के अधीन किसी करार या उपपैरा (2) के अधीन किसी अवधारण की तारीख से एक वर्ष की अवधि के भीतर कियाजाएगा ।"।

[3] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71(i) और आठवीं अनुसूची द्वारा (21-1-1972 से) "असम सरकार" के स्थान पर प्रतिस्थापित ।

[4] संविधान (छठी अनुसूची) संशोधन अधिनियम, 1988 (1988 का 67) की धारा 2 द्वारा पैरा 10 त्रिपुरा और मिजोरम राज्यों को लागू करने में निम्नलिखित रूप से संशोधित किया गया :--

'(क) शीर्षक में से "जनजातियों से भिन्न व्यक्तियों की" शब्दों का लोप किया जाएगा ;

(ख) उपपैरा (1) में से "जनजातियों से भिन्न" शब्दों का लोप किया जाएगा ;

(ग) उपपैरा (2) में, खंड (घ) के स्थान पर, निम्नलिखित खंड रखा जाएगा, अर्थात् :--

"(घ) विहित कर सकेंगे कि कोई व्यक्ति, जो जिले में निवासी है जिला परिषद् द्वारा इस निमित्त दी गई अनुज्ञप्ति के अधीन कोई थोक या फुटकर व्यापार करेगा अन्यथा नहीं :" '।

[5] संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा पैरा 10 असम राज्य को लागू करने में निम्नलिखित रूप से संशोधित किया गया जिससे उपपैरा (3) के पश्चात् निम्नलिखित अंतःस्थापित किया जा सके, अर्थात् :--

"(4) इस पैरा की कोई बात, इस अनुसूची के पैरा 2 के उपपैरा (3) के परंतुक के अधीन गठित बोडोलैंड प्रादेशिक परिषद् को लागू नही होगी ।" ।

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say —

(*a*) taxes on professions, trades, callings and employments;

(*b*) taxes on animals, vehicles and boats;

(*c*) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(*d*) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph [1][and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect].

[2]9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by [3][the Government of the State] in respect of any area within an autonomous district as may be agreed upon between [4][the Government of the State] and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

[4-5]10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals.—(1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

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[1] Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

[2] Paragraph 9 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2, so as to insert the following sub-paragraph after sub-paragraph (2), namely :

"(3) The Governor may, by order, direct that the share of royalties to be made over to a District Council under this paragraph shall be made over to that Council within a period of one year from the date of any agreement under sub-paragraph (1) or, as the case may be, of any determination under sub-paragraph (2).".

[3] Subs. by the North -Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for "the Government of Assam" (w.e.f. 21-1-1972).

[4] Paragraph 10 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s.2, as under--

(a) in the heading, the words "by non-tribals" shall be omitted;

in sub-paragraph (1), the words "other than Scheduled Tribes" shall be omitted;

in sub-paragraph (2), for clause (d), the following clause shall be substituted, namely:--

(d) prescribe that no person resident in the district shall carry on any trade, whether wholesale or retail, except under a licence issued in that behalf by the District Council."

[5] Paragraph 10 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2 , so as to insert the following sub-paragraph after sub-paragraph (3), namely:

"(4) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule." .

(क) विहित कर सकेंगे कि उस निमित्त दी गई अनुज्ञप्ति के धारक के अतिरिक्त और कोई साहूकारी का कारोबार नहीं करेगा ;

(ख) साहूकार द्वारा प्रभारित या वसूल किए जाने वाले ब्याज की अधिकतम दर विहित कर सकेंगे ;

(ग) साहूकारों द्वारा लेखे रखे जाने का और जिला परिषदों द्वारा इस निमित्त नियुक्त अधिकारियों द्वारा ऐसे लेखाओं के निरीक्षण का उपबंध कर सकेंगे ;

(घ) विहित कर सकेंगे कि कोई व्यक्ति, जो जिले में निवासी अनुसूचित जनजातियों का सदस्य नहीं है, जिला परिषद् द्वारा इस निमित्त दी गई अनुज्ञप्ति के अधीन ही किसी वस्तु का थोक या फुटकर कारबार करेगा, अन्यथा नहीं :

परंतु इस पैरा के अधीन ऐसे विनियम तब तक नहीं बनाए जा सकेंगे जब तक वे जिला परिषद् की कुल सदस्य संख्या के कम से कम तीन चौथाई बहुमत द्वारा पारित नहीं कर दिए जाते हैं :

परंतु यह और कि ऐसे किन्हीं विनियमों के अधीन किसी ऐसे साहूकार या व्यापारी को जो ऐसे विनियमों के बनाए जाने के पहले से उस जिले के भीतर कारबार करता रहा है, अनुज्ञप्ति देने से इंकार करना सक्षम नहीं होगा ।

(3) इस पैरा के अधीन बनाए गए सभी विनियम राज्यपाल के समक्ष तुरंत प्रस्तुत किए जाएंगे और जब तक वह उन पर अनुमति नहीं दे देता है तब तक उनका कोई प्रभाव नहीं होगा ।

11. अनुसूची के अधीन बनाई गई विधियों, नियमों और विनियमों का प्रकाशन--जिला परिषद् या प्रादेशिक परिषद् द्वारा इस अनुसूची के अधीन बनाई गई सभी विधियों, नियम और विनियम राज्य के राजपत्र में तुरंत प्रकाशित किए जाएंगे और ऐसे प्रकाशन पर विधि का बल रखेंगे ।

[1,2]12. [3][असम राज्य में स्वशासी जिलों और स्वशासी प्रदेशों को संसद् के और असम राज्य के विधान-मंडल के अधिनियमों का लागू होना]--(1) इस संविधान में किसी बात के होते हुए भी,--

(क) [4][असम राज्य के विधान-मंडल] का कोई अधिनियम, जो ऐसे विषयों में से किसी विषय के संबंध में है जिनको इस अनुसूची के पैरा 3 में ऐसे विषयों के रूप में विनिर्दिष्ट किया गया है, जिनके संबंध में जिला परिषद् या प्रादेशिक परिषद् विधियां बना सकेगी और [4][असम राज्य के विधान-मंडल] का कोई अधिनियम, जो किसी अनासुत ऐल्कोहाली लिकर के उपभोग को प्रतिषिद्ध या निर्बंधित करता है, [5][उस राज्य में] किसी स्वशासी जिले या स्वशासी प्रदेश को तब तक लागू नहीं होगा जब तक दोनों दशाओं में से हर एक में ऐसे जिले की जिला परिषद् या ऐसे प्रदेश पर अधिकारिता रखने वाली जिला परिषद्, लोक अधिसूचना द्वारा, इस प्रकार निदेश नहीं दे देती है और जिला परिषद् किसी अधिनियम के संबंध में ऐसा निदेश देते समय यह निदेश दे सकेगी कि वह अधिनियम ऐसे जिले या प्रदेश या उसके किसी भाग को लागू होने में ऐसे अपवादों या उपांतरणों के अधीन रहते हुए प्रभावी होगा जो वह ठीक समझती है ;

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[1] संविधान (छठी अनुसूची) संशोधन अधिनियम, 1995 (1995 का 42) की धारा 2 द्वारा पैरा 12 असम राज्य को लागू होने के लिए निम्नलिखित रूप से संशोधित किया गया, अर्थात् :--

'पैरा 12 के उपपैरा (1) में "इस अनुसूची के पैरा 3 में ऐसे विषयों" शब्दों और अंक के स्थान पर, "इस अनुसूची के पैरा 3 या पैरा 3क में ऐसे विषयों" शब्द, अंक और अक्षर रखे जाएंगे ।' ।

[2] संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा पैरा 12 असम राज्य को लागू करने में निम्नलिखित रूप से संशोधित किया गया, अर्थात् :--

'पैरा 12 के उपपैरा (1) के खंड (क) में, "इस अनुसूची के पैरा 3 या पैरा 3क में ऐसे विषयों के रूप में विनिर्दिष्ट किया गया है" शब्दों, अंकों और अक्षर के स्थान पर, "इस अनुसूची के पैरा 3 या पैरा 3क या पैरा 3ख में ऐसे विषयों के रूप में विनिर्दिष्ट किया गया है" शब्द, अंक और अक्षर रखे जाएंगे ;'।

[3] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) शीर्षक के स्थान पर प्रतिस्थापित।

[4] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) "राज्य का विधान-मंडल" के स्थान पर प्रतिस्थापित ।

[5] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) अंतःस्थापित ।

(*a*) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;

(*b*) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;

(*c*) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;

(*d*) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council :

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

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

11. Publication of laws, rules and regulations made under the Schedule.—All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

[1-2]12. [3][Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam]. —(1) Notwithstanding anything in this Constitution —

(*a*) no Act of the [4][Legislature of the State of Assam] in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the [4][Legislature of the State of Assam] prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region [5][in that State] unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

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[1] Paragraph 12 has been amended to its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s.2, as under,-

'in paragraph 12, in sub-paragraph (1), for the words and figure "matters specified in paragraph 3 of this Schedule", the words, figures and letter "matters specified in paragraph 3 or paragraph 3A of this Schedule" shall be substituted.'.

[2] Paragraph 12 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, as under,—

'in paragraph 12, in sub-paragraph (1), in clause (a), for the words, figures and letter "matters specified in paragraph 3 or paragraph 3A of this Schedule", the words, figures and letter "matters specified in paragraph 3 or paragraph 3A or paragraph 3B of this Schedule" shall be substituted.'.

[3] Subs. by the North Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for the marginal heading (w.e.f. 21-1-1972).

[4] Subs. by s. 71 (i) and Eighth Sch., *ibid.*, for "Legislature of the State" (w.e.f. 21-1-1972).

[5] Ins. by s. 71 (i) and Eighth Sch., *ibid.*, (w.e.f. 21-1-1972).

(ख) राज्यपाल, लोक अधिसूचना द्वारा, निदेश दे सकेगा कि संसद् का या [1][असम राज्य के विधान-मंडल] का कोई अधिनियम, जिसे इस उपपैरा के खंड (क) के उपबंध लागू नहीं होते हैं [2][उस राज्य में] किसी स्वशासी जिले या स्वशासी प्रदेश को लागू नहीं होगा अथवा ऐसे जिले या प्रदेश या उसके किसी भाग को ऐसे अपवादों या उपांतरणों के अधीन रहते हुए लागू होगा जो वह उस अधिसूचना में विनिर्दिष्ट करे ।

(2) इस पैरा के उपपैरा (1) के अधीन दिया गया कोई निदेश इस प्रकार दिया जा सकेगा कि उसका भूतलक्षी प्रभाव हो ।

[3]**12क. मेघालय राज्य में स्वशासी जिलों और स्वशासी प्रदेशों को संसद् के और मेघालय राज्य के विधान-मंडल के अधिनियमों का लागू होना**--इस संविधान में किसी बात के होते हुए भी--

(क) यदि इस अनुसूची के पैरा 3 के उपपैरा (1) में विनिर्दिष्ट विषयों में से किसी विषय के संबंध में मेघालय राज्य में किसी जिला परिषद् या प्रादेशिक परिषद् द्वारा बनाई गई किसी विधि का कोई उपबंध या यदि इस अनूसूची के पैरा 8 या पैरा 10 के अधीन उस राज्य में किसी जिला परिषद् या प्रादेशिक परिषद् द्वारा बनाए गए किसी विनियम का कोई उपबंध, मेघालय राज्य के विधान-मंडल द्वारा उस विषय के संबंध में बनाई गई किसी विधि के किसी उपबंध के विरुद्ध है तो, यथास्थिति, उस जिला परिषद् या प्रादेशिक परिषद् द्वारा बनाई गई विधि या बनाया गया विनियम, चाहे वे मेघालय राज्य के विधान-मंडल द्वारा बनाई गई विधि से पहले बनाया गया हो या उसके पश्चात्, उस विरोध की मात्रा तक शून्य होगा और मेघालय राज्य के विधान-मंडल द्वारा बनाई गई विधि अभिभावी होगी ;

(ख) राष्ट्रपति, संसद के किसी अधिनियम के संबंध में, अधिसूचना द्वारा निदेश दे सकेगा कि वह मेघालय राज्य में किसी स्वशासी जिले या स्वशासी प्रदेश को लागू नहीं होगा अथवा ऐसे जिले या प्रदेश या उसके किसी भाग को ऐसे अपवादों या उपांतरणों के अधीन रहते हुए लागू होगा जो वह अधिसूचना में विनिर्दिष्ट करे और ऐसा कोई निदेश इस प्रकार दिया जा सकेगा कि उसका भूतलक्षी प्रभाव हो ।]

[4]**[12कक, त्रिपुरा राज्य में स्वशासी जिलों और स्वशासी प्रदेशों को संसद् के और त्रिपुरा राज्य के विधान-मंडल के अधिनियमों का लागू होना**--इस संविधान में किसी बात के होते हुए भी,--

(क) त्रिपुरा राज्य के विधान-मंडल को कोई अधिनियम, जो ऐसे विषयों में से किसी विषय के संबंध में है जिनको इस अनुसूची के पैरा 3 में ऐसे विषयों के रूप में विनिर्दिष्ट किया गया है जिनके संबंध में जिला परिषद् या प्रादेशिक परिषद् विधियां बना सकेगी, और त्रिपुरा राज्य के विधान-मंडल का कोई अधिनियम जो किसी अनासुत ऐल्कोहाली लिकर के उपभोग को प्रतिषिद्ध या निर्बंधित करता है, उस राज्य में किसी स्वशासी जिले या स्वशासी प्रदेश को तब तक लागू नहीं होगा जब तक, दोनों दशाओं में से हर एक में, उस जिले की जिला परिषद् या ऐसे प्रदेश पर अधिकारिता रखने वाली जिला परिषद् लोक अधिसूचना द्वारा, इस प्रकार निदेश नहीं दे देती है और जिला परिषद् किसी अधिनियम के संबंध में ऐसा निदेश देते समय यह निदेश दे सकेगी कि वह अधिनियम उस जिले या प्रदेश या उसके किसी भाग को लागू होने में ऐसे अपवादों या उपांतरणों के अधीन रहते हुए प्रभावी होगा जो वह ठीक समझती है ;

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[1] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) "राज्य का विधान-मंडल" के स्थान पर प्रतिस्थापित ।

[2] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) अंतःस्थापित ।

[3] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) पैरा 12क के स्थान पर प्रतिस्थापित ।

[4] संविधान छठी अनुसूची (संशोधन) अधिनियम, 1988 (1988 का 76) की धारा 2 द्वारा पैरा 12कक और 12ख के स्थान पर प्रतिस्थापित । पैरा 12कक संविधान(उनचासवां संशोधन) अधिनियम, 1984 की धारा 4 द्वारा (1-4-1985 से) अंतःस्थापित किया गया था।

(*b*) the Governor may, by public notification, direct that any Act of Parliament or of the [1][Legislature of the State of Assam] to which the provisions of clause (*a*) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region [2][in that State], or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect**.**

[3][12A. Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya.—Notwithstanding anything in this Constitution,—

(*a*) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;

(*b*) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.]

[4][12AA. Application of Acts of Parliament and of the Legislature of the State of Tripura to the autonomous districts and autonomous regions in the State of Tripura.— Notwithstanding anything in this Constitution,—

(a) no Act of the [5][Legislature of the State of Assam] in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the [4][Legislature of the State of Assam] prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region [6][in that State] unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

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[1] Subs. by the North -Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for "Legislature of the State" (w.e.f. 21-1-1972).

[2] Ins. by the North -Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch. (w.e.f. 21-1-1972).

[3] Subs. by s. 71 (i) and Eighth Sch., *ibid*., for paragraph 12A (w.e.f. 21-1-1972).

[4] Subs. by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2, for paragraphs 12AA and 12B. Paragraph 12AA was ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985).

[5] Subs. by s. 71 (i) and Eighth Sch., *ibid.*, for "Legislature of the State" (w.e.f. 21-1-1972).

[6] Ins. by s. 71 (i) and Eighth Sch., *ibid.,* (w.e.f. 21-1-1972).

(ख) राज्यपाल, लोक अधिसूचना द्वारा, निदेश दे सकेगा कि त्रिपुरा राज्य के विधान-मंडल को कोई अधिनियम, जिसे इस उपपैरा के खंड (क) के उपबंध लागू नहीं होते हैं, उस राज्य में किसी स्वशासी जिले या स्वशासी प्रदेश को लागू नहीं होगा अथवा ऐसे जिले या प्रदेश या उसके किसी भाग को ऐसे अपवादों या उपांतरणों के अधीन रहते हुए लागू होगा जो वह उस अधिसूचना में विनिर्दिष्ट करे ;

(ग) राष्ट्रपति, संसद के किसी अधिनियम के संबंध में, अधिसूचना द्वारा निदेश दे सकेगा कि वह त्रिपुरा राज्य में किसी स्वशासी जिले या स्वशासी प्रदेश को लागू नहीं होगा अथवा ऐसे जिले या प्रदेश या उसके किसी भाग को ऐसे अपवादों या उपांतरणों के अधीन रहते हुए लागू होना जो वह अधिसूचना में विनिर्दिष्ट करे और ऐसा कोई निदेश इस प्रकार दिया जा सकेगा कि उसका भूतलक्षी प्रभाव हो ।

12ख. मिजोराम राज्य में स्वशासी जिलों और स्वशासी प्रदेशों को संसद् के और मिजोरम राज्य के विधान-मंडल के अधिनियमों को लागू होना--इस संविधान में किसी बात के होते हुए भी,--

(क) मिजोरम राज्य के विधान-मंडल का कोई अधिनियम जो ऐसे विषयों में से किसी विषय के संबंध में है जिनको इस अनुसूची के पैरा 3 में ऐसे विषयों के रूप में विनिर्दिष्ट किया गया है जिनके संबंध में जिला परिषद् या प्रादेशिक परिषद् विधियां बना सकेगा, और मिजोरम राज्य के विधान-मंडल का कोई अधिनियम, जो किसी अनासुत ऐल्कोहाली लिकर के उपभोग को प्रतिषिद्ध या निर्बधित करता है, उस राज्य में किसी स्वशासी जिले या स्वशासी प्रदेश को तब तक लागू नहीं होगा, जब तक, दोनों दशाओं में से हर एक में, उस जिले की जिला परिषद् या ऐसे प्रदेश पर अधिकारिता रखने वाली जिला परिषद्, लोक अधिसूचना द्वारा, इस प्रकार निदेश नहीं दे देती है और जिला परिषद् किसी अधिनियम के संबंध में ऐसा निदेश देते समय यह निदेश दे सकेगी कि वह अधिनियम उस जिले या प्रदेश या उसके किसी भाग को लागू होने में ऐसे अपवादों या उपांतरणों के अधीन रहते हुए प्रभावी होगा जो वह ठीक समझती है ;

(ख) राज्यपाल, लोक अधिसूचना द्वारा, निदेश दे सकेगा कि मिजोरम राज्य के विधान-मंडल का कोई अधिनियम, जिसे इस उपपैरा के खंड (क) के उपबंध लागू नहीं होते हैं, उस राज्य में किसी स्वशासी जिले या स्वशासी प्रदेश को लागू नहीं होगा अथवा ऐसे जिले या प्रदेश या उसके किसी भाग को ऐसे अपवादों या उपांतरणों के अधीन रहते हुए लागू होगा जो वह उस अधिसूचना में विनिर्दिष्ट करे ;

(ग) राष्ट्रपति, संसद् के किसी अधिनियम के संबंध में, अधिसूचना द्वारा निदेश दे सकेगा कि वह मिजोरम राज्य में किसी स्वशासी जिले या स्वशासी प्रदेश को लागू नहीं होगा अथवा ऐसे जिले या प्रदेश या उसके किसी भाग को ऐसे अपवादों या उपांतरणों के अधीन रहते हुए लागू होगा जो वह अधिसूचना में विनिर्दिष्ट करे और ऐसा कोई निदेश इस प्रकार दिया जा सकेगा कि उसका भूतलक्षी प्रभाव हो ।]

13. स्वशासी जिलों से संबंधित प्राक्कलित प्राप्तियों और व्यय का वार्षिक वित्तीय विवरण में पृथक् रूप से दिखाया जाना--किसी स्वशासी जिले से संबंधित प्राक्कलित प्राप्तियां और व्यय, जो [1]*** राज्य की संचित निधि में जमा होनी हैं या उसमें से किए जाने हैं, पहले जिला परिषद् के समक्ष विचार-विमर्श के लिए रखे जाएंगे और फिर ऐसे विचार-विमर्श के पश्चात् अनुच्छेद 202 के अधीन राज्य के विधान-मंडल के समक्ष रखे जाने वाले वार्षिक वित्तीय विवरण में पृथक् रूप से दिखाए जाएंगे ।

[2]14. स्वशासी जिलों और स्वाशासी प्रदेशों के प्रशासन की जांच करने और उस पर प्रतिवेदन देने के लिए आयोग की नियुक्ति--(1) राज्यपाल, राज्य में स्वशासी जिलों और स्वशासी प्रदेशों के प्रशासन के संबंध में अपने द्वारा विनिर्दिष्ट किसी विषय की, जिसके अंतर्गत इस अनुसूची के पैरा 1 के उपपैरा (3) के खंड (ग), खंड (घ), खंड (ङ) और खंड (च) में विनिर्दिष्ट विषय हैं, जांच करने और उस पर प्रतिवेदन देने के लिए किसी भी समय आयोग नियुक्त कर सकेगा, या राज्य में स्वशासी जिलों और स्वशासी प्रदेशों के साधारणतया प्रशासन की और विशिष्टतया---

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[1] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) "असम" शब्द का लोप किया गया ।

[2] संविधान छठी अनुसूची (संशोधन) अधिनियम, 1995 (1995 का 42) की धारा 2 द्वारा पैरा 14 "असम" राज्य में लागू होने के लिए निम्नलिखित रूप से संशोधित किया गया, अर्थात्:-

'पैरा 14 के उपपैरा (2) में, " राज्यपाल की उससे संबंधित सिफारिशों के साथ" शब्दों का लोप किया जाएगा ।' ।

(*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 sub-paragraph do not apply, shall not apply to the autonomous district or any 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;

(*c*) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to the autonomous district or an autonomous region in the State of Tripura, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

12B. Application of Acts of Parliament and of the Legislature of the State of Mizoram to autonomous districts and autonomous regions in the State of Mizoram.— Notwithstanding anything in this Constitution, —

(*a*) no Act of the Legislature of the State of Mizoram in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Mizoram prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless, in either case, the District Council for such district or having jurisdiction over such region, by public notification, so directs, and the District Council, in giving such direction with respect to any Act, may direct that the Act shall, in its application to such district or region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(*b*) the Governor may, by public notification, direct that any Act of the Legislature of the State of Mizoram to which the provisions of clause (*a*) of this sub-paragraph do not apply, shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(*c*) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Mizoram, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.]

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement.—The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State [1]*** shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 202.

[2]**14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions.—**(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in clauses (*c*), (*d*), (*e*) and (*f*) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

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[1] The words "of Assam" omitted by the North- Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch. (w.e.f. 21-1-1972).

[2] Paragraph 14 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995) , s. 2, as under,--

'in paragraph 14, in sub-paragraph (2), the words "with the recommendations of the Governor with respect thereto" shall be omitted.'.

(क) ऐसे जिलों और प्रदेशों में शिक्षा और चिकित्सा की सुविधाओं की और संचार की व्यवस्था की,

(ख) ऐसे जिलों और प्रदेशों के संबंध में किसी नए या विशेष विधान की आवश्यकता की, और

(ग) जिला परिषदों और प्रादेशिक परिषदों द्वारा बनाई गई विधियों, नियमों और विनियमों के प्रशासन की,

समय-समय पर जांच करने और उस पर प्रतिवेदन देने के लिए आयोग नियुक्त कर सकेगा और ऐसे आयोग द्वारा अनुसरण की जाने वाली प्रक्रिया परिनिश्चित कर सकेगा ।

(2) संबंधित मंत्री, प्रत्येक ऐसे आयोग के प्रतिवेदन को, राज्यपाल की उससे संबंधित सिफारिशों के साथ, उस पर [1][राज्य की सरकार] द्वारा की जाने के लिए प्रस्तावित कार्रवाई के संबंध में स्पष्टीकारक ज्ञापन सहित, राज्य के विधान-मंडल के समक्ष रखेगा ।

(3) राज्यपाल राज्य की सरकार के कार्य का अपने मंत्रियों में आबंटन करते समय अपने मंत्रियों में से एक मंत्री को राज्य के स्वशासी जिलों और स्वशासी प्रदेशों के कल्याण का विशेषतया भारसाधक बना सकेगा ।

[2]**15. जिला परिषदों और प्रादेशिक परिषदों के कार्यों और संकल्पों का निष्प्रभाव या निलंबित किया जाना**---(1) यदि राज्यपाल का किसी समय यह समाधान हो जाता है कि जिला परिषद् या प्रादेशिक परिषद् के किसी कार्य या संकल्प से भारत की सुरक्षा का संकटापन्न होना संभाव्य है [3][या लोक व्यवस्था पर प्रतिकूल प्रभाव पड़ना संभाव्य है] तो वह ऐसे कार्य या संकल्प को निष्प्रभाव या निलंबित कर सकेगा और ऐसी कार्रवाई (जिसके अंतर्गत परिषद् का निलंबन और परिषद् में निहित या उसके द्वारा प्रयोक्तव्य सभी या किन्हीं शक्तियों को अपने हाथ में ले लेना है) कर सकेगा जो वह ऐसे कार्य को किए जाने या उसके चालू रखे जाने का अथवा ऐसे संकल्प को प्रभावी किए जाने का निवारण करने के लिए आवश्यक समझे ।

(2) राज्यपाल द्वारा इस पैरा के उपपैरा (1) के अधीन किया गया आदेश, उसके लिए जो कारण है उनके सहित, राज्य के विधान-मंडल के समक्ष यथासंभवशीघ्र रखा जाएगा और यदि वह आदेश, राज्य के विधान-मंडल द्वारा प्रतिसंहृत नहीं कर दिया जाता है तो वह उस तारीख से, जिसको वह इस प्रकार किया गया था, बारह मास की अवधि तक प्रवृत्त बना रहेगा :

परन्तु यदि और जितनी बार, ऐसे आदेश को प्रवृत्त बनाए रखने का अनुमोदन करने वाला संकल्प राज्य के विधान-मंडल द्वारा पारित कर दिया जाता है तो और उतनी बार वह आदेश, यदि राज्यपाल द्वारा रद्द नहीं कर दिया जाता है तो, उस तारीख से, जिसको वह इस पैरा के अधीन अन्यथा प्रवर्तन में नहीं रहता, बारह मास की और अवधि तक प्रवृत्त बना रहेगा ।

[4]**16. जिला परिषद् या प्रादेशिक परिषद् का विघटन**---[5][(1)] राज्यपाल, इस अनुसूची के पैरा 14 के अधीन नियुक्त आयोग की सिफारिश पर, लोक अधिसूचना द्वारा, किसी जिला परिषद् या प्रादेशिक परिषद् का विघटन कर सकेगा, और--

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[1] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) "असम सरकार" के स्थान पर प्रतिस्थापित ।

[2] संविधान छठी अनुसूची (संशोधन) अधिनियम, 1988 (1988 का 67) की धारा 2 द्वारा पैरा 15 त्रिपुरा और मिजोरम राज्यों को लागू करने में निम्नलिखित रूप से संशोधित किया गया है :---

'(क) आरंभिक भाग में, "राज्य के विधान-मंडल द्वारा" शब्दों के स्थान पर " राज्यपाल द्वारा" शब्द रखे जाएंगे;

(ख) परन्तुक का लोप किया जाएगा ।' ।

[3] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) अंतःस्थापित ।

[4] संविधान छठी अनुसूची (संशोधन) अधिनियम, 1988 (1988 का 67) की धारा 2 द्वारा पैरा 16 त्रिपुरा और मिजोरम राज्यों को लागू करने में निम्नलिखित रूप से संशोधित किया गया है :---

'(क) उपपैरा (1) के खंड (ख) में आने वाले " राज्य के विधान-मंडल के पूर्व अनुमोदन से" शब्दों और दूसरे परन्तुक का लोप किया जाएगा;

(ख) उपपैरा (3) के स्थान पर निम्नलिखित उपपैरा रखा जाएगा, अर्थात् :---

"(3) इस पैरा के उपपैरा (1) या उपपैरा (2) के अधीन किया गया प्रत्येक आदेश, उसके लिए जो कारण है उनके सहित, राज्य के विधान-मंडल के समक्ष रखा जाएगा ।"' ।

[5] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) पैरा 16 को उपपैरा (1) के रूप में पुनर्संख्यांकित किया गया ।

(*a*) the provision of educational and medical facilities and communications in such districts and regions;

(*b*) the need for any new or special legislation in respect of such districts and regions; and

(*c*) the administration of the laws, rules and regulations made by the District and Regional Councils;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by [1][the Government of the State].

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

[2]15. Annulment or suspension of acts and resolutions of District and Regional Councils.—(1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India [3][or is likely to be prejudicial to public order], he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made:

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

[4]16. Dissolution of a District or a Regional Council.—[5][(1)] The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council, and—

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[1] Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for "the Government of Assam" (w.e.f. 21-1-1972).

[2] Paragraph 15 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2, as under,--

' (a) in the opening paragraph, for the words "by the Legislature of the State", the words "by him" shall be substituted;

(b) the proviso shall be omitted.'.

[3] Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

[4] Paragraph 16 has been amended in its application to the States of Tripura and Mizoram by the Sixth Sechedule to the Constitution (Amendment) Act, 1988 (67 of 1988) s. 2, as under,--

' (a) in sub-paragraph (1), the words "subject to the previous approval of the Legislature of the State" occurring in clause (b), and the second proviso shall be omitted;

(b) for sub-paragraph (3), the following sub-paragraph shall be substituted, namely:--

"(3) Every order made under sub-paragraph (1) or sub-paragraph (2) of this paragraph, along with the reasons therefor shall be laid before the Legislature of the State.".'.

[5] Paragraph 16 renumbered as sub-paragraph (1) thereof by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

(क) निदेश दे सकेगा कि परिषद् के पुनर्गठन के लिए नया साधारण निर्वाचन तुरंत कराया जाए ; या

(ख) राज्य के विधान-मंडल के पूर्व अनुमोदन से ऐसी परिषद् के प्राधिकार के अधीन आने वाले क्षेत्र का प्रशासन बारह मास से अनधिक अवधि के लिए अपने हाथ में ले सकेगा अथवा ऐसे क्षेत्र का प्रशासन ऐसे आयोग को जिसे उक्त पैरा के अधीन नियुक्त किया गया है या अन्य ऐसे किसी निकाय को जिसे वह उपयुक्त समझता है, उक्त अवधि के लिए दे सकेगा :

परन्तु जब इस पैरा के खंड (क) के अधीन कोई आदेश किया गया है तब राज्यपाल प्रश्नगत क्षेत्र के प्रशासन के संबंध में, नया साधारण निर्वाचन होने पर परिषद् के पुनर्गठन के लंबित रहने तक, इस पैरा के खंड (ख) में निर्दिष्ट कार्रवाई कर सकेगा :

परन्तु यह और कि, यथास्थिति, जिला परिषद् या प्रादेशिक परिषद् को राज्य के विधान-मंडल के समक्ष अपने विचारों को रखने का अवसर दिए बिना उस पैरा के खंड (ख) के अधीन कोई कार्रवाई नहीं की जाएगी ।

[1][(2) यदि राज्यपाल का किसी समय यह समाधान हो जाता है कि ऐसी स्थिति उत्पन्न हो गई है जिसमें स्वशासी जिले या स्वशासी प्रदेश का प्रशासन उस अनुसूची के उपबंधों के अनुसार नहीं चलाया जा सकता है तो वह, यथास्थिति, जिला परिषद् या प्रादेशिक परिषद् में निहित या उसके द्वारा प्रयोक्तव्य सभी या कोई कृत्य या शक्तियां, लोक अधिसूचना द्वारा, छह मास से अनधिक अवधि के लिए अपने हाथ में ले सकेगा और यह घोषणा कर सकेगा कि ऐसे कृत्य या शक्तियां उक्त अवधि के दौरान ऐसे व्यक्ति या प्राधिकारी द्वारा प्रयोक्तव्य होंगी जिसे वह इस निमित्त विनिर्दिष्ट करे :

परन्तु राज्यपाल आरंभिक आदेश का प्रवर्तन, अतिरिक्त आदेश या आदेशों द्वारा, एक बार में छह मास से अनधिक अवधि के लिए बढ़ा सकेगा ।

(3) इस पैरा के उपपैरा (2) के अधीन किया गया प्रत्येक आदेश, उसके लिए जो कारण हैं उनके सहित, राज्य के विधान-मंडल के समक्ष रखा जाएगा और वह आदेश उस तारीख से जिसको राज्य विधान-मंडल उस आदेश के किए जाने के पश्चात् प्रथम बार बैठता है, तीस दिन की समाप्ति पर प्रवर्तन में नहीं रहेगा यदि उस अवधि की समाप्ति से पहले राज्य विधान-मंडल द्वारा उसका अनुमोदन नहीं कर दिया जाता है ।]

[2]17. स्वशासी जिलों में निर्वाचन-क्षेत्रों के बनाने में ऐसे जिलों से क्षेत्रों का अपवर्जन--राज्यपाल, [3][असम या मेघालय [4][या त्रिपुरा [5][या मिजोरम]] की विधान सभा] के निर्वाचनों के प्रयोजनों के लिए, आदेश द्वारा, यह घोषणा कर सकेगा कि, [6][यथास्थिति, असम या मेघालय [4][या त्रिपुरा [5][या मिजोरम]] राज्य में] किसी स्वशासी जिले के भीतर का कोई क्षेत्र ऐसे किसी जिले के लिए विधान सभा में आरक्षित स्थान या स्थानों को भरने के लिए किसी निर्वाचन-क्षेत्र का भाग नहीं होगा, किन्तु विधान सभा में इस प्रकार आरक्षित न किए गए ऐसे स्थान या स्थानों को भरने के लिए आदेश में विनिर्दिष्ट निर्वाचन-क्षेत्र का भाग होगा ।

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[1] आसाम पुनर्गठन (मेघालय) अधिनियम, 1969 (1969 का 55) की धारा 74 और चौथी अनुसूची द्वारा (2-4-1970 से) अंतःस्थापित ।

[2] संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा पैरा 17 असम राज्य को लागू करने में निम्नलिखित अंतःस्थापित किया गया, अर्थात् :--

"परन्तु इस पैरा की कोई बात बोडोलैंड प्रादेशिक क्षेत्र जिला को लागू नहीं होगी ।" ।

[3] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) "असम की विधान सभा" के स्थान पर प्रतिस्थापित ।

[4] संविधान (उनचासवां संशोधन) अधिनियम, 1984 की धारा 4 द्वारा (1-4-1985 से) अंतःस्थापित ।

[5] मिजोरम राज्य अधिनियम, 1986 (1986 का 34) की धारा 39 द्वारा (20-2-1987 से) अंतःस्थापित ।

[6] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) अंतःस्थापित ।

[7] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) पैरा 18 का लोप किया गया ।

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

[1][(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification, assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefor shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the order, unless, before the expiry of that period it has been approved by that State Legislature.]

[2]**17. Exclusion of areas from autonomous districts in forming constituencies in such districts.**—For the purposes of elections to [3][the Legislative Assembly of Assam or Meghalaya] [4][or Tripura] [5][or Mizoram], the Governor may by order declare that any area within an autonomous district [6][in the State of Assam or Meghalaya [3][or Tripura] [4][or Mizoram], as the case may be, shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

[7]* * * * *

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[1] Ins. by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), s. 74 and Fourth Sch. (w.e.f. 2-4-1970).

[2] Paragraph 17 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2 , so as to insert the following proviso, namely: —

"Provided that nothing in this paragraph shall apply to the Bodoland Territorial Areas District.".

[3] Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for "the Legislative Assembly of the Assam" (w.e.f. 21-1-1972).

[4] Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985).

[5] Ins. by the State of Mizoram Act, 1986 (34 of 1986), s. 39 (w.e.f. 20-2-1987).

[6] Ins. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch. (w.e.f. 21-1-1972).

[7] Paragraph 18 omitted by s. 71 (i) and Eighth Sch., ibid. (w.e.f. 21-1-1972).

[1]**19. संक्रमणकालीन उपबंध**--(1) राज्यपाल, इस संविधान के प्रारंभ के पश्चात् यथासंभव शीघ्र, इस अनुसूची के अधीन राज्य में प्रत्येक स्वशासी जिले के लिए जिला परिषद् के गठन के लिए कार्रवाई करेगा और जब तक किसी स्वशासी जिले के लिए जिला परिषद् इस प्रकार गठित नहीं की जाती है तब तक ऐसे जिले का प्रशासन राज्यपाल में निहित होगा और ऐसे जिले के भीतर के क्षेत्रों के प्रशासन को इस अनुसूची के पूर्वगामी उपबंधों के स्थान पर निम्नलिखित उपबंध लागू होंगे, अर्थात् :--

(क) संसद् का या उस राज्य के विधान-मंडल का कोई अधिनियम ऐसे क्षेत्र को तब तक लागू नहीं होगा जब तक राज्यपाल, लोक अधिसूचना द्वारा, इस प्रकार निदेश नहीं दे देता है और राज्यपाल किसी अधिनियम के संबंध में ऐसा निदेश देते समय यह निदेश दे सकेगा कि वह अधिनियम ऐसे क्षेत्र या उसके किसी विनिर्दिष्ट भाग को लागू होने में ऐसे अपवादों या उपांतरणों के अधीन रहते हुए प्रभावी होगा जो वह ठीक समझता है ;

(ख) राज्यपाल ऐसे किसी क्षेत्र की शांति और सुशासन के लिए विनियम बना सकेगा और इस प्रकार बनाए गए विनियम संसद् के या उस राज्य के विधान-मंडल के किसी अधिनियम का या किसी विद्यमान विधि का, जो ऐसे क्षेत्र को तत्समय लागू हैं, निरसन या संशोधन कर सकेंगे ।

(2) राज्यपाल द्वारा इस पैरा के उपपैरा (1) के खंड (क) के अधीन दिया गया कोई निदेश इस प्रकार दिया जा सकेगा कि उसका भूतलक्षी प्रभाव हो ।

(3) इस पैरा के उपपैरा (1) के खंड (ख) के अधीन बनाए गए सभी विनियम राष्ट्रपति के समक्ष तुरंत प्रस्तुत किए जाएंगे और जब तक वह उन पर अनुमति नहीं दे देता है तब तक उनका कोई प्रभाव नहीं होगा ।

[2][**20. जनजाति क्षेत्र**--(1) नीचे दी गई सारणी के भाग 1, भाग 2 [3][, भाग 2क] और भाग 3 में विनिर्दिष्ट क्षेत्र क्रमशः असम राज्य, मेघालय राज्य [3][, त्रिपुरा राज्य] और मिजोरम [4][राज्य] के जनजाति क्षेत्र होंगे ।

(2) [5][नीचे दी गई सारणी के भाग 1, भाग 2 या भाग 3 में] किसी जिले के प्रति निर्देश का यह अर्थ लगाया जाएगा कि वह पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 की धारा 2 के खंड (ख) के अधीन नियत किए गए दिन से ठीक पहले विद्यमान उस नाम के स्वशासी जिले में समाविष्ट राज्यक्षेत्रों के प्रति निर्देश हैं :

परन्तु इस अनुसूची के पैरा 3 के उपपैरा (1) के खंड (ङ) और खंड (च), पैरा 4, पैरा 5, पैरा 6, पैरा 8 के उपपैरा (2), उपपैरा (3) के खंड (क), खंड (ख) और खंड (घ) और उपपैरा (4) तथा पैरा 10 के उपपैरा (2) के खंड (घ) के प्रयोजनों के लिए, शिलांग नगरपालिका में समाविष्ट क्षेत्र के किसी भाग के बारे में यह नहीं समझा जाएगा कि वह [6][खासी पहाड़ी जिले] के भीतर है ।

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[1] संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा पैरा 19 असम राज्य को लागू करने में निम्नलिखित रूप से संशोधित किया गया जिससे उपपैरा (3) के पश्चात् निम्नलिखित अंतःस्थापित किया गया अर्थात् :--

'(4) इस अधिनियम के प्रारंभ के पश्चात्, यथाशीघ्र असम में बोडोलैंड प्रादेशिक क्षेत्र जिले के लिए एक अंतरिम कार्यपालक परिषद्, राज्यपाल द्वारा बोडो आन्दोलन के नेताओं में से, जिनके अंतर्गत समझौते के ज्ञापन के हस्ताक्षरकर्ता भी हैं, बनाई जाएगी और उसमें उस क्षेत्र के गैर जनजातीय समुदायों को भी पर्याप्त प्रतिनिधित्व दिया जाएगा :

परंतु अन्तरिम परिषद् छह मास की अवधि के लिए होगी जिसके दौरान परिषद् का निर्वाचन कराने का प्रयास किया जाएगा ।

स्पष्टीकरण--इस उपपैरा के प्रयोजनों के लिए, "समझौते का ज्ञापन" पद से भारत सरकार, असम सरकार और बोडो लिबरेशन टाइगर्स के बीच 10 फरवरी, 2003 को हस्ताक्षरित ज्ञापन अभिप्रेत है ।'।

[2] पूर्वोत्तर क्षेत्र (पुनर्गठन) अधिनियम, 1971 (1971 का 81) की धारा 71 और आठवीं अनुसूची द्वारा (21-1-1972 से) "पैरा 20 और 20क के" के स्थान पर प्रतिस्थापित ।

[3] संविधान (उनचासवां संशोधन) अधिनियम, 1984 की धारा 4 द्वारा (1-4-1985 से) अंतःस्थापित ।

[4] मिजोरम राज्य अधिनियम, 1986 (1986 का 34) की धारा 39 द्वारा (20-2-1987 से) "संघ राज्यक्षेत्र" के स्थान पर प्रतिस्थापित ।।

[5] संविधान (उनचासवां संशोधन) अधिनियम, 1984 की धारा 4 द्वारा (1-4-1985 से) " नीचे दी गई सारणी में " के स्थान पर प्रतिस्थापित ।

[6] मेघालय सरकार के अधिसूचना सं0 डी.सी.ए. 31/ 72/11, तारीख 14 जून, 1973, मेघालय का राजपत्र, भाग V क, तारीख 23-6-1973 पृ. 200 द्वारा प्रतिस्थापित ।

[1]**19. Transitional provisions.**—(1) As soon as possible after the commencement of this Constitution the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district instead of the foregoing provisions of this Schedule, namely:—

(*a*) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;

(*b*) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

(2) Any direction given by the Governor under clause (*a*) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

(3) All regulations made under clause (*b*) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

[2][20. Tribal areas.—(1) The areas specified in Parts I, II [3][, IIA] and III of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya [9][, the State of Tripura] and the [4][State] of Mizoram.

(2) [5][Any reference in Part I, Part II or Part III of the table below] to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (*b*) of section 2 of the North-Eastern Areas (Reorganisation) Act, 1971:

Provided that for the purposes of clauses (*e*) and (*f*) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (*a*), (*b*) and (*d*) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 and clause (*d*) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the [6][Khasi Hills District].

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[1] Paragraph 19 has been amended in its application to the State of Assam by s. 2, *ibid.*, so as to insert the following sub-paragraph after sub-paragraph (3), namely :—

"(4) As soon as possible after the commencement of this Act, and Interim Executive Council for Bodoland Territorial Areas District in Assam shall be formed by the Governor from amongst leaders of the Bodo movement, including the signatories to the Memorandum of Settlement, and shall provide adequate representation to the non-tribal communities in that area:

Provided that Interim Council shall be for a period of six months during which endeavour to hold the election to the Council shall be made.

Explanation.-- For the purposes of this sub-paragraph, the expression "Memorandum of Settlement" means the Memorandum signed on the 10th day of February, 2003 between Government of India, Government of Assam and Bodo Liberation Tigers." .

[2] Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71 (i) and Eighth Sch., for paragraphs 20 and 20A (w.e.f. 21-1-1972).

[3] Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985).

[4] Subs. by the State of Mizoram Act, 1986 (34 of 1986), s. 39, for "Union territory" (w.e.f. 20-2-1987).

[5] Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4, for "Any reference in the Table below" (w.e.f. 1-4-1985).

[6] Subs. by the Government of Meghalaya Notification No. DCA 31/72/11 dated the 14th June, 1973, Gazette of Meghalaya, Pt. VA, dated 23-6-1973, p. 200.

[2][(3) नीचे दी गई सारणी के भाग 2क में "त्रिपुरा जनजाति क्षेत्र जिला" के प्रति निर्देश का यह अर्थ लगाया जाएगा कि वह त्रिपुरा जनजाति क्षेत्र स्वशासी जिला परिषद् अधिनियम, 1979 की पहली अनुसूची में विनिर्दिष्ट जनजाति क्षेत्रों में समाविष्ट राज्यक्षेत्र के प्रति निर्देश है ।]

सारणी

भाग 1

1. उत्तरी कछार पहाड़ी जिला ।

[1]2. [2][कार्बी आंगलांग जिला ।]

भाग 2

[3][1. खासी पहाड़ी जिला ।

2. जयंतिया पहाड़ी जिला ।]

3. गारो पहाड़ी जिला ।

[4][**भाग 2क**

त्रिपुरा जनजाति क्षेत्र जिला ।]

भाग 3

[5]* * * *

[6][1. चकमा जिला ।

[7][2. मारा जिला ।

3. लई जिला ।]]

[8]**[20क. मिजो जिला परिषद् का विघटन**--(1) इस अनुसूची में किसी बात के होते हुए भी, विहित तारीख से ठीक पहले विद्यमान मिजो जिले की जिला परिषद् (जिसे इसमें इसके पश्चात् मिजो जिला परिषद् कहा गया है) विघटित हो जाएगी और विद्यमान नहीं रह जाएगी ।

(2) मिजोरम संघ राज्यक्षेत्र का प्रशासक, एक या अधिक आदेशों द्वारा, निम्नलिखित सभी या किन्हीं विषयों के लिए उपबंध कर सकेगा, अर्थात् :--

(क) मिजो जिला परिषद् की आस्तियों, अधिकारों और दायित्वों का (जिनके अतंर्गत उसके द्वारा की गई किसी संविदा के अधीन अधिकार और दायित्व हैं) पूर्णतः या भागतः संघ को या किसी अन्य प्राधिकारी को अंतरण ;

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[1] संविधान छठी अनुसूची (संशोधन) अधिनियम, 2003 (2003 का 44) की धारा 2 द्वारा असम राज्य को लागू करने में पैरा 20 की सारणी के भाग 1 में प्रविष्टि 2 के पश्चात् निम्नलिखित प्रविष्टि अंतःस्थापित की गई, अर्थात् :--

"3. बोडोलैंड प्रादेशिक क्षेत्र जिला ।" ।

[2] असम सरकार द्वारा तारीख 14-10-1976 की अधिसूचना सं टी.ए.डी/आर 115/74/47 द्वारा "मिकीर पहाडी जिला" के स्थान पर प्रतिस्थापित ।

[3] मेघालय सरकार की अधिसूचना सं डी.सी.ए. 31/72/11 तारीख 14 जून, 1973 मेघालय का राजपत्र, भाग V क, तारीख 23-6-1973 पृष्ठ 200 द्वारा प्रतिस्थापित ।

[4] संविधान उनचासवां सशोधन् अधिनियम 1984 की धारा 4 द्वारा (1-4-1985 से) अन्तःस्थापित ।

[5] संघ राज्यक्षेत्र शासन (संशोधन) अधिनियम, 1971 (1971 का 83) की धारा 13 द्वारा (29-4-1972 से) "मिजो जिला" शब्दों का लोप किया गया ।

[6] मिजोरम का राजपत्र 1972, तारीख 5 मई, 1972, जिल्द 1, भाग II, पृ0 17 में प्रकाशित मिजोरम जिला परिषद् (प्रकीर्ण उपबंध) आदेश, 1972 द्वारा (29-4-1972 से) अंतःस्थापित ।

[7] संविधान छठी अनुसूची (संशोधन) अधिनियम, 1988 (1988 का 67) की धारा 2 द्वारा क्रम सं0 2 और 3 तथा उनसे संबंधित प्रविष्ठियों के स्थान पर प्रतिस्थापित ।

[8] संघ राज्यक्षेत्र सासन (संशोधन) अधिनियम, 1971 (1971 का 83) की धारा 13 द्वारा (29-4-1972 से), पैरा 20क के स्थान पर प्रतिस्थापित ।

[2][(3) The reference in Part IIA in the table below to the "Tripura Tribal Areas District" shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979.]

TABLE

PART I

1. The North Cachar Hills District.

[1]2. [2][The Karbi Anglong District.]

[3][3. The Bodoland Territorial Areas District.]

PART II

[1][1. Khasi Hills District.

2. Jaintia Hills District.]

3. The Garo Hills District.

[4][PART IIA

Tripura Tribal Areas District]

PART III

[5]* * *

[6][1. The Chakma District.

[7][2. The Mara District.

2. The Lai District.]]

3.

[8][20A. Dissolution of the Mizo District Council.—(1) Notwithstanding anything in this Schedule, the District Council of the Mizo District existing immediately before the prescribed date (hereinafter referred to as the Mizo District Council) shall stand dissolved and cease to exist.

(2) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—

(*a*) the transfer, in whole or in part, of the assets, rights and liabilities of the Mizo District Council (including the rights and liabilities under any contract made by it) to the Union or to any other authority;

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[1] In Paragraph 20 No. 3 in Part II of the table has been inserted so as to its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, namely: —

"3. the Bodoland Territorial Areas District."

[2] Subs. by the Government of Assam Notification No. TAD/R/115/74/47 dated the 14-10-1976, for "The Mikir Hills District".

[3] Ins. by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2.

[4] Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4 (w.e.f. 1-4-1985).

[5] The words "The Mizo District" omitted by the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), s. 13 (w.e.f. 29-4-1972).

[6] Ins. by the Mizoram District Councils (Miscellaneous Provisions) Order, 1972, published in the Mizoram Gazette, 1972, dated the 5th May, 1972, Vol. I, Pt. II, p. 17 (w.e.f 29-4-1972).

[7] Subs. by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2, for serial numbers 2 and 3 and the entries relating thereto.

[8] Subs. by the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), s. 13, for paragraph 20A (w.e.f. 29-4-1972).

(ख) किन्हीं ऐसी विधिक कार्यवाहियों में, जिनमें मिजो जिला परिषद् एक पक्षकार है, मिजो जिला परिषद् के स्थान पर संघ का या किसी अन्य प्राधिकारी का पक्षकार के रूप में रखा जाना अथवा संघ का या किसी अन्य प्राधिकारी का पक्षकार के रूप में जोड़ा जाना ;

(ग) मिजो जिला परिषद् के किन्हीं कर्मचारियों का संघ को या किसी अन्य प्राधिकारी को अथवा उसके द्वारा अंतरण या पुनर्नियोजन, ऐसे अंतरण या पुनर्नियोजन के पश्चात् उन कर्मचारियों को लागू होने वाले सेवा के निबंधन और शर्तें ;

(घ) मिजो जिला परिषद् द्वारा बनाई गई और उसके विघटन से ठीक पहले प्रवृत्त किन्हीं विधियों का, ऐसे अनुकूलनों और उपांतरणों के, चाहे वे निरसन के रूप में हों या संशोधन के रूप में, अधीन रहते हुए जो प्रशासक द्वारा इस निमित्त किए जाएं, तब तक प्रवृत्त बना रहना जब तक किसी सक्षम विधान-मंडल द्वारा या अन्य सक्षम प्राधिकारी द्वारा ऐसी विधियों में परिवर्तन, निरसन या संशोधन नहीं कर दिया जाता है ;

(ङ) ऐसे आनुषंगिक, पारिणामिक और अनुपूरक विषय जो प्रशासक आवश्यक समझे ।

स्पष्टीकरण--इस पैरा में और इस अनुसूची के पैरा 20ख में, "विहित तारीख" पद से वह तारीख अभिप्रेत है जिसको मिजोरम संघ राज्यक्षेत्र की विधान सभा का, संघ राज्यक्षेत्र शासन अधिनियम, 1963 के उपबंधों के अधीन और उनके अनुसार, सम्यक् रूप से गठन होता है ।

[1]-[2]20ख. मिजोरम संघ राज्यक्षेत्र में स्वशासी प्रदेशों का स्वशासी जिले होना और उसके पारिणामिक संक्रमणकालीन उपबंध --(1) इस अनुसूची में किसी बात के होते हुए भी,--

(क) मिजोरम संघ राज्यक्षेत्र में विहित तारीख से ठीक पहले विद्यमान प्रत्येक स्वशासी प्रदेश उस तारीख को और से उस संघ राज्यक्षेत्र का स्वशासी जिला (जिसे इसमें इसके पश्चात्, तत्स्थानी नया जिला कहा गया है) हो जाएगा और उसका प्रशासक, एक या अधिक आदेशों द्वारा, निदेश दे सकेगा कि इस अनुसूची के पैरा 20 में (जिसके अंतर्गत उस पैरा से संलग्न सारणी का भाग 3 है) ऐसे पारिणामिक संशोधन किए जाएंगे जो इस खंड के उपबंधों को प्रभावी करने के लिए आवश्यक हैं और तब उक्त पैरा और उक्त भाग 3 के बारे में यह समझा जाएगा कि उनका तद्नुसार संशोधन कर दिया गया है ;

(ख) मिजोरम संघ राज्यक्षेत्र में विहित तारीख से ठीक पहले विद्यमान स्वशासी प्रदेश की प्रत्येक प्रादेशिक परिषद् (जिसे इसमें इसके पश्चात् विद्यमान प्रादेशिक परिषद् कहा गया है) उस तारीख को और से और जब तक तत्स्थानी नए जिले के लिए परिषद् का सम्यक् रूप से गठन नहीं होता है तब तक, उस जिले की जिला परिषद् (जिसे इसमें इसके पश्चात् तत्स्थानी नई जिला परिषद् कहा गया है) समझी जाएगी ।

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[1] संविधान छठी अनुसूची (संशोधन) अधिनियम, 1995 (1995 का 42) की धारा 2 द्वारा असम में लागू होने के लिए पैरा 20ख के पश्चात् निम्नलिखित पैरा अंतःस्थापित किया गया, अर्थात् :-

"**20खक. राज्यपाल द्वारा अपने कृत्यों के निर्वहन में वैवेकिक शक्तियो का प्रयोग**--राज्यपाल, इस अनुसूची के पैरा 1 के उपपैरा (2) और उपपैरा (3), पैरा 2 के उपपैरा (1), उपपैरा (6), उपपैरा (6क) के पहले परन्तुक को छोड़कर और उपपैरा (7), पैरा 3 के उपपैरा (3), पैरा 4 के उपपैरा (4), पैरा 5, पैरा 6 के उपपैरा (1), पैरा 7 के उपपैरा (2), पैरा 8 के उपपैरा (4), पैरा 9 के उपपैरा (3), पैरा 10 के उपपैरा (3), पैरा 14 के उपपैरा (1), पैरा 15 के उपपैरा (1) और पैरा 16 के उपपैरा (1) और उपपैरा (2) के अधीन अपने कृत्यों के निर्वहन में, मंत्रिपरिषद् और, यथास्थिति, उत्तरी कछार पहाड़ी स्वशासी परिषद् या कार्बी आंगलांग पहाड़ी स्वशासी परिषद से परामर्श करने के पश्चात् ऐसी कार्रवाई करेगा, जो वह स्वविवेकानुसार आवश्यक मानता है ।" ।

[2] संविधान छठी अनुसूची (संशोधन) अधिनियम, 1988 (1988 का 67) की धारा 2 द्वारा त्रिपूरा और मिजोरम राज्यों को लागू करने में, पैरा 20ख के पश्चात् निम्नलिखित पैरा अंतःस्थापित किया गया है, अर्थात् :-

"**20खख. राज्यपाल द्वारा अपने कृत्यों के निर्वहन में वैवेकिक शक्तियों का प्रयोग**--राज्यपाल, इस अनुसूची के पैरा 1 के उपपैरा (2) और उपपैरा (3), पैरा 2 के उपपैरा (1) और उपपैरा (7), पैरा 3 का उपपैरा (3), पैरा 4 का उपपैरा (4), पैरा 5, पैरा 6 का उपपैरा (1), पैरा 7 का उपपैरा (2), पैरा 9 का उपपैरा (3), पैरा 14 का उपपैरा (1) और पैरा 16 का उपपैरा (1) और उपपैरा (2) के अधीन अपने कृत्यों के निर्वहन में, मंत्रिपरिषद् से और यदि वह आवश्यक समझे तो संबंधित जिला परिषद् या प्रादेशिक परिषद् से परामर्श करने के पश्चात्, ऐसी कार्रवाई करेगा, जो वह स्वविवेकानुसार आवश्यक समझे ।"।

(*b*) the substitution of the Union or any other authority for the Mizo District Council, or the addition of the Union or any other authority, as a party to any legal proceedings to which the Mizo District Council is a party;

(*c*) the transfer or re-employment of any employees of the Mizo District Council to or by the Union or any other authority, the terms and conditions of service applicable to such employees after such transfer or re-employment;

(*d*) the continuance of any laws, made by the Mizo District Council and in force immediately before its dissolution, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf, until such laws are altered, repealed or amended by a competent Legislature or other competent authority;

(*e*) such incidental, consequential and supplementary matters as the Administrator considers necessary.

Explanation.—In this paragraph and in paragraph 20B of this Schedule, the expression "prescribed date" means the date on which the Legislative Assembly of the Union territory of Mizoram is duly constituted under and in accordance with the provisions of the Government of Union Territories Act, 1963.

[1-2]**20B. Autonomous regions in the Union territory of Mizoram to be autonomous districts and transitory provisions consequent thereto**.—(1) Notwithstanding anything in this Schedule,—

(*a*) every autonomous region existing immediately before the prescribed date in the Union territory of Mizoram shall, on and from that date, be an autonomous district in that Union territory (hereafter referred to as the corresponding new district) and the Administrator thereof may, by one or more orders, direct that such consequential amendments as are necessary to give effect to the provisions of this clause shall be made in paragraph 20 of this Schedule (including Part III of the table appended to that paragraph) and thereupon the said paragraph and the said Part III shall be deemed to have been amended accordingly;

(*b*) every Regional Council of an autonomous region in the Union territory of Mizoram existing immediately before the prescribed date (hereafter referred to as the existing Regional Council) shall, on and from that date and until a District Council is duly constituted for the corresponding new district, be deemed to be the District Council of that district (hereafter referred to as the corresponding new District Council).

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[1] After paragraph 20B, the following paragraph has been inserted in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2, namely:-

"**20BA. Exercise of discretionary powers by the Governor in the discharge of his functions.--** The Governor in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1), (6), sub-paragraph (6A) excluding the first proviso and sub-paragraph (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub-paragraph (4) of paragraph 8, sub-paragraph (3) of paragraph 9, sub-paragraph (3) of paragraph 10, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers and the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, take such action as he considers necessary in his discretion." .

[2] After paragraph 20B, the following paragraph has been inserted in its application to the States of Tripura and Mizoram, by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2, namely:--

"20BB. Exercise of discretionary powers by the Governor in the discharge of his functions.-The Governor, in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1) and (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub- paragraph (3) of paragraph 9, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, 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." .

(2) विद्यमान प्रादेशिक परिषद् का प्रत्येक निर्वाचित या नामनिर्देशित सदस्य तत्स्थानी नई जिला परिषद् के लिए, यथास्थिति, निर्वाचित या नामनिर्देशित समझा जाएगा और तब तक पद धारण करेगा जब तक इस अनुसूची के अधीन तत्स्थानी नए जिले के लिए जिला परिषद् का सम्यक् रूप से गठन नहीं होता है ।

(3) जब तक तत्स्थानी नई जिला परिषद् द्वारा इस अनुसूची के पैरा 2 के उपपैरा (7) और पैरा 4 के उपपैरा (4) के अधीन नियम नहीं बनाए जाते हैं तब तक विद्यमान प्रादेशिक परिषद् द्वारा उक्त उपबंधों के अधीन बनाए गए नियम, जो विहित तारीख से ठीक पहले प्रवृत्त हैं, तत्स्थानी नई जिला परिषद् के संबंध में ऐसे अनुकूलनों और उपांतरणों के अधीन रहते हुए प्रभावी होंगे जो मिजोरम संघ राज्यक्षेत्र के प्रशासक द्वारा उनमें किए जाएं ।

(4) मिजोरम संघ राज्यक्षेत्र का प्रशासक, एक या अधिक आदेशों द्वारा, निम्नलिखित सभी या किन्हीं विषयों के लिए उपबंध कर सकेगा, अर्थात् :--

(क) विद्यमान प्रादेशिक परिषद् की आस्तियों, अधिकारों और दायित्वों का (जिनके अंतर्गत उसके द्वारा की गई किसी संविदा के अधीन अधिकार और दायित्व हैं) पूर्णतः या भागतः तत्स्थानी नई जिला परिषद् को अंतरण ;

(ख) किन्हीं ऐसी विधिक कार्यवाहियों में, जिनमें विद्यमान प्रादेशिक परिषद् एक पक्षकार है, विद्यमान प्रादेशिक परिषद् के स्थान पर तत्स्थानी नई जिला परिषद् का पक्षकार के रूप में रखा जाना ;

(ग) विद्यमान प्रादेशिक परिषद् के किन्हीं कर्मचारियों का तत्स्थानी नई जिला परिषद् को अथवा उसके द्वारा अंतरण या पुनर्नियोजन ; ऐसे अंतरण या पुनर्नियोजन के पश्चात् उन कर्मचारियों को लागू होने वाले सेवा के निबंधन और शर्तें ;

(घ) विद्यमान प्रादेशिक परिषद् द्वारा बनाई गई और विहित तारीख से ठीक पहले प्रवृत्त किन्हीं विधियों का, ऐसे अनुकूलनों और उपांतरणों के, चाहे वे निरसन के रूप में हों या संशोधन के रूप में, अधीन रहते हुए जो प्रशासक द्वारा इस निमित्त किए जाएं, तब तक प्रवृत्त बना रहना जब तक सक्षम विधान-मंडल द्वारा या अन्य सक्षम प्राधिकारी द्वारा ऐसी विधियों में परिवर्तन, निरसन या संशोधन नहीं कर दिया जाता है ;

(ङ) ऐसे आनुषंगिक, पारिणामिक और अनुपूरक विषय जो प्रशासक आवश्यक समझे ।

20ग. निर्वचन--इस निमित्त बनाए गए किसी उपबंध के अधीन रहते हुए, इस अनुसूची के उपबंध मिजोरम संघ राज्यक्षेत्र को उनके लागू होने में इस प्रकार प्रभावी होंगे--

(1) मानो राज्य के राज्यपाल और राज्य की सरकार के प्रति निर्देश अनुच्छेद 239 के अधीन नियुक्त संघ राज्यक्षेत्र के प्रशासक के प्रति निर्देश हों ; ("राज्य की सरकार" पद के सिवाय) राज्य के प्रति निर्देश मिजोरम संघ राज्यक्षेत्र के प्रति निर्देश हों और राज्य विधान-मंडल के प्रति निर्देश मिजोरम संघ राज्यक्षेत्र की विधान सभा के प्रति निर्देश हों ;

(2) मानो--

(क) पैरा 4 के उपपैरा (5) में संबंधित राज्य की सरकार से परामर्श करने के उपबंध का लोप कर दिया गया हो ;

(ख) पैरा 6 के उपपैरा (2) में, "जिस पर राज्य की कार्यपालिका शक्ति का विस्तार है" शब्दों के स्थान पर "जिसके संबंध में मिजोरम संघ राज्यक्षेत्र की विधान सभा को विधियां बनाने की शक्ति है" शब्द रख दिए गए हों ;

(ग) पैरा 13 में, "अनुच्छेद 202 के अधीन" शब्दों और अंकों का लोप कर दिया गया हो ।]]

21. अनुसूची का संशोधन--(1) संसद्, समय-समय पर विधि द्वारा, इस अनुसूची के उपबंधों में से किसी का, परिवर्धन, परिवर्तन या निरसन के रूप में संशोधन कर सकेगी और जब अनुसूची का इस प्रकार संशोधन किया जाता है तब इस संविधान में इस अनुसूची के प्रति किसी निर्देश का यह अर्थ लगाया जाएगा कि वह इस प्रकार संशोधित ऐसी अनुसूची के प्रति निर्देश है ।

(2) ऐसी कोई विधि जो इस पैरा के उपपैरा (1) में उल्लिखित है, इस संविधान के अनुच्छेद 368 के प्रयोजनों के लिए इस संविधान का संशोधन नहीं समझी जाएगी ।

(2) Every member whether elected or nominated of an existing Regional Council shall be deemed to have been elected or, as the case may be, nominated to the corresponding new District Council and shall hold office until a District Council is duly constituted for the corresponding new district under this Schedule.

(3) Until rules are made under sub-paragraph (7) of paragraph 2 and sub-paragraph (4) of paragraph 4 of this Schedule by the corresponding new District Council, the rules made under the said provisions by the existing Regional Council and in force immediately before the prescribed date shall have effect in relation to the corresponding new District Council subject to such adaptations and modifications as may be made therein by the Administrator of the Union territory of Mizoram.

(4) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—

(*a*) the transfer in whole or in part of the assets, rights and liabilities of the existing Regional Council (including the rights and liabilities under any contract made by it) to the corresponding new District Council;

(*b*) the substitution of the corresponding new District Council for the existing Regional Council as a party to the legal proceedings to which the existing Regional Council is a party;

(*c*) the transfer or re-employment of any employees of the existing Regional Council to or by the corresponding new District Council, the terms and conditions of service applicable to such employees after such transfer or re-employment;

(*d*) the continuance of any laws made by the existing Regional Council and in force immediately before the prescribed date, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf until such laws are altered, repealed or amended by a competent Legislature or other competent authority;

(*e*) such incidental, consequential and supplementary matters as the Administrator considers necessary.

20C. Interpretation.—Subject to any provision made in this behalf, the provisions of this Schedule shall, in their application to the Union territory of Mizoram, have effect—

(1) as if references to the Governor and Government of the State were references to the Administrator of the Union territory appointed under article 239, references to State (except in the expression "Government of the State") were references to the Union territory of Mizoram and references to the State Legislature were references to the Legislative Assembly of the Union territory of Mizoram;

(2) as if—

(*a*) in sub-paragraph (5) of paragraph 4, the provision for consultation with the Government of the State concerned had been omitted;

(*b*) in sub-paragraph (2) of paragraph 6, for the words "to which the executive power of the State extends", the words "with respect to which the Legislative Assembly of the Union territory of Mizoram has power to make laws" had been substituted;

(*c*) in paragraph 13, the words and figures "under article 202" had been omitted.

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

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

ANNEXURE 6 G

STATE-WISE LIST OF SCHEDULED AREAS

I. ANDHRA PRADESH*

(1) Balmor, Kondnagol, Banal, Bilakas, Dharawaram, Appaipali, Rasul Chernvu, Pulechelma, Marlapaya, Burj Gundal, Agarla Penta, Pullaipalli, Dukkan Penta, Bikit Penta, Karkar Penta, Boramachernvu, Yemlapaya, Irlapenta, Mudardi Penta, Terkaldari, Vakaramamidi Penta, Medimankal, Pandibore, Sangrigundal, Lingabore, Rampur, Appapur, Malapur, Jalal Penta, Piman Penta, Railet, Vetollapalli, Patur Bayal, Bhavi Penta, Naradi Penta, Tapasi Penta, Chandragupta, Ullukatrevu, Timmareddipalli, Sarlapalli, Tatigundal, Elpamaehena, Koman Penta, Kollam Penta, Mananur, Macharam, Malhamamdi, Venketeshwarla Bhavi, Amrabad, Tirmalapur, Upnootola, Madhavanpalli, Jangamreddi Palli, Pedra, Venkeshwaram, Chitlamkunta, Lachmapur, Udmela, Mared, Ippalpalli, Maddimadag, Akkaram, Ainol, Siddapur, Bamanpalli, Ganpura and Manewarpalli Villages of **Achempeth Taluq of Mahbubnagar district.**

(2) Malai Borgava, Ankapur, Jamul Dhari, Lokari, Vanket, Tantoli, Sitagondi, Burnoor, Navgaon, Pipal Dari, Pardi Buzurg, Yapalguda, Chinchughat, Vankoli, Kanpa, Avasoda Burki, Malkapur, Jaree, Palsi Buzurg, Arli Khurd, Nandgaon, Vaghapur, Palsikurd, Lingee, Kaphar Deni, Ratnapur, Kosai, Umari, Madanapur, Ambugaon, Ruyadee, Sakanapur, Daigaon, Kaslapur, Dorlee, Sahaij, Sangvee, Khogdoor, Kobai, Ponala, Chaprala, Mangrol, Kopa Argune, Soankhas, Khidki, Khasalakurd, Khasalabuzurg, Jamni, Borgaon, Sayedpur, Khara, Lohara, Marigaon, Chichdari, Khanapur, Kandala, Tipa, Hati Ghota, Karond Kurd, Karoni Buzurg, Singapur, Buranpur, Nagrala, Bodad, Chandpelli, Peetgain, Yekori, Sadarpur, Varoor, Rohar, Takli and Ramkham villages of **Adilabad taluq of Adilabad district**.

(3) Ambari, Bodri, Chikli, Kamtala, Ghoti, Mandwa, Maregaon, Malborgaon, Patoda, Dahigaon, Domandhari, Darsangi, Digri, Sindgi, Kanakwari, Kopra, Malakwadi, Nispur, Yenda, Pipalgaon, Bulja, Varoli, Anji, Bhimpur Sirmeti, Karla, Kothari, Gokunda, Gogarwudi, Malkapur, Dhonora, Rampur, Patri, Porodhi, Boath, Darsangi, Norgaon, Unrsi, Godi, Sauarkher, Naikwadi, Sarkani, Wajhera, Mardap, Anjenkher, Gondwarsa, Palaiguda, Karalgaon, Palsi, Patoda, Javarla, Pipalgaon, Kanki Singora, Dongargoan, Pipalsendha, Jurur, Minki, Tulsi, Machauder Pardhi, Murli, Takri, Parsa, Warsa, Umra, Ashta, Hingni, Timapur, Wajra, Wanola, Patsonda, Dhanora, Sakur and Digri villages of **Kinwat taluk of Adilabad district.**

(4) Hatnur, Wakri, Pardhi, Kartanada, Serlapalli, Neradi-konda, Daligaon, Kuntala, Venkatapur, Hasanpur, Surdapur, Polmamda, Balhanpur, Dharampuri, Gokonda, Bhotai, Korsekal, Patnapur, Tejapur, Guruj, Khahdiguda, Rajurwadi, Ispur, Ghanpur, Jaterla, Khantegaon, Sauri, Ichora, Mutnur, Gudi Hatnur, Talamedee, Gerjam, Chincholi, Sirchelma, Mankapur, Narsapur, Dharmpur, Harkapur, Dhampur, Nigni, Ajhar Wajhar, Chintalbori, Chintakarvia, Rampur, Gangapur and Gayatpalli villages of **Boath taluk of Adilabad district.**

(5) All villages of **Utnur taluq of Adilabad district**.

(6) Rajampet, Gunjala, Indhani, Samela, Tejapur, Kannargaon, Kantaguda, Shankepalli, Jamuldhari, Gundi, Chorpalli, Saleguda, Wadiguda, Savati, Dhaba, chopanguda, Nimgaon, Khirdi, Metapipri, Sakra, Sangi, Devurpalli, Khotara-Ringanghat, Nishani, Kota Parandoli, Mesapur, Goigaon, Dhanora, Pardha, Surdapur, Kerineri Murkilonki, Devapur, Chinta Karra, Iheri, Ara, Dasnapur, Kapri, Belgaon, Sirasgaon, Moar, Wadam, Dhamriguda, Dallanpur, Chalwardi, Ihoreghat, Balijhari, Sakamgundi, Ara, Uppal Naugaon, Anksorpur, Chirakunta, Illipita Dorli, Mandrumera, Dantanpalli, Deodurg, Tunpalli, Dhagleshwar, Padibanda, Tamrin, Malangundi, Kandan Moar, Geonena, Kuteda, Tilani, Kanepelli, Bordoum Telundi, Maugi Lodiguda, Moinda-gudipet, Chinnedari, Koitelundi, Madura, Devaiguda, Areguda, Gardepalli, Takepalli, Choutepalli, Rane Kannepalli, Sungapur, Rala Samkepalli,

Chopri, Doda Arjuni, Serwai, Rapalli, Tekamandwa and Meta Arjuni villages of **Asaifabad taluq of Adilabad district.**

(7) Gudam, Kasipet, Dandepalli, Chelampeta, Rajampet, Mutiempet, Venkatapur, Rali, Kauwal, Tarapet, Devapur, Gathapalli, Rotepalli, Mandamari, Dharmaraopet Venkatapur, Chintaguda and Mutiempalli villages of **Lakshetipet taluq of Adilabad district**.

(8) Bendwi, Chincholi, Goigaon, Hirapur, Sakri, Balapur, Manoli, Antargaon, Wirur, Dongargaon, Timbervai, Sersi, Badora, Vmarjeeri, Lakarkot, Ergaon, Kirdi, Sondo, Devara, Khorpana, Kanargaon, Chenai, Kairgaon, Samalhira, Dhanoli, Marnagondi, Yellapur, Katalbori, Isapur, Devti, Panderwani, Wansari, Perda, Wargaon Nokari, Mirapur, Pardhi, Kutoda, Parsewara, Mangalhra, Karki, Nokari, Manoli, Sonapur, Inapur, Mangi, Uparwai, Tutta, Lakmapur, Kirdi, Injapur, Jamni, Hargaon, Chikli, Patan, Kosundi, Kotara and Sonorli villages of **Rajura taluq of Adilabad district.**

(9) Ralapet, Kistampet, Takalapalli, Chakalpalli, Anaram, Bhepalli, Korsni Isgaon, Chintaguda, Ankora, Usurampalli, Arpalli, Bophalpatnam, Balasaga, Pardhi, Tumrihati, Chintalmanopalli, Chintam, Gullatalodi, Damda, Dhorpalli, Kanki Garlapet, Gudlabori, Gurmpet, Lomveli, Mogurdagar, Wirdandi and Chilpurdubor villages of **Sirpur taluq of Adilabad district.**

(10) Kannaiguda, Ankannaguda, Raghavpatnam, Medarmiola, Koetla, Parsa Nagaram, Muthapur, Motlaguda, Venglapur, Yelpak, Kaneboenpalli, Medaram, Kondred, Chintaguda, Kondaparthi, Yelsethipalli, Allvammarighunpur, Rampur, Malkapalli, Chettial, Bhupathipur, Gangaram, Kannaiguda, Rajannapet, Bhutaram, Akkela, Sirvapur, Gangaram Bhupathipur, Pumbapur, Rampur, Ankampalli, Kamaram, Kamsettigudam, Ashnaguda, Yellapur, Allaguda, Narsapur, Puschapur, Bhattupalli, Lavnal, Vadduguda, Kothur, Pegdapalli, Srvapur, Bhussapur, Chelvai, Rangapur Govindraopet, Ballapali, Dhumpallaguda, Kelapalli, Lakhanavaram, Pasra, Gonepalli, Padgapur, Narlapur, Kalvapalli, Uratam, Kondia, Maliat, Aclapur, Dodla, Kamaram, Tadvai, Boodiguda, Bannaji, Bandam, Selpak, Kantalpalli, Sarvai, Gangaguda, Tupalkalguda, Akulvari, Ghanpur, Shahpalli, Gagpelli, Chinna-beonnplli, Venkatapur, Narsapur, Anvaram, Lingal, Ballepalli, Bandal and Thunmapur villages of **Mulug taluq of Warrangal district**.

(11) Vebelli, Polara, Bakkachintaphad, Ganjad, Thirmalguda, Gopalpur, Khistapur, Tatinari Venpalli, Pattal Bhoopati, Chandelapur, Battalpalli, Advarampet, Satiahnagar, Dutla, Mothwada, Mangalawarpet, Karlai, Arkalkunta, Kodsapet, Gunderpalli, Masami, Battavartigudem, Mamidigudam, Pangonda, Roturai, Satreddipalli, Konapur, Kondapuram, Pogulapalli, Govindapuram, Makadapalli, Pagulapalli, Murraigudem, Yelchagudem, Tummapurm, Jangamvartigudem, Rangagudem, Peddalapalli, Yerravaram, Kundapalli Neelampalli Daravarinampalli, Karnegund, Mahadevagudem, Marrigudem, Jangalpalli, Bavarguda, Oarbak, Gangaramam, Mucherla Amaroncha, Kamaraam, Chintagudem, Nilavancha, Kangargidda, Madagudem, Dalurpet, Kothagudem, Kotapalli, Durgaram,Dubagudem, Rudravaram, Narsugudam, Komatlagudem, Katervam, Semar Rajpet, Marepalli, Goarur, Radhiapur, Gazalgudem, Rajvepalli and Bollypalli villages of **Narsampet taluk of Warrangal district.**

(12) All the villages of Yellandu taluq of Warrangal district (excluding the Yellandu, Singareni and Sirpur villages and the town of Kothaguda)

(13) (i)All the villages of Palocha taluq of Warrangal district excluding Palondha, Borgampad, Ashwaraopet, Dammapet, Kuknur and Nelipak villages and (ii) Samasthan of Paloncha

(14) Visakhapatnam Agency area 1[excluding the areas comprised in the villages of Agency Lakshmipuram, Chidikada, Konkasingi, Kumarapuram, Krishnadevipeta, Pichigantikothagudem, Golugondapeta, Gunupudi,

Gummudukonda, Sarabhupalapatnam, Vadurupalli, Pedajaggampeta]2[Sarabhupathi Agraharam, Ramachandrarajupeta Agraharam, and Kondavatipudi Agraharam in Visakhapatnam district.]

(15) East Godwari Agency area2 [excluding the area comprised in the village of Ramachandrapuram including its hamlet Purushothapatnam in the East Godavari district.]

(16) West Godawari Agency area in West Godavari district.

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* The Scheduled Areas in the State of Andhra Pradesh were originally specified by the Scheduled Areas (Part A States) Order, 1950 (C.O.No.9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950 (C.O.No.26) dated 7.12.1950 and have been modified vide the Madras Scheduled Areas (Cesser) Order 1951 (C.O. 50) and the Andhra Scheduled Areas (Cesser) Order, 1955 (C.O.30)

1. Inserted by the Madras Scheduled Areas (Cesser) Order, 1951
2. Inserted by the Andhra Scheduled Areas (Cesser) Order, 1955

II. GUJARAT**

1. Uchchhal. Vyara, Mahuwa, Mandvi, Nizar, Songadh, Valod, Mangrol and Bardoli talukas in Surat district.
2. Dediapada, Sagbara, Valia, Nandod and Jhagadia talukas in Bharuch district
3. Dangs district and taluka
4. Bansda, Dharampur, Chikhali, Pardi and Umbergaon talukas in Valasad district
5. Jhalod, Dohad, Santrampur, Limkheda and Deogarh Baria talukas in Panchmahal district
6. Chhotaudepur and Naswadi talukas and Tilakwada mahal in Vadodora district
7. Khedbrahma, Bhiloda and Meghraj talukas, and Vijayanagar mahal in Sabarkantha district

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** The Scheduled Areas in the State of Gujarat were originally specified by the Scheduled Areas (Part A States) Order, 1950 (Constitution Order, 9) dated 23.1.1950 and have been respecified as above by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 (Constitution Order, 109) dated 31.12.1977 after rescinding the Order cited first so far as that related to the State of Gujarat.

III. HIMACHAL PRADESH***

1. Lahaul and Spiti district
2. Kinnaur district
3. Pangi tehsil and Bharmour sub-tehsil in Chamba district

*** Specified by the Scheduled Areas (Himachal Pradesh) Order, 1975 (Constitution Order 102) dated 21.11.1975

IV. MAHARASHTRA#

1. The following in Thane district :

(a) Tahsils of **Dhahanu, Talasari, Mokhando, Jawher, Wada and Sahapur**

(b) (i) The one hundered forty four villages of Palghar tahsil as mention below :

Palghar Tahsil

(1) Tarapur
(2) Kudan
(3) Dahisar-tarf-Tarapur
(4) Ghiwali
(5) Wawe
(6) Akkarpatti
(7) Kurgaon
(8) Parnali
(9) Vengani
(10) Patharwali
(11) Newale
(12) Shigaon
(13) Gargaon
(14) Chinchare
(15) Akegawhan
(16) Naniwali
(17) Ambedhe
(18) Barhanpur
(19) Salgaon,
(20) Khutad,
(21) Khaniwade,
(22) Rawate,
(23) Akoli,
(24) Asheri,
(25) Somate,
(26) Pasthal,
(27) Boisar,
(28) Borsheti
(29) Mahagaon,
(30) Kirat,
(31) Wade,
(32) Khadkawane,
(33) Mendhwan
(34) Vilshet,
(35) Kondgaon
(36) Karsood
(37) Betegaon,
(38) Warangade
(39) Lalonde,
(40) Ghanede
(41) Kampalgaon
(42) Man
(43) Ghaneghar,
(44) Wedhe
(45) Chari Budruk
(46) Birwadi
(47) Kallale,
(48) Padghe
(49) Pole,
(50) Nandore,
(51) Girnoli,
(52) Borande,
(53) Devkhope,
(54) Sagawe,
(55) Kosbad
(56) Kokaner,
(57) Nagzari
(58) Chari Khurd
(59) Velgaon
(60) Khutal,
(61) Chilhar,
(62) Bhopoli,
(63) Nihe,
(64) Damkhand,
(65) Kondhan,
(66) Awandhan,
(67) Bangarchole,
(68) Shil,
(69) Loware,
(70) Bandhan,
(71) Nand-gaon-tarf-Manor,
(72) Shilshet,
(73) Katale,
(74) Ambhan,
(75) Wasaroli
(76) Kharshet,
(77) Manor,
(78) Takwahal,
(79) Sawarkhand,
(80) Nalshet,
(81) Kev,
(82) Wakadi,
(83) Maswan,
(84) Wandiwali,
(85) Netali
(86) Saye,
(87) Ten,
(88) Karalgaon,
(89) Gowade,
(90) Tamsai,
(91) Durves,
(92) Dhuktan,
(93) Pochade,
(94) Haloli,
(95) Khamloli,
(96) Bahadoli,
(97) Bot,
(98) Embur irambi,
(99) Danisari-tarf-Manor,
(100) Kude,
(101) Gundave,
(102) Satiwali,
(103) Vehaloli,
(104) Saware,
(105) Warai,
(106) Jansai
(107) Khaire,
(108) Dhekale,
(109) Ganje,
(110) Jayshet,
(111) Shelwade,
(112) Veur,
(113) Ambadi,
(114) Nawali,
(115) Morawali,
(116) Varkhunti,
(117) Kamare,
(118) Tokrale,
(119) Bandate,
(120) Zanjaroli,
(121) Chahade,

(122) Wasare,
(123) Khadkoli,
(124) Sakhare,
(125) Rothe,
(126) Lalthane,
(127) Navaze,
(128) Tandulwadi,
(129) Girale,
(130) Pargaon,
(131)Nagawe-tarf-Manor,
(132) Umbarpada Nandade,
(133) Uchavali,
(134) Safale,
(135) Sonawe,
(136) Makane Kapse,
(137) Karwale,
(138) Wadhiv Sarawali,
(139) Penand,
(140) Kandarwan,
(141) Dahiwale,
(142) Darshet,
(143) Navghar (Ghatim)
(144) Umbarpada-tarf-Manor.

(ii) The forty five villages of Vasai (Bassein) Tahsil as mentioned below:

Vasai (Bassein) Tahsil

(1) Dahisar,
(2) Koshimbe,
(3) Tulinj,
(4) Sakawar,
(5) Chimane,
(6) Hedavade,
(7) Kashidkopar,
(8) Khaniwade,
(9) Bhaliwali,
(10) Kavher,
(11) Shirsad
(12) Mandvi
(13) Chandip,
(14) Bhatane,
(15) Shivansai
(16) Usgaon,
(17) Medhe,
(18) Vadghar,
(19) Bhinar,
(20) Ambode,
(21) Kalbhon,
(22) Adne,
(23) Sayawan,
(24) Parol,
(25) Shirvali,
(26) Majivali,
(27) Karanjon,
(28) Tilher,
(29) Dhaviv,
(30) Pelhar,
(31) Achole,
(32) Valiv,
(33) Sativali,
(34) Rajavali,
(35) Kolhi,
(36) Chinchoti
(37) Juchandra
(38) Bapane
(39) Deodal
(40) Kamam
(41) Sarajamori
(42) Poman
(43) Shilottar
(44) Sasunavghar
(45) Nagle

(iii) The seventy two villages of Bhiwandi tahsil as mentioned bellow :

Bhiwandi tahsil

(1) Bhivali,
(2) Gancshpuri,
(3) Vadavali Vajreshwari,
(4) Akloli,
(5) Savaroli,
(6) Khatrali
(7) Usgaon,
(8) Ghotgaon,
(9) Vadhe,
(10) Vareth,
(11) Chane,
(12) Asnoli-tarf-Dugad
(13) Dugad,
(14) Manivali,
(15) Vadwali-tarf-Dugad,
(16) Malbidi,
(17) Mohili,
(18) Nandithane,
(19) Depoli,
(20) Sakharoli,
(21) Supegaon,
(22) Pilanze Khurd,
(23) Pilanze Budruk,
(24) Alkhivali,
(25) Vaghivale,
(26) Devehole,
(27) Sagoan,
(28) Eksal,
(29) Chinchavali-tarf-Kunde,
(30) Dudhani,
(31) Vape,
(32) Ghadane,
(33) Kunde,
(34) Ghotavade,
(35) Mainde,
(36) Karmale,
(37) Kandali Budruk,
(38) Kelhe,
(39) Kandali Khurd,
(40) Dighashi,
(41) Newade,
(42) Ambadi,
(43) Dalonde,
(44) Jambhiwali -tarf - Khambal,
(45) Umbarkhand,
(46) Ashivali,
(47) Zidake,

(48) Kharivali
(49) Base,
(50) Gondade,
(51) Pahare,
(52) Shedgaon,
(53) Pachhapur,
(54) Gondravali,
(55) Jambhiali-tarf-Kunde,
(56) Asnoli-tarf-Kunde,
(57) Shirole,
(58) Dabhad,
(59) Mohandul,
(60) Shirgaon,
(61) Pimpal Seht Bhusheth,
(62) Khadki Khurd,
(63) Khadki Budruk,
(64) Chimbipade,
(65) Kuhe,
(66) Dhamne,
(67) Lakhiwali,
(68) Palivali,
(69) Paye,
(70) Gane,
(71) Dahyale,
(72) Firangpada,

(iv) The seventy seven villages of Murbad tahsil as mentioned below :

Murbad Tahsil

(1) Kasgaon,
(2) Kisal,
(3) Wadawali,
(4) Sakhare,
(5) Khutalborgaon,
(6) Ambele Khurd
(7) Sayale,
(8) Inde,
(9) Khedale,
(10) Talawali-tarf-Ghorat,
(11) Eklahare,
(12) Chafe-tarf-Khedul,
(13) Pimpalghar,
(14) Dahigaon,
(15) Parhe,
(16) Kandali,
(17) Dhasai,
(18) Alyani,
(19) Palu,
(20) Deoghar,
(21) Madh,
(22) Sonawale,
(23) Veluk,
(24) Alawe,
(25) Bursunge,
(26) Mandus,
(27) Khed,
(28) Vanote,
(29) Shai,
(30) Shelgaon,
(31) Shiroshi,
(32) Talegaon,
(33) Fangalkoshi
(34) Merdi,
(35) Walhivare,
(36) Mal,
(37) Jadai,
(38) Ambiwali,
(39) Dighephal,
(40) Diwanpada,
(41) Kochare Khurd,
(42) Kochare Budruk,
(43) Chosale,
(44) Khutal Bangla,
(45) Nayahadi,
(46) Moroshi,
(47) Fangulgawhan,
(48) Sawarne,
(49) Thitabi-tarf-Vaishakahre,
(50) Kudhset,
(51) Fangane,
(52) Khapari,
(53) Hedawali,
(54) Karchonde,
(55) Zadghar,
(56) Udaldoha,
(57) Mhorande,
(58) Tokawade,
(59) Balegaon,
(60) Talawali (Baragaon),
(61) Waishakhare,
(62) Maniwali-tarf-Khedul,
(63) Pendhari,
(64) Umaroli budruk,
(65) Ojiwale,
(66) Mandwat,
(67) Mahaj,
(68) Padale,
(69) Koloshi,
(70) Jaigaon,
(71) Kalambad (Bhondivale),
(72) Kheware,
(73) Dudhanoli,
(74) Umaroli Khurd,
(75) Khopwali,
(76) Milhe,
(77) Gorakhagad,

2. The following in Nasik district :-

(a) The tahsils of **Peint, Surgana and Kalwan**

(b) (i) The one hundred six villages of **Dindori** tahsil as mentioned below :

Dindori Tahsil

(1) Mokhanal,
(2) Bhanwad,
(3) Dehare,
(4) Karanjali,
(5) Gandole,
(6) Palasvihir,

(7) Vare,
(8) Vanjole,
(9) Ambad,
(10) Vanare,
(11) Titve,
(12) Deothan,
(13) Nanashi
(14) Charose,
(15) Deoghar,
(16) Kaudasar,
(17) Vani Khurd,
(18) Pimpalgaon Dhum,
(19) Joran,
(20) Mahaje,
(21) Sadrale,
(22) Nalwadi,
(23) Oje,
(24) Golshi,
(25) Jalkhed,
(26) Nigdol,
(27) Kokangaon Budruk,
(28) Umbrale Khurd,
(29) Ambegan,
(30) Chachadgaon,
(31) Vaghad,
(32) Pophal wade,
(33) Dhaur,
(34) Umbale Budruk,
(35) Jambutke,
(36) Pimpraj,
(37) Nalegaon,
(38) Vilwandi,
(39) Rasegaon,
(40) Kochargaon,
(41) Tilholi,
(42) Ravalgaon,
(43) Deher Wadi,
(44) Dhagur,
(45) Deosane,
(46) Sarsale,
(47) Karanjkhed,
(48) Pingalwadi,
(49) Eklahare,
(50) Chausale,
(51) Pimpri Anchla,
(52) Ahiwantwadi,
(53) Goldari,
(54) Haste,
(55) Kolher,
(56) Jirwade,
(57) Chamdari,
(58) Maledumala,
(59) Mandane,
(60) Koshimbe,
(61) Punegaon,
(62) Pandane,
(63) Ambaner,
(64) Chandikapur,
(65) Bhatode,
(66) Dahivi,
(67) Mulane,
(68) Kokangaon Khurd,
(69) Malegaon,
(70) Pimparkhed,
(71) Phopasi,
(72) Vani Kasbe,
(73) Sangamner,
(74) Khedle,
(75) Mavadi,
(76) Karanjwan,
(77) Dahegaon,
(78) Vaglud,
(79) Krishnagaon,
(80) Varkhed,
(81) Kadvamhalungi,
(82) Gaondegaon,
(83) Hatnore,
(84) Nilwandi,
(85) Pimpalgoan Ketki,
(86) Rajapur,
(87) Dindori,
(88) Jopul,
(89) Madki jamb,
(90) Palkhed,
(91) Indore,
(92) Korhate,
(93) Chinchkhed,
(94) Talegaon Dindori,
(95) Akrale,
(96) Mohadi,
(97) Pimpsalanare,
(98) Khatwad,
(99) Ramsej,
(100) Ambe Dindore,
(101) Dhakambe,
(102) Janori,
(103) Manori,
(104) Shivanai,
(105) Varwandi,
(106) Jaulke Dindori,

(ii) The ninety three villages of Igatpuri tahsil as mentioned below and one town Igatpuri :

Igatpuri Tahsil

(1) Dhadoshi,
(2) Bhilmal,
(3) Pahine,
(4) Zarwad Khurd,
(5) Tak-Harsha,
(6) Aswali Harsha,
(7) Samundi,
(8) Kharoli,
(9) Kojoli,
(10) Avhate,
(11) Kushegaon,
(12) Metchandryachi,
(13) Alwand,
(14) Dapure,
(15) Met Humbachi,
(16) Zarwad Budruk,
(17) Mhasurli,
(18) Shevgedang,
(19) Wanjole,
(20) Deogaon,
(21) Ahurli,
(22) Nandagaon,
(23) Vavi Harsha,
(24) Nagosali,

(25) Dhargaon,
(26) Ondli,
(27) Saturli,
(28) Awalidumala,
(29) Karhale,
(30) Rayambe,
(31) Takedeogaon,
(32) Metyelyachi,
(33) Biturli,
(34) Walvihir,
(35) Bhavli Badruk,
(36) Pimpalgaon Bhatata,
(37) Kopargaon,
(38) Kurnoli,
(39) Dhamoli,
(40) Waki,
(41) Chinchale, (Khaire),
(42) Tringalwadi,
(43) Adwan,
(44) Awalkhede,
(45) Parderi,
(46) Balayduri,
(47) Khambala,
(48) Take Ghoti,
(49) Ghoti Budruk,
(50) Talegaon,
(51) Girnare,
(52) Titoli,
(53) Bortembhe,
(54) Taloshi,
(55) Nandgaon sade,
(56) Pimpri Sadaroddin,
(57) Talegha,
(58) Kanchangaon,
(59) Shenwad Budruk,
(60) Fangulgavan,
(61) Borli,
(62) Manwedhe,
(63) Bhavali Khurd,
(64) Kaluste,
(65) Jamunde,
(66) Gahunde,
(67) Bharvaj,
(68) Karungwadi,
(69) Nirpan,
(70) Maniargaon,
(71) Ambewadi,
(72) Khadked,
(73) Indore,
(74) Umbarkon,
(75) Somaj Ghadga,
(76) Ubhade, (Vanjulwadi),
(77) Megare,
(78) Belgaon Tarhale,
(79) Dhamangaon,
(80) Deole,
(81) Khairgaon,
(82) Pimpalgaon Mor,
(83) Dhamni,
(84) Adasare Khurd,
(85) Adasare Budruk,
(86) Acharwad,
(87) Taked Khurd,
(88) Taked Budruk,
(89) Khed,
(90) Barshingve,
(91) Sonoshi,
(92) Maidara Dhanoshi,
(93) Wasali,

(iii) The seventy villages in Nasik tahsil as mentioned below and one town Trimbak :

Nasik tahsil

(1) Sapte,
(2) Kone,
(3) Kharwal,
(4) Varasvihir,
(5) Vaghera,
(6) Rohile,
(7) Nandgaon,
(8) Gorthan,
(9) Hirdi,
(10) Malegaon,
(11) Welunje,
(12) Ganeshgaon Waghera,
(13) Pimpri Trimbak,
(14) Met Kawara,
(15) Brahmanwade Trimbak,
(16) Toanangan,
(17) Dhumbdi,
(18) Bese,
(19) Chakore,
(20) Amboli,
(21) Ambai,
(22) Shirasgaon,
(23) Talwade Trimbak,
(24) Pimpalad Trimbak,
(25) Khambale,
(26) Sapgaon,
(27) Kachurli,
(28) Arianeri,
(29) Talegaon Trimbak,
(30) Pogalwadi Trimbak,
(31) Vacholi,
(32) Ubbrande,
(33) Kalmuste,
(34) Trimbak (Rural),
(35) Harshewadi,
(36) Metgherakilla Trimbak,
(37) Mulegaon,
(38) Ladachi,
(39) Naikwadi,
(40) Vele,
(41) Sadgaon,
(42) Vadgaon,
(43) Manoli,
(44) Dhondegaon,
(45) Dari,
(46) Gimate,
(47) Dugaon,
(48) Deorgaon,
(49) Nagalwadi,
(50) Ozarkheda,
(51) Chandashi,
(52) Gangamhalungi,
(53) Jalalpur,
(54) Sawargaon,
(55) Goverdhan,
(56) Shivangaon,
(57) Pimpalgaon Garudeshwar,
(58) Rajewadi,
(59) Gangawarhe,

(60) Ganeshgaon Trimbak,
(61) Ganeshgaon Nashik,
(62) Wasali,
(63) Dudgaon,
(64) Mahrawani,
(65) Talegaon Anjaneri,
(66) Jategaon,
(67) Sarul,
(68) Pimplad Nashik,
(69) Rajur Bahula,
(70) Dahigaon,

(iv) The fifty seven villages in Baglan tahsil as mentioned below :

Baglan tahsil

(1) Borhate,
(2) Mohalangi,
(3) Jaitapur,
(4) Golwad,
(5) Hatnoor,
(6) Maliwade,
(7) Ambapur,
(8) Jad,
(9) Visapur,
(10) Shevare,
(11) Kharad,
(12) Vade Digar,
(13) Deothan,
(14) Kondharabad,
(15) Antapur,
(16) Raver,
(17) Jamoti,
(18) Aliabad,
(19) Ajande,
(20) Mulher,
(21) Babulne,
(22) Morane-Digar,
(23) Bordaivat,
(24) Bhimkhet,
(25) Waghambe,
(26) Manoor,
(27) Salher,
(28) Katarwel,
(29) Bhilwad,
(30) Tungan,
(31) Daswel,
(32) Jakhod,
(33) Mungase,
(34) Bhawade,
(35) Dasane,
(36) Malgaon Khurd,
(37) Salawan,
(38) Pisore,
(39) Kerasane,
(40) Vathod,
(41) Pathwedigar,
(42) Talwade Digar,
(43) Morkure,
(44) Kikwari Khurd,
(45) Kelzar,
(46) Tatani,
(47) Bhildar,
(48) Kikwari Budruk,
(49) Joran,
(50) Sakode,
(51) Karanjkhed,
(52) Dang Saundane,
(53) Nikwel,
(54) Bandhate,
(55) Dahindule,
(56) Sarwar,
(57) Wadichaulher.

3. The following in Dhule District:-

(a) Tahsils of Nawapur, Taloda, Akkalkuwa and Akrani.

(b) (i) The eighty villages in Sakri tahsil as mentioned below:-

Sakri tahsil

(1) Choupale,
(2) Rothod,
(3) Jamkhel,
(4) Khuruswade,
(5) Sutare,
(6) Dhaner,
(7) Amale,
(8) Machmal,
(9) Khandbare,
(10) Raikot,
(11) Burudkhe,
(12) Pangaon,
(13) Lagadwal,
(14) Raitel,
(15) Brahmanwel,
(16) Amkhel,
(17) Jambore,
(18) Varsus,
(19) Jamki,
(20) Runmali,
(21) Vaskhedi,
(22) Damkani,
(23) Saltek,
(24) Dahiwel,
(25) Bhongaon,
(26) Badgaon,
(27) Maindane,
(28) Dapur,
(29) Rohan,
(30) Jebapur,
(31) Amode,
(32) Kirwade,
(33) Ghodade,
(34) Surpan,
(35) Korde,
(36) Valwhe,
(37) Vitave,
(38) Kasbe Chhadwell,
(39) Basar,

(40) Isarde,
(41) Petale,
(42) Pimpalgaon,
(43) Mohane,
(44) Tembhe, Pargane Warse,
(45) Shirsole,
(46) Umarpata,
(47) Malgaon Pargane Versa,
(48) Khargaon,
(49) Kalambe,
(50) Chorwad,
(51) Lakhale,
(52) Warse,
(53) Shenwad,
(54) Kudashi,
(55) Manjari,
(56) Mapalgaon,
(57) Dangshirwade,
(58) Bopkhel,
(59) Shiv,
(60) Khatyal,
(61) Vardoli,
(62) Kaksad,
(63) Pankhede,
(64) Samode,
(65) Mhasadi, Pargane Pimpalner,
(66) Pimpalner,
(67) Chikase,
(68) Jirapur,
(69) Kokangaon,
(70) Shevage,
(71) Dhamandhar,
(72) Virkhel,
(73) Pargaon,
(74) Mandane,
(75) Balhane,
(76) Deshirvade,
(77) Kadyale,
(78) Dhongaddigar,
(79) Shelbari,
(80) Degaon,

(ii) The eighty two villages in Nandurbar tahsil and town Nandurbar as mentioned below:-

Nandurbar tahsil

(1) Bhangade,
(2) Mangloor,
(3) Vasalai,
(4) Arditara,
(5) Dhanora,
(6) Pavale,
(7) Kothede,
(8) Umaj,
(9) Kothali Khurd,
(10) Vadajakan,
(11) Nimbone Budruk,
(12) Jalkhe,
(13) Shirvade,
(14) Ranale Khurd,
(15) Natawad,
(16) Karanjwe,
(17) Shejwe,
(18) Pimplod-tarf-Dhanore,
(19) Loya,
(20) Velaved,
(21) Vyahur,
(22) Dhulawad,
(23) Gujar Bhavali,
(24) Gujar Jamboli,
(25) Karankhede,
(26) Phulsare,
(27) Umarde Budruk,
(28) Narayanpur,
(29) Ghirasgaon,
(30) Dhekwad,
(31) Biladi,
(32) Khairale,
(33) Khamgaon,
(34) Nagasar,
(35) Virchak,
(36) Tokartale,
(37) Waghale,
(38) Ozarde,
(39) Ashte,
(40) Thanepada,
(41) Amarave,
(42) Patharai,
(43) Dhamdai,
(44) Varul,
(45) Adachhi,
(46) Lonkhede,
(47) Karajkupe,
(48) Nalave Khurd,
(49) Sundarde,
(50) Nalave Budruk,
(51) Dudhale,
(52) Nandarkhe,
(53) Dhane,
(54) Vasadare,
(55) Wawad,
(56) Chakle,
(57) Dahindule Budruk,
(58) Dahindule Khurd,
(59) Athore Digar,
(60) Umarde Khurd,
(61) Chaupale,
(62) Akrale,
(63) Vadbare,
(64) Akhatwade,
(65) Hatti alias Indi,
(66) Palashi,
(67) Ghuli,
(68) Rakaswade,
(69) Waghode,
(70) Patonde,
(71) Hol-tarf-Haveli,
(72) Khodasgaon,
(73) Shahade,
(74) Shinde,
(75) Kolde,
(76) Bhagsari,
(77) Dhamdod,
(78) Savalde,
(79) Korit,
(80) Sujatpur,
(81) Tishi,
(82) Dhandhane.

(iii) The one hundred forty one villages in Shahada tahsil as mentioned below:-

Shahada tahsil

(1) Akaspur,
(2) Nawagaon(Forest Village),
(3) Virpur,
(4) Dara,
(5) Bhuta,
(6) Kansai,(Forest Village),
(7) Nandya Kusumwade (Forest Village, Rampur,
(8) Chirade,
(9) Nagziri (Forest Village),
(10) Kusumwade,
(11) Nandya (Forest Village),
(12) Pimprani,
(13) Ranipur, (Forest Village),
(14) Fattepur,
(15) Lakkadkot (Forest Village),
(16) Kotbandhani (Forest Village),
(17) Pimplod,
(18) Kuddawad,
(19) Lachhore,
(20) Kanadi-tarf-Haveli,
(21) Shirud-tarf Haveli,
(22) Amode,
(23) Alkhed ,
(24) Padalde Budruk,
(25) Budigavan,
(26) Umarati,
(27) Pimpri,
(28) Mhasavad,
(29) Anakwade,
(30) Sulwade,
(31) Tavalai,
(32) Mubarakpur,
(33) Velavad,
(34) Kalmadi-tarf-Boardi,
(35) Wadi,
(36) Sonawadtarf-Boardi,
(37) Thangche,
(38) Javadetarf-Boardi,
(39) Tarhadi-tarf-Boardi,
(40) Vardhe,
(41) Pari,
(42) Kothali-tarf-haveli,
(43) Aurangpur,
(44) Chikhali Budruk,
(45) Karankhede,
(46) Nandarde,
(47) Vaijali,
(48) Vaghode,
(49) Parakashe,
(50) Dhamlad,
(51) Katharde Budruk,
(52) Katharde Khurd,
(53) Kalsadi,
(54) Dhurkhede,
(55) Bhade,
(56) Pingane,
(57) Ganor,
(58) Adgoan,
(59) Kharagaon,
(60) Kochrare,
(61) Biladi-tarf-Haveli,
(62) Bahirpur,
(63) Bramhanpur,
(64) Sultanpur,
(65) Raikhed,
(66) Khed Digar,
(67) Navalpur,
(68) Chandsaili,
(69) Godipur,
(70) Padalde Khurd,
(71) Bhagapur,
(72) Javkhede,
(73) Sonwai-tarf-Haveli,
(74) Kavalith,
(75) Tuki,
(76) Sawkhede,
(77) Karjot,
(78) Lohare,
(79) Gogapur,
(80) Kurangi,
(81) Tidhare,
(82) Damalde,
(83) Kalamad-tarf-Haveli,
(84) Chikhali Khurd,
(85) Bhortek,
(86) Shrikhede,
(87) Ozarte,
(88) Ukhalshem,
(89) Vagharde,
(90) Jam,
(91) Javade-tarf-Haveli,
(92) Titari,
(93) Hol Mubarakpur (Forest Village),
(94) Vadgaon,
(95) Pimparde,
(96) Asalod,
(97) Mandane,
(98) Awage,
(99) Tikhore,
(100) Untawad,
(101) Hol,
(102) Mohide-tarf-Haveli,
(103) Junwane,
(104) Lonkhede,
(105) Tembhali,
(106) Holgujari,
(107) Asus,
(108) Bupkari,
(109) Maloni,
(110) Dongargaon,
(111) Kothal-tarf-Shahada,
(112) Matkut,
(113) Borale,
(114) Kamravad,
(115) Kahatul,
(116) Vadchhil,
(117) Londhare,
(118) Udhalod,
(119) Nimbhore,
(120) Dhandre Budurk,
(121) Chirkhan (Forest Village),
(122) Asalod (New) (Forest Village),
(123) Jainagar,

(124) Dhandre Khurd (Forest Village),
(125) Manmodya (Forest Village),
(126) Dutkhede (Forest Village),
(127) Bhongara (Forest Village),
(128) Vadali,
(129) Kondhawal,
(130) Bhulane (Forest Village),
(131) Chandsaili (Forest Village),
(132) Ubhadagad (Forest Village),
(133) Kakarde Khurd,
(134) Khaparkhede (Forest Village),
(135) Malgaon (Forest Village),
(136) Langadi Bhavani (Forest Village),
(137) Shahana (Forest Village),
(138) Kakarde Budruk,
(139) Abhanpur Budruk,
(140) Katghar,
(141) Nimbardi (Forest Village),

(iv) The sixty two villages in Shirpur tahsil as mentioned below:-

Shirpur tahsil

(1) Borpani (Forest Village),
(2) Malkatar (Forest Village),
(3) Fattepur (Forest Village),
(4) Gadhad Deo (Forest Village),
(5) Kodid (Forest Village),
(6) Gurhadpani (Forest Village),
(7) Bhudaki (Forest Village),
(8) Waghpade (Forest Village),
(9) Saigarpada (Forest Village),
(10) Manjriburdi (Forest Village),
(11) Chondi (Forest Village),
(12) Bhudaki (Forest Village),
(13) Chandsurya (Forest Village),
(14) Boradi (New) (Forest Village),
(15) Kakadmal (Forest Village),
(16) Vakawad (Forest Village),
(17) Umarda (Forest Village),
(18) Durabadya (Forest Village),
(19) Mohide (Forest Village),
(20) Dondwada (Forest Village),
(21) Tembha (Forest Village),
(22) Kharikhan (Forest Village),
(23) Boaradi,
(24) Wasardi,
(25) Nandarde,
(26) Chandase,
(27) Wadi Budruk,
(28) Wadi Khurd,
(29) Jalod,
(30) Abhanpur Khurd,
(31) Tarhad,
(32) Ukhalwadi,
(33) Mukhed,
(34) Nimzari,
(35) Varzadi,
(36) Waghabarda,
(37) Samryapada,
(38) Lauki,
(39) Sule,
(40) Fattepur,
(41) Hedakhed,
(42) Arunapuri Dam (Deforested),
(43) Sangavi,
(44) Hated,
(45) Zendya Anjan,
(46) Palasner,
(47) Khambale,
(48) Panakhed (Forest Village),
(49) Khairkhuti (Forest Village),
(50) Joyada (Forest Village),
(51) Chilare (Forest Village),
(52) Lakdya Hanuman (Forest Village),
(53) Mahadeo Dondwade (Forest Village),
(54) Malapur (Forest Village),
(55) Rohini,
(56) Bhoiti,
(57) Ambe,
(58) Khamkhede Pargane Ambe,
(59) Hiwarkhede, (Forest Village),
(60) Higaon,
(61) Vadel Khurd,
(62) Kalapani (Forest Village)

4. The following in Jalgaon district:-

(a) (i) **The twenty five villages in Chopda tahsil as mentioned below:-**

Chopda Tahsil

(1) Maratha (Forest Village),
(2) Mordhida (Forest Village),
(3) Umarti (Forest Village),
(4) Satrasen (Forest Village),
(5) Krishnapur (Forest Village),
(6) Angurne,
(7) Kharya Padav (Forest Village),
(8) Vaijapur (Revenue),
(9) Mulyautar (Forest Village),
(10) Vaijapur (Forest Village) (54),
(11) Borajanti (Forest Village),
(12) Malapur (Forest Village),
(13) Bormali (Forest Village),
(14) Karajane (Forest Village),
(15) Melane (Forest Village),
(16) Vishnapur (Forest Village),
(17) Devhari (Forest Village),
(18) Deoziri (Forest Village),
(19) Kundyapani (Forest Village),
(20) Ichapur Pargane Adwad,
(21) Badhawani,
(22) Badhai,
(23) Andane,
(24) Moharad,
(25) Asalwadi (Forest Village),

(ii) The thirteen villages in Yaval tahsil as mentioned below:-

Yaval Tahsil

(1) Manapuri,
(2) Tolane,
(3) Khalkot,
(4) Ichakhede,
(5) Malod,
(6) Haripura (Forest Village),
(7) Vaghazira (Forest Village),
(8) Parasade Budruk,
(9) Borkhede Khurd,
(10) Langda Amba,
(11) Jamnya (Forest Village),
(12) Gadrya (Forest Village),
(13) Usmali (Forest Village)

(iii) The twenty-one villages in Raver tahsil as mentioned below :-

Raver Tahsil

(1) Mahumandali (Forest Village),
(2) Pimparkund (Forest Village),
(3) Andharmali (Forest Village),
(4) Tidya (Forest Village),
(5) Nimdya (Forest Village),
(6) Garbardi (Forest Village),
(7) Janori,
(8) Chinchati,
(9) Pal,
(10) Marwhal,
(11) Jinsi,
(12) Sahasraling (Forest Village),
(13) Lalmati (Forest Village),
(14) Abhode Budruk
(15) Lohare,
(16) Kusumbhe Budruk,
(17) Kusumbe Khurd,
(18) Pimpri,
(19) Mohagan Budruk,
(20) Padale Budruk,
(21) Mahumandali (old) Deserted)

5. The following in Ahmednagar district

(a) The ninety-four villages in **Akole tahsil** as mentioned below:

Akole Tahsil

(1) Tirdhe,
(2) Padoshi,
(3) Mhajungi,
(4) Ekdare,
(5) Sangavi,
(6) Keli Rumhanwadi,

(7) Bitaka,
(8) Khirvire,
(9) Kombhalne,
(10) Tahakari,
(11) Samsherpur,
(12) Savargaon Pat,
(13) Muthalane,
(14) Bari,
(15) Waranghusi,
(16) Ladagaon,
(17) Shenit,
(18) Pabhulwandi,
(19) Babhulwandi,
(20) Ambevangan,
(21) Deogaon,
(22) Pendshet,
(23) Manhere,
(24) Shelvihire,
(25) Panjare,
(26) Chinchond,
(27) Waki,
(28) Titavi,
(29) Pimparkane,
(30) Udadawane,
(31) Kodani,
(32) Ghatghar,
(33) Shinganwadi Rajur,
(34) Murshet,
(35) Shendi,
(36) Samarad
(37) Bhandardara,
(38) Ranad Budruk,
(39) Ranad khurd,
(40) Malegaon,
(41) Kohondi,
(42) Digambar,
(43) Guhire,
(44) Katalapur,
(45) Ratanwadi,
(46) Mutkhel,
(47) Terungan,
(48) Rajur,
(49) Vithe,
(50) Koltembhe,
(51) Kelungan,
(52) Jamgaon,
(53) Shirpunje Budruk,
(54) Savarkute,
(55) Kumshet,
(56) Shirpunje Khurd,
(57) Dhamanvan,
(58) Ambit,
(59) Balthan,
(60) Manik Ozar,
(61) Puruchawadi,
(62) Maveshi,
(63) Shiswad,
(64) Wapjulshet,
(65) Gondoshi,
(66) Khadki,
(67) Sakirwadi,
(68) Pachanai,
(69) Chinchavane,
(70) Padalne (80)
(71) Shelad,
(72) Pimpri,
(73) Ghoti,
(74) Paithan,
(75) Lavali Kotul,
(76) Waghdari,
(77) Shilvandi,
(78) Kohone,
(79) Lavali Otur,
(80) Tale,
(81) Kothale,
(82) Somalwadi,
(83) Vihir,
(84) Shinda,
(85) Ambit Khind,
(86) Palsunde,
(87) Pisewadi,
(88) Phopsandi,
(89) Satewadi
(90) Keli Otur,
(91) Keli Kotul
(92) Khetewadi,
(93) Esarthav,
(94) Karandi,

6. The following in Pune District

(a) (i) The fifty-six villages in **Ambegaon tahsil** as mentioned below :

Ambegaon Tah

(1) Don,
(2) Pimpargaane,
(3) Aghane,
(4) Ahupe,
(5) Tirpad,
(6) Nhaved,
(7) Asane,
(8) Malin,
(9) Nanawade,
(10) Amade,
(11) Warsawane,
(12) Kondhare,
(13) Adivare,
(14) Borghar,
(15) Patan,
(16) Kushire Khurd,
(17) Panchale budruk,
(18) Kushire Budruk,
(19) Digad,
(20) Panchale Khurd,
(21) Mahelunge-tarf-Ambegaon,
(22) Savarali,
(23) Megholi,
(24) Vachape,
(25) Sakeri,
(26) Pimpari,
(27) Ambegaon
(28) Jambhori,
(29) Kalambai,
(30) Kondhawal,
(31) Phulavade,
(32) Phalode,

(33) Koltavade,
(34) Terungaon,
(35) Dimbhe Budruk,
(36) Mahalunge-tarf-Ghoda,
(37) Rajpur,
(38) Chikhali,
(39) Rajewadi,
(40) Supeghar,
(41) Taleghar,
(42) Mapoli,
(43) Dimbhe Khurd,
(44) Pokhari,
(45) Gohe Budruk,
(46) Nigadale,
(47) Gohe Khurd,
(48) Apati,
(49) Gangapur Khurd,
(50) Amondi
(51) Kanase,
(52) Gangapur Budruk,
(53) Shinoli,
(54) Pimpalgaon-tarf-Ghoda,
(55) Sal,
(56) Dhakale

(ii) The sixty-five villages in Junnar tahsil as mentioned below :

Junnar Tahsil

(1) Chilhewadi,
(2) Ambehavhan,
(3) Jambhulshi,
(4) Khireshwar,
(5) Mathalane,
(6) Kolhewadi,
(7) Kopare,
(8) Mandave,
(9) Singanore,
(10) Alu,
(11) Khubi
(12) Pimpalgaon Joga,
(13) Karanjale,
(14) Mach,
(15) Pangri-tarf-Madh,
(16) Kolwadi,
(17) Pargaon-tarfModh,
(18) Taleran,
(19) Sitewadi,
(20) Wathale,
(21) Nimgir,
(22) Anjanwale,
(23) Hadsar,
(24) Devale,
(25) Khaire,
(26) Ghatghar,
(27) Jalwandi,
(28) Hirdi,
(29) Undekhadak,
(30) Rajpur,
(31) Khatkale,
(32) Manikdoh,
(33) Khad kumbe,
(34) Ursan,
(35) Vevadi,
(36) Tejpur,
(37) Phangalghavan,
(38) Ch avand,
(39) Pur,
(40) Khangaon,
(41) Mankeshwar,
(42) Surale,
(43) Amboli,
(44) Shiroli-tarf-Kukadner,
(45) Wanewadi,
(46) Aptale,
(47) Koli,
(48) Shivali,
(49) Utchil,
(50) Botarde,
(51) Dhalewadi-tarf-Minher,
(52) Bhivade Budruk,
(53) Ingaloon,
(54) Bhivade Khurd,
(55) Ghangaldare,
(56) Sonavale,
(57) Tambe,
(58) Hivare-tarf-Minher,
(59) Hatvij,
(60) Ambe,
(61) Pimparwadi,
(62) Sukalewdhe,
(63) Godre,
(64) Khamgaon,
(65) Somatwadi,

7. The following in Nanded District:-

(a) The one hundred fifty-two villages and **town Kenwat in kinwat tahsil** as mentioned below:-

Kinwat Tahsil

(1) Takli,
(2) Padsa,
(3) Sayepal,
(4) Murli,
(5) Wadsa,
(6) Koli,
(7) Ashta,
(8) Gondegaon,
(9) Madnapur (Mahore),
(10) Bondgavan,
(11) Umra,
(12) Machandra Pard,
(13) Karalgaon,
(14) Sawarkhed,
(15) Digdi (Kutemar),
(16) Wai,
(17) Hardap,
(18) Naikwadi,
(19) Hingani,
(20) Wazra,
(21) Tulshi,

(22) Gondwadsa,
(23) Anjankhed,
(24) Bhorad,
(25) Chorad,
(26) Dhanora (sindkhed),
(27) Rampur,
(28) Pathri,
(29) Khambala,
(30) Pardi,
(31) Sindkhed,
(32) Cinchkhed,
(33) Hatola,
(34) Waifani,
(35) Dhundra,
(36) Gouri,
(37) Both,
(38) Sailu,
(39) Karanji (Sindkhed),
(40) Bhagwati,
(41) Wazra Budruk,
(42) Umri,
(43) Unakdeo,
(44) Chais,
(45) Pimpalsenda,
(46) Sarkhani,
(47) Delhi,
(48) Nirala,
(49) Noorgaon,
(50) Titvi,
(51) Lingi,
(52) Nagapur,
(53) Jununi,
(54) Digadwazra,
(55) Darsangvi (Sindkhed),
(56) Singoda,
(57) Sirpur,
(58) Tembhi,
(59) Patoda Budruk,
(60) Mandvi,
(61) Jawarla,
(62) Palsi,
(63) Belgaon,
(64) Kanki,
(65) Kothari, (Sindkhed),
(66) Pimpalgaon (Sindkhed),
(67) Dongargaon (Sindkhed),
(68) Jarur,
(69) Minki,
(70) Pachunda,
(71) Wanola,
(72) Sakur,
(73) Mendki,
(74) Digdi (Mohanpur),
(75) Dhanora (Digdi),
(76) Mohapur,
(77) Mungshi,
(78) Singdi (Kinwat),
(79) Malborgaon,
(80) Nejpur,
(81) Rajgad,
(82) Wadoli,
(83) Anji,
(84) Kanakwadi,
(85) Loni,
(86) Dhamandhari,
(87) Pandhara,
(88) Bellori (Kinwat),
(89) Maregaon,
(90) Kamthala,
(91) Ambadi,
(92) Kherda,
(93) Malkapur,
(94) Ghoti,
(95) Sirmetti,
(96) Bhimpur,
(97) Pipalgaon (Kinwar),
(98) Ghogarwadi,
(99) Gokunda,
(100) Mandva,
(101) Digdi (Mangabodi)
(102) Nagzari,
(103) Kothari (Chikhli),
(104) Pradhan Sangvi,
(105) Bendi,
(106) Amadi,
(107) Madnapur (Chikhli),
(108) Shaniwar Peth,
(109) Dabhadi,
(110) Chikhli,
(111) Hudi (Chikhli),
(112) Endha,
(113) Bhulja,
(114) Darsangvi (Chikhli),
(115) Malakwadi,
(116) Penda,
(117) Pardi Khurd,
(118) Karla,
(119) Degaon,
(120) Lingdhari,
(121) Pardi Budruk,
(122) Bodhadi Khurd,
(123) Bodhadi Budruk,
(124) Sindgi (Chikhli),
(125) Andbori (Chikhli),
(126) Kopara,
(127) Piperphodi,
(128) Patoda (Chikhli),
(129) Pipri,
(130) Dhanora (Chikhli),
(131) Sawari,
(132) Thara,
(133) Poth Redy,
(134) Singarwadi,
(135) Anjegaon,
(136) Bhandarwadi,
(137) Jaldhara (Chandrapur),
(138) Belori (Chikhli),
(139) Malkolari,
(140) Digras,
(141) Dongargaon(Chikhli),
(142) Shivoni (Chikhli),
(143) Paroti,
(144) Sawargaon,
(145) Jaldhara (Islapur),
(146) Kothari,
(147) Hudi (Islapur),
(148) Karanji (Islapur),
(149) Kupti Khurd,
(150) Kupti Budruk,
(151) Wagdhari,
(152) Talari,

8. **The following in Amravati district:-**

(a) The tahsils of Chikhaldara and Dharni

9. **The following in Yavatmal district**

(a) (i) The one hundred thirty villages in **Maregaon tahsil** as mentioned below

Maregaon Tahsil

(1) Ghoguldara,
(2) Shionala,
(3) Buranda,
(4) Phapal,
(5) Kanhalgaon
(6) Khepadwai,
(7) Ghodadhara,
(8) Narsala,
(9) Dhamani,
(10) Madnapur,
(11) Bori Khurd,
(12) Pisgaon,
(13) Wadgaon,
(14) Phiski (Forest Village),
(15) Bhalewadi,
(16) Pathari,
(17) Chinchala,
(18) Pan Harkawala,
(19) Kharda (Forest Village),
(20) Pimprad (Forest Village),
(21) Phaparwada,
(22) Salabhatti (Forest Village),
(23) Doldongargaon,
(24) Machindra,
(25) Pandwihir,
(26) Jalka,
(27) Pandhardevi (Forest Village),
(28) Ambora (Forest Village),
(29) Chinchoni Botoni,
(30) Awalgaon (Forest Village),
(31) Kanhalagaon,
(32) Khairgaon,
(33) Sarati,
(34) Buranda,
(35) Durgada,
(36) Wagdhara,
(37) Mendhani,
(38) Ghanpur,
(39) Hatwaniri,
(40) Khapri,
(41) Uchatdevi (Forest Village),
(42) Maregaon (Forest Village),
(43) Khandani,
(44) Mhasdodka,
(45) Palgaon,
(46) Botoni,
(47) Girjapur (Forest Village),
(48) Pachpohar,
(49) Ambezari,
(50) Rohapat,
(51) Raipur,
(52) Sagnapur,
(53) Hiwara Barsa,
(54) Rampur
(55) Katli Borgaon,
(56) Pardi,
(57) Shibla,
(58) Chiali (Forest Village),
(59) Boargaon (Forest Village),
(60) Pendhari,
(61) Arjuni,
(62) Kagaon,
(63) Rajani,
(64) Majara,
(65) Gangapur (Forest Village),
(66) Bhoikund (Forest Village),
(67) Wadhona,
(68) Susari,
(69) Surla,
(70) Godani,
(71) Nimani,
(72) Darara,
(73) Asan,
(74) Jaglon,
(75) Zamkola,
(76) Isapur,
(77) Kilona,
(78) Umarghat,
(79) Wallasa,
(80) Junoni (Forest Village),
(81) Lenchori,
(82) Chinchghar,
(83) Ambizari, Khurd,
(84) Ambezari Badruk,
(85) Kargaon Khurd,
(86) Nimbadevi,
(87) Tembhi,
(88) Kundi,
(89) Mandiv,
(90) Junoni,
(91) Parambha,
(92) Pokharni (Forest Village),
(93) Piwardol,
(94) Bhorad, (Forest Village),
(95) Chikhaldoh,
(96) Mulgawaan,
(97) Bhimnala,
(98) Chatwan,
(99) Araiakwad,
(100) Gawara,
(101) Matharjun,
(102) Mahadapur,
(103) Pandharwani,
(104) Demad Devi,
(105) Mandwa,
(106) Dongargaon (Forest Village),

(107) Dabhadi,
(108) Umari,
(109) Mudhati,
(110) Parsodi,
(111) Kodpakhindi,
(112) Mangrul Khurd,
(113) Mangrul Badruk,
(114) Gopalpur,
(115) Rampeth,
(116) Chalbardi,
(117) Jamani,
(118) Shirola,
(119) Adkoli,
(120) Khalakloh,
(121) Birsapeth,
(122) Muchi,
(123) Marki Budruk,
(124) Marki Khurd,
(125) Ganeshpur,
(126) Pawnar (Forest Village),
(127) Krishnapur (Forest Village),
(128) Khekadi (Forest Village),
(129) Shekapur,
(130) Yeoti.

(ii) The forty-three villages in Ralegaon tahsil as mentioned below :-

Ralegaon Tahsil

(1) Lohara,
(2) Eklara,
(3) Sonerdi
(4) Watkhed,
(5) Jalka,
(6) Wama,
(7) Pimpari Durga,
(8) Mandawa,
(9) Kolwan,
(10) Soit,
(11) Varud,
(12) Bukai,
(13) Zargad,
(14) Khadki Sukli,
(15) Dongargaon,
(16) Tejani,
(17) Anji,
(18) Loni,
(19) Borati (Forest Village),
(20) Sarati,
(21) Khairgaon Kasar,
(22) Wardha,
(23) Bhulgad,
(24) Pimpalshenda (75)
(25) Atmurdi
(26) Sawarkhed,
(27) Chondhi,
(28) Wadhoda,
(29) Khemkund,
(30) Pardi (Forest Village),
(31) Umarvihir,
(32) Adni,
(33) Khatara,
(34) Munzala,
(35) Palaskund,
(36) Vihirgaon,
(37) Khairgaon,
(38) Deodhari,
(39) Singaldip,
(40) Sonurli,
(41) Shindola,
(42) Zotingdara,
(43) Sakhi Khurd.

(iii) The one hundred three villages in Kelapur tahsil as mentioned below and town Pandharkawada:-

Kelapur Tahsil

(1) Mohdari,
(2) Jogin Kohla,
(3) Mira,
(4) Jira,
(5) Ghoddara (Forest Village),
(6) Sakhi Budruk,
(7) Wadhona Khurd,
(8) Zolapur (Forest Village),
(9) Karanii,
(10) Wadhona Budruk
(11) Tiwsala (Forest Village),
(12) Kothada,
(13) Surdevi,
(14) Chanai,
(15) Asoli,
(16) Mohada,
(17) Karegaon,
(18) Chikhaldara,
(19) Krishnapur,
(20) Dabha,
(21) Morwa,
(22) Khairgaon,
(23) Wagholi,
(24) Kusal,
(25) Chopan,
(26) Malkapur (Forest Village),
(27) Kgaon,
(28) Vadner,
(29) Zuli,
(30) Bhad umari,
(31) Patoda,
(32) Pahapal,
(33) Nagazari Khurd,
(34) Bahattar,
(35) Susari,
(36) Naiksukali, (Forest Village),

(37) Pedhari,
(38) Pilpali,
(39) Dongaragaon,
(40) Both,
(41) Malegaon Khurd (Forest Village),
(42) Hiwardari (Forest Village),
(43) Malagaon Budruk (Forest Village),
(44) Daryapur,
(45) Pilwahari,
(46) Arli,
(47) Hiwari,
(48) Pimpalshenda,
(49) Karagaon,
(50) Wadwat,
(51) Khairi,
(52) Ghubadi,
(53) Konghara,
(54) Sakhara Budruk,
(55) Dharna,
(56) Mangi,
(57) Dhaki,
(58) Wai,
(59) Pimpalapur,
(60) Ganespur,
(61) Khairgaon
(62) Pah,
(63) Niljai,
(64) Margaon,
(65) Ambhora
(66) Dongargaon
(67) Pimpari,
(68) Khairgaon,
(69) Muchi,
(70) Mangurda,
(71) Pandharwani Budruk (Forest Village),
(72) Kondhi,
(73) Wedad,
(74) Baggi,
(75) Ghanmode,
(76) Nandgaon,
(77) Ganeshpur (30)
(78) Tatapur,
(79) Zunzapur,
(80) Gondwakadi,
(81) Chalbardi,
(82) Beluri,
(83) Tadumari,
(84) Bargaon,
(85) Acoli Budruk,
(86) Mahandoli,
(87) Sakhara,
(88) Marathwakadi,
(89) Dhoki,
(90) Ballarpur,
(91) Tokwanjari,
(92) Wanjari,
(93) Khairgaon Budruk,
(94) Tembhi,
(95) Radhapur (Forest Village),
(96) Pikhana (Forest Village),
(97) Wasari,
(98) Andharwadi,
(99) Yellapur (Forest Village),
(100) Chanakha,
(101) Nimdheli,
(102) Rudha,
(103) Sukli

(iv) The fifty-five villages in Ghatanji tahsil as mentioned below :-

Ghatanji Tahsil

(1) Marweli,
(2) Rajurwadi,
(3) Lingi,
(4) Koli Khurd,
(5) Koli Budruk,
(6) Rampur Undharni,
(7) Kapshi,
(8) Datodi,
(9) Gudha,
(10) Warud (240)
(11) Zaparwadi,
(12) Umri (242)
(13) Palodi,
(14) Kopri (244)
(15) Ghoti,
(16) Bodadi,
(17) Mudhati (Forest Village),
(18) Jalandri,
(19) Manusdhari,
(20) Ayate,
(21) Kap,
(22) Kavatha Budruk,
(23) Bilayat,
(24) Khadki,
(25) Chimta,
(26) Kopri Khurd,
(27) Chincholi (268)
(28) Kindhi (Forest Village)
(29) Gawara (Forest Village),
(30) Titwi,
(31) Muradgavhan (Forest Village)
(32) Pimpal Khuti (Forest Village),
(33) Kharoni (Forest Village),
(34) Wadhona,
(35) Dorli,
(36) Rahati,
(37) Rasa (Forest Village),
(38) Zatala,
(39) Chikhalwardha,
(40) Tad-Sawali,
(41) Saifal,
(42) Nagezari Budruk,
(43) Kawatha (Forest Village),
(44) Parwa,
(45) Majhada,
(46) Pardi,
(47) Jamb,
(48) Kaleshwar,
(49) Sherad,
(50) Dhunki(Forest Village),
(51) Mathani (Forest Village),
(52) Rajagaon (Forest Village),
(53) Khapri (Forest Village),
(54) Honegaon
(55) Ganeri

10. The following in Gadchiroli district:-

(a) The tahsils of Ettapalli, Sironcha, Aheri, Dhanora, Kurkheda.

(b) (i) The sixty-two villages in **Gadchiroli tahsil** as mentioned below:-

Gadchiroli Tahsil

(1) Nawgaon,
(2) Chak Churchura,
(3) Kurhadi,
(4) Chak Maushi,
(5) Murmadi,
(6) Botheda,
(7) Palandur,
(8) Gilgaon,
(9) Chak Kharpurdi,
(10) Japra,
(11) Chak Dhibhana,
(12) Marumbodi,
(13) Kurkheda,
(14) Khursa,
(15) Visapur,
(16) Sonapur,
(17) Mondha,
(18) Sawrgaon,
(19) Kanri,
(20) Pulkhal,
(21) Mudza Budruk,
(22) Mudza Tukum,
(23) Krupala,
(24) Masli,
(25) Ranbhumi,
(26) Chandala,
(27) Ranmul,
(28) Kumbhi Patch,
(29) Kumbhi Mokasa,
(30) Made Mul,
(31) Maroda,
(32) Kosamghat,
(33) Raipur,
(34) Rawanzora,
(35) Pekinkasa,
(36) Sawela,
(37) Suimara,
(38) Sakhera,
(39) Karkazara,
(40) Kanhalgaon,
(41) Keligatta,
(42) Tohagaon,
(43) Gajanguda,
(44) Banoli,
(45) Suryadongri,
(46) Salaitola,
(47) Bitantota,
(48) Potegaon,
(49) Rajoli,
(50) Madras,
(51) Jaller,
(52) Devapur,
(53) Ramgad
(54) Gavalheti,
(55) Deoda,
(56) Kharadguda,
(57) Talguda,
(58) Jamgaon,
(59) Kadsi,
(60) Korkuti,
(61) Nagweli,
(62) Jalegaon.

(ii) The seventy-four villages in Armori tahsil as mentioned below :-

Armori Tahsil

(1) Koregaon
(2) Kalamgaon,
(3) Kural,
(4) Selda Tukum,
(5) Selda Lambe,
(6) Kasari Tukum,
(7) Kasarigaon,
(8) Shivrajpur,
(9) Potegaon,
(10) Vihirgaon,
(11) Pimpalgaon,
(12) Arat-tondi,
(13) Dongargaon (Halbi),
(14) Palasgaon,
(15) Navargaon,
(16) Pathargota,
(17) Mangewada,
(18) Armori,
(19) Salmara,
(20) Thanegaon,
(21) Patanwada,
(22) Puranawairagad,
(23) Deulgaon,
(24) Sukala,
(25) Mohazari alias Sakharbodi,
(26) Chak Kernada,
(27) Lohara,
(28) Chak Sonpur,
(29) Hirapur,
(30) Dongartamsi,
(31) Shiani Khurd,
(32) Chavhela,
(33) Mohatala Chak Kukodi,
(34) Mendha,
(35) Dongartamsi Patch,
(36) Nagarwadi,
(37) Chak Naroti,
(38) Chak Kurandi
(39) Wadegaon,
(40) Thotebodi,
(41) Dellanwadi,
(42) Manapur,
(43) Kosari,
(44) Mangoda,
(45) Tultuli,
(46) Chaknagarwahi,
(47) Vihirgaon,
(48) Kurandi,

(49) Umari,
(50) Yengada,
(51) Pisewadadha,
(52) Paraswadi,
(53) Dawandi,
(54) Khadaki,
(55) Bhakarandi,
(56) Naroti Malgujar,
(57) Koregaon,
(58) Warkheda,
(59) Kharadi,
(60) Bhansi,
(61) Dorli,
(62) Wanarchuwa,
(63) Jambhali,
(64) Mendha,
(65) Narchuli,
(66) Khairi,
(67) Maregaon Patch,
(68) Maregaon
(69) Chak Maregaon
(70) Chak Chicholi,
(71) Mousi Khamb,
(72) Belgaon,
(73) Chicholi,
(74) Wankheda

(iii) The one hundred thirty-two villages in Chamorshi tahsil as mentioned below :-

Chamorshi Tahsil

(1) Saganpur,
(2) Bandhona,
(3) Gilgaon,
(4) Bhendi Kanhal,
(5) Thatari,
(6) Chite Kanhar,
(7) Kalamgaon,
(8) Kurud,
(9) Maler,
(10) Kulegaon,
(11) Nachangaon,
(12) Bhadbhid,
(13) Walsara,
(14) Chak Visapur,
(15) Jogana,
(16) Murmuri,
(17) Rawanpalli,
(18) Sonapur,
(19) Darli,
(20) Rekhagaon,
(21) Yedanur,
(22) Pailsanpeth,
(23) Pandhri Bhatal,
(24) Rajangatta,
(25) Chak Amagaon No.1,
(26) Mutnur,
(27) Abapur,
(28) Murandapi,
(29) Lenguda,
(30) Adyal,
(31) Karkapalli,
(32) Chak Karakapalli,
(33) Jangamkurul,
(34) Fuser,
(35) Dhekani,
(36) Chak Mudholi No.2,
(37) Lakshamanpur,
(38) Saganapur,
(39) Amboli,
(40) Gahubodi,
(41) Chak Narayanpur No. 1,
(42) Chak Narayanpur No. 2,
(43) Rajur Budruk,
(44) Bhadbid,
(45) Manger,
(46) Chichpally,
(47) Wanarchuwa,
(48) Jairampur,
(49) Waigaon,
(50) Narayanpur,
(51) Rajur Khurd,
(52) Haladwahi,
(53) Mudholi,
(54) Kothari,
(55) Bamhani Deo,
(56) Somanpalli,
(57) Kanhalgaon,
(58) Singela,
(59) Belgatta,
(60) Pethtala,
(61) Chak Pethtala No. 1,
(62) Pardideo,
(63) Yadavpalli,
(64) Rajpur,
(65) Jambhalirith,
(66) Meteguda,
(67) Chak Belgatta,
(68) Manjigaon,
(69) Machhalighot,
(70) Chak Makepalli No. 4,
(71) Darpanguda,
(72) Chak Makepalli No. 2.
(73) Chak Makepalli No. 3,
(74) Garanji,
(75) Chak Made Amgaon,
(76) Chak Made Amgaon No. 1,
(77) Chak Made Amgaon No. 2,
(78) Tumdi,
(79) Regadi,
(80) Makepalli Malgujari,
(81) Borghat,
(82) Ashti Nokewada,
(83) Bramhanpeth,
(84) Venganur,
(85) Nokewada,
(86) Allapalli,
(87) Rengewahi,
(88) Kolpalli
(89) Ambela (Forest village),
(90) Gatta (Forest Village),
(91) Adgepalli,
(92) Surgaon (Forest Village),
(93) Yellur,
(94) Thakari,
(95) Rajgatta,
(96) Lohara,
(97) Mukaritola,
(98) Bholkhandi (Forest Village),
(99) Hetalkasa,

(100) Bolepalli,
(101) Pulligudam,
(102) Kunghada,
(103) Kunghada,
(104) Kalapur,
(105) Gangapur,
(106) Chandankhedi
(107) Malera,
(108) Basarwada,
(109) Chaprala,
(110) Chaidampatti,
(111) Mukadi (Forest Village),
(112) Singanpalli,
(113) Dhamanpur,
(114) Kothari (930)
(115) Ambatpalli,
(116) Gomani,
(117) Lagamhetti,
(118) Damapur,
(119) Bandukpalli,
(120) Kodigaon,
(121) Chichela,
(122) Nagulwahi,
(123) Chintugunha,
(124) Tumugunda,
(125) Machingatta,
(126) Yella,
(127) Tikepalli,
(128) Marpalli,
(129) Jamgaon,
(130) Kultha,
(131) Rampur,
(132) Lagam Chak.

11. The following in Chandrapur district:-

The one hundred eighty-two villages in **Rajura tahsil** as mentioned below :-

Rajura Tahsil

(1) Parasoda,
(2) Raipur,
(3) Kothoda Khurd,
(4) Govindpur,
(5) Kothoda Budruk,
(6) Mehandi,
(7) Pardi,
(8) Jewra,
(9) Chanai Khurd,
(10) Akola,
(11) Korpana,
(12) Durgadi,
(13) Rupapeth,
(14) Chanai Budruk,
(15) Mandwa,
(16) Kanergaon Budruk,
(17) Katlabodi,
(18) Shivapur,
(19) Chopan,
(20) Kerambodi,
(21) Kukulbodi,
(22) Tippa,
(23) Mangulhira,
(24) Khadki,
(25) Jamuldhara,
(26) Borgaon Budruk,
(27) Borgaon Khurd,
(28) Asapur,
(29) Tangala,
(30) Khairgaon,
(31) Hatloni
(32) Yergoan,
(33) Umarzara,
(34) Yellapur,
(35) Singar Pathar,
(36) Lambori,
(37) Shedwai,
(38) Narpathar,
(39) Kodapur,
(40) Gharpana,
(41) Nokewada,
(42) Gudsela,
(43) Wani,
(44) Kokazari,
(45) Mohda,
(46) Pudiyal Mohda,
(47) Kamalapur,
(48) Chickhkhod,
(49) Wansadi,
(50) Paramba,
(51) Devghat,
(52) Kusal,
(53) Dahegaon,
(54) Sonurlo,
(55) Kargaon Khurd,
(56) Dhanoli,
(57) Piparda,
(58) Chincholi,
(59) Kargaon Budruk,
(60) Markagondi,
(61) Belgaon,
(62) Zulbardi,
(63) Sawalhira,
(64) Khiragaon,
(65) Pandharwani,
(66) Jambuldhara,
(67) Dhanak Devi,
(68) Yermi Isapur,
(69) Sarangapur,
(70) Jiwati
(71) Nagapur,
(72) Markalmotta,
(73) Dhonda Arguni,
(74) Dhondha Mandwa,
(75) Teka Arjuni,
(76) Teka Mandwa,
(77) Rahpalli Budruk,
(78) Chikhili
(79) Patan,
(80) Hirapur,
(81) Isapur,
(82) Asan Khurd,
(83) Asan Budruk,
(84) Pipalgaon,
(85) Palezari,
(86) Borinavegaon,
(87) Nanda,
(88) Bibi
(89) Dhunki,

(90) Dhamangaon,
(91) Kakhampur,
(92) Wadgaon,
(93) Injapur,
(94) Chandur,
(95) Kukadsat,
(96) Khirdi,
(97) Thutra,
(98 Behlampur,
(99) Manoli Khurd,
(100) Jamani,
(101) Nokari Budruk,
(102) Sonapur,
(103) Upparwai,
(104) Bhurkunda Khurd,
(105) Kaadki,
(106) Nokari Khurd,
(107) Nagrala,
(108) Palezari,
(109) Kakban,
(110) Dongargaon,
(111) Chikhali,
(112) Bhurkhunda Budruk,
(113) Pachgaon,
(114) Sengaon,
(115) Tatakohadi,
(116) Bhendvi,
(117) Sukadpalli,
(118) Markagondi,
(119) Titvi,
(120) Nadpa,
(121) Yergavan,
(122) Kawadgondi,
(123) Sorakasa,
(124) Kusumbi,
(125) Jankapur,
(126) Punaguda (Navegaon),
(127) Dewada,
(128) Khadki Raipur,
(129) Govendpur,
(130) Maraipatan,
(131) Umarzara,
(132) Rahpalli Khurd,
(133) Dharamaram,
(134) Bhoksapur,
(135) Bambezari,
(136) Bhari,
(137) Pandarwani,
(138) Sindolta,
(139) Sondo,
(140) Belgaon,
(141) Kakadghat,
(142) Ganeri,
(143) Khirdi,
(144) Sedwai,
(145) Babapur,
(146) Hirapur,
(147) Sakhari,
(148) Manoli Budruk,
(149) Goyegaon,
(150) Hardona Khurd,
(151) Hardona Budruk,
(152) Winirgaon,
(153) Magi,
(154) Wangi,
(155) Pandharpouni,
(156) Aheri,
(157) Kochi,
(158) Goraj,
(159) Warur,
(160) Raniwcli,
(161) Bhedoda,
(162) Tembhurwahi
(163) Chirud,
(164) Chinchbodi,
(165) Kawthala,
(166) Sonurli,
(167) Sirsi,
(168) Berdi,
(169) Bhendala,
(170) Kelzari,
(171) Navegaon
(172) Chinchala,
(173) Wirur,
(174) Siddheshwar,
(175) Ghotta,
(176) Dongargaon,
(177) Subai,
(178) Kostala,
(179) Lakadkot
(180) Ambezari,
(181) Antargaon
(182) Annur

The Scheduled Areas in the State of Maharashtra were originally specified by the Scheduled Areas (Part A States) Order, 1950 (C.O.9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950 (C.O. 26) dated 7.12.1950 and have been respecifed under the Scheduled Areas (Maharashtra) Order, 1985 (C.O. 123) dated 2.12.1985 after recinding the Orders cited earlier in so far as they related to the State of Maharashtra.

V. Orissa##

1. Mayurbhanj district
2. Sundargah district
3. Koraput district
4. Kuchinda tahsil in Sambalpur district
5. Keonjhar and Telkoi tahsils of keonjhar sub-division, and Champua and Barbil tahsils of Champua sub-division in Keonjhar district.

6. Khondmals tahsil of Khondmals sub-division, and Balliguda and G. Udayagiri tahsils of Balliguda sub-division in Boudh-Khondmals district
7. R. Udayagiri tahsil, and Guma and Rayagada Blocks of Parlakhemundi Tahsil of Parlakhemundi sub-division, and Surada tahsil, exlcluding Gazalbadi and Gocha Gram Panchayats of Ghumsur sub-division, in Ganjam district
8. Thuamul Rampur Block of Kalahandi Tahsil, and Lanjigarh Block, falling in Lanjigarh and Kalahandi tahsils, in Bhawanipatna sub-division in Kalahandi district.
9. Nilgiri Community Development Block of Nilgiri tahsil in Nilgiri Sub-division in Balasore district.

##The Scheduled Areas in the State of Orissa were originally specified by the Scheduled Areas (Part A States) Order, 1950 (Constitution Order, 9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950, (Constitution Order, 26) dated 7.12.1950 and have been respecified as above by the Scheduled Areas (States of Bihar Gujarat, Madhya Pradesh and Orissa) Order, 1977, (Constitution Order, 109) dated 31.12.1977 after rescinding the Orders cited earlier in so far as they related to the State of Orissa.

VI. Rajasthan$

1. Banswara district
2. Dungarpur district
3. The following in Udaipur district :-
   - (a) Tahsils of Phalsia, Kherwara, Kotra, Sarada, Salumbar and Lasadia.
   - (b) The eighty one villages of Girwa tahsils as mentioned below:

(i) Sisarma Devali, Baleecha, Sethji Ki Kundal, Rayta, Kodiyat and Peepliya villages of Sisarma panchayat,
(ii) Bujra, Naya Gurha, Popalti and Naya Khera villages of Bujra Panchayat,
(iii) Nai village of Nai Panchayat,
(iv) Dodawali Kaliwas, Kar Nali Surna, Borawara Ka Khera, Madri, Bachhar and Keli villages of Dodawali Panchayat,
(v) Bari Undri, Chhoti Undri, Peepalwas and Kumariya Kherwa villages of Bari Undri Panchayat,
(vi) Alsigarh, Pai and Aar Villages of Alsigarh Panchayat,
(vii) Padoona Amarpura and Jawala villges of Padoona Panchayat,
(viii) Chanawada village of Chanawada panchayat,
(ix) Saroo and Baran villages of Saroo Panchayat
(x) Teeri, Borikuwa and Gojiya villages of Terri Panchayat.
(xi) Jawar, Rawan, Dhawari Talai, Nayakhera, Kanpur and Udaiya Khera villages of Jawar Panchayat
(xii) Barapal, Torana Talab and Kadiya Khet villages of Barapal Panchayat,
(xiii) Kaya and Chandani Villages of Kaya Panchayat
(xiv) Teetardi, Phanda, Biliya, Dakankotra, Dholiya Ki Pati and Saweena Khera villages of Teetardi Panchayat,
(xv) Kanpur village of Kanpur Panchayat
(xvi) Wali, Boodel, Lalpura, Parawal, Kheri and Jaspur vllages of Wali Panchayat.
(xvii) Chansada, Damaron Ka Guda, Mamadeo, Jhamar Kotra, Sathpura Gujaran, Sathpura Meenan. Jali Ka Gurha, Kharwa, Manpura and Jodhipuriya villages of Chansada Panchayat.

(xviii) Jagat village of Jagat Panchayat

(xix) Dateesar, Runeeja, Basu and Rodda villages of Dateesar Panchayat,

(xx) Lokarwas and Parola villages of Lokarwas Panchayat

(xxi) Bhala Ka gurha, Karget, Bhesadha and Bichhri villages of Bhala Ka Gurha Panchayat.

4. Pratapgarh tahsil in Chittaurgrah district.

5. Abu Road Block of Abu Road tahsil in Sirohi district.

$ The Scheduled Areas in the State of Rajasthan were originally specified under the Scheduled Areas (Part B States) Order, 1950 (C.O. 26) dated 7.12.1950 and have been respecifed vide the Scheduled Areas (State of Rajasthan) Order, 1981 (C.O. 114) dated 12.2.1981 after recinding the Order cited earlier in so far as it related to the State of Rajasthan.

VII. Jharkhand$$

1. Ranchi District
2. Lohardaga District
3. Gumla District
4. Simdega District
5. Latehar District
6. East Singhbhum District
7. West Singhbhum District
8. Sarikela-Kharsawan District
9. Sahebganj District
10. Dumka District
11. Pakur District
12. Jamtara District
13. Palamu District-Rabda and Bakoria Panchayats of Satbarwa Block
14. Garhwa district- Bhandaria Block
15. Godda District- Sunderpahari and Boarijor Blocks.

$$ The Scheduled Areas in the composite State of Bihar were originally specified by the ScheduledAreas (Part A States) Order, 1950 (Constitution Order, 9) dated 23.1.1950 and thereafter they had been respecified by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 (Constitution Order, 109) dated 31.12.1977 after rescinding the Order cited first so far as that related to the State of Bihar. Consequent upon formation of new State of Jharkhand vide the Bihar Reorganisation Act, 2000 , the Scheduled Areas which were specified in relation to the composite State of Bihar stood transferred to the newly formed State of Jharkhand. The Scheduled Areas of Jharkhand have been specified by the Scheduled Areas (States of Chhattisgarh,Jharkhand and Madhya Pradesh) Order , 2003 (Constitution Order, 192) dated 20.2.2003 after rescinding the order dated 31.12.77 so far as that related to the State of Bihar. The Schedule Area of Jharkhand specified in the the Scheduled Areas (States of Chhattisgarh,Jharkhand and Madhya Pradesh) Order , 2003 (Constitution Order, 192) have been rescinded vide the Scheduled Areas (State of Jharkhand) Order, 2007 (C.O. 229) dated 11.04.07.

VIII. Madhya Pradesh$$$

1. Jhabua district
2. Mandla district
3. Dindori district
4. Barwani district
5. Sardarpur, Dhar, Kukshi, Dharampuri, Gandhwani and Manawar tahsils in Dhar district
6. Bhagwanpura, Segaon, Bhikangaon, Jhirniya, Khargone and Meheshwar tahsils in Khargone (West Nimar) district

7. Khalwa Tribal Development Block of Harsud tahsil and Khaknar Tribal Development Block of Khaknar tahsil in Khandwa (East Nimar) district
8. Sailana and Bajna tahsils in Ratlam district
9. Betul tahsil (excluding Betul Development Block) and Bhainsdehi and Shahpur tahsils in Betul district
10. Lakhanadone, Ghansaur and Kurai tahsils in Seoni district
11. Baihar tahsil in Balaghat district
12. Kesla Tribal Development Block of Itarsi tahsil in Hoshangabad district
13. Pushparajgarh, Anuppur, Jaithari, Kotma, Jaitpur, Sohagpur and Jaisinghnagar tahsils of Shahdol district
14. Pali Tribal Development Block in Pali tahsil of Umaria district
15. Kusmi Tribal Development Block in Kusmi tahsil of Sidhi district
16. Karahal Tribal Development Block in Karahal tahsil of Sheopur district
17. Tamia and Jamai tahsils, patwari circle Nos. 10 to 12 and 16 to 19, villages Siregaon Khurd and Kirwari in patwari circle no. 09, villages Mainawari and Gaulie Parasia of patwari circle No. 13 in Parasia tahsil, village Bamhani of Patwari circle No. 25 in Chhindwara tahsil, Harai Tribal Development Block and patwari circle Nos. 28 to 36,41,43,44 and 45B in Amarwara tahsil

    Bichhua tahsil and patwari circle Nos. 05,08,09,10,11 and 14 in Saunsar tahsil, Patwari circle Nos. 01 to 11 and 13 to 26, and patwari circle no. 12 (excluding village Bhuli), village Nandpur of patwari circle No. 27, villages Nikanth and Dhawdikhapa of patwari circle no 28 in Pandurna tahsil of Chhindwara district.

IX. Chhattisgarh$$$

1. Surguja district
2. Koria district
3. Bastar district
4. Dantewara district
5. Kanker district
6. Marwahi,Gorella-I, Gorella-2 Tribal Development Blocks and Kota Revenue Inspector Circle in Bilaspur district
7. Korba district
8. Jashpur district
9. Dharmjaigarh, Gharghoda, Tamnar, Lailunga and Kharsia Tribal Development Blocks in Raigarh district
10. Dondi Tribal Development Block in Durg district
11. Chauki, Manpur and Mohla Tribal Development Blocks in Rajnandgaon district
12. Gariaband, Mainpur and Chhura Tribal Development Blocks in Raipur district
13. Nagri (Sihawa) Tribal Development Block in Dhamtari district

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$$$ The Scheduled Areas in the State of Madhya Pradesh were originally specified by the Scheduled Areas (Part A States), Order, 1950 (Constitution Order, 9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950. (Constitution Order 26) dated 7.12.1950 and had been respecified as above by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977, (Constitution

Order, 109) dated 31.12.1977 after rescinding the Orders citied earlier in so far as they related to the State of Madhya Pradesh. Consequent uon for the formation of new State of Chhattisgarh by the Madhya Pradesh Reorgnaisation Act, 2000 some Scheduled Areas stood transferred to the newly formed State of Chhattisgarh. Accordingly, the Scheduled Areas have been respecified by the Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order , 2003 (Constitution Order, 192) dated 20.2.2003 after rescinding the Order dated 31.12.77 so far as that related to the States of Madhya Pradesh.

ANNEXURE 1.VII
(Ref. para 1.20, SR_Ch 1)

Comparative Chart of ILO Conventions 107 (1957) and 169 (1989)

ILO 107		ILO 169		Best practices emerged from the Conventions	Relevant safeguards in constitution/ Constitutional/ legislative changes required
Art.	Relevant extract	Art.	Relevant extract		
1	(a) Members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited	1	(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation		

	the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong. 2. For the purposes of this Convention, the term ***semi-tribal*** includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.		or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. 2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply		
2	1Governments shall have the primary responsibility for developing co-ordinated	2	1.Governments shall have the responsibility for developing, with the participation of	Governments to bear responsibility, in consultation with STs for protection of their rights STs and to guarantee respect	

	and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.		the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.	for their integrity.	
	2(a) enabling the said populations to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to the other elements of the population;				
	2(b) promoting the social, economic and cultural development of these populations and raising their standard of living;		(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;	Promotion of full realisation of social, economic and cultural rights of STs with respect for their social and cultural identity, their customs and traditions and their institutions	
	(c) creating possibilities of national integration to the exclusion of measures tending towards the artificial		c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and	Elimination of socio-economic gaps between STs and other members of the national community, in a manner compatible with their aspirations and ways of life	

	assimilation of these populations.		other members of the national community, in a manner compatible with their aspirations and ways of life		
3	1. So long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong, special measures shall be adopted for the protection of the institutions, persons, property and labour of these populations. 2. Care shall be taken to ensure that such special measures of protection--	4	1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned. 2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.	Special measures for safeguarding the persons, institutions, property, labour, and environment of STs (not e contrary to the freely-expressed wishes of the STs.	
4	In applying the provisions of this Convention relating to the integration of the populations concerned-- (a) due account shall be taken of the cultural and religious values and of the forms of	5	In applying the provisions of this Convention: (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account	Recognisation and protection of the social, cultural, religious and spiritual values and practices of STs , and due account to be taken of the nature of the problems which face them both as groups and as individuals;	Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act ,1989

	social control existing among these populations, and of the nature of the problems which face them both as groups and as individuals when they undergo social and economic change; (b) the danger involved in disrupting the values and institutions of the said populations unless they can be replaced by appropriate substitutes which the groups concerned are willing to accept shall be recognised; (c) policies aimed at mitigating the difficulties experienced by these populations in adjusting themselves to new conditions of life and work shall be adopted.		shall be taken of the nature of the problems which face them both as groups and as individuals; (c) policies ned at mitigating e difficulties perienced by ese peoples in cing new nditions of life and rk shall be opted, with the rticipation and co-eration of the oples affected.	Framing of policies aimed at mitigating the difficulties experienced by STs in facing new conditions of life and work and their adoption with the participation and co-operation of the STs	
5	In applying the provisions of this Convention relating to the protection and integration	6.	1. In applying the provisions of this Convention, governments shall:	Consultation with STs through appropriate procedures and in particular through their representatives	Tribal Advisory Council (Schedule V) Autonomous Council (Schedule VI)

	of the populations concerned, governments shall-- (a) seek the collaboration of these populations and of their representatives; (b) provide these populations with opportunities for the full development of their initiative;		(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.	Establishment of means for the full development of STs' own institutions and initiatives, and provision of necessary resources for this purpose	
6	The improvement of the conditions of life and work and level of education of the populations concerned shall be given high priority in plans for the over-all economic development of areas inhabited by these populations. Special projects for economic development of the areas in	7	2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of	Priority in plans for the overall economic development of areas, inhabited by STs including improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation. Designing of special projects for development of such areas	Tribal-sub plan (TSP) strategy

	question shall also be so designed as to promote such improvement.		the areas in question shall also be so designed as to promote such improvement		
7	1. In defining the rights and duties of the populations concerned regard shall be had to their customary laws. 2. These populations shall be allowed to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes.	8	1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws 2. These peoples shall have the right to retain their own customs and institutitons, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.	Laws and regulations, concerning STs to have due regard to their customs or customary laws; not restricted to such methods Permission to allow STs their own customs and institutions where these not incompatible with the national legal system or the objectives of integration programmes.	Adoption of laws by Governor (ScheduleV) Framing of laws by Autonomous Council (Schedule VI)
8	To the extent consistent with	9	1. To the extent compatible with	Respect to the customary methods	

	the interests of the national community and with the national legal system-- (a) the methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations; (b) where use of such methods of social control is not feasible, the customs of these populations in regard to penal matters shall be borne in mind by the authorities and courts dealing with such cases		the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected. 2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.	practicised by STs for dealing with offences committed by their *members*	
11	PART II. LAND The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised	14	1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the	Measures to safeguard the right of STs for the land, not exclusively occupied by them, but having traditiona access for their subsistence and traditional activities, particularly d shifting cultivators.. Identification of the land Governments shall take steps as	Land alienation laws/Regulations Forest rights accorded under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

			right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect. 2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. 3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.	necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. 3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned	

12	1.The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations. 2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations				Special provisions Land Acquisition Act (contemplated) Provisions in The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

	concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees. 3. Persons thus removed shall be fully compensated for any resulting loss or injury.				
11	The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.	15	2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The	1. Recognisation of traditional rights of ownership, collective or individual 2. Govt. to establish or maintain procedures, while retaining the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, for consultation with STs with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands.	Mining Act,2011 (proposed)

			peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.		
12	1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations. 2. When in such cases removal of these populations is	16	1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. 2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate,	Removal of STs from their land only when (a) relocation is considered necessary as an exceptional measure, subject to their free and informed consent. Where their consent cannot be obtained, such relocation to take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of STs 3. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, ST to be provided in all possible cases with	

	necessary as an exceptional measure, they shall be provided with lands of quality at least equa l to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees. (a) the provision of more land for these populations when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;		which provide the opportunity for effective representation of the peoples concerned 3. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. 5. Persons thus relocated shall be fully compensated for any resulting loss or injury	lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where affected STs express a preference for compensation in money or in kind, compensation under appropriate guarantees. 5 Full compensation to relocated persons for any resulting loss or injury	

13	1. Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected, within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development. 2. Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members.	17	1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected. 2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community. 3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.	1.Respect to Procedures for the transmission of land rights among STs. 1. Consultation with STs whenever, considering alienation their lands or transmission of their transmission of their rights outside their community 2.Prevention of non-STs from taking advantage of customs of STs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.	Land alienation laws/regulations

		18	Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.	Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.	
15	1. Each Member shall, within the framework of national laws and regulations, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to the populations concerned so long as they are not in a position to enjoy the protection granted by law to workers in general.	20	1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.	1. Govts to take special measures , within the framework of national laws and regulations, and in co-operation with STs to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to STs to the extent that STs are not effectively protected by laws applicable to workers in general.	Reservation law (contemplated)
18	1. Handicrafts and rural industries shall be encouraged as factors in the economic	23	1. Handicrafts, rural and community-based industries, and subsistence economy and	1. Govts to ensure, with the participation of STs strengthening and promotion of handicrafts, rural and community-	

	development of the populations concerned in a manner which will enable these populations to raise their standard of living and adjust themselves to modern methods of production and marketing. 2. Handicrafts and rural industries shall be developed in a manner which preserves the cultural heritage of these populations and improves their artistic values and particular modes of cultural expression.		traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted. 2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.	based industries, and subsistence economy and traditional activities and their recognisation as important factors in the maintenance of their cultures and in their economic self-reliance and development. 2. Appropriate technical and financial assistance wherever possible, taking into account the traditional technologies and cultural characteristics of STs as well as the importance of sustainable and equitable development, on request of the STs	

20	1. Governments shall assume the responsibility for providing adequate health services for the populations concerned. 2. The organisation of such services shall be based on systematic studies of the social, economic and cultural conditions of the populations concerned. 3. The development of such services shall be co-ordinated with general measures of social, economic and cultural development.	25	1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health. 2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines. 3. The health care system shall give preference to the training and	Govt. to ensure that adequate health services to STs and provision of resources to allow them to design and deliver such services under their own responsibility and control, to enjoy the highest attainable standard of physical and mental health. 2 Planning of community-based. Health services, to the extent possible and administration in co-operation STs and taking into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines. 3. Preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services. 4. Co-ordication of health services with other social, economic and cultural measures	

			employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services. 4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.		
21	Measures shall be taken to ensure that members of the populations concerned have the opportunity to acquire education at all levels on an equal footing with the rest of the national community. **Article 22** 1. Education programmes for the populations concerned shall be adapted, as regards methods and techniques, to the stage these populations have reached in the process of social, economic and	27	1.Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. 2. The competent authority shall ensure the training of members of these peoples and their	1.Measures to ensure that ST populations concerned have the opportunity to acquire education at all levels on an equal footing with the rest of the national community. 2.Development of education programmes and services for STs and their implementation in co-operation with STs to address their special needs, incorporation of their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. 3. Ensuring that the training of STs and their involvement in the formulation and	Right of Children to Free and Compulsory Education (RTE) Act 2009

	cultural integration into the national community.		involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate. 3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.	implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to them 3. Govt. to recognise the right of STs to establish their own educational institutions and facilities with provision of appropriate resources, subject to these institutions meeting minimum standards established by the competent authority in consultation with STs.	Safeguards for (religious) Minorities
23	1. Children belonging to the populations concerned shall be taught to read and write in their mother tongue or, where this is not practicable, in the language most commonly used	28	1. Children belonging to the peoples concerned *shall,* wherever practicable*,* be taught to read and write in their own indigenous language or in the language most commonly used by the	Teaching to ST children, wherever practicable, (both reading and writing) in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent	Constitutional safeguards for linguistic minorities under Article 29 and 30

	by the group to which they belong. 3. Appropriate measures shall, as far as possible, be taken to preserve the mother tongue or the vernacular language. .		group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective. 3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.	authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective. Measures for preservation and promotion of the development and practice of the indigenous languages of STs	
24	The imparting of general knowledge and skills that will help children to become integrated into the national community shall be an aim of primary education for the populations concerned.	29	The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.	Education to STs to aim at imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community	
. **25**	Educational measures shall be taken among other sections of the	31	Educational measures shall be taken among all sections of the national	Educational measures among all sections of the national community, and particularly	

	national community and particularly among those that are in most direct contact with the populations concerned with the object of eliminating prejudices that they may harbour in respect of these populations		community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.	among those that are in most direct contact with the STs , with the object of eliminating prejudices that they may harbour in respect of these peoples; efforts to be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.	
27		33	1. The Governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administers programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfillment of the	Government to ensure that agencies or other appropriate mechanisms exist to administer the programme affecting STs Proposing of legislative and other measures and supervision of the application of the measures taken, in co-operation with the STs	

			functions assigned to them. 2. These programmes shall include: (a) The planning,co-ordination, execution and evaluation, in co-operating with the people concerned of measures provided for in this Convention. (b) The proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned		

ANNEXURE 1.VIII
(Ref. para 1.27, SR_Ch 1)

National Commission for Scheduled Tribes

Summary Record of the Proceedings of the Sitting taken by Hon'ble Chairperson, NCST on 16th February, 2012 to discuss applicability of best practices emerged from ILO C-107 and C-109 for adoption in relation to Scheduled Tribes

List of the officials who were present in the meeting is enclosed at **ANNEXURE**.

2. The Commission mentioned that the meeting was convened to discuss applicability of best practices emerged from ILO C-107 and C-109 for adoption in relation to Scheduled Tribes. The Commission had sought views of the MEA, MHA and the MTA vide letter dated 31st January, 2012 on the approach of the Government with regard to the various provisions in the ILO C-169. In response, MTA has communicated vide D.O. No. 368/JS(UNES)/121 dated 3rd February, 2012 that Ministry of Labour and Employment is the nodal Ministry for dealing with issues relating to ILO. On the other hand, Ministry of Labour and Employment vide D.O. No.W-13014/1/2002-ILAS (i) dated 6th February, 2012 has furnished comments of the (MEA, MHA and MTA in the context of ratification of ILO Convention 169. The reply of the Ministry of Labour and Employment does not indicate the views of the Govt. of India communicated, if any, to the ILO.

3. The Commission has noted from the Ministry of Labour and Employment letter dated 6th February, 2012 that C-169 has not been ratified by India mainly due to non-applicability of the concept of indigenous people (as defined in C-169) in the Indian context. While we may also heed political overtones (MEA), indigenous citizen concerns (MHA) and the reporting load (MTA) arising out of ratification of C-169, and on such considerations, not subscribing to the Convention does not appear rational or egalitarian to ignore the best practices which emerge from the Convention(s), that are also aimed to uplift the tribal people bringing them to the level of general population especially in the context of increasing resentment/ unrest in tribal areas.

4. The Commission noted that MEA has mentioned that subjecting to our laws to any scrutiny in accordance with the relevant provisions of the C-169 is bound to provoke a litany of motivated complaints. The Commission desired to know the views of the MEA as to why our laws should not be aligned with best practices emerged from the Convention (s) and whether such adoption will result in any international merit. JS, MEA explained that the best practices arising out of the Convention (s) should be adopted with a view to improving out system. He

also mentioned that MEA also highlights such matters at various international forums.

5. The representative of MHA expressed that provisions like right to indigenous and tribal people to decide their own priorities for the purpose of development (Article 7 of C-169) would create administrative problems in the formulation of development plans and may distort the planning process in the country. In the context of spreading violence in tribal population/ areas, Commission desired to know the views of MHA on their objection if any, to the inclusion of a re-furbished TSP strategy predicated on increased GoI responsibility in the Vth and VIth Schedule, which also aims at focussed development of respective Scheduled Areas. Director, MHA informed that MHA in principle agrees to the above views. However, these may require review of the existing provisions in Vth and VIth Schedules to the Constitution.

6. The Commission also noted that MHA have mentioned that the existing laws don't confer rights on landholders, whether tribal or non-tribal, over sub-surface resources. It was mentioned that the V^{th} and VI^{th} Schedule provide for separate regulations in respect of land rights of tribals. These do not mention about excluding sub-surface rights. Thus, the views expressed by the MHA are not in line with the existing provisions of the V^{th} and VI^{th} Schedules. Representative of MHA, however, mentioned that the Ministry will take up the matter with the Ministry of Law for their opinion and advice on the sub-surface rights of the tribals in the Schedule Areas under Vth and VIth Schedule to the Constitution.

7. The Commission desired to know the views of the MTA on the need to incorporate international best practices into our constitutional safeguards for STs and also spell out these aspirations in the Tribal Policy. The Commission noted that Governors' Conference, the second Administrative Reforms Commission (ARC) and the Standing Committee on Inter-Sectoral Issues have also argued for issue of directions by GoI to implement the spirit of V^{th} Schedule/ discretionary powers of Governors. The Commission pointed out that after making monetary compensation to the tribals after acquiring their lands, the tribals become jobless as well as landless and the compensation received is not sufficient to secure peaceful livelihood to the tribals and this was a major cause for uprising and naxalism in various tribal/ scheduled areas in the country. The Commission mentioned that it has already recommended on the MMDR Bill,2011 that besides compensation for entrustment of land surface rights, future earnings from mining activity should also be shared with land owners in perpetuity. Therefore, while redesigning the quantum and nature of (sweat) equity participation to allay the apprehensions of promoters in respect of enterprise management, a sum equal to royalty be paid to the land rights holders for the duration of mineral extraction; and sweat equity holdings may be redeemed by the lessee to purchase lifelong annuity payments after mining operations have ceased in a particular location.

8. Secretary, MTA informed that the best practices could be incorporated in the related issues concerning Scheduled Tribes. The Secretary also informed that the Task Force under the Chairmanship of Dr. Narendra Jadhav, Member, Planning Commission has already examined the working of Tribal Sub-Plan in various States and by the Central Ministries/Departments. The Task Force has given its recommendations for revised guidelines for preparing TSP by the Central Ministries. Recommendations of the Task Force .relating to revised guidelines for TSP of States is in the process. He further mentioned regarding sub-surface rights over land that the proposed provisions by the Ministry of Mines in the MMDR Bill, 2011 may also be examined.

9. Secretary, Ministry of Labour and Employment mentioned that a draft Cabinet Note regarding ratification of ILO Convention (C 169) was mooted in 2003 which was not finalized taking into consideration the views expressed by the MEA, MHA and MTA. He further mentioned that, so far, only 22 countries have ratified ILO C 169. He also emphasized the need to adopt best practices out of ILO Conventions to improve our systems.

10. Chairman, NCST observed that while some of the best practices have been embedded through existing safeguards in our Constitution, in respect of remaining, a view should be taken for Constitutional/ legislative changes which may be appropriate for modern times/context. He further mentioned that based on the position emerged from the discussion, Commission will propose to recommend to the Govt. for considering the need for amendments of Schedule V^{th} and VI^{th} to provide a comprehensive Charter for tribal communities incorporating the best practices enumerated in the ILO Convention (s). It was also decided that the MHA will take up the matter with the Ministry of Law and Ministry of Mines in relation to the Scheduled Areas under VI^{th} Schedule. Similarly, MTA, (which is the nodal Ministry for Tribal Affairs) may take up the matter with the Ministry of Mines in the context of sub-surface rights of the tribals in the Country.

ANNEXURE

F. No. 4/5/11-Coord.

National Commission for Scheduled Tribes

Sitting held on 16-02-2012 at 12:00 hrs. on Approach to ILO Convention 107: Indigenous and Tribal Population Convention, 1957 and Convention 169: Indigenous and Tribal Peoples Convention, 1989.

List of officials present in the meeting

	National Commission for Scheduled Tribes
Sl. No.	Name & Designation
1.	Dr. Rameshwar Oraon, Chairperson (In chair)
2.	Shri Aditya Mishra, Joint Secretary
	Ministry of External Affairs
1.	Shri T. S. Tirumurti, Joint Secretary (UNES)
	Ministry of Tribal Affairs
1.	Shri A. K. Chugh, Secretary
2.	Shri K. Touthang, Director
	Ministry of Home Affairs
1.	Shri Ashok Kumar, Director
2.	Shri Ajay Kanoujia, Dy. Secretary, NE
3.	Shri N. Kindo, Section Officer
	Ministry of Labour & Employment
1.	Shri Mrityunjay Sarangi, Secretary
2.	Shri Vikas, Director

S. No. 11(R)

No.1343/M&G/2010
Government of India
Ministry of Home Affairs

North Block, New Delhi
7th December, 2010.

OFFICE MEMORANDUM

Sub: - Article, captioned 'Centre may take over control of tribal areas', published in the Times of India dated 5/11/2010.

The undersigned is directed to refer to National Commission for Scheduled Tribes letter No, PDN/Development/MTA (Policy)/2010/RU-II dated 24.11.2010 on the subject mentioned above and to state that Ministry of Home Affairs had obtained the opinion of the Learned Attorney General on the specific powers of the Governor under Schedule-V to the Constitution. All the Governors of the states concerned have been apprised of the opinion of the Ld. Attorney General. CS Division in the Ministry of Home Affairs has no proposal, under consideration, for review the role and powers of the Governors in respect of Scheduled Area. A copy of the opinion of Attorney General of India is enclosed for information.

2. A copy of the letter received from the National Commission for Scheduled Tribes has been forwarded to NM Division of this Ministry for providing details, if any.

(NEERAJ KANSAL)
DIRECTOR (CS)
Tel. No. 2309 2933

307/DS/2010
7/12

To

Consultant
Please

National Commission for Scheduled Tribes,
(Shri Aditya Mishra, Joint Secretary)
6th Floor, 'B' Wing, Lok Nayak Bhavan,
Khan Market, New Delhi–110003.

give a copy to DIR(VA) also

Copy to Joint Secretary (NM), Ministry of Home Affairs, North Block, New Delhi with request to provide the requisite information, if any, to the National Commission for Scheduled Tribes.

Delhi
7/12

Copy retained
8/12/10
DS(VA)

OFFICE OF SHRI GOLAM E VAHANVATI
ATTORNEY GENERAL FOR INDIA
SUPREME COURT
NEW DELHI 110 001

F.NO. 1046/ADV. 'A'/2010.

1. My opinion has been sought on the nature of powers of the Governor under the Fifth Schedule read with Article 244 of the Constitution of India in respect of administration of Scheduled Areas and Tribal Areas

2 The background of this Opinion is the proceedings of the Conference of Governors held on 16th and 17th September, 2008 where the Hon'ble President of India stated that.

> "In view of the provisions under Fifth Schedule there is a feeling in certain quarters that the Governor should play a pro-active role. On the other hand, it is understood that court judgments and debates in the Constituent Assembly provide that the Governor is bound by the advice of the Council of Ministers in the exercise of his powers under the Fifth Schedule. This causes considerable uncertainty. The Government could seek authoritative legal opinion to set at rest this ambiguity."

3 In short, the issue raised is whether the powers conferred upon the Governor under Article 244 read with the Fifth Schedule are to be exercised on the aid and advice of the Council of Ministers of the State or are discretionary powers of the Governor.

4. Before answering the query raised, it is necessary to trace the history and evolution of Article 244 and the Fifth Schedule of the Constitution.

HISTORICAL BACKGROUND

5. The genesis of the Fifth Schedule can be traced to certain provisions of the Government of India Act 1935. Under the said Act, certain backward areas were placed under the personal rule of the Governor. These areas had to be administered by the Governor in the exercise of his personal discretion. Section 91 and 92 of the Government of India Act, 1935 deal with the administration of backward areas. The same are extracted hereunder for the sake of convenience.

> "Section 91:
>
> Excluded areas and partially excluded areas - (1) In this Act the expressions "excluded areas" and partially" excluded area mean respectively such areas as His Majesty may by Order in Council declare to be excluded areas or partially excluded areas.
>
> The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this sub-section before Parliament within six

1

months from the passing of this Act (2) His Majesty may at any time by order in Council--

(a) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area;

(b) direct ,that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area.

(c) alter, but only by way of rectification of boundaries, and ex-cluded or partially excluded area,

(d) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously in any Province to be, or to form part of, an excluded area or a partially excluded area, and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper, but save as aforesaid the Order in Council made under sub-section (1) of this section shall not be varied by any subsequent Order"

Section 92:

"Administration of excluded areas and partially excluded areas - (1) The executive authority of a province extends to excluded and partially excluded areas therein, but notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area is a partially excluded area, unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the areas, or to any special part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) the Governor may make regulations for the peace and good government of an y area in a Province which is for the time being an excluded area, or a partially excluded area and any regulation so made may repeal or amend any Act of the Federal Legislature of the Provincial Legislature, or any exisiting Indian Law, which is for the time being applicable to the area in question

Regulations made under this sub-section shall be submitted for with to the Governor-General and until assented to by him in hi discretion shall have no effect, [and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretions."

6. Dr Subhash Kahsyap in his **Constitutional Law of India Vol. II, 2008 Edition at page 1795** has explained the genesis of the Fifth Schedule

2

> "During the period of the British Rule in India, there were small areas in different parts of the country which were recognized as specially backward. These were mostly inhabited by tribal or aboriginal population. Under Section 91 and 92 of the Government of India Act, 1935, these backward areas were classified as excluded areas and partially excluded areas. A small number of excluded areas were placed under the personal rule of the Governor acting in his discretion, while partially excluded areas were within the field of ministerial responsibility, but the Governors exercised a special responsibility in respect of the administration of all these areas; and they had the power in the individual judgment to overrule their Ministers if they thought fit to do so. No Act of the Federal or Provincial Legislature would apply to any of these areas; but the Governors' or the authority to apply such Act with such modifications as they considered necessary. In addition to the excluded and partially excluded areas, there were certain "Tribal Areas". The powers exercisable in these areas were described as arising out of "treaty, grant, usage, sufferance or otherwise" and the Act of 1935 contained a specific authorization enabling these powers to be exercised as a part of the executive authority of the Central Government by the Governor-General acting in his discretion and, therefore, outside the area of responsibility of the Ministry. The actual extent of administrative authority exercised in each of these tribal areas differed.[1]"

7 The Draft Constitution prepared by the Drafting Committee in February, 1948 contained the following provisions with regard to the administration of the scheduled and tribal areas. Articles 189 and 190 of the Draft Constitution dealt with the same and read as follows:

"Article 189

"In this Constitution -

(a) the expression "schedule areas" means the areas specified in Parts I to VII of the table appended to paragraph 18 of the Fifth Schedule in relation to the state to which those Parts respectively relate;

(b) the expression "tribal areas" means the areas specified in Part I and II of the table apprehended to paragraph 19 of the Sixth Schedule."

Article 190

"Administration of schedule and tribal areas -

1. The provisions of the fifth Schedule shall apply to the administration and control of the schedule areas and schedule tribes in any State for the time being specified in Part I of the First Schedule.

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[1] *Constitutional Law of India by Dr. Subhash Kashyap, Vol. II, 2008 Edition, Page 1795*

2 The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam."

8 At the revision stage, Article 244 was brought in to encapsulate Articles 189 and 190.[2]

THE RELEVANT PROVISIONS OF THE CONSTITUTION

9. Article 244 of the Constitution falls in Part X of the Constitution and states as under:

> "Article 244
>
> Administration of Scheduled Areas and tribal areas
>
> 1. The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.
>
> 2. The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram."

10 The provisions of the Fifth Schedule are reproduced hereunder for the sake of convenience:

> Fifth Schedule
>
> "PART A - GENERAL
>
> 1. Interpretation.—In this Schedule, unless the context otherwise requires, the expression "State" does not include the States of Assam, Meghalaya, Tripura and Mizoram.
>
> 2. Executive power of a State in Scheduled Areas.—**Subject to the provision of this Schedule, the executive power of a State extends to the Scheduled Areas therein.**
>
> 3. Report by the Governor to the President regarding the administration of Scheduled Areas.—The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.
>
> PART B - ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

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[2] *Constitutional Law of India by Dr. Subhash Kashyap, Vol. II, 2008 Edition, page 1797*

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4. Tribes Advisory Council – (1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be, –

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5 Law applicable to Scheduled Areas – (1) Notwithstanding anything in
this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.
(2) The Governor may make regulations for the peace and good governnent of any area in a State which is for the time being a Scheduled Area
In particular and without prejudice to the generality of the foregoing power, such regulations may –
(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
(b) regulate the allotment of land to members of the Scheduled Tribes in such area;
(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor [4] may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C - SCHEDULED AREAS

6. Scheduled Areas.—(1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order [3] declare to be Scheduled Areas.

(2) The President may at any time by order [4]—

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

[1][(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D - AMENDMENT OF THE SCHEDULE

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

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an

amendment of this Constitution for the purposes of article 368."

11. The note of Shri G.B. Mukherjee, Secretary, Ministry of Tribal Affairs states that Mangeshkar Committee Report of the Planning Commission has recommended that in the Fifth Schedule areas, the office of the Governor must play a pro-active role for ensuring protection of tribal rights and tribal welfare/development. The note of Shri G.B. Mukherjee states as follows:

> "The Mungekar Committee Report of the Planning Commission, vide page 8-28/C, recommends that in the Fifth Schedule Areas, the office of the Governor must play a more pro-active for ensuring the protection of tribal rights and for tribal welfare/development. It suggests that besides a critical review of the Governor's report, the Governor should also decide on the application of central laws as well as notification of new laws in Schedules Areas as provided in Schedule V of the Constitution."

12. In the background of the aforesaid history of the administration of scheduled areas and the relevant provisions in the Constitution of India, I would now straight away proceed to answer the query raised on whether the Governor can exercise the powers vested in him under the Fifth Schedule in his personal or discretionary capacity or whether the same have to be exercised only on the aid and advice of the Council of Ministers of the State.

ANALYSIS OF THE PROVISIONS OF THE FIFTH SCHEDULE

13 The Framers of our Constitution were sensitive to the administration of scheduled areas and special provisions were carved for administration of the said areas.

14. Under Clause 2 of the Fifth Schedule, the extent of executive power of the state in the Scheduled areas has been made subject to the provisions of the Fifth Schedule. In other words, the exercise of the executive power of the State in Scheduled areas is subservient to the provisions of the Fifth Schedule which grants important and crucial powers to the Governor in respect of scheduled areas.

15. Under Clause 3 the Governor is mandated to make a report to the President regarding the administration of Scheduled areas and the executive power of the Union extends to the giving of directions to the State as to the administration of the said areas. This provision categorically shows the overarching control of the Union which the Constitution Framers envisaged in respect of Scheduled Areas.

16. Clause 5 is important and deals with the legislative powers of the Governor. Clause 5 opens with a *non-obstante* clause stating that the power exercisable under clause 5 overrides any other provisions in the Constitution. Under clause 5, the Governor may, by a public notification, direct that any particular Act of Parliament or of the Legislature of the State will not apply to a scheduled area or would apply subject to such exceptions and modifications as he may specify in the notification. The Governor is also empowered to make

regulations for peace and good governance of any area in a State which is for the time being a scheduled area. The regulations made under clause 5 have to be submitted to the President and have no effect until assented to by the President.

EXECUTIVE AND DISCRETIONARY POWERS OF THE GOVERNOR

17. Under Article 163(1) of the Constitution, the Council of Ministers along with the Chief Minister, aid and advice the Governor in the exercise of his functions except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.

Article 163(1) and (2) are reproduced hereunder for the sake of Convenience:

> **"163. Council of Ministers to aid and advise Governor.** – (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the 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
> (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion."

18. The question as to whether all the functions of the Governor have to be exercised in accordance with the aid and advice of the Council of Ministers is an issue which is no longer res-integra. The Hon'ble Supreme Court has held in a catena of decisions that this principle that the Governor is bound by the aid and advice of the Council of Ministers in exercise of his functions is only applicable in situations where there is no discretion conferred by the Constitution. In matters where the Constitution expressly or implicitly confers discretionary powers, the Governor is not bound by the aid and advice of the Council of Ministers.

19. In **Shamsher Singh Vs. State of Punjab [(1974) 2 SCC 831]**, a Bench of seven Judges of the Hon'ble Supreme Court of India categorically held that certain provisions of the Constitution require that the Governor should act in his discretion. In such circumstances, the Governor is not bound by the aid and advice of the Council of Ministers. The Hon'ble Court held that:

> "Where the Governor has any discretion, the Governor acts on his judgment."

20. In **M.P. Special Police Establishment Vs. State of M.P. [(2004) 8 SCC 788]**, the Constitution Bench of five Hon'ble Judges again reiterated that although the normal rule is that the Governor acts on the aid and advice of the Council of Ministers, but there are exceptions under which the Governor can act in his own discretion. In this regard, the Court observed that:

> "The normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independent or contrary to it, but there are exceptions in which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is, however, clarified that the exceptions mentioned in the judgment are not exhaustive. It is also recognized that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognized that there may be situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to ministerial advice."

21 In **Pu Myllai Hlychho v. State of Mizoram [(2005) 2 SCC 92]**, a Constitution Bench of five Hon'ble Judges again reiterated the principles that there are certain powers in the Constitution which are to be exercised in the discretion of the Governor. The Hon'ble Court held that:

> "There are several powers and duties for the Governor and some of these powers are to be exercised in his discretion and some other powers are to be exercised by him with the aid and advice of the Council of Ministers. The executive powers of the State are vested in the Governor under Article 154(1). Article 163(1) states that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution, required to exercise his functions or any of them in his discretion."

22. A perusal of the aforesaid decisions would show that the Governor has undoubtedly discretionary powers under the Constitution of India

THE NATURE OF POWERS EXERCISED BY THE GOVERNOR UNDER THE FIFTH SCHEDULE

23 The next question which would arise is whether the powers exercised by the Governor under Fifth Schedule are discretionary powers

24. In **Ram Kripal Bhagat Vs. State of Bihar, [(1969) 3 SCC 471]** the Hon'ble Supreme Court considered the provisions of the Fifth Schedule and observed that they were para-materia with Section 91 and 92 of the Government of India Act, 1935 which conferred on the Governor "an utmost discretion of enactment for the containment of the objects pointed to".

25. In the said judgment, the Apex Court considered the background of the Fifth Schedule. The Apex Court observed that the powers conferred on the Governor under the Government of India Act, 1935 were discretionary powers. In this regard, the Court observed that:

> "The Scheduled Areas are dealt with by Article 244 of the Constitution and the Fifth Schedule to the Constitution. Prior to the Constitution, the excluded areas were dealt with by Sections 91 and 92 of the Government of India Act,

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1935. The excluded and the partially excluded areas were areas so declared by order in Council under Section 91 and under Section 92. No act of the Federal Legislature or of the Provincial Legislature was to apply to an excluded or a partially excluded area unless the Governor by public notification so directed. Sub-section (2) of Section 92 of the Government of India Act, 1935 conferred power on the Governor to make regulations for the peace and good government of any area in a Province which was an excluded or a partially excluded area and any regulations so made might repeal or amend any Act of the Federal Legislature or the Provincial Legislature or any existing Indian law which was for the time being applicable to the area in question. **The extent of the legislative power of the Governor under Section 92 of the Government of India Act, 1935 in making regulations for the peace and good government of any area conferred on the Governor in the words of Lord Halsbury "an utmost discretion of enactment for the attainment of the objects pointed to".** (See *Riel* v. *Queen*). In that case the words which fell for consideration by the Judicial Committee were "the power of the Parliament of Canada to make provisions for the administration, peace, order and good government of any territory not for the time being included in any province". It was contended that if any legislation differed from the provisions which in England had been made for the administration, peace, order and good government then the same could not be sustained as valid. That contention was not accepted. These words were held to embrace the widest power to legislate for the peace and good government for the area in question."

26. In Paragraph 22 of the judgment, the Hon'ble Apex Court considered the nature of powers exercisable under clause 5 of the Fifth Schedule. Paragraph 22 reads as follows:

> "The Fifth Schedule to the Constitution consists of 7 paras and consists of Parts A, B, C and D. Para 6 in Part C deals with Scheduled Areas as the President may by order declare and there is no dispute in the present case that the Santhal Parganas falls within the Scheduled Areas. Para 5 in the Fifth Schedule deals with laws applicable to Scheduled Areas. Sub-para 2 of para 5 enacts that the Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. Under sub-para 3 of para 5 the Governor may repeal or amend any Act of Parliament or of the legislature of the State or any existing law which is for the time being applicable to the area in question. It may be stated that a contention was advanced by counsel for the appellants that Section 92 of the Government of India Act, 1935 was still in operation and the Governor could only act under that section. This contention is utterly devoid of any substance because Section 92 of the Government of India Act, 1935 ceased to exist after repeal of the Government of India Act, 1935 by Article 395 of the Constitution. It was contended that the power to make regulations did not confer power on the Governor to apply any law. It was said that under Section 92 of the

Government of India Act, 1935 the Governor could do so but under the Fifth Schedule of the Constitution the Governor is not competent to apply laws. This argument is without any merit for the simple reason that the power to make regulations embraces the utmost power to make laws and to apply laws. Applying law to an area is making regulations which are laws. Further the power to apply laws is inherent when there is a power to repeal or amend any Act, or any existing law applicable to the area in question. The power to apply laws is really to bring into legal effect sections of an Act as if the same Act had been enacted in its entirety. Application of laws is one of the recognised forms of legislation. Law can be made by referring to a statute or by citing a statute or by incorporating a statute or provisions or parts thereof in a piece of legislation as the law which shall apply."

27 The Hon'ble Court further held that:

> "the Governor had full powers to make regulations which are laws and just as Parliament can enact that a piece of legislation which applies to a particular State; similarly under Clause 5 of the Fifth Schedule, Governor can apply specified laws to a scheduled area"

28. In **State of Meghalaya Vs. Ka Brhyien Kurkalang [(1972) 1 SCC 148]**, the Hon'ble Supreme Court, following Ram Kripal's Case, held that the power contained in Clause 5 of the Fifth Schedule was of the widest amplitude. In this regard the Hon'ble Court held that:

> "In *Ram Kirpal* v. *Bihar* this Court had the occasion of considering the provisions of the Fifth Schedule to the Constitution, and in particular its para 5(2) which empowers the Governor to "make regulations for the peace and good government of any area in a State which is for the time being a scheduled area" and which power under sub-paragraph (3) includes the power to repeal or amend, while making such a regulation, any Act of Parliament or of a State Legislature or any existing law which is for the time being applicable to the area in question. Explaining the content and the scope of that power, Ray, J., speaking for the Court observed at p. 244 of the report that the **power contained in para 5(2) of that Schedule embraced the widest power to legislate for the peace and good government for the area in question** which comprised of not only making of laws but also of selecting and applying laws, and that "the power to apply laws is inherent when there is a power to repeal or amend any Act or any existing law applicable to the area in question".

29 In **Samata Vs. State of A.P. [(1997) 8 SCC 191]**, the Hon'ble Supreme Court again considered the provisions of the Fifth Schedule. The Hon'ble Court held that the provisions of Clause 5 (2) (a) and (c) were legislative powers and Clause 5 (2) (b) comprise of legislative as well as executive powers. The Hon'ble Court also observed that the executive power of the State is subject to the legislative powers under

Clause 5(1) of the Fifth Schedule. The relevant portions of the judgment in this regard reads as follows:

> "The executive power especially conferred by the Constitution like the pleasure tenure or the power of pardoning a convict are in our view, not apposite to the issue. The power of the executive Government in that behalf has wisely been devised in the Constitution and is not subject to any restriction except in accordance with the Constitution and the law made under Article 245 read with the relevant entry in the Seventh Schedule to the Constitution subject to the Fifth Schedule when it is applied to Scheduled Area. The power of the Government to acquire, hold and dispose of the property and the making of contracts for any purpose conferred by Article 298 of the Constitution equally is coextensive with the legislative power of the Union/State. However, Article 244(1) itself specifies that provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State except the excluded areas specified therein. The legislative power in clause (1) of Article 245 equally is *"subject to the provisions of the Constitution"* i.e. Fifth Schedule. Clause (1) of para 5 of Part B of the Fifth Schedule applicable to Scheduled Areas, adumbrates with a non obstante clause that: "Notwithstanding anything in the Constitution, in other words, despite the power, under Article 298, the Governor may, by public notification direct that any particular Act of Parliament or of the legislature of a State *shall not apply to a Scheduled Area or any part thereof* in the State or shall apply to a Scheduled Area or any part thereof in the State, subject to such exceptions and modifications as he may specify in the notification and any direction given under clause (1) of para 5, may be given so as to have retrospective effect." **The executive power of the State is, therefore, subject to the legislative power under clause 5(1) of the Fifth Schedule**. Similarly sub-para (2) thereof empowers the Governor to make Regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such Regulations may regulate the allotment of land to members of the Scheduled Tribes in such area or may prohibit or restrict the transfer of land under clause (*a*) by or among the members of the Scheduled Tribes in such areas. In other words sub-para 5(2) combines both legislative as well as executive power, clause 5(2)(*a*) and (*c*) legislative power and clause (*b*) combines both legislative as well as executive power. The word "regulation" in para 5(2)(*b*) is thus of wide import."

30. The Hon'ble Court further held that the legislative powers of the Governor under the Fifth Schedule was of very wide import and gave wide discretion to the Governor to make laws for such purposes. Paragraph 173 of the judgment reads as under:

> "The Governor has also been given the legislative power to make Regulations for the *"peace and good government"* of any area in a State which is a Scheduled Area. The words

"peace and good government" are words of very wide import **and give wide discretion to the Governor to make laws for such purpose**. In *King Emperor* v. *Benoari Lal Sarma* and in *Attorney General for Saskatchewan* v. *Canadian Pacific Rly. Co.* it was held that the words *"peace, order and good government"* are words of very wide import giving wide power to the authority to pass laws for such purposes. In *Raja Jogendra Narayan Deb* v. *Debendra Narayan Roy* it was explained that these words, namely, *"peace, order and good government"* have reference to the scope and not to the merits of the legislation. It was again explained in *Girindra Nath Banerjee* v. *Birendra Nath Pal* that these words are words of the widest significance and it is not open to a court to consider whether any legislation made by the Governor would conduce to peace and good government."

GOVERNOR NOT BOUND BY THE AID AND ADVICE OF THE COUNCIL OF MINISTERS IN PERFORMANCE OF FUNCTIONS UNDER SCHEDULE V.

31. The Hon'ble Supreme Court in **Bhuri Nath v. State of J& K, (1997) 2 SCC 745** has categorically held that the powers exercised by the Governor under the fifth Schedule are discretionary powers and that whilst doing so the Governor does not act on the aid advice of the Council of Ministers. The Hon'ble Supreme Court in the said case overruled the judgement in Mansingh Suraj Singh Padvi's case and held:

> "The ratio in *Mansing Surajsingh Padvi case*[3] relates to the exercise of the power by the Governor under the West Khandesh Mehwassi Estates (Proprietary Rights Abolition, etc.) Regulation, 1961. From the notification issued thereunder, the learned Judges appear to have reached the conclusion that the Governor acts with the aid and advice of the Council of Ministers. They did not correctly understand the scope of Schedule V to the Constitution in its relation to the administration of the scheduled area. The power of State and the Governor in that behalf was not properly understood nor brought home to the learned Judges. Therefore, the learned Judges were not right in holding that the Governor while exercising the power under Schedule V of the Constitution acts with the aid and advice of the Council of Ministers. The law laid down therein is not correct in law."

32. In my opinion, the powers exercisable by the Governor especially under the Fifth Schedule are discretionary powers. Under Clause 3 of the Fifth Schedule, the Governor has to annually make a report regarding the administration of the scheduled areas in that State. This report is his personal assessment of the administration of the scheduled areas in that State. The Governor is not only the administrative and executive Head of the State but is also an agency of the Centre representing the Centre at the State level. The Governor is not only the executive head of the State but also is vital link in the qausi federal structure of our Constitution.

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33. Charles Henry Alexandrowicz in his treatise, *Constitutional Developments in India*, OUP, 1957 discusses the special role assigned to the Governor in the quasi federal context of the Indian Constitution. At page 144, it is observed that:

> "On the one hand, the Governor is the Constitutional head of the local State, on the other hand, he is the agency of the Centre called upon to implement its policy from a wider federal point of view...
>
> In this respect, the view was expressed in the Constituent Assembly that the Governor is... the agency which will press for and guard the central policy and that the local states must follow..."

34. In **Surya Narain Choudhary v. Union of India, AIR 1982 Raj 1**, the Hon'ble Rajasthan High Court whilst dealing with the nature of powers of the Governor observed that:

> "It must be realized that the Governor while discharging his functions works as a channel of communication and contact between State and Centre."

35. In **Rameshwar Prasad (VI) v. Union of India, (2006) 2 SCC 1**, Justice Pasayat highlighted the role of the Governor as a bridge between the Centre and the State. In his dissenting opinion, the Hon'ble Judge observed as follows:

> "213. ...A Governor has been assigned the role of a constitutional sentinel and a vital link between the Union and the State. A Governor has also been described as a useful player in the channel of communication between the Union and the State in matters of mutual interest and responsibility.
>
> 272. The key actor in the Centre-State relations is the Governor who is a bridge between the Union and the State. The founding fathers deliberately avoided election to the office of the Governor, as is in vogue in the USA to insulate the office from linguistic chauvinism...

36 Clause 3 of the Fifth Schedule is one such provision which seeks to make the Governor a vital link and an agency of the Centre at the State level. The Governor is expected to take a personal assessment of the administration of scheduled areas and report to the President so that the appropriate directions can be passed by the Centre in relation to the same in exercise of the Executive Power of the Union.

37. Thus, under Clause 3 the executive powers of the Union extends to the giving of directions to the State for administration of Scheduled areas. This is a clear indication that the framers of the Constitution had intended that overarching power to administer the Scheduled areas would vest with the Centre. This being the position, it cannot but be said that the exercise of powers by the Governor cannot be controlled by the Council of Ministers.

38. Under Clause 5, the Governor may by notification direct that any particular Act of Parliament or Legislature shall not apply to a

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scheduled area or any part thereof or be applicable with such exceptions and modifications as may be specified in the notification.

39 A perusal of the Clause 5 would reveal that framers of the Constitution deemed it appropriate to confer on the Governor wide powers for the administration of scheduled areas. Under Clause 5 the Governor can declare that a law made by a State or by Parliament be not applicable to the scheduled areas. The Governor is also entitled to make regulations for the peace and good governance of any scheduled area. In my opinion this power is discretionary as has been held by the Hon'ble Supreme Court *[See (1997) 8 SCC 191, paragraph 173 and 1997 2 SCC 745 para 25].*

40. If the powers exercisable under Clause 5 are construed to be non-discretionary the entire scheme of the Fifth Schedule would fail. The legislative power under Clause 5 of the Fifth Schedule was conferred on the Governor so that he could independently assess the administration of the scheduled areas. The Governor can not only declare that particular state or Central laws would not be applicable to scheduled areas but also is empowered to make regulations for the administration of the scheduled areas. To say that the powers under clause 5 of the Fifth schedule can be exercised only on the aid and advice of the council of ministers would be to empower the council of ministers of a State to override/repeal a Central law which could not have been the intention of the framers of the Constitution. The only restriction which was placed on this power of the Governor was that all the regulations made in Clause 2 of Fifth Schedule came into effect only upon the assent by the President.

41 The matter can be looked at from another angle. Clause 2 of Fifth Schedule states that the executive power of the State is subject to the provisions of the Fifth Schedule. Under Article 154, the executive power of the State is vested in the Governor. In so far as exercise of executive powers of the State are concerned, the Governor has to be exercise the same on the aid and advice of the Council of Ministers along with the Chief Minister. However, the exercise of powers by the Governor under the Fifth Schedule is not *co-terminus* with exercise of the executive power of the State but it is within the discretion of the Governor. In other words, the executive power of the State which is exercisable by the Governor on the aid and advice of the Council of Ministers has been expressly been made *subject to* the provisions of the Fifth Schedule. In performance of the functions and exercise of powers under the Fifth Schedule, the Governor is not bound by the aid and advice of the Council of Ministers of the State.

Goolam E. Vahanvati
Attorney General for India

21 April 2010

Shri R.L.Koli, A.S.

ANNEXURE 1.X
(Ref. para 1.36, SR_Ch 1)

Governments decisions on the recommendations contained in the Reports of the Second Administrative Reforms Commission

S. No.	Subject	Decision taken on Report or not.
1st Report	Right to Information - Master key to good governance	YES
2nd Report	Unlocking Human Capital Entitlements And Governance - Implementation of NREGA	YES
3rd Report	Crisis Management - From Despair to Hope	YES
4th Report	Ethics in Governance	YES
5th Report	Public Order	No
6th Report	Local Governance	YES
7th Report	Capacity Building for Conflict Resolution - Friction to Fusion	YES
8th Report	Combating Terrorism - The report is being handled by Ministry of Home Affairs	No
9th Report	Social Capital - A Shared Destiny	YES
10th Report	Refurbishing Personnel Administration - Scaling New Heights	No
11th Report	Promoting e-Governance - The Smart Way Forward	YES
12th Report	Citizen Centric Administration - The Heart of Governance	YES
13th Report	Organisational Structure of Government of India	YES
14th Report	Strengthening Financial Management System	YES
15th Report	State and District Administration	YES

Source: Website of DARPG

ANNEXURE 1.XI
(Ref. para 1.37, Ch 1)

MOST IMMEDIATE BY FAX/ SPL. MESSENGER

भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ No.- No:4/3/11-Coord. दिनांक/ Date: 16/02/2012

To

The Secretary,
Department of Administrative Reforms & Public Grievances
Ministry of Personnel, Public Grievances and Pensions,
Sardar Patel Bhawan, New Delhi – 110001.

Sub: Report of the National Commission for Scheduled Tribes on Role of the Governors in the Scheduled Areas under Fifth and Sixth Schedules to the Constitution

Sir,

I am to refer to this Commission's letter of even no. dated 14/02/2012 regarding sitting in the Chamber of Dr. Rameshwar Oraon, Hon'ble Chairperson, National Commission for Scheduled Tribes on the above subject and your discussions over phone today with the Secretary, National Commission for Scheduled Tribes. It has been noted that decisions of the Government on the 7th and 15th Report of the 2nd Administrative Reforms Commission (which have recommendations relating to Scheduled Tribes) are available on the Website of the DARPG. The Commission is interested to know the manner in which decisions taken by the Government have been implemented by the Governments of the Union and the concerned States in respect of the recommendations mentioned at (i) S.No.37 to 45 of the Decision taken (7th) Report and (ii) S.No.87 to 158 of the Decision taken (15th) Report.

2. The10th Report of Administrative Reforms Commission- "Refurbishing of Personnel Administration, Scaling New Heights" (November, 2008)- also has important recommendations relating to the Scheduled Tribes. However, the Decision taken by the Government on the 10th Report is not available on the Website of the DARPG. The NCST has noted that general reluctance on the part of the officers and staff for posting in Scheduled Areas/ Tribal Areas is mainly on account of lack of housing, medical and education facilities. In order to address these problems, the Commission is considering to recommend that Government should formulate regulations in respect of Scheduled Areas for personnel management with the formation of a State level Civil Services Authority for Scheduled Areas, which would deal with matters of assignment of functional domains to officers, preparing a panel for posting of officers, fixing tenures for senior posts etc., in line with the Central Civil Services Authority proposed by the SARC (p. 325). In order to improve personnel management in respect of all category of employees, it is necessary to fix a minimum tenure for cadre posts, which be filled on the basis of merit, suitability and experience, prescribe norms and guidelines for transfers and posting to maintain continuity and predictability in career advancement and acquisition of necessary skills and experiences as well as promotion of good

governance. The normal tenure of all public servants shall not be less than two years and Transfers before the specified tenure should only be for valid reasons to be recorded in writing. This is in accordance with the observations contained in para 8.5.11, 8.5.12 and 8.5.14 of the 10th Report. DARPG may give their views on the above since the Department's Website does not disclose current status of the recommendations.

3. It is `requested that additional information on the above points may also be provided before discussions in the meeting

Yours faithfully,

Sd/-
(Aditya Mishra)
Joint Secretary
Tel: 24603669

MOST IMMEDIATE
BY FAX/ SPL. MESSENGER

भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ No.- No:4/3/11-Coord. दिनांक/ Date: 14/02/2012

To

The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.

Sub: Report of the National Commission for Scheduled Tribes on Role of the Governors in the Scheduled Areas under Fifth and Sixth Schedules to the Constitution

Sir,

As you are aware, the National Commission for Scheduled Tribes set up under Article 338A of the Constitution is vested with the duty *inter-alia* to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards and to present to the President, annually and at such other times as the commission may deem fit, reports upon the working of those safeguards. The National Commission for Scheduled Tribes has decided to submit to the President of India, a Special Report on Good Governance in Scheduled Areas under Fifth and Sixth Schedule and Tribal Development Administration, under the provision of article 338A (6) of the Constitution.

2. It may be recalled that Second Administrative Reforms Commission set up in August 2005 submitted its fifteenth report on **STATE AND DISTRICT ADMINISTRATION** in April 2009. Chapter-5 of the Report relates to GOVERNANCE ISSUES IN NORTH-EASTERN STATES. The Commission made several recommendations relating to the subject matter. Some of the recommendations needed immediate steps to be taken by the Government. Specific attention is invited to the recommendations contained in the following para of the Chapter.

Para	5.3.6(c)	5.4.8(a)	5.5.5(a)	5.5.5(c)	5.7.3	5.8.4.1.5
(Point)	5.8.5.2	5.8.6	5.11.5	5.12.5	5.15.2.5.5(d)	5.15.3.9.3

3. As it is about three years when the report was submitted, action on the above mentioned points of recommendations might have been taken/ completed by now. This Commission has to incorporate in its Special Report, the present status of the recommendations made in the Report. As these recommendations relate to Governance in North-Eastern States, particularly Governance in the Sixth Schedule Areas and the Ministry of Home Affairs is the Nodal Ministry for implementation of Sixth Schedule, it is requested that a statement highlighting the point-wise action taken by the Union and the State Governments concerned on the above mentioned recommendations may be furnished to this Commission by 12:00 hrs on 21/02/2012.

4. As the matter requires urgency, for incorporation in the Special Report to be finalized by end of February 2012 for submission to the President, the Hon'ble Chairperson, National Commission for Scheduled Tribes has decided to hold a Sitting at **15:00 hrs on 21/02/2012** to discuss the progress in the matter in detail in his chamber. You are accordingly requested to kindly make it convenient to attend the Sitting along with relevant documents on the date and time mentioned above. In case similar issue has been covered in any of the earlier or other Report of the Administrative Reforms Commission, action taken information on those points may also be furnished. Since the information received from your Ministry will form the basis for discussion in the Sitting, it is requested that the requisite information may be furnished to this Commission **by 12:00 hrs on 21/02/2012** positively. Soft copy of the material may also be sent in a CD or by E-mail at dircood@ncst.nic.in.

Yours faithfully,

Sd/-
(Aditya Mishra)
Joint Secretary
Tel: 24603669

MOST IMMEDIATE
BY FAX/ SPL. MESSENGER

भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ No.- No:4/3/11-Coord. दिनांक/ Date: 14/02/2012

To

The Secretary,
Ministry of Personnel, Public Grievances and Pensions,
Department of Administrative Reforms & Public Grievances
Sardar Patel Bhawan, New Delhi – 110001.

Sub: Report of the National Commission for Scheduled Tribes on Role of the Governors in the Scheduled Areas under Fifth and Sixth Schedules to the Constitution

Sir,

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2. It may be recalled that Second Administrative Reforms Commission set up in August 2005 submitted its fifteenth report on **STATE AND DISTRICT ADMINISTRATION** in April 2009. Chapter-5 of the Report relates to GOVERNANCE ISSUES IN NORTH-EASTERN STATES. The Commission made several recommendations relating to the subject matter. Some of the recommendations needed immediate steps to be taken by the Government. Specific attention is invited to the recommendations contained in the following para of the Chapter.

Para	5.3.6(c)	5.4.8(a)	5.5.5(a)	5.5.5(c)	5.7.3	5.8.4.1.5
(Point)	5.8.5.2	5.8.6	5.11.5	5.12.5	5.15.2.5.5(d)	5.15.3.9.3

3. As it is about three years when the report was submitted, action on the above mentioned points of recommendations might have been taken/ completed by now. This Commission has to incorporate in its Special Report, the present status of the recommendations made in the Report. It is therefore, requested that a statement highlighting the **point-wise** action taken by the Union and the State Governments concerned on the above mentioned recommendations may be furnished to this Commission by 12:00 hrs on 21/02/2012.

4. As the matter requires urgency, for incorporation in the Special Report to be finalized by end of February 2012 for submission to the President, the Hon'ble Chairperson, National Commission for Scheduled Tribes has decided to hold a Sitting at **15:00 hrs on 21/02/2012** to discuss the progress in the matter in detail in his chamber. You are accordingly, requested to kindly make it convenient to attend the Sitting along with relevant documents on the date and time mentioned above. In case similar issue has been covered in any of the earlier or other Report of the Administrative Reforms Commission, action taken information on those points may also be furnished. Since the information received from your Ministry will form the basis for discussion in the Sitting, it is requested that the requisite information may be furnished to this Commission **by 12:00 hrs on 21/02/2012** positively. Soft copy of the material may also be sent in a CD or by E-mail at dircood@ncst.nic.in.

Yours faithfully,

Sd/-
(Aditya Mishra)
Joint Secretary
Tel: 24603669

	Table No. 4.15. This could be reviewed once in five years. Within such delegated powers, the UT Administration should be given full administrative and functional autonomy. **(83)**	
	28. (Para 4.7.6) Daman and Diu and Dadra & Nagar Haveli	
84.	a) The recommendations made by the Commission in its Report on 'Local Governance' should be implemented on priority by the Union Government in Daman & Diu and Dadra & Nagar Haveli. **(84)**	(a) to (c) Recommendations have been accepted.
85.	b) The Union Government should immediately enhance financial powers of the UT administration by notifying delegation proposed at Table No. 4.16. This should be revised once in five years. Within such delegated powers, the UT Administration must be given full administrative and functional autonomy. **(85)**	
86.	c) The Union Government should review the requirement of personnel at different levels in both the UTs. The operating levels should be adequately manned. At the same time, the Government should examine the issue of having so many senior level posts in Daman & Diu, which has resulted in a top-heavy administration. **(86)**	
	29. (Para 5.3.6) North Eastern Region: Ethnic Conflicts - in Places, Manifesting as Territorial Conflicts and Violence (Problem of Insurgency and Law and Order)	
87.	a) In order to address the genuine and legitimate concerns of the local people, there is need to continue political dialogue among various stakeholders. Steps should be taken to upgrade the capacity and capability of the police forces of the States so that they are able to uphold the law. In order to control cross border movement of insurgents, in addition to other measures, diplomatic efforts should be stepped up. **(87)**	(a) Recommendation has been accepted.
88.	b) The North-East Division of the Ministry of Home Affairs should be upgraded to a separate wing and put under the charge of an	(b) Recommendation has been accepted in principle. Details for augmenting resources would be worked out by MHA.

	Additional/Special Secretary to handle the increased and complex workload pertaining to the region. **(88)**	
89.	c) To oversee the formulation and implementation of the plans for this region, a Standing Committee of the National Development Council should be constituted and may be headed by a Cabinet Minister. Te Committee should report to the Chairman, NDC twice a year to ensure both speedy resolution of any differences and coordinated action regarding development of the region. **(89)**	(c) Recommendation has not been accepted.
	30. (Para 5.4.8) Provisions of the Sixth Schedule of Constitutions with Respect to Assam, Meghalaya, Tripura and Mizoram	
90.	a) The Government may undertake an exercise to incorporate provisions which currently occur as footnotes, in the main text of the Sixth Schedule. This will make the Schedule more accessible to members of the public. **(90)**	(a) Recommendation has been accepted.
	31. (Para 5.5.5) Adhoc Transfer of Subjects/Activities to Autonomous Councils	
91.	a) The power of the Councils to make laws, as permitted by the Schedule, should be respected in its true spirit and draft legislations should not be stalled at the State level for years, while ensuring that they are not inconsistent with the provisions of the Constitution and relevant Union and State Laws. **(91)**	(a) Recommendation has been accepted.
92.	b) The States should undertake comprehensive activity mapping with regard to all the subjects mentioned in Para 3, 3A and 3B of the Sixth Schedule. This mapping should cover all aspects of the subjects viz planning, budgeting and provisioning of finances. This will necessitate full transfer of all government offices and institutions dealing with these activities to the control of the Councils. The State Government should set-up a Task Force to complete this work in a time span of one year. **(92)**	(b) Recommendation may be sent to State Government for their consideration.

93.	c) The Union Government should also take similar action with regard to Centrally Sponsored Schemes being implemented in these areas. **(93)**	(c) Recommendation has been accepted.
	32. (Para 5.6.6) Predominance of non-elected Customary Heads/Bodies at the Village Level; Issue of Village Self Governance in the Sixth Schedule Areas	
94.	a) Autonomous Councils should be encouraged to pass suitable legislation for establishment of elected bodies at the village level with well defined powers and a transparent system of allocation of resources. **(94)**	(a) to (c) Recommendations have been accepted.
95.	b) Suitable stipulations may be made in the procedure for release of grants to the Councils that a certain portion thereof will be disbursed only in the event of a Council passing and implementing the legislation referred at (a) above. **(95)**	
96.	c) While an Autonomous District Council should be free to lay down a suitable framework for Village Councils under its jurisdiction, this freedom should be subject to certain general principles such as, the number of ex officio members/ traditional village functionaries should not be in a majority and the Village Council should be responsible for implementation of development schemes at the village level (including planning, monitoring and selection of beneficiaries). **(96)**	
	33. (Para 5.7.3) Absence of Linkage between the Sixth Schedule and the 73rd Amendment	
97.	a) Autonomous Districts/Councils in Sixth Schedule Areas should also be covered by the State Finance Commission and the State Election Commission. **(97)**	(a) Recommendation has been accepted in principle. The implementation mechanism may be determined by State Governments.
	34. (Para 5.8.6) Special Powers of the Governors of Assam, Meghalaya, Tripura	

	and Mizoram with respect to Schedule 6 Areas	
98.	a) The Governors of Assam, Tripura and Mizoram should be empowered to exercise discretionary powers in respect of all the provisions pertaining to the Autonomous Councils under the Sixth Schedule in consultation with the Council of Ministers and if necessary, in consultation with these Councils. A Constitutional amendment will be required for this purpose. **(98)**	(a) Recommendation has been accepted.
99.	b) Paragraph 14 of the Sixth Schedule should be suitably amended to enable the Union Government to appoint a common Commission to review the working of all autonomous districts of the North-East and to make recommendations as envisaged therein. A periodicity may also be provided for the Commission. **(99)**	(b) & (c) Recommendations have been accepted in principle. However, it is suggested that Committees may be formed for reviewing the working in place of the Commission.
100.	c) A high-level Review Committee headed by the Governor and consisting of representatives of both the State Government and the District Councils should be formed in each State to review the functioning of these bodies. This Committee should submit its report to the Union Government. **(100)**	
	35. (Para 5.11.5) Issue of Tribal Areas Lying outside the Sixth Schedule	
101.	a) For tribal areas which lie outside the Sixth Schedule as well as the Seventy Third Constitutional Amendment the State Government should take steps to create specially at the district level bodies which should consist of both elected as well as traditionally selected representatives. The States which show initiative and take a lead in this matter should be given incentives. **(101)**	(a) & (b): Recommendations have not been accepted.
102.	b) The District Rural Development Authority of the district should work as a body accountable to this District Level Body. **(102)**	
	36. (Para 5.12.6) Personnel Management and Capacity Building of Administration	

103.	a) The North Eastern Council, in consultation with the Universities and other educational institutions of the region, should draw up programmes for coaching students for the Civil Services, and other competitive tests such as the Combined Defence Services Examination and the Engineering/ Medical Examinations. **(103)**	(a) Recommendation has been accepted.
	37. (Para 5.13.2) Issues of Recruitment in the Sixth Schedule Areas	
104.	a) Immediate steps should be taken to constitute District cadres for all Groups 'C' and 'D' posts (Classes III and IV) for performance of all 'transferred functions' wherever such action has not been taken. **(104)**	(a) to (e): Recommendations have been accepted.
105.	b) Recruitment to Groups 'A' and 'B' posts (Classes I and II) by the Autonomous District Councils or analogous bodies particularly to positions requiring technical/ professional qualifications should ordinarily be left to the State level. **(105)**	
106.	c) State Governments and the Autonomous District Councils should jointly draw up norms for arriving at the number of technical and professional posts required in the tribal areas. Personnel for such posts should be made available on priority basis. **(106)**	
107..	d) Postings to the tribal areas should be for a fixed tenure and must be followed by, as far as practicable, to a posting at a place of the officer's choice. **(107)**	
108.	e) On satisfactory completion of tenure in such areas the incumbent should be entitled to benefits like deputation for higher professional qualifications, training abroad and higher weightage in Departmental promotions. **(108)**	
	38. (Para 5.14.4) Regional Institutes	
109.	a) For improving delivery systems and development processes, emphasis ought to be given to capacity building of personnel and it should be a priority activity of the	(a) & (b), (d) to (f): Recommendations have been accepted.

	government. **(109)**	
110.	b) There should be comprehensive training programmes for all government employees working in the North-Eastern States. The programmes shouldconsist of (i) a long duration induction module when he joins service, (ii) mid career training opportunities and (iii) officials should be encouraged to acquire higher professional qualifications/ skill sets in their respective branches and also in subjects such as Public Administration, Trade laws, project investment/ appraisal/ management and information technology applications. **(110)**	
111.	c) The North Eastern Council (NEC) should establish an apex Regional Academy for Human Resource Development as an autonomous body with academic and executive flexibility. The mandate of the Academy may extend to the entire range of services under the government. **(111)**	(c) Recommendation has not been accepted.
112.	d) The North-Eastern Council should be given the responsibility to undertake a review of various regional institutes under the Union Government/Ministries and come up with suitable recommendations for bringing improvements in their functioning whenever required. An officer/ member of the NEC should be placed on the governing body of these institutions. **(112)**	
113.	e) The NEC should take up monitoring and evaluation of these Institutes. The Commission in its Seventh Report has already recommended that the NEC should be suitably strengthened. Once this is done, it should be possible for the NEC to undertake these additional and important responsibilities. **(113)**	
114.	f) The North Eastern Hill University (NEHU) could provide the academic foundation for policy research on issues impinging on the entire region and which need to be addressed by State action. **(114)**	

	39. (Para 5.15.1.5) Assam	
115.	a) All the three Sixth Schedule Autonomous Councils of Assam should be given parity with regard to legislative and executive powers. **(115)**	(a) Recommendation has not been accepted.
116.	b) Adequate resources should be provided to the Autonomous Councils so that they are able to carry out their assigned responsibilities effectively. The allocation of funds to these bodies should be based on pre-settled norms (with reference to the minimum standards of service to be provided and their capacity to raise local resources). This exercise could be undertaken by the State Finance Commission. **(116)**	(b) Recommendation has been accepted.
117.	c) The system of release of funds to the BTC through a single window system should be further fine tuned to make it more effective and hassle free. Such a hassle free system of fund release should be adopted for the other two Councils also with adequate delegation of financial powers. **(117)**	(c) Recommendation may be referred to State Government for consideration.
	40. (Para 5.15.1.6.8) Tribe Specific Councils (Created under State Enactment) in Assam	
118.	a) The Government of Assam should apportion functions between the tribe specific Councils/Village Councils and the Panchayati Raj Institutions in a manner that schemes involving individual tribal beneficiaries may be assigned to the 'Tribe Specific Councils' while area development schemes are assigned to the latter. **(118)**	(a) to (d) Recommendations have been accepted in principle and may be referred to State Government.
119.	b) The State Government should initiate a system of meeting at least the establishment costs of the 'Tribe Specific Councils' from sources outside the tribal sub plan and build in these requirements in their projections to the next Finance Commission. **(119)**	
120.	c) The State Government should take steps to identify innovative initiatives which could be entrusted to the Tribe Specific Councils for the benefit of the concerned tribes without	

	affecting area development and local government concerns. **(120)**	
121.	d) Suitable guidelines may be drafted for preparation of District and sub-District plans in the relevant areas through joint efforts of the Tribe Specific Councils and the Panchayati Raj Institutions. **(121)**	
	41. (Para 5.15.2.5.5) Arunachal Pradesh	
122.	a) The recommendations made in its Report on "Local Governance" for strengthening and empowering PRIs need to be implemented on priority. **(122)**	(a) to (d) Recommendations have been accepted.
123.	b) Some districts of Arunachal Pradesh are presently affected by insurgency from neighboring States. Firm steps should be taken by both the Union and the State Government to restore peace in the affected areas. **(123)**	
124.	c) Traditionally, land in Arunachal Pradesh is owned by the community. However, this system has gradually weakened primarily because community owned land is not a bankable collateral. This issue needs to be resolved in consultation with the Reserve Bank of India, banks and stake-holders in the land. **(124)**	
125.	d) Because of the gradual expansion of the formal judicial system in place of the traditional 'Kebang system', it would be necessary for the Ministry of Home Affairs to examine the Assam Frontier (Administration of Justice) Regulation Act 1945 in the State, to ensure a smooth transition to the formal judicial system. **(125)**	
	42. (Para 5.15.3.7) Manipur	
126.	a) Sincere, proactive measures should be taken to revive and activate the Hill District Councils in Manipur. It will be imperative to devolve a major domain of developmental activities to them. It will have to be done along with transfer of funds and functionaries. The local functionaries of the field offices/ departments of the State Governments and	(a) to (c) Recommendations have been accepted.

	the parallel bodies which are currently handing these activities at the district level will also need to be placed at the disposal of the District Councils. **(126)**	
127.	b) All steps should be taken to put in place elected Village Councils in rural areas. Suitable incentives should be provided to the State for initiating proactive legislative measures in this direction having due regard to the local circumstances. **(127)**	
128.	c) As regards the PRIs the Commission has already made a number of recommendations for their strengthening and empowerment in its Report on "Local Governance" (sixth Report) which needs to be implemented on priority. **(128)**	
	43. (Para 5.15.3.8.5) Issues of Personnel Management in Manipur	
129.	a) Initiatives of the Manipur Government in human resource management need to be sustained. Similar initiatives may also be considered by other States of the region. **(129)**	(a) Recommendations has been accepted.
	44. (Para 5.15.3.9.3) Special Powers to the Governor of Manipur under Article 371	
130.	a) In view of the circumstances prevailing in Manipur, the Governor of Manipur should be given special powers/responsibility with respect to law and order on the lines of the powers vested in the Governors of Nagaland and Arunachal Pradesh under Articles 371A and 371H of the Constitution respectively. This could be done by inserting a suitable paragraph in Article 371C. **(130)**	(a) Recommendation has not been accepted.
	45. (Para 5.15.4.7) Meghalaya	
131.	a) The fact of Autonomous District Councils should be accepted and the State should undertake comprehensive activity mapping with regard to all the matters mentioned in para 3 of the Sixth Schedule. This process should cover all aspects of the subjects viz planning, budgeting and provisioning of finances. This will necessitate full transfer of	(a) to (d) Recommendations have been accepted.

	local functionaries of the field offices/ departments and bodies relating to these activities at the district level to the control of the Councils. The State Government should set-up a task force to complete this work in a time bound manner. **(131)**	
132.	b) Allocation of funds to the District Councils should be based on normative and transparent considerations. These allocations should be budgeted in detail and released in agreed installments during the financial year. **(132)**	
133.	c) The Union Government would also need to take similar action with regard to Centrally Sponsored Schemes being implemented in these areas. **(133)**	
134.	d) Appropriate measures may be taken for capacity building in Autonomous Councils so that they are able to utilize the funds in a better way. **(134)**	
135.	e) Government of Meghalaya may take steps for extension of the experiment of elected village committees in the Garo Hills for implementing the National Employment Guarantee Act and for implementation of other rural development programmes as well. **(135)**	(e) Recommendation has been accepted in principle and referred to State Government for consideration.
136.	f) In the long run, directly elected village level representative bodies will need to be constituted and adequately empowered in autonomous Hill Councils areas of Meghalaya. **(136)**	(f) Recommendation has been accepted.
	46. (Para 5.15.5.5) Mizoram	
137.	a) The State should undertake comprehensive activity mapping with regard to all the matters mentioned in para 3 of the Sixth Schedule. This process should cover all aspects of the subjects viz planning, budgeting and provisioning of finances. This will necessitate full transfer of functionaries of the field offices/ departments/bodies relating to these activities to the control of the Councils. The State Government should set-up a Task Force to complete this work in a	(a) & (b) Recommendations have been accepted.

	time bound manner. **(137)**	
138.	b) The Union Government will also need to take similar action with regard to Centrally Sponsored Schemes being implemented in these areas. **(138)**	
	47. (Para 5.15.6.9) Nagaland	
139.	a) The Commission would like to reiterate the following recommendation in this regard made in its Seventh Report:- Nagaland has made commendable efforts to usher in a paradigm of decentralized village self-governance through effective use of "Social Capital". The State has communitised a large number of service delivery schemes. The Ministry of Rural Development should formally recognize this arrangement for implementation of various development and poverty alleviation initiatives in this State. Its replication by other States should be pursued. **(139)**	(a) Recommendation has beenaccepted in principle and referred to State Governments for consideration.
	48. (Para 5.15.7.6) Sikkim	
140.	a) The Commission has made a number of recommendations for strengthening and empowering PRIs in its Report on "Local Governance" which needs to be implemented on priority. **(140)**	(a) & (b) Recommendations have been accepted.
141.	b) There is need to rationalize the large cadre strength of various All India Services in the State, in accordance with actual requirements**. (141)**	
	49. (Para 5.15.8.8) Tripura	
142	a) DPCs may be constituted in all the districts of Tripura with representation from both the TTADC and the District Administration as all the districts in Tripura comprise of both TTADC and part IX areas. The TTADC should also be involved in the planning process at the State level. **(142)**	(a) to (d) Recommendations have been accepted in principle and may be referred to State Government.
143.	b) Immediate steps should be taken to ensure that there is only one intermediate	

	structure between the village and the district bodies of the TTAADC. **(143)**	
144	c) The State Government should take steps to evolve a mechanism which could coordinate block level committees chaired by MLAs and zones and sub-zones which are headed by elected representatives of TTAADC. **(144)**	
145.	d) The State may also undertake comprehensive activity mapping exercise to delineate functions among various levels operating within the system such as the District Council, the Block committee and the Village Council. **(145)**	
	50. (Para 6.5.1.3) Financial Delegation and Operational Flexibility – the IFA system	
146.	a) Based on the experience of the Union Government with regard to the IFA, States should take steps to introduce / strengthen the IFA system in the State administration. **(146)**	(a) Recommendation has been accepted.
	51. (Para 6.5.2.3) Avoiding Fiscal Profligacy	
147.	a) The State Governments need to take steps to ensure that projects and programmes are included in the budget only after well considered deliberations and processes. The practice of announcing projects and schemes on an ad-hoc basis needs to be done away with. **(147)**	(a) Recommendation has been accepted.
	52. (Para 6.5.3.3) Expenditure Management	
148.	(a) The States should take priority steps to improve their expenditure profile by (a) finalizing the detailed project reports of schemes in the preceding year and (b) ensuring that the financial sanctions are given to the departments in the first two months of the current financial year. **(148)**	(a) & (b) Recommendations have been accepted.
149.	(b) The States should conduct a zero-base review of programmes and schemes which are more than five years old and which involve large sums of public money. (Say over 50 crores) **(149)**	
	53. (Para 6.5.4.7) Prudent Budget	

	formulation	
150.	a) There should be prudent and realistic economic assumptions in formulation of budget estimates. At the end of every financial year, the gap between the estimates and the actuals should be analyzed so that the underlying economic assumptions could be suitably calibrated for the future. **(150)**	(a) to (e) Recommendations have been accepted.
151.	b) There should be interaction between the State Government and stakeholders including industry associations, think tanks etc. in budget formulation. In order to make such consultations effective and meaningful, steps should be taken to (a) provide information-access to citizens and (b) educate citizens and leaders of society on budget making and its implications. **(151)**	
152.	c) State Governments should shift to multi-year budgeting and give the estimates of revenue and expenditure for a period of four years in addition to the year which the budget pertains. This should be done on a roll-on basis. **(152)**	
153.	d) The States should follow the practice of preparation and implementation of the MTFP. **(153)**	
154.	e) In order to remove prejudice against non-plan expenditure, the State should take steps to provide for maintenance of the asset in the project cost itself and ensure its maintenance for at least five years after it is acquired. This action should go hand in hand with recovery of adequate user charges. **(154)**	
	54. (Para 6.5.5.2) Revenue Forecast and Need for a Tax Research Unit	
155.	a) The State Governments should initiate steps to set up dedicated cell within its Finance Department to provide input on the revenue forecast with the reasons thereof. **(155)**	(a) Recommendation has been accepted.
	55. (Para 6.5.6.2) Mechanism for Internal Control	
156.	a) The State Governments should take steps	(a) Recommendation has been accepted.

	to set up internal audit committees in each of its departments**. (156)**	
157.	**56. (Para 6.5.7.3) External Audit** a) The State Governments should specify a time frame for the Departments for necessary follow up action on the recommendations of Audit and forwarding of the ATN after incorporating such action to Audit for vetting before their fnal submission to the State PAC/ COPU. All Departments should adhere to the prescribed time limits. **(157)**	(a) Recommendation has been accepted.
158.	**57. (Para 6.5.8.3) Projectisation and Appraisal** a) In order to deploy public funds prudentially, with inbuilt financial closure, the States should take steps to strengthen their project formulation and appraisal capacity. **(158)**	(a) Recommendation has been accepted.

Sl. No.	Recommendations made by Administrative Reforms Commission (ARC)	Government's Decision
34.	(l) There should be training programmes for the law enforcement agencies to suitably sensitise them to the problems of the Scheduled Castes and the need for strict enforcement of laws.**(34)**	
35.	(m) The local governments – municipalities and panchayats – should be actively involved in various programmes concerned with effective enforcement of various social legislations.**(35)**	
36.	(n) The corporate sector and NGOs need to be involved in complementing the efforts of government for the development of the Scheduled Castes. Such voluntary action should not only be directed towards economic and social empowerment of the SCs, but also towards enabling them to raise their voice against atrocities, discrimination and exploitation. **(36)**	
	5. (Para 7.10) Issues Related to Scheduled Tribes	
37.	(a) While all States in the Fifth Schedule Area have enacted compliance legislations vis-à-vis PESA, their provisions have been diluted by giving the power of the Gram Sabha to other bodies. Subject matter laws and rules in respect of money lending, forest, mining and excise have not also been amended. This needs to be done. In case of default, Government of India would need to issue specific directions under Proviso 3 of Part A of the Fifth Schedule, to establish a forum at the central level to look at violations and apply correctives. The Commission would like to re-iterate the importance of the Annual Reports of the Governors under the Fifth Schedule of the Constitution.**(37)**	(a) Recommendation has not been accepted. Moral suasion of State Governments seems a better option. Ministry of Tribal Affairs and Ministry of Panchayati Raj Institutions were directed to resolve any overlapping issues hence the two operative Acts.
38.	(b) Awareness campaigns should be organised in order to make the tribal population aware of the provisions of PESA and the 73rd amendment to the Constitution so as to demand accountability in cases in which the final decisions are contrary to the	(b) to (i) The recommendations have been accepted.

Sl. No.	Recommendations made by Administrative Reforms Commission (ARC)	Government's Decision
	decisions of the Gram Sabha or Panchayat.**(38)**	
39.	(c) There should be a complete overhaul and systematic re-organisation of existing land records with free access to information about land holdings**.(39)**	
40.	(d) There is need to harmonise the various legislations and government policies being implemented in tribal areas with the provisions of PESA. The laws that require harmonisation are the Land Acquisition Act, 1894, Mines and Minerals (Development and Regulation) Act, 1957, the Indian Forest Act, 1927, the Forest Conservation Act, 1980, and the Indian Registration Act. National policies such as the National Water Policy, 2002, National Minerals Policy, 2003, National Forest Policy, 1988, Wildlife Conservation Strategy, 2002 and National Draft Environment Policy, 2004 would also require harmonisation with PESA.**(40)**	
41.	(e) Mining laws applicable to Scheduled Tribal Areas should be in conformity with the principles of the Fifth and Sixth Schedules of the Constitution**.(41)**	
42.	(f) Government should select such police, revenue and forest officials who have the training and zeal to work in tribal areas and understand as well as empathise with the population they serve.**(42)**	
43.	(g) A national plan of action for comprehensive development which would serve as a road map for the welfare of the tribals should be prepared and implemented.**(43)**	
44.	(h) There should be convergence of regulatory and development programmes in the tribal areas. For the purpose, a decadal development plan should be prepared and implemented in a mission mode with appropriate mechanism for resolution of	

Sl. No.	Recommendations made by Administrative Reforms Commission (ARC)	Government's Decision
	conflicts and adjustments.**(44)**	
45.	(i) The authorities involved in determining the inclusion and exclusion of tribes in the list of Scheduled Tribes should adopt a mechanism of consultation with the major States and those with tribal populations, on the basis of which a comprehensive methodology with clearly defined parameters is arrived at.**(45)**	
	6. (Para 8.6) Issues Related to Other Backward Classes	
46.	(a) Government may work out the modalities of a survey and take up a statewise socio-economic survey of the "Other Backward Classes", which could form the basis of policies and programmes to improve their status.**(46)**	(a) & (b) The recommendations have been accepted.
47.	(b) Government needs to formulate and implement a comprehensive scheme for capacity building of OBCs that would bring them at par with the rest of society.**(47)**	
	7. (Para 9.6) Religious Conflicts	
48.	(a) Community policing should be encouraged. The principles laid down by the Commission in paragraph 5.15.5 of its Report on 'Public Order' should be followed.**(48)**	(a) to (c) The recommendations have been accepted.
49.	(b) District Peace Committees/Integration Councils should be made effective instruments of addressing issues likely to cause communal disharmony. The District Magistrate in consultation with the Superintendent of Police should constitute these committees. In Police Commissionerates, these committees should be constituted by the Police Commissioner in consultation with the Municipal Commissioner. The committees should be of permanent nature. These committees should identify local problems with a potential to degenerate into communal conflicts and suggest means to deal with them at the earliest. Further, Mohalla Committees should	

ANNEXURE 1.XIV
(Ref. para 1.43, SR_Ch 1)

ACTION TAKEN REPORT ON THE ACCEPTED RECOMMENDATIONS OF THE 15TH REPORT OF 2ND ADMINISTRATIVE REFORMS COMMISSION – STATE AND DISTRICT ADMINISTRATION

Name of the Division: NE Division

Date of submission of ATR : 17th Feburary, 2012

S.No.	Text of the recommendations made by the Department of AR&PG including para no. and heading of the recommendation	Government's decision	Action Taken Report
89.	**Para 5.3.6** (c) To oversee the formulation and implementation of the plans for this region, a Standing Committee of the National Development Council should be constituted and may be headed by a Cabinet Minister. The Committee should report to the Chairman, NDC twice a year to ensure both speedy resolution of any differences and coordinated action regarding development of the region. (89)	Recommendation has not been accepted. "Core Group of Administrative Reforms (CGAR)"	
90.	**30. (Para 5.4.8) Provisions of the Sixth Schedule of Constitutions with Respect to Assam, Meghalaya, Tripura and Mizoram** a) The Government may undertake an exercise to incorporate provisions which currently occur as footnotes, in the main text of the Sixth Schedule. This will make the Schedule more accessible to members of the public. (90)	A recommendation has been accepted.	Law Ministry is to take action.
91	**31. (Para 5.5.5) Adhoc Transfer of Subjects/Activities to Autonomous Councils** a) The power of the Councils to make laws, as permitted by the Schedule, should be respected in its true spirit and draft	a)Recommendation has been accepted.	State Government to take action.

	legislations should not be stalled at the State level for years, while ensuring that they are not inconsistent with the provisions of the Constitution and relevant Union and State Laws. (91)		
93	(c) The Union Government should also take similar action with regard to Centrally Sponsored Schemes being implemented in these areas. (93)	(c) Recommendation has been accepted.	Action on this recommendation is to be taken by Planning Commission.
97.	**33. (Para 5.7.3) Absence of Linkage between the Sixth Schedule and the 73rd Amendment** a) Autonomous Districts/Councils in Sixth Schedule Areas should also be covered by the State Finance Commission and the State Election Commission. (97)	(a) Recommendation has been accepted in principle. The implementation mechanism may b e determined by State Governments.	-do-
	Para 5.8.4.1.5 Ministry of Home Affairs may consultation with concern State Governments and the Autonomous Councils, identify powers under the Sixth Schedule that Governors may exercise at their direction without having to act on the aid and advices of the Council of Ministers as envisaged in Article 163(1) of the Constitution.	This Recommendation was not referred by (CGAR) for comments.	However, MHA would take necessary action in this regard.
	Para 5.8.5.2 It was accordingly recommended that:- iii) Administration of Civil and Criminal Justice involving decisions accordingly to Naga Customary Law: iv) Ownership and transfer of land and its resources Shall apply to the State of Nagaland unless the legislative Assembly of Nagaland by a Resolution decides:	This Recommendation was not referred by (CGAR) for comments.	This may be referred to the State Government of Nagaland.

98	**34. (Para 5.8.6) Special Powers of the Governors of Assam, Meghalaya, Tripura and Mizoram with respect to Schedule 6 Areas** (a) The Governors of Assam, Tripura and Mizoram should be empowered to exercise discretionary powers in respect of all the provisions pertaining to the Autonomous Councils under the Sixth Schedule in consultation with the Council of Ministers and if necessary, in consultation with these Councils. A Constitutional amendment will be required for this purpose. (98)	(a) Recommendation has been accepted.	Governors of Assam, Tripura and Mizoram have already been given discretionary powers in certain matters of Sixth Schedule.
99	(b) Paragraph 14 of the Sixth Schedule should be suitably amended to enable the Union Government to appoint a common Commission to review the working of all autonomous districts of the North-East and to make recommendations as envisaged therein. A periodicity may also be provided for the Commission. (99)	(b) & (c) Recommendations have been accepted in principle. However, it has been decided that Committees may be formed for reviewing the working in place of Commission.	The Ministry of Home Affairs has prepared a Cabinet Note for making amendments to Sixth Schedule to the Constitution of India extending certain features of Panchayati Raj System to the Sixth Schedule areas. These interalia includes mandatory village Councils/Village Development Board and election to Village Council, Regional Council and District Councils supplementing the existing powers of the Councils, so that additional powers and subjects included under Schedule 11 and Schedule 12 could be developed to the ADCs/ACs, setting up of State Finance Commission to make the distribution of

			taxes, tolls, duties, etc. between the States and the District Councils, administrative and financial control and effective mechanism for audit accounts of the Council and setting up of Election Commission for election to the Council etc. The draft Cabinet Note has been sent to the Law Ministry, Planning Commission, M/o Finance for their comments. In addition to above, an initiative for deepening the process of Decentralized Governance in North East where Panchayati Raj Institutions (PRIs) do not exists is being taken up by an Inter-Ministerial Team (IMT) from Ministries of Panchayati Raj, Home Affairs, Development of North Eastern Region, Urban Development and Tribal Affairs. In respect of District Councils, the following amendments to the existing arrangements have been proposed:- (a) Conduct of elections through the State election

			Commission. (b) Making the process of supersession of Deputy Commissioner by the State Government transparent. (c) Reservation for women. (d) Development of funds through the State Finance Commission. (e) Consitution of Village Councils where they do not exist. (f) Identification of functions and responsibilities between District Councils and Village Councils.
100	(c) A high-level Review Committee headed by the Governor and consisting of representatives of both the State Government and the District Councils should be formed in each State to review the functioning of these bodies. This Committee should submit its report to the Union Government. (100)	-do-	-do-
	35 (Para 5.11.5) Issue of Tribal Areas Lying outside the Sixth Schedule (a) For tribal areas which lie outside the Sixth Schedule as well as the Seventy Third Constitutional Amendment the State Government should take steps to create specially at the district level bodies which should consist of both elected as well as traditionally selected representatives. The States which show initiative a and take a lead in this matter should be given incentives. **(101)**	(a) &(b) : Recommendations have not been accepted. (CGAR)	

	((b) The District Rural Development Authority of the District should work as a body accountable to this District Level Body (102)		
	Para 5.12.5 The Committee has suggested a large number of measures for improvement of personnel Management in the North Eastern States its Seventh and Tenth report. They need be implemented**.**		Matter pertains to Department of Personnel & Training.
	41 (Para 5.15.2.5.5) (d) Arunachal Pradesh d) Because of the gradual expansion of the formal judicial system in place of traditional 'Kebang System'. It would be necessary for Ministry of Home affairs to examine the Assam Frontier (Administration of Justice) Regulation Act, 1945 in the State to ensure a smooth transition to the formal judicial system. (125)	Recommendations have been accepted.	
	(Para 5.15.3.9.3) Special Powers to the Governor of Manipur under Article 371 a) In view of the circumstances prevailing in Manipur, the Governor of Manipur should be given special powers/responsibility with respect to law and order on the lines of the powers vested in the Governors of Nagaland and Arunachal Pradesh under Articles 371 A and 371H of the Constitution respectively. This could be done by inserting a suitable paragraph in Article 371C (13)	Recommendation has not been accepted. (CGAR)	

ANNEXURE-I

DETAILS OF FUNDS RELEASED UNDER MODERNISATION OF POLICE FORCES (MPF) SCHEME TO NE STATES DURING 2005-2006 TO 2010-11 (UPTO 6TH DECEMBER,2010

(Rs. in crore)

Name of the State	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11* **(upto 06.12 2010)**	Total
Arunachal Pradesh	7.00	11.53	11.71	14.72	11.50	1.91	58.37
Assam	56.68	52.18	88.12	68.12	60.79	47.00	372.89
Manipur	16.97	14.09	32.06	39.24	27.44	19.91	149.71
Meghalaya	6.57	8.59	15.41	10.82	9.73	2.45	53.57
Mizoram	6.00	10.48	10.98	12.69	11.48	11.70	63.33
Nagaland	17.52	22.68	30.72	38.43	31.50	29.69	170.54
Sikkim	2.43	3.46	4.42	6.12	4.72	0.90	22.05
Tripura	11.83	11.34	8.85	20.66	22.92	21.70	97..3
TOTAL	**125.00**	**134.35**	**202.27**	**210.80**	**180.08**	**135.26**	**987.76**

F.No. 11011/97-2011-NE-III
Government of India
Ministry of Home Affairs

Subject:- Report of the National Commission for Scheduled Tribe on Role of the Governs in the Scheduled Areas under Fifth and Sixth Schedules to the Constitution.

National Commission vide letter No. 4/3/11-Coord. dated 14/02/2012 has addressed to Secretary, MHA and informed that they have decided to submit to the President of India, a special Report on Good Governance in Schedule Areas under Fifth and Sixth Schedule and Tribal Development Administration, under the provision of article 338A(6) of the Constitutions.. They have also mentioned that Second Administrative Reforms Commission set up in August 2005 submitted its fifteenth report on **STATE AND DISTRICT ADMINISTRATION in April, 2009**. Chapters-5 of the r\Relates to Governance issues in North-Eastern States. The Commission made several recommendations relating to the subject matter, Some Specific attention is invited to the recommendations contained in the following para of the Chapter:

Para 5.3.6 (c), 5.4.8(a), 5.5.5(a), 5.5.5(c), 5.7.3, 5.8.4.1.5 (Point) 5.8.5.2, 5.8.6, 5.11.5 5.12.5, 5.12.2.5.5(d) and 5.15.3.9.3

2. On the above points, they have requested to send them Action Taken Report latest by 21.2.2012.

3. As per the information available in the Section, the item and point wise ATR has been prepared and placed below for kind approval. If approve, we may forward the same to National Commission for Scheduled Tribes. DFA please.

Sd/-
(H.Kujur)
SO(NE-III)
17.02.2012

DS(NEII)

F.No. 11011/97-2011-NE-III
Government of India
Ministry of Home Affairs

New Delhi dated 21st February, 2012

To

Shri Adhya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes,
6th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-110003

Subject:- Report of the National Commission for Scheduled Tribe on Role of the Governs in the Scheduled Areas under Fifth and Sixth Schedules to the Constitution.

Sir,

I am directed to refer to the National Commission for Scheduled Tribes letter No.4/3/11-Coord. dated 14.2.2012 on the subject mentioned above.

2. As desired, Para and point-wise information is forwarded for information and necessary action.

Yours faithfully,

Sd/-
(Ajay Kanoujia)
Deputy Secretary to the Government of India

ANNEXURE 1.XV

(Ref. para1.49 SR_Ch1)

Regulations promulgated for Good Governance in Scheduled Areas- Meeting held on 11/01/2012 to discuss the Role of the Governors in the Scheduled Areas under Fifth and Sixth Schedule to the Constitution- Status position w. r. t. Ministry of Tribal Affairs.

In the meeting held on 11/01/2012 to discuss the role of Governors in Schedule V & Schedule VI States as per Constitution provision, the Joint Secretary, MTA informed that use of any of the discretionary powers of the Governor under the provisions in Schedule V and VI had not been reported. Tribes Advisory Councils have been constituted and their meetings were being held in the States having Scheduled Areas and two other States namely, Tamil Nadu and West Bengal. As per the records available in the Ministry, meetings of TACs during the year 2011 were held in the States of Chhattisgarh (26/09/2011), Jharkhand (19/04/2011 and 16/06/2011), Madhya Pradesh (20/07/2011), Maharashtra (25/10/2011), Orissa (13/05/2011) and Rajasthan (21/07/2011). The details of the meetings of the TACs convened in the year relating to other States were not available with the MTA.

2. The Joint Secretary, MTA further informed that The States having Scheduled Areas have been requested to set up the cell in the office of the Governor to oversee the constitutional responsibilities relating to the Scheduled Tribes and Scheduled Areas. He also informed that the Government of India have prescribed a format of the Governor's Report and the States were directed to submit the Report by 30th September every year and the Government was considering revising the format of the Report to include:

- Objective assessment of the quality and adequacy of administration touching upon exploitative elements, development programmes undertaken and existing level of administration including measures proposed for improving the administration.

- The report should give, as far as possible, and ITDA/ITDP/District-wise analysis of the issues mentioned above.
- Each department at the State level should prepare a Report for the Scheduled Areas in respect of its functional jurisdiction and a department-wise analysis should be included in the report.
- Observations made by the Tribes Advisory Council of the State should be dealt with in the Report.

3. Regarding status of Governor's Reports received in the Ministry, the following position was furnished.

State	Reports awaited
Andhra Pradesh	2010-11

Chhattisgarh	2010-11
Gujarat	2010-11
Jharkhand	2006-07 onwards
Himachal Pradesh	2010-11
Madhya Pradesh	-
Maharashtra	2010-11
Orissa	2010-11
Rajasthan	2010-11

4. The Joint Secretary further informed that the Ministry of Panchayati Raj was also considering modalities to extend the provisions of the PESA to the Sixth Schedule Areas. It was decided in the meeting that the MTA may collect the ground position from all the Scheduled Areas States and furnish a report to the Commission on the following points.

(a) Enumeration and details of the instances in which President's powers have been exercised to issue directions to the States under paragraph 2 of the Fifth Schedule.

(b) Enumeration and details of the Regulations assented/refused assent by the President under paragraph 5(4) of the Fifth Schedule. The details should include name of the Regulation, date of notification, and salient features (along with copy thereof).

(c) An objective assessment of the adequacy of reasons in respect of the cases included in (b) above.

5. The Ministry of Tribal Affairs vide its letter No. 17014/1/2011-C&LM-II-(Part) dated 24/01/2012 requested the Principal Secretary to Governors of Scheduled Areas States to furnish information with respect to points (b) and (c) above by 27/01/2012. The Ministry of Tribal Affairs also requested the Ministry of Home Affairs to furnish information with respect to (a) above.

ANNEXURE 1.XVI
(Ref. para1.49 SR_Ch1)

Regulations promulgated for Good Governance in Scheduled Areas- Meeting held on 11/01/2012 to discuss the Role of the Governors in the Scheduled Areas under Fifth and Sixth Schedule to the Constitution- Status position w. r. t. Ministry of Home Affairs.

Deputy Secretary (NE), MHA informed during the meeting that Autonomous district councils/ Autonomous councils have been set up in the States of Assam, Meghalaya, Mizoram and Tripura for administration of the tribal areas.

Assam

i) Karbi Anglong Autonomous Council (KAAC)

ii) North Cachar Hills Autonomous Council (NCHAC)

iii) Bodoland Territorial Areas District (BTAD) included after signing **of Bodo Accord in 2003.**

Meghalaya

iv) Khasi Hills Autonomous District Council (KHADC)

v) Jaintia Hills Autonomous District council (JHADC)

vi) Garo Hills Autonomous District Council (GHADC)

Tripura

vii) Tripura Tribal Areas Autonomous District Council (TTAADC)

Mizoram

viii) Lai Autonomous District Council (LADC)

ix) Mara Autonomous District Council (MADC)

x) Chakma Autonomous District Council (CADC)

2. The above councils have been vested with legislative, judicial, financial and executive powers in respect of the subjects provided in the Sixth Schedule and any additional subject transferred to them by the State Government such as :

a) The allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town;

b) The management of any forest not being a reserved forest.

c) The use of any canal or water-course for the purpose of agriculture

d) The regulation of the practice of jhum or other forms of shifting cultivation.

e) The establishment of village or town committees or councils and their powers.

f) Any other matter relating to village or town administration, including village or town police and public health and sanitation.

g) The appointment or succession of Chiefs or Headmen.

h) The inheritance of property.

j) Marriage and divorce (Social customs)

3. He further informed that The Sixth Schedule has entrusted several key powers to the Governors of the Sixth Schedule States in respect of concerned District and Regional Councils. These powers are briefly described below:

Description of Power entrusted to the Governor	Para	Brief Content
Power to constitute district and regional councils	19	Constitute district councils for each autonomous district as soon as possible and until constitution of district Council, to be the head of the administration of the district.
	1(2)	Divide areas of district council into autonomous regions.
	1(3)	Issue notification for inclusion, exclusion, creation, increase, decrease, unite or define areas of district council or alter the name of any district council.
	2(6)	Frame rules of the first constitution of district council or regional council.
	14(3)	Place one of the Ministers in charge of the welfare of the autonomous district region.
Power to dissolve and supersede councils	16(1)	Dissolve a district or regional council and assume to himself all or any of the functions or powers of the district or the regional council on the recommendation of the Commission appointed under Paragraph 14.
	16(2)	Dissolve a district or regional council and assume to himself all or any of the functions or powers of the district or regional council if satisfied that the administration of the autonomous district or region cannot be carried out in accordance with the provisions of the sixth schedule to the constitution.
Power affecting electoral representation in the council area	2(1) , 2 & 2(6A)	Nominate four members in each district council who hold office at his pleasure.
	17	For the purpose of elections to the legislative assembly of the State, declare that any area

		within an autonomous district shall not form part of any constituency to fill a seat or seats in the assembly not so reserved to be specified in the order.
Power to enlarge, diminish powers or review decisions of District and Regional Councils	4(3)	Extention of jurisdiction of the High Court over suits and cases tried by District Council Courts.
	5	Confer power under CPC and CrPC on district council courts for trial of specified nature of cases and withdraw or modify the same.
	6(2)	Entrust conditionally or unconditionally all or any of the executive powers available to the State to the District council or its officers with the consent of the District Council.
	15(1)	Annul or suspend acts and resolutions of the district and regional council if such act or resolution is likely to endanger the safety of India or is prejudicial to the public order .
Give prior assent to laws, rules and regulations of the district and regional councils	3(3)	Assent to laws made by the District and Regional councils, without which they have no force of law.
	2(7)	Approve the rules made by the District and Regional council for composition and delimitation of the Council, qualification terms of office etc, of its members and generally for all matters regulating the transaction of business pertaining to the administration of the district.
	6(1)	Give prior approval for framing of the regulations by the District Council for the regulation and control of primary schools, dispensaries, markets, road transport, waterways etc.
	4(4)	Approve rules regarding constitution procedure etc of village council and district council courts, made by the district and regional counjcils.
	7(2)	Make rules for the management of district and regional fund
	8(4)	Give prior assent to regulations framed by District and Regional Council for the control of money lending, without which they do not have the force of law.
	10(3)	Give prior assent to regulations framed by District council for the control of money lending, without which they do not have the force of law.

Powers of arbitration	9(2)	Give the final decision in respect of disputes between district council and regional council in cases of royalty for extraction of minerals, which shall be referred to the governor for resolution
Powers to appoint a Commission	14(1)	Appoint a commission to inquire into the administration of autonomous district regions.
	14(2)	Report of Commission appointed under paragraph 14 is required to be laid before the State legislature with the recommendation (except in the case of State of Assam) with respect thereto.

4. In addition to the above powers, special powers have been conferred in respect of the Governors of Assam, Tripura and Mizoram, as described below:-

States concerned	**Para**	**Details of the provision in the Sixth Schedule Brief content**
Tripura and Mizoram	9 (3)	Prescribe the period within which the royalty acquiring from grant of lease for extraction of minerals is to be shared between the State Government and the District Council.
	12 AA (b)	Direct that any Act of the State legislature other than matters specified in paragraph 3 and legislation prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall not apply to any autonomous district or an autonomous region or shall apply subject to such exceptions or modifications as may be notified.
	12B (b)	
Assam	12 (1)(b)	Direct that any Act of Parliament or of the State Legislature other than matters specified in paragraph 3 and Legislation prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall not apply to an autonomous district or an autonomous region or shall apply subject to such exception and modifications as may be notified.

5. The provisions contained in paragraphs 12, 12A, 12AA and 12B provide for different schemes with respect to:

a. Laws of the State Legislature on the subjects mentioned in para 3, 3A and 3B.

b. Laws of the State Legislature on the subjects other than those mentioned in para 3, 3A and 3B.

c. Laws of the State Legislature on the subjects other than those mentioned in para 8 and 10.

d. Laws of the State Legislature prohibiting or restricting the consumption of any non-distilled alcoholic liquor; and

e. Laws made by the Parliament.

Category of laws	**Assam (under para 12)**	**Meghalaya (under para 12A)**	**Tripura (under para 12AA)**	**Mizoram (under para 12B)**
a. Laws of the State Legislature on the subjects mentioned in para 3, 3A and 3B.	Not applicable unless District Council so directs with or without modification	State Legislation prevails and District Council laws to the extent of repugnancy are void	Not applicable unless District Council so directs with or without modification	Not applicable unless District Council so directs with or without modification
b. Laws of the State Legislature on the subjects mentioned in para 3, 3A and 3B	Governor may direct not to apply or may apply with or without modification	There is no special mention meaning thereby that the District Council laws shall prevail.	Governor may direct not to apply or may apply with or without modification	Governor may direct not to apply or may apply with or without modification
c. Laws of the State Legislature on the subjects mentioned in para 8 and 10.	There is no special mention meaning thereby that the District Council laws shall prevail.	State Legislation prevails and District Council Regulation to the extent of repugnancy are void.	There is no special mention meaning thereby that the District Council laws shall prevail.	There is no special mention meaning thereby that the District Council laws shall prevail.
d. Laws of the State Legislature prohibiting or restricting the consumption of any non-distilled alcoholic liquor; and	Not applicable unless District Council so directs with or without modification	There is no special mention meaning thereby that the District Council laws shall prevail	Not applicable unless District Council so directs with or without modification	Not applicable unless District Council so directs with or without modification
e. Laws made by the Parliament	Governor may direct not to apply or may apply with or without modification	President may direct not to apply or may apply with or without modification	President may direct not to apply or may apply with or without modification	President may direct not to apply or may apply with or without modification

6. The Commission was also informed that a comprehensive amendment of the Sixth Schedule was under process. On a query from the Secretary, NCST, the Deputy Secretary confirmed that as per the directive of the Cabinet Secretariat, the Commission would be consulted in the matter before its submission to the Cabinet. Regarding the information sought by the Commission, Deputy Secretary mentioned that the same was not available with the Ministry. It was decided in the meeting that the MTA may collect the ground position from all the Scheduled Areas States and furnish a report to the Commission on the following points.

(a) Enumeration and details of the instances in which the President's or Governor's powers have been exercised regarding applicability or adaptation of an Act of Parliament or State legislature as provided under para 12,12A, 12AA and 12B of the Sixth Schedule (after ascertaining the position in the matter from the Governor's Secretariat and Law Deptt. of the respective States).

The details should include the Title of the Act not applied/modified, date of relevant President's/Governor's notification and salient features thereof (along with copy of notification).

(b) Enumeration and details of the instances wherein the recommendations of the District or Regional Council relating to any laws proposed by them have not been accepted by the Governor under Paragraph 3(3) of the Sixth Schedule together with an objective assessment of the reasons therefor.

7. The Ministry of Home Affairs vide letter No. 11012/4/2112 dated 18/01/2012 requested the States of Assam, Meghalaya, Mizoram and Tripura for furnishing information w.r.t. above points. Replies received from the State Governments were forwarded to the National Commission for Scheduled Tribes. The information, as received from the above States has been separately consolidated and the same is placed at **ANNEXURE 1.XVIII** in this Report.

ANNEXURE 1.XVII
(Ref. para 1.49 of SR_Ch 1)

Regulations promulgated for Good Governance in Scheduled Areas-position submitted by the Fifth Schedule States

S.No.	State → / Provision in the Fifth Schedule ↓	A.P.	Chhattisgarh	Gujarat	H.P.	Jharkhand	M.P.	Maharashtra	Orissa	Rajasthan
(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)
1.	3. Report by the Governor to the President regarding the administration of Scheduled Areas.—	Reports submitted upto 2009-10	No information about last available report and the no. of reports submitted	No information about last available report and the no. of reports submitted	No information about last available report and the no. of reports submitted	No information about last available report and the no. of reports submitted	Reports submitted upto 2009-10	No information about last available report and the no. of reports submitted	No information about last available report and the no. of reports submitted	Annual Report submitted regularly. No information about last available report and the no. of reports submitted
2.	4. Establishment of Tribes Advisory Council	Initially constituted in 1958 under AP TAC Rules 1958. Last reconstituted in 2009.	The State was created in November 2000. Initially TAC was constituted on 25th Nov 2000 with 27 Members under the provision of TAC Rules 1957 (of erstwhile MP). Last reconstituted on 20th May 2009 with 20 Members.	Initiallyl constituted in 1960 under Gujarat TAC Rules 1960. Rules amended six times. Last amendment on 24/06/2008.	The State was given Statehood in 1971. First TAC was constituted in June 1978 under H. P. TAC Rules 1976 notified on 09/01/1976 with Total 12 Members. Rules amended 4 times. Last constituted on 26 Nov. 2010 with 16 Members	The State was created in Nov. 2000. First TAC was constituted with 30 Members vide notification dated 16/06/2001. Last reconstituted with 21 Members on 29/03/2011	Initially constituted in 1958 under under MP Adimjati Mantrana Parishad Niyamawali, 1957. Last reorganized on 18/02/2009	Constituted As per Maharashtra Tribes Advisory Council Rules 1960. Last reconstituted on 08/09/2011.	Initially constituted under Orissa T.A.C. Rules, 1950. Last reconstituted on 10/11/2009	Initially constituted as per the Rajasthan TAC Rules, 1952, repealed by the Rajasthan TAC Rules 1980 Notified on 24th Sep. 1981. Last reconstituted on 27th Aug. 2010. TAC to meet once in a quarter. 31 meetings held from 16th Mar 1982 to 21/07/2011

3.	4 (2) Duty of the TAC to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor	Agenda for the meeting prepared by TW Department. No information about issues referred by Governor.				Agenda for the meeting prepared by TW Department. For the first time Agenda for meeting on 30/01/2012 sent by Governor's Sectt.		Agenda for the meeting prepared by TW Department. No information about issues referred by Governor.		Agenda for the meeting prepared by TW Department. No information about issues referred by Governor.
4.	(3) The Governor may make rules prescribing or regulating, as the case may be,—									
4(a)	(a) appointment of the Chairman of the Council and of the officers and servants thereof;	Minister for TW Ex-Officio Chairman and Commissioner of TW is the Secretary. years.	Chief Minister is Ex-Officio Chairman, Minister of TW is Deputy Chairman & Principal Secretary, TW is the Secretary of TAC.	Chief Minister is Ex-Officio Chairman, Minister/ Dy. Minister of TW is Vice Chairman & State Minister/ Dy. Minister of TW is Co-Vice - Chairman Chief Secretary, is also Member.	Chief Minister is Ex-Officio Chairman, & Minister of TW is Member.	Chief Minister is Ex-Officio Chairman, Minister of TW is Vice-Chairman and Secretary, TW is the Secretary of TAC.	Chief Minister is Ex-Officio Chairman, Minister for TW is Vice-Chairman and Secretary, TWD is the Secretary of the TAC.	Chief Minister Ex-Officio Chairman, Minister for TW is Vice-Chairman & Principal Secy. TWD is Secretary of TAC.	Chief Minister Ex-Officio Chairman, Minister for TW is Vice-Chairman of the TAC.	Minister for Tribal Development Ex-Officio Chairman, and Commissioner TAD is the Secretary of TAC.
4(b)	(*b*) the conduct of its meetings and its procedure in general; and	. Not less than 2 meetings in a year. 105 meetings held upto 2011.		21 Meetings held from 07/05/1991 to 01/06/2011	41 Meetings held till 24th March, 2011	10 meetings upto 16/06/2011. 11th meeting scheduled on 30/01/2012.	One meeting in every six months. 31 meetings held from 09/07/1982 to 20/07/2011. Information not available about meetings held prior to 09/07/1982.	47 meetings held upto 2011-12.	Details of meetings of TAC held so far, not furnished.	

							Rules provide for including such matters on the Agenda which are referred by the Governor.			
4(c)	(*c*) all other incidental matters		Amendment in Chhattis-garh Civil Services (General Conditions of Service) Rules 1961 providing that "only local residents of the district falling under Bastar and Sarguja Division, shall be eligible for recruitment to the vacancies arising in Class – III and Class – IV posts of the districts cadre in various departments of the concerned district, for a period of two years from	(i) Gujarat Panchayats (Amendment) Act 1998 to amend Gujarat Panchayats Act 1993, (ii) Bombay Land Revenue (Gujarat 2nd Amendment) Act 1980 (iii) Notifi-cation dated 23/11/2001 to further amend Gujarat Panchayats Act 1993 (iv) Gujarat Minor Mineral Concession Rules 2010 for regulating grant of mining lease in respect of minor minerals under Mines and Minerals (Development and	H. P. Transfer of Land (Regulation) Act, 1968 H. P. Transfer of Land (Regulation) Rules, 1969		<u>Laws applicable to Scheduled Areas</u> : (i)MP Land Revenue Code 1959 and (ii) MP Anusuchit Janjati Sahukar Viniyam, 1972 <u>Laws in consonance with PESA Act</u>: (i) MP Excise (Amendment) Act 1997, (ii) MP Panchayati Raj (2nd Amendment) Act 1997 & 1999 (iii) MP Money Lenders (Amendment) Act 2000 (iv) MP Land Revenue Code		Laws/ Regulations framed for Scheduled Areas : Orissa Gram Panchayat Act, 1964, Orissa Money Lenders Regulation 1967 (amended in 1976 & 2001) Orissa (Sch. Areas) Debt Relief Regulation 1967 Orissa Sch. Areas Exercise of Criminal Powers Validation Regulation 1963 Orissa Sch. Areas Transfer of Immovable Property (by STs) Regulation	Notification dated 12/09/2007 provide for reservation of 45 % for STs and 5% for SCs in posts under Government Services other than State Service Cadre, in the Scheduled Areas of the State, as against 12% for STs and 16% for SCs in other Areas

			the date of issue of this Notification."	Regulation) Act, 1957					1956 Amendment to Panchayat Samiti Act (for extension to Sch. Areas) 1996	

ANNEXURE 1.XVIII
(Ref. para 1.49 of SR_ Ch 1)

Regulations promulgated for Good Governance in Scheduled Areas-position submitted by the Sixth Schedule States

S.No.	State	Provision	Status
	Assam	12(*a*) no Act of the Legislature of the State of Assam in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Assam prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;	
	Assam	12(*b*) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State of Assam to which the provisions of clause (*a*) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.	(As per Legislative Department, Government of Assam) There is no such record of any measure taken by the Governor of Assam under Para – 12 of the Sixth Schedule of the Constitution regarding applicability and non-applicability of an Act of Parliament or the State Legislature in the Autonomous Region of the State of Assam i. e. Bodoland Territorial Area Districts of Assam. The Governor Secretariat of the State is yet to furnish their comments. The same will be intimated as and when received.
	Meghalaya	12A(*a*) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before	All Acts of Parliament after independence apply to the whole of India including Autonomous Districts unless the Act of Parliament specifically excludes Autonomous District Councils or other areas, for example, Section 2(2) of the Gram Nyayalayas Act, 2008, proviso to sub-section (2) of Section 1 of CrPC, 1972 except chapter VIII, X and XI, Articles 243ZC of the Constitution of India, Section 10(26) of Income Tax Act [1976 AIR (SC) 670] specify the laws that does not apply to the scheduled areas. Various sections of the Administration of Justice in Meghalaya provide that only the spirit of CrPC and CPC

		or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;	are applicable in the tribal areas and not in letter. The Law of Limitation does not apply to disputes between tribals. Law of Easement does not apply to the Atutonomous Districts.
	Meghalaya	12A(*b*) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.	Various Acts, Rules and Regulations have been passed by the three Autonomous District Councils in Meghalaya and received the approval of the Governor, the list of which are sent herewith as **Annexure**. The Bill passed by the District Council but not approved due to various legal issues and legislative incompetency of the District Council is the Khasi Hills Autonomous District (Allotment Occupation or Use or Setting Apart of Land) Regulation Bill, 2005. Till date no law of the District Council has been in conflict with the law made by the State Legislature.
	Mizoram	12B(*a*) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;	As Mizoram was initially created as a Union Territory by Carving the Areas from then State of Assam, by various Adaptation Orders, the then existing Central Laws and State Laws of Assam continued to apply to the whole of the Union Territory of Mizoram including the District Council/Tribal Areas in Mizoram. No separate notification or notifications appears/appear to have been issued under Paragraph 12B the Sixth Schedule to the Constitution. Mizoram became a State with effect from 20/02/1987. Section 43 of the State of Mizoram Act, 1986 provides for continuation of all existing laws including the Central laws to the whole State of Mizoram, subject to the exceptions/modifications as may be provided for in the Adaptation Orders. Accordingly, the Central and the U.T. laws as existing on 20th February, 1987 continued to apply to the autonomous districts of Lai (previously, Pawi), Mara (previously, Lakher) and Chakma in the State of Mizoram by virtue of this legal fiction,
		12B(*b*) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have	There has been no instances in which the President's or the Governor's powers have been exercised under Paragraph 12B regarding applicability or adaptationo of an Act of Parliament or State Legislature. Similarly, there has been no instances wherein the recommendations of the District or Regional Council relating to any

		retrospective effect.	laws proposed by them but not accepted by the Governor under Paragraph 3(3)
	Tripura	12AA(*a*) no Act of the Legislature of the State of Tripura in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Tripura prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless, in either case the, District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall, in its application to that district or such region or any part thereof have effect subject to such exceptions or modifications as it thinks fit; g	
		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 sub-paragraph do not apply, shall not apply to the autonomous district or any 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;	Records so far available in the Law Department do not reveal any instance in which Governor's powers have been exercised regarding applicability or adaptation of an Act of State Legislature as provided under para 12, 12A 12AA and 12B of the Sixth Schedule nor any instance wherein the recommendations of the District or Regional Council relating to any laws proposed by them have not been accepted by the Governor under Paragraph 3(3) of the Sixth Schedule.
		12AA(*c*) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to the autonomous district or an autonomous region in the State of Tripura, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.	

ANNEXURE 1.XIX

(Ref. para 1.50 of SR_ Ch 1)

National Commission for Scheduled Tribes

Sub: Summary Record of the meeting held on 11/01/2012 with the MHA, MTA and the Secretaries in charge of Tribal Development/Welfare in the States having Scheduled Areas to discuss the status of implementation of the provisions under Fifth and Sixth Schedule to the Constitution for adaption of laws applicable to Scheduled Areas/Tribes

The meeting, presided by Shri Raghuvendra Singh Sirohi, Secretary, National Commission for Scheduled Tribes (NCST), was held in the Conference Hall of the Enforcement Directorate at Sixth Floor. A list of the participants is enclosed. The State of Tripura was not represented.

2. Secretary, NCST extended a warm welcome to the officials who had come to attend the meeting. He mentioned that the NCST is a Constitutional Body which, under Article 338A(5)(d) of the Constitution, is required to report to the Parliament through President upon the working of the safeguards provided for the Scheduled Tribes. Secretary, NCST referred to the recently introduced legislation, viz., Land Acquisition and Resettlement & Rehabilitation Bill, 2010, MMDR Bill 2011and the National Food Security Bill 2011 and emphasised that these Bills were of major concern for the tribals. The recommendations of the Commission in respect of these Bills could be seen on the website of the Commission. As a part of its constitutional role of an advisor to the Govt., the NCST has been attempting to ensure greater sensitivity and responsiveness to the tribal concerns while examining policy and such legislations, but with limited results.

3. Coincidently, in 2009, a Standing Committee on Inter-sectoral issues in its 3rd Report on "Standards of Administration and Governance in Scheduled Areas" had lamented that, while special provisions in Schedule V to the Constitution envisage that all Central and State Legislations would be fine-tuned by the Governor in accordance with the requirements of the tribals in the Scheduled Areas, these provisions had largely remained a dead letter during the last sixty years of the Republic. The Commission has, therefore, resolved to prepare a Special Report on good governance in Scheduled Areas/Tribal Areas, which would aim to shed light on the actual working of the Constitutional safeguards in Schedule V and Schedule VI respectively. He mentioned that the Commission is endeavouring to provide a documentation of experience across the country, an analysis of which will form the basis for expedient recommendations by the Commission in the Special Report.

4. Secretary, NCST emphasised that separate laws /systems for Tribal Areas had a long history, in India beginning with the provision in the Scheduled Areas Act, 1874, to extend general laws with modification to Scheduled Districts. The Government of India Act, 1919 divided Scheduled Districts into "Excluded Areas" and "Partially Excluded

Areas". Subsequently, the GoI Act, 1935 empowered Governors to make regulations with the approval of the Governor General. This arrangement has been incorporated as Schedule V and Schedule VI to the Constitution for specific adaption of general loss to Scheduled Area/Tribes; but its effectiveness appears to have paled since judging from the infrequent resort to the relevant provisions despite a plethora of Central/State Legislation impacting Scheduled Areas/Tribes. To this end, the Commission had sought information on three issues viz:

a. The instances in which Central/State legislation(s) had been adapted in its application to Scheduled Areas/Tribal Areas,

b. Regulations promulgated for peace and good governance in different States, which have the force of law; and

c. Experience of the functioning of advisory mechanisms (Tribal Advisory Council)

5. Secretary, NCST mentioned that the responses received from the State Govts. In the matter had revealed that the State Govts. were experiencing some difficulties in appreciating the requirements conveyed by the Commission vide NCST letter dated 23-11-2011 and 30-12-2011. Secretary hoped that the deliberations in the meeting would result in achieving greater enrichment of minds all around with full understanding of the requirements of the Commission and also lead to emergence of ideas for the way forward.

6. Thereafter, Joint Secretary, NCST made a presentation which was followed by the presentations by the representatives from the Ministry of Tribal Affairs, the Ministry of Home Affairs, and the representatives from the States. The important features of the presentations were as under:

National Commission for Scheduled Tribes

7. Joint Secretary, NCST highlighted the provisions under Schedule V and Schedule VI to the Constitution regarding the role of the Governors and the President in adoption of a particular Act of Parliament or the State Legislature to the Scheduled Areas. Joint Secretary, further mentioned that the Special Report, being prepared by the Commission will include a State-wise analysis of the measures taken for good governance in Scheduled Areas, and instances regarding applicability or modification of an Act of Parliament or the State Legislature, as provided under Para 5 of the Fifth Schedule and under Para 12, 12A, 12AA and 12B of the Sixth Schedule in order to test the efficacy of Constitutional arrangements for adaption of general laws in tune with the requirements of Scheduled Areas/Scheduled Tribes. The Report will also include the nature and type of issues discussed and recommended by the Tribes Advisory Councils to assess effectiveness of this important institutional mechanism for Scheduled Areas.

Ministry of Tribal Affairs

8. Joint Secretary, MTA mentioned that use of any of the discretionary powers of the Governor under the provisions in Schedule V and VI had not been reported. TACs have been constituted and their meetings are being held in the States having Scheduled Areas and two other States namely, Tamil Nadu and West Bengal. As per the records

available in the Ministry, during the year 2011, meetings of TACs were held in the States of Chhattisgarh (26/09/2011), Jharkhand (19/04/2011 and 16/06/2011), Madhya Pradesh (20/07/2011), Maharashtra (25/10/2011), Orissa (13/05/2011) and Rajasthan (21/07/2011). The details of the meetings of the TACs convened in the year relating to other States were not available with the MTA.

9. Joint Secretary, MTA further informed that the prescribed format of the Governor's Report was under revision. The Governor's Reports for the year 2010-11 were awaited from the States of Andhra Pradesh, Chhattisgarh, Gujarat, Maharashtra, Orissa and Rajasthan. Jharkhand has not submitted Governor's Report since 2006-07 onwards. Joint Secretary, MTA also informed that the MTA had also asked the State Govts. having Scheduled Areas to set up a Cell in the office of the Governor to oversee the Constitutional responsibilities relating to Scheduled Areas and Scheduled Tribes. The Ministry of Panchayati Raj was also considering modalities to extend the provisions of the PESA to the Sixth Schedule Areas.

Ministry of Home Affairs

10 Deputy Secretary (NE), MHA informed that a comprehensive amendment of the Sixth Schedule was under process. On a query from the Secretary, NCST, the Deputy Secretary confirmed that as per the directive of the Cabinet Secretariat, the Commission would be consulted in the matter before its submission to the Cabinet. Regarding the information sought by the Commission, Deputy Secretary mentioned that the same was not available with the Ministry.

Andhra Pradesh

11 Additional Director, Tribal Welfare Department informed that the Land Transfer Regulations relating to Scheduled Areas in the State prohibit transfer of land not only from STs to non-STs but also from non-STs to non-STs without permission of the Government. There is also a regulation, with the approval of the Governor, for provision of reservation for local STs in recruitment in the Scheduled Areas. However, the Govt. Order on the subject has been challenged in the Court and is now pending in the Apex Court. The Mid-Day-Meal Scheme to children, which is meant for the Govt. Schools, by the order of the Governor, has been extended to all schools, run by Govt. or NGOs in the Scheduled Areas so that all children in the Scheduled Areas are benefited. He further informed that the first AP Tribes Advisory Council was constituted during 1958 and it was last reconstituted during 2009. The TAC consists of 20 members, of whom not less than 15 shall be representatives of the STs in the AP Legislative Assembly. The Minister for Tribal Welfare is the ex-officio Chairman of the Council. The decisions and opinion of the Council on matters referred to them by the Governor are treated as recommendations. So far, 105 Meetings of the TAC have been held.

Chhattisgarh

12 The Deputy Secretary, Tribal Welfare Department informed that the TAC was constituted, soon after constitution of the State in November, 2000. There were 30 members of TAC. The last TAC was constituted in 2009 with 20 members only. All these members belong to Scheduled Tribes. He further informed that there was a

special provision for reservation for local STs in recruitment to local services in Scheduled Areas (9 Districts).

Gujarat

13 Joint Secretary, Tribal Development Department informed that whole of the Dang District in the State is included as Scheduled Area in the State. There are special regulations relating to Dang District concerning STs details of which would be furnished separately. The TAC was constituted soon after creation of the State and its 38 meetings had been held so far (last meeting held on 1 June, 2011). The Chief Minister of the State is the ex-officio chairman of the TAC. He also informed that 62 rights of the ST Communities had been codified.

14 Joint Secretary further informed that the State Govt. had also forwarded copies of the Gujrat Panchayats (Amendment) Act, 1998 and Bombay Land Revenue (Gujarat Second Amendment Act) Act 1998 regarding non-transfer of land of STs to the Commission vide letter dated 22/12/2011.

Himachal Pradesh

15 The Principal Secretary, Tribal Development mentioned that about 60% of the tribal population i.e. 2,14,977 out of total 3,56,777 in the State resides in non-tribal areas of the State, mainly Gaddis and Gujjars. For the welfare of these communities, Gaddi Kalyan Board and Gujjar Kalyan Board have been constituted. The Tribes Advisory Council has been constituted in the State. The TAC consists of 20 members including the Chairman (Chief Minister). The last meeting of the TAC (41st) was held on 24.03.2011. He mentioned that most of the issues discussed in the TAC were relating to the infrastructure development For effective governance and speedy implementation of the developmental works Single, Line Administration is in operation since 1988.The HP Transfer of Land(Regulation) Act, 1968 and HP Transfer of Land(Regulation) Rules 1969 are under implementation in Scheduled Areas of the State which lay down complete ban on the transfer of land by Scheduled Tribes in favour of non-tribals except with the prior permission of the State Govt.

Jharkhand

16 The Secretary, Welfare Department mentioned that 10 meetings of the TAC had been held so far and the next meeting was scheduled on 30/01/2012. He mentioned that the Agenda for the TAC meeting is prepared by the Welfare Department and approved by the Chief Minister and the Governor's Secretariat was not involved in finalizing the Agenda. Consequently, the Governors Secretariat is not in a position to comprehend the issues from the records of the TAC meetings and therefore, last five reports on administration of Scheduled Areas have remained pending. He further mentioned that the format prescribed by the Ministry of Tribal Affairs needed restructuring to include information about issues relating to TSP.

Madhya Pradesh

17 The Commissioner, Tribal Development mentioned that policy related issues and local development related issues constituted about 5% and 80% respectively of the

Agenda issues of the TAC. The Chief Minister of the State is the Chairman of the TAC and Minister-in-charge of the Tribal Welfare Department is the Vice Chairman. The meetings of the Tribal Advisory Council after the last re-organization, were held on 23.7.2009, 12.3.2010; 29.7.2010 and 20.7.2011. The decisions of TAC being recommendatory in nature may not be accepted by the Cabinet.

Maharastra

18 The Principal Secretary, Tribal Development Department, mentioned that since 1968, 47 meetings of the TAC were held. The Agenda for the TAC is prepared by the Tribal Welfare Department. There has not been any case regarding use of discretionary powers by the Governor under Schedule V. The State Government has also formulated regulations pertaining to land transfer and reservation for local STs in recruitment at local level in the Scheduled Areas.

Orissa

19 The Secretary, ST and SC Development Deptt. mentioned that the State Govt. had formulated regulations pertaining to land transfer, recruitment at local level in the Scheduled Areas. The rules of business have also been formulated for TAC. The focus of TAC has been on education, reservation in appointment, flow to TSP, Forest Rights Act, inclusion/exclusion in ST categories.

Rajasthan

20 The Principal Secretary, Tribal Area Development informed that the Tribes Advisory Council Rules, 1980 were notified in September,1981. He mentioned that the Minister, TAD is the Chairman of the Council, while the State Minister/Dy. Minister, T.A.D is the Vice-Chairman. The Council has 18 members including 14 ST MLAs nominated by the State Government, 1 non-official member, and 3 officially nominated members. During the last 5 years, eleven meetings of the Council had been held. He further informed that Govt. of Rajasthan through Notification dated 12.9.07 had provided reservation of 45% seats to the local STs for direct recruitment vacancies in the Scheduled Areas (excluding State Service Post).

Assam

21 The Principal Secretary, Department of Hill Areas informed that as informed by the Legislative Deptt. of the State, there was no record of any measure taken by the Governor of Assam under Para-12 of the Sixth Schedule to the Constitution regarding applicability and non-applicability of an Act of Parliament or the State Legislature in the Autonomous Region of the State of Assam i.e. Bodoland Territorial Area, Districts of Assam. The Governor Secretariat of the State has not furnished their comments. He also mentioned that the District Council had recommended application of the PESA Act, but the proposal was awaiting approval of the Central Govt.

Meghalaya

22 The Secretary, DCA Department informed that the State is covered by the 3(three) Autonomous District Councils, viz, the Khasi Hills Autonomous District Council,

the Jaintia Hills Autonomous District Council and, the Garo Hills Autonomous District Council. He further mentioned that assent of the Governor on a legislation, passed by the Assembly, was mandatory before these had the force of law. Further, rules made by the District Council have to be approved by the Governor. The Governor also has the powers to annul or suspend any act or resolution and can assume to himself all or any of the functions or powers vested in or exercisable by the District Council, power to extend the term of a District Council.

Mizoram

23 The Resident Commissioner mentioned that the State Govt. had submitted the information vide letter dated 06/01/2012. He mentioned that that the State Govt. didn't had much records of the action taken in the matter. The District Council and the erstwhile Regional Council also appear to have not maintained complete records relating to the action taken in pursuance of para 12 (original) or para 12B, as the case may be, of the Sixth Schedule. The information furnished vide letter 06/01/2012 had been retrieved from the old records and notes maintained in the Law & Judicial Deptt.

24 During discussion on various presentations, Secretary, NCST noted that possibly because of infrequent resort to the Constitutional scheme, the State Govts. had not submitted/presented the requisite information/details, as requested vide NCST letter dated 23-11-2011 and 30-12-2011. The factual position in the matter was also not pre-confirmed from the Governor's Secretariat and the Law Deptt. by most of the States, which was necessary for the purpose of ensuring reliability of the information being furnished in the Commission's Report to the President. It was also revealed from the discussion that the Regulations, promulgated by Governors of the States, had been mainly restricted to land transfer alienation, restrictions on money landing and reservation of local STs in recruitment at local level etc. The details of specific regulations for peace and good governance and important areas like social rights, cultural rights etc. had not been furnished. Regarding the functioning of the TAC, it emerged that, in general its meetings were an annual/ bi-annual features; the nature of issues largely pertained to local development related matters, reservation of local STs in recruitment at local level and general issues. He desired that the MHA, MTA and the State Governmwnts should forward information as under, at the earliest, **no later than 27-01-2012**:

[A] **Ministry of Home Affairs**

a. Enumeration and details of the instances in which the President's or Governor's powers have been exercised regarding applicability or adaptation of an Act of Parliament or State legislature as provided under para 12,12A, 12AA and 12B of the Sixth Schedule (after ascertaining the position in the matter from the Governor's Secretariat and Law Deptt. of the respective States).

   The details should include the Title of the Act not applied/modified, date of relevant President's/Governor's notification and salient features thereof (along with copy of notification).

b Enumeration and details of the instances wherein the recommendations of the District or Regional Council relating to any laws proposed by them have not been accepted by the Governor under Paragraph 3(3) of the Sixth Schedule together with an objective assessment of the reasons therefor.

[B] **Ministry of Tribal Affairs**

a. Enumeration and details of the instances in which President's powers have been exercised to issue directions to the States under paragraph 2 of the Fifth Schedule.

b Enumeration and details of the Regulations assented/refused assent by the President under paragraph 5(4) of the Fifth Schedule. The details should include name of the Regulation, date of notification, and salient features (along with copy thereof).

c An objective assessment of the adequacy of reasons in respect of the cases included in (b) above.

[C] **Schedule V States**

a. Enumeration and details of the instances, when the President of India or Governor of the State had invoked the powers specified in paragraph 5(1) of the Fifth Schedule regarding applicability or adaptation of Central/State legislation.

Note: (i)The details should include name of the Act, date of notification issued by the Governor ,and salient features (along with copy thereof).

(ii) The details should be submitted after ascertaining the position in the matter from the Governor's Secretariat and Law Deptt. also.

b. Enumeration and details of the Regulations (which have force of law) promulgated for peace and good governance, under paragraph 5(2) of the Fifth Schedule.

c. An objective assessment of the adequacy of the regulations promulgated by the Governor in relation to the spirit of the relevant provisions of the Fifth Schedule and suggested areas for new regulations.

d. Details regarding the functioning of the Tribes Advisory Council, including:

(i) Date of initial constitution of the Tribes Advisory Council after delineation of Scheduled Areas in the State and its composition.

(ii) Date when the Tribes Advisory Council was last re-constituted, the composition of the present Tribes Advisory Council and the Rules prescribed for the functioning of the Council under paragraph 4(3) of the Fifth Schedule.

(iii) Dates of the Tribes Advisory Council's meetings held so far, list of Agenda Items discussed in each meeting and proceedings of each meeting.

e. An objective assessment of the Rules prescribed for the conduct of meeting, the type of issues included in the agenda and the nature of the , recommendations of the TAC and its effectiveness in addressing concerns pertaining to the welfare and advancement of Scheduled Tribes.

[D] **Schedule VI States**

a. Enumeration and details of the instances in which the President's or Governor's powers have been exercised regarding applicability or adaptation of an Act of Parliament or State legislation as provided under para 12,12A, 12AA and 12B of the Sixth Schedule (after re-confirming facts in the matter from the Governor's Secretariat/Law Deptt. of the respective States).

The details should include the title of the Act not applied/modified, date of relevant President's/Governor's notification and salient features thereof (along with copy of notification).

b Enumeration and details of the instances wherein the recommendations of the District or Regional Council relating to any laws proposed by them have not been accepted by the Governor under Paragraph 3(3) of the Sixth Schedule together with an objective assessment of the reasons therefor.

ANNEXURE 2.I
(Ref. Para 2.95__SR Ch 2)

Ministry/ Schemes-wise Proposed Earmarking of Plan Outlays under TSP for 2011-12		
S.No	**Ministries/ Department**	**Earmarking of Funds under TSP Recommend-ed for the Ministry (In %)**
1	**2**	**3**
Category I	**Ministries/ Departments with no obligation for Earning Funds under TSP**	0.0
Category II	**Ministries/ Departments required to do partial Earning (less than 7.5% of their Plan Outlays)**	
1	Department of Telecommunications	0.25
2	Ministry of Textiles	1.20
3	Ministry of Water Resources	1.30
4	Department of Food and public Distribution	1.40
5	Ministry of Culture	2.00
6	Department of AYUSH	2.00
7	Ministry of HUPA	2.40
8	Ministry of Tourism	2.50
9	Department of Science & Technology	2.50
10	Ministry of Road Transport & Highways	3.50
11	Department of Agriculture Research & Education	3.60
12	Ministry of Mines	4.00
13	Department of Information Technology	6.70
Category III	**Ministries/ Departments which will be required to Earmark between 7.5 to 8.2% of their Plan Outlays**	
1	Department of Higher Education	7.50
2	Department of Agriculture & Cooperation	8.00
3	Ministry of MSME	8.20
4	Ministry of Coal	8.20
5	Department of Youth Affairs	8.20
6	Ministry of Labor and Employment	8.20
7	Ministry of Panchayati Raj	8.20
8	Department of Sports	8.20
9	Ministry of Women & Child Development	8.20
10	Department of Health & family welfare	8.20
Category IV	**Ministries/ Departments which will be required to Earmark more than 8.2% of their Plan Outlays under TSP**	
1	Department of Land Resources	10.00
2	Department of Drinking water and Sanitation	10.00
3	Department of School Education & Literacy	10.70
4	Department of Rural Development	17.50
5	Ministry of Tribal Affairs	100.00
	Applying these percentages to respective Ministries/ Departments' BE- 2010-11, the average BE in percentage terms expected to be earmarked under TSP	8.26#
# Exclusive of SCA to TSP and Grants under Proviso to Article 275(1) of the constitution, as the outlays under these Heads are shown in Statement 16 of Expenditure Budget (Volume I), which provides Central Assistance to State Plans. Including SCA to TSP (Rs 960 crore), this figures increases to 8.6%		

डा. रामेश्वर उराँव
अध्यक्ष
(भूतपूर्व सांसद–लोकसभा)
(पूर्व जनजातीय कार्य राज्यमन्त्री)
Dr. RAMESHWAR ORAON
Chairman
(Ex Member Parliament-LS)
(Former Minister of State for Tribal Affairs)

सत्यमेव जयते

भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
छठी मंजिल, लोकनायक भवन,
खान मार्किट, नई दिल्ली-110003
Government of India
National Commission for Scheduled Tribes
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Tel. : 011-24635721
Telefax : 011-24624628

DO No.NCST/2008/REHAB/01

Dated the .17..th October, 2011

Respected Pradhan Mantri ji,

I seek to bring to your august attention a grave transgression of Constitutional safeguards affecting Scheduled Tribes, which requires your personal intervention for its rectification.

2. As you are aware, the Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, any law for the time being in force and under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution further provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes". Under Clause 5(d) of the Article the Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

3. For sometime the Commission has been rather perturbed by the cavalier disregard exhibited by some Ministries in respect of meaningful consultation with the Commission, while drafting legislation affecting the land rights of tribals, etc. which are specifically protected under the Constitution; and the issue was commented upon at length in the Annual Reports of the Commission for the years 2008-09 and 2009-10, which unfortunately have still to be placed in Parliament. The matter was also specifically brought to your kind attention after submitting these reports to the President (D.O. letters No 4/5/2010-Coord dated 9th September, 2010 and No 4/2/11/11-Coord dated 20th July, 2011 refer). However, we are not aware whether any action has subsequently been taken by the Cabinet Secretariat, or the Ministry of Law, in respect of the Commission's recommendations to ensure consultation with the Commission's during processing of legislative proposals before they are considered by the Council of Ministers.

4, Recently, the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been introduced in the Lok Sabha on 7th September, 2011 while the Mines and Minerals (Development and Regulation) Bill, 2011 has been approved by the Cabinet on 30th September, 2011 for introduction in the ensuing session of the Parliament. Though both these Bills are important legislative proposals vitally affecting the Scheduled tribes and their land rights, the concerned Ministries viz. Ministry of Rural Development (MoRD) and Ministry of Mines, have processed these Bills wilfully ignoring this Commission and the Constitutional

Residence : 103, New Moti Bagh Complex, New Delhi - 110023

obligation under Article 338A. Not only this, these Ministries repeatedly disregarded the Commission's exhortations that, for meaningful consultation as envisaged under Article 338 A(9) of the Constitution, the draft Bills finalized by the Ministry should be referred to the Commission for advice before submission to the Cabinet - impudently suggesting that the Commission may proffer its views on the draft hosted for public comment on their websites; which demonstrates the scant regard in which they hold Constitutional bodies, as well as also the spirit underlying the important constitutional safeguards for Scheduled Tribes. I enclose 2 notices issued by the Commission to the Secretaries of these Ministries (Annexure-I/II) which are self explanatory. I may add that the Ministry of Law have also opined that Ministries are obligated by the Constitution to consult the Commission on the provision of the draft bill affecting Scheduled Tribes (Annexure-III). The Law Secretary has also written to the Cabinet Secretary requesting him to advise all Ministries/Departments to follow strictly the provision contained in the said Article (Annexure-IV).

5. In view of the position explained above, the Commission is of the view that the concerned Ministries viz. Ministry of Rural Development (MoRD) and Ministry of Mines and their senior officials should be counselled suitably to adopt a more sensitive approach towards the problems of Scheduled Tribes/Scheduled Areas and respect for relevant Constitutional safeguards. The Commission also recommends that the Cabinet Secretariat and the Ministry of Law and Legal Affairs should be tasked with the responsibility of ensuring consultation with the National Commission for Scheduled Tribes before such proposals affecting Scheduled Tribes are placed for consideration before the Council of Ministers; and the Cabined Secretariat may issue appropriate instructions in this regard under the Rules of Business of the Government.

6. Notwithstanding this, the Commission has finalized detailed comments/views of the Commission on the Land Acquisition, Rehabilitation & Resettlement Bill, which has became available to the Commission only after its introduction in Lok Sabha (Annexure-V). I would request you to have the views of the Commission considered by the Government even while the matter is engaging the attention of the Standing Committee of the Parliament.

With esteemed regards,

Yours Sincerely,

Rameshwar Oraon

(Dr. Rameshwar Oraon)

Dr. Manmohan Singh,
Hon'ble Prime Minister of India,
South Block,
New Delhi- 110001.

Encl:

Annexure-I/II	:	Notices issued by the Commission to the Secretary, Ministry of Rural Development and Ministry of Mines
Annexure-III	:	Ministry of Law and Justice, Deptt. of Legal Affairs letter No. FTS/LS/11 dated 22/09/2011
Annexure-IV	:	Ministry of Law & Justice Letter dated 26/10/2007
Annexure-V		Comments/views of National Commission for Scheduled Tribes on the draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011

ANNEXURE 3.II

(Ref. para 3.13.3 of NCST_CH3)

(Total 4 Pages)

NOTICE BY FAX/ SPEED POST

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

No.12/2/2009-Coord

Date: 13th October, 2011

To

Shri S. Vijay Kumar,
Secretary,
Ministry of Mines, Room No. 320,'A' Wing,
Shastri Bhavan,
New Delhi

Sub: **Mandatory consultation with the National Commission for Scheduled Tribes under . Clause (9) of Article 338A by Ministry of Mines with reference to Mines and Mineral (Development & Regulation) Bill 2010**

Sir,

The Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, and any law for the time being in force and under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution further provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes". Under Clause 5(d) of the Article the Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

2. It was understood from news reports that the Government was contemplating the new Mines and Minerals (Development & Regulation) Bill, 2010. As mining affects tribals in a large measure, particularly their livelihood, settlements, environment and culture, the Commission was anxious that certain important concerns need to be adequately addressed in the Bill, and requested the Ministry of Mines, on several occasions, to submit the Draft MMDR Bill, as finalized, for obtaining the views/comments of the Commission under Article 338A(9) of the Constitution, as detailed below:

Reference No./Date	Contents in brief
NCST Letter 12/2/2009-Coord dt. 21/05/2010	Secretary, Mines apprised of the mandatory consultation on all major policy matters affecting Scheduled Tribes under Clause 9 of Article 338A and requested to forward the draft regulation as soon it is finalized.

MTA letter 20025/19/2009-P&M dt.02/06/2010	As a follow up to National Commission for Scheduled Tribes letter dated 21/05/2011, Ministry of Tribal Affairs requested the Ministry of Mines to send the draft legislation, as and when finalized, to the Commission.
Min. of Mines 16/83/2009-M-VI(Pt.-IX) dt. 08/06/2010	Ministry of Mines communicated that new Draft MMDR Act has not been finalized, also informing that the latest version of the draft MMDR Act had been uploaded on 3rd June, 2010 on website of the Ministry of Mines.
NCST Letter 12/2/2009-Coord dt.28/06/2010	Secretary, Ministry of Mines again requested (with reference to their letter dated 08/06/2010) to forward the new Draft MMDR Act, as soon as it is finalized for comments/views of the Commission.
NCST /2008/ REHAB/01 dt. 06/08/2010	Minister of Mines apprised of mandatory consultation with the Commission under Clause 9 of Article 338A of the Constitution and the Commission's concern in critical areas which require urgent attention.
NCST Letter 12/2/2009-Coord dt. 25/08/2010	Minister of Mines requested to forward the final version of the Draft MMDR Act for the views of the Commission as required under Article 338A of the Constitution at an early date.
NCST Letter 12/2/2009-Coord dt 11/10/2010	Minister of Mines apprised of Commission's concern on certain important issues affecting Scheduled Tribes.
NCST Letter 12/2/2009-Coord dt.13/07/2011	Minister of Mines was informed that no response from the Ministry of Mines had been received in response to D.O. letter dated 11/10/2010 with the request to have views of the Commission considered by the Council of Ministers.
Minutes of the Meeting on held on 25/07/2011,circulated vide NCST Letter 12/2/2009-Coord dt.27/07/2011	Meeting taken by the Hon'ble Chairperson with the Secretary, Ministry of Mines. From the position submitted by the Ministry of Mines in the meeting, the Commission observed that its recommendations being important, required consideration of the Government; and in case it was not found to be feasible to incorporate Commission's recommendations for general adoption, these may be incorporated as special provisions, applicable to the Vth Scheduled Areas. The Commission also observed that since the draft MMDR Bill, as finalized and being processed had not been referred for comments by the Ministry of Mines, the Commission was not in a position to date, to discharge its mandated function. Representative of the Ministry of Mines stated that the draft MMDR Bill was formulated in terms of the National Mineral Policy, 2008, which had been approved by the Government in March, 2008. Further, since the present proposal pertained to legislation and not policy matter, the draft MMDR Bill was not referred to National Commission for Scheduled Tribes.

NCST Letter 12/2/2009-Coord dt 27/07/2011	Secretary, Ministry of Mines requested to forward the Draft MMDR Bill 2010, as finalized by the Group of Ministers for Commission's views/suggestions to enable the Commission discharge its mandate in the spirit of the Constitution.
NCST Letter 12/2/2009-Coord dt 10/08/2011	Secretary Ministry of Mines was informed that the Commission was not agreeable to the contention of the Secretary, Ministry of Mines that legislation was not a policy matter within the ambit of Article 338A (9) of the Constitution, Ministry of Mines was also apprised of the concern of the Commission regarding non-furnishing of the Draft MMDR Bill, 2010 inspite of the letter dated 27.07.2011 for Commission's views/suggestions in the matter. Secretary, Ministry of Mines also requested to produce copy of the draft MMDR Bill, 2010 in the meeting scheduled to be held on 17/8/2011.
Min. of Mines Letter 16/83/2009-MVI)Part v) dt. 11/08/2011	Ministry of Mines informed that views of the Deptt. of Legal Affairs, Ministry of Law have been sought inter-alia, on the need to consult the Commission on the MMDR Bill, 2010 legislation
Min. of Mines Letter 16/83/2009-MVI (part v) dt.17/08/2011	Ministry of Mines informed vide letter dated 17/08/2011 that recommendations of the GOM on the draft MMDR Bill 2010 were awaiting Cabinet approval. Since GOM and Cabinet procedures are by their nature secret, it is not possible to share the contents of the discussions of the GOM with the Commission at this stage.
NCST Letter 12/2/2009-Coord dt 09/09/2011	Secretary, Ministry of Mines apprised of the need to forward the draft Bill finalized in the Ministry to the Commission and also expedite views of the Ministry of Law in the matter.
Minutes of the Meeting on held on 15/09/2011,circulated vide NCST Letter 12/2/2009-Coord dt.20/09/2011	In the meeting taken by the Chairperson, National Commission for Scheduled Tribes representative of Deptt. of Legal Affairs stated that the opinion of the Ministry of Law would be communicated shortly.
Min. of Law & Justice Letter FTS.2878/LS/11 dt. 22/09/2011	Ministry of Law and Justice have opined that the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet.

3. It is evident from the above that the Ministry of Mines have faulted in lack of proper understanding of the Constitutional provisions - in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to STs and failed to exhibit expected sensitivity of approach/attitude towards weaker sections.

4. In view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, the Chairperson, NCST has called the Secretary, Ministry of Mines **on 3rd November, 2011 at 12 00 hours** at the Conference Room of the Commission to:

(a) Produce a chronological record of the action taken on the requests made by the Commission regarding the MMDR Bill, 2010.

(b) Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs; and

(c) Explain why legal action should not be instituted against the Secretary, Ministry of Mines, for repeated disregard of the Commission's requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

5. Secretary, Ministry of Mines, is requested to attend **in person.**

Yours faithfully,

(**Aditya Mishra**)
Joint Secretary

Statement of Shri S. Vijay Kumar, Secretary, Rural Development dated 13.2.2012 in the National Commission for Scheduled Tribes

As requested by the National Commission for Scheduled Tribes (NCST) vide their Letter No. 12/2/2009/Coord dated 3rd February 2012, the detailed position has been given in my response vide letter no. Secy(RD)/Misc/2012(NCST) dated 9.2.2012, which may be taken on record. In response to queries of the Chairman, NCST, it was further clarified that:-

(i) all letters/requests of the NCST regarding consultation with NCST in terms of clause (9) of Article 338A of the Constitution have been promptly responded from the Ministry of Mines (reference letters dated 11.8.2011, 17.8.2011, 13.9.2011, 30.9.2011, 24.10.2011, 3.11.2011 and 21.11.2011). In addition Hon'ble Minister of Mines has also written to NCST on 27.9.2010;

(ii) all meetings of the NCST have been attended by me as requested (meetings dated 25.7.2011, 17.8.2011, 15.9.2011 and 3.11.2011);

(iii) In the meeting with the Commission on 3.11.2011, in my then capacity as Secretary, Ministry of Mines, I explained the entire matter in detail and also left a written copy of my statement vide letter no. 16/83/2009-M(VI)(Part V) dated 3.11.2011 which may be taken on record;

(iv) Based on the minutes of the meeting held on 3.11.2011, a further response was given vide Ministry of Mines OM No. 16/83/2009-MVI (Part V) dated 21.11.2011;

(v) It has been reiterated in the letters and meetings that there was no intention of disregarding obligations under the Transaction of Business Rules, and that due diligence was observed at all times in terms of the instructions on a subject referred for Cabinet process, as is evident from the chronology provided in response to the requests of the NCST.

(vi) The matter relates to Clause (9) of Article 338A of the Constitution of India which enjoins mandatory consultation of Government of India with the NCST on matters of policy. Since all proceedings of the Commission in this matter have been under Clause (9) of the Article, any further requests in the matter need to be made to the Ministry of Mines, Government of India. In case the NCST requires any specific document pursuant to Clause (9) of Article 338A of the Constitution, they may make a specific request to the Ministry of Mines. I am no longer in the Ministry of Mines and am therefore not in a position to assist the NCST in the matter.

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ANNEXURE 3.IV
(Ref. para 3.20, SR_Ch 3)

BY FAX/ SPEED POST

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES
(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

No.12/2/2009-Coord Date: 06 March , 2012

To

Shri S. Vijay Kumar,
Secretary,
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhawan, New Delhi. - 110011

Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by Ministry of Mines with reference to Mines and Mineral (Development & Regulation) Bill 2011

Sir,

I am to refer to your letter No.Secy (RD)/Misc/2012(NCST) dated 15/02/2012, submitting your statement in pursuance of the position explained by the Commission to you in the Sitting taken by the Chairperson on 13/02/2012 with reference to NCST letter of even number dated 03.02.2012 and accompanying brief.

2. The statement has been examined. The Commission has noted that despite repeated exhortations, the draft Mines and Mineral (Development & Regulation Bill) 2011, as finalized by the Ministry of Mines, was withheld from the Commission till after consideration was completed by the Council of Ministers on 30/09/2011; and, its directions mentioned in the NCST communication dated 13/10/2011 to produce documents/ a chronological record of the action taken on the request of the Commission to forward the draft Bill for its views/ comments, and in the Sitting taken on 3/11/2011 to submit comments in the matter with documentary evidence within a fortnight have not been complied. Further, instead of responding substantively to the issues raised by the Commission, extraneous and illusory questions of procedure have been urged. The Commission has, therefore, viewed these transgressions as a flagrant disregard of the authority vested with the Commission under Clause (8) (b) of Article 338 A, whereby the Commission, while investigating any matter, inter- alia, referred to in sub-clause (a) has all the powers of a Civil Court in regard to production of documents.

3. The Commission has further noted that the treatment of the case in your capacity as the Secretary of the Ministry of Mines, reflects lack of proper understanding of Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution; and, in the context of non-production of documents, has been viewed by the Commission as deliberate attempt to evade repeated persuasions by the Commission to submit the draft Bill for Commission's views/comments. The Commission is distressed to observe that inspite of receiving Ministry of Law's unambiguous advice on the subject; the Bill was forwarded to the NCST only on the day it was considered by the Cabinet,

effectively forestalling the consideration of NCST's comments by the Council of Ministers. The Commission has viewed that such perfidious actions on the part of a very senior officer of the level of Secretary to the Government are to be deprecated as deliberate failure to maintain transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes; and the same do not exhibit the expected sensitivity of approach/attitude towards weaker sections.

4. However, taking a lenient view of the matter, the Commission has, therefore, decided to advise the DoPT, which is the Cadre Controlling Authority for the All India Services (IAS), as well as the Cabinet Secretariat, to take appropriate action in the matter; and also take requisite measures to avoid recurrence of such cases in future keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998.

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Encl: As above.

Copy to:

The Secretary,
Deptt. of Personnel & Training,
North Block, New Delhi.

For further action keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 30/11/1998. The action taken in the matter may please be advised urgently, positively by 12/03/2012

Copy also forwarded to:
The Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi.

In continuation of NCST letter No. 12/04/11-Coord. dt. 29/02/2012, forwarding proceedings of the Sitting taken by the Chairman, NCST on 21/02/2012.

It is requested that appropriate action on the subject may please be taken with requisite measures to avoid recurrence of such cases, keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998. The action taken in the matter may please be communicated urgently, positively by 12/03/2012.

(Aditya Mishra)
Joint Secretary

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ANNEXURE 3.V

F. No. 210111/04/2011-LRD (Ref. para 3.30, SR_Ch 3)

Government of India
Ministry of Rural Development
Department of Land Resources

'G' Wing, N.B.O Building
Nirman Bhawan, New Delhi
Dated: 21.11. 2011

To

Shri Aditya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes,
6th Floor, B-wing, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.

Subject: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by the Deptt. Of Land Resources, MoRD with reference to (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation and Resettlement Bill, 2011 – regarding.

Sir,

Please refer to your letter No. NCST/2008/REHAB/01 dated 14th October, 2011 addressed to Secretary, DoLR on the subject cited above.

2. As per directions of the Commission Sh. B.K. Sinha, Secretary (LR) along with Additional Secretary (LR), Joint Secretary (LR) and Deputy Secretary (LR) appeared before the Commission on 03.11.2011 and apprised/stated the position of the Department in the matter.

3. It is submitted that there was no intention of the Department to avoid meaningful consultation with the Commission and the Department has followed the guidelines/instructions of the Cabinet Secretariat regarding inter-ministerial consultations. The Department feels that the views of the Commission are of paramount importance. Special provisions for Schedule Castes and Schedule Tribes have already been made in the Second Schedule of the Land Acquisition, Rehabilitation and Resettlement Bill, 2011. Further, as desired details of chronological consultation/action taken by the Department in the matter is enclosed herewith.

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Yours faithfully,

(Surendra Kumar)
Joint Secretary (LR)

Encl: As above.

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"A **note on the chronological consultation with NCST by the Department of Land Resources"**

Reference No./Date	Contents in Brief
Letter No. NCST/2008/REHAB/01 dated 6.08.2010	This Department had requested the Chairman, National Commission for Scheduled Tribes vide letter dated 18.7.2011(copy enclosed) for sending a copy of the comments of the Commission on both the Bills, i.e., Rehabilitation and Resettlement Bill, 2007 and land Acquisition (Amendment) Bill, 2007 as stated to have been enclosed along with the D.O. letter dated 6.8.2010 as the comments were not received in this Department.
Letter No. NCST/2008/REHAB/01 dated 20.5.2011	This Department had received a D.O. letter No. NCST/2008/REHAB/01 dated 20.5.2011 addressed to the Hon'ble Minister of MoRD regarding consideration of views of National Commission for Scheduled Tribes on R&R Bill and Land Acquisition (Amendment) Bill, before introducing in the Parliament. The reply of this Department with reference to the NCST's letter dated 20.5.2011 was sent vide this Department letter No. 21011/04/2011-LRD dated 18.7.2011 (copy enclosed).
Letter No. NCST/2008/REHAB/01 dated 13.07.2011	This Department had received the letter No. NCST/2008/REHAB/01 dated 14.07.2011 and not 13.7.2011. The reply to the NCST was sent vide this Department's letter No. 21011/04/2011-LRD dated 21st July, 20 11 (copy enclosed).
Letter No. NCST/2008/REHAB/01 dated 10.08.2011	NCST had sent a brief for discussion with Secretary DoLR vide their letter No. NCST/2008/REHAB/01 dated 19.7.2011. The meeting of the Secretary (LR) with Dr. Rameshwar Oraon Hon'ble Chairperson NCST to consider the views of the Commission on the Draft Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 was held on 29.07.2011 at 1130 hours in the Commission. During meeting it was brought to the notice of NCST that this Department is in the midst of redrafting the Land Acquisition, Rehabilitation and Resettlement Bill, 2011. A copy of the proceeding of the meetings was received from NCST vide their letter dated 10.08.2011. The Draft LARR Bill, 2011, was sent to Secretary (NCST) for comments vide D.O. letter dated 19.8.2011 of this Department (copy enclosed).
Letter No. NCST/2008/REHAB/01 dated 30.08.2011	This Department had informed Shri Aditya Mishra, Joint Secretary (NCST) with reference to their D.O. letter dated 30st August, 2011 vide D.O. letter dated 13.9.2011 (copy enclosed) that this Department had drafted the Land Acquisition, Rehabilitation & Resettlement Bill, 2011, which was put in the public domain for inviting suggestions/comments from the all stake-holders and public" at large on 29th July, 2011. Comments were invited up to 31st August, 2011. The Cabinet Note for the Land

	Acquisition, Rehabilitation & Resettlement (LARR) Bill, 2011 has been considered and approved by the Cabinet on 5th September, 2011. The aforesaid Bill has been introduced in the Lok Sabha on 7th July, 2011. The Bill is available on web-site of this Department i.e. dolr.nic.in
Letter No. NCST/2008/REHAB/01 dated 09.09.2011	The matter related to consultation process with NCST was not referred to the Ministry of Law and Justice. However, a reference has been made to the Cabinet Secretariat vide this Department's O.M. No P-II015/10/2010-LRD dated 30.08.2011 seeking their clarification with regard to consultation with statutory Commissions in the Govt. of India. (Copy enclosed). A reminder to the Cabinet secretariat has been sent vide O.M. dated 20.10.2011. (Copy enclosed). The Cabinet Secretariat vide its letter dated 21.10.2011 has informed that "**the sponsoring ministry/department may consult the concerned administrative Ministry/Department dealing with the relevant Constitutional body/Commission/Statutory body etc. except in cases where there is no administrative Ministry/Department specified for such bodies/Commissions etc.**"

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Immediate

No. 21011/04/2011-LRD
Government of India
Ministry of Rural Development
Department of Land Resources

'G-Wing', NBO Building,
Nirman Bhawan,
New Delhi-110011.
Dated the 18th July,2011.

To,

The Chairman,
National Commission for Scheduled Tribes
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi 110003.

Subject: Consideration of views of National Commission for Scheduled Tribes on the R&R Bill and Land Acquisition(Amendment)Bill, before introducing in the Parliament.

Sir,

I am directed to refer to your D.O. letter No. NCST/2008/REHAB/01 dated 20.5.2011 addressed to the Hon'ble Minister of Rural Development on the subject mentioned above and to say that a copy of the comments of the Commission on both the Bills .i.e. Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment)Bill,2007 as stated to have been enclosed along-with the said D.O. letter dated 6.8.2010 does not seem to have been received in this Department.

It is , therefore, requested that a copy of the same may kindly be sent , so that the further action in the matter could be taken by this Department.

Yours faithfully,

(Harpartap Singh)
Deputy Secretary to the Govt. of India.

S.No. 4(I)

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Immediate 386

No. 21011/04/2011-LRD
Government of India
Ministry of Rural Development
Department of Land Resources

'G-Wing', NBO Building,
Nirman Bhawan,
New Delhi-110011.
Dated the 21st July,2011.

Shri Aditya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes
Lok Nayak Bhawan,
Khan Market, New Delhi 110003.

Subject: Consideration of comments/views of the Commission on the draft Land Acquisition (Amendment)Bill, 2007 and Rehabilitation and Resettlement Bill,2007.

Sir,

I am directed to refer to the Commission's letter No. NCST/2008/REHAB/01 dated 14.7.2011 on the subject mentioned above and to say that Secretary (LR) has already spoken on this matter to you and brought to your notice that this Department is in the midst of re-drafting the Land Acquisition and Rehabilitation & Resettlement Bill,2011. Further, this Department is organizing a workshop on "Best Practices on Land Reforms on 25th July, 2011.

In view of above, I request you to give an alternate date for the meeting of Secretary (LR) with the Chairperson, NCST.

D/C

Yours faithfully,

(Surendra Kumar)
Joint Secretary to the Govt. of India

Issued 22/7/2011

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प्रभुदयाल मीना, आई.ए.एस
अपर सचिव
PRABHUDAYAL MEENA, I.A.S.
ADDITIONAL SECRETARY

सत्यमेव जयते

भारत सरकार
ग्रामीण विकास मंत्रालय
भूमि संसाधन विभाग
Government of India
Ministry of Rural Development
Department of Land Resources

D.O. No. P. 11015/10/2010-LRD

Dated the 19th August, 2011

Dear Sir

You may be aware that a draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011 has been prepared and put in the public domain (www.dolr.nic.in) on July 29th, 2011 for discussion.

2. I shall be grateful if you could kindly send your comments and suggestions on the above mentioned draft Bill to this Department latest by August 31st, 2011.

With regard

Yours sincerely,

o/c

(Prabhudayal Meena)

Shri R.S. Sirohi,
Secretary,
National Commission for Scheduled Tribes,
6th Floor, B- Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi.

19/8/11

सुरेन्द्र कुमार
संयुक्त सचिव
SURENDRA KUMAR
JOINT SECRETARY

ग्रामीण विकास मंत्रालय
भूमि संसाधन विभाग
Government of India
Ministry of Rural Development
Department of Land Resources

D.O. No. 11015/10/2010-LRD

Dated the 13/09/2011

Dear Shri

Please refer to your D.O. letter No. NCST/2008/REHAB/01 dated 30th August, 2011 addressed to the Additional Secretary, Department of Land Resources regarding seeking comments on the Draft Land Acquisition and Rehabilitation & Resettlement Bill, 2011 under Article 338 A(9) of the Commission.

I would like to submit that this Department had drafted the Land Acquisition, Rehabilitation and Resettlement Bill, 2011, which was put in the public domain for inviting suggestions/comments from the all stake-holders and public at large on 29th July, 2011. Comments were invited up-to 31st August, 2011. The Cabinet Note for the aforesaid Bill had been circulated to Department/Ministries in the Govt. of India for comments/suggestions. The Cabinet Note for the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been considered and approved by the Cabinet on 5th September,2011.The aforesaid Bill has been introduced in the Lok Sabha on 7th July,2011.The Bill is available on web-site of the Department, i.e., dolr.nic.in.

With regards

o/c

15/9/11

Yours sincerely

(Surendra Kumar)

Shri Aditya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes,
6th Floor, B-wing,
Lok Nayak Bhawan, Kahn Market ,
New Delhi

जी-विंग, एन.बी.ओ. बिल्डिंग, निर्माण भवन, नई दिल्ली-110 108 फोन : 23062454
B-Wing, N.B.O. Building, Nirman Bhawan, New Delhi-110 108 Tel.: 23062454

IMMEDIATE

No.P-11015/10/2010-LRD
Government of India
Ministry of Rural Development
Department of Land Resources
(Land Reforms Division)

'G' Wing, NBO Building
Nirman Bhavan, New Delhi
Dated: 30.08.2011

OFFICE MEMORANDUM

Subject: Inter-Ministerial Consultations. Regarding- Clarification.

The undersigned is directed to say that a draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011 has been prepared and put in the public domain (www.dolr.nic.in) on July 29th, 2011 for comments from the stakeholders. Comments/views have been requested from all the stakeholders up to 31st August,2011.

As per the Instructions of the Cabinet Secretariat regarding Inter-Ministerial Consultations, this Department has prepared and circulated the Draft Cabinet note on the Land Acquisition and Rehabilitation & Resettlement Bill,2011 to the various Ministries/Departments of the Government of India for their comments/views. In the said instructions, no mention has been made regarding the process of consultations with various Commissions of the Government of India i.e SC Commission & ST Commission. The Constitution of India enjoins upon the National Commissions to monitor all matters relating to the safeguards provided for the SCs &STs. Clause (9) of Article 338 &338A of the Constitution also provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting SCs/STs. etc. There may be other commissions also in the Government of India.

It is therefore, requested to clarify whether consultations is mandatory separately with these Commissions or the Administrative Ministry/Department under which these Commissions function should consult their respective Commissions

d/c

(Surendra Kumar)
Joint Secretary to the Govt. of India

Cabinet Secretariat, Government of India,
(Shri Rajive Kumar , Joint Secretary)
Rashtrapathi Bhawan, New Delhi.

1/9/11

310

Reminder

No.P-11015/10/2010-LRD
Government of India
Ministry of Rural Development
Department of Land Resources
(Land Reforms Division)

'G' Wing, NBO Building
Nirman Bhavan, New Delhi
Dated: 20.10.2011

OFFICE MEMORANDUM

Subject: Inter-Ministerial Consultations. Regarding- Clarification.

The undersigned is directed to refer to this Department's O.M. of even number dated the 30.8.2011 (copy enclosed for ready reference) on the subject mentioned above and to say that the clarification sought by this Department has not been received so far.

It is therefore, requested to expedite the clarification at the earliest.

Enal:As above.

o/c

(Surendra Kumar)
Joint Secretary to the Govt. of India

Cabinet Secretariat, Government of India,
(Shri Rajive Kumar , Joint Secretary)
Rashtrapathi Bhawan, New Delhi.

24/10/11

IMMEDIATE

No.P-11015/10/2010-LRD
Government of India
Ministry of Rural Development
Department of Land Resources
(Land Reforms Division)

'G' Wing, NBO Building
Nirman Bhavan, New Delhi
Dated: 30.08.2011

OFFICE MEMORANDUM

Subject: Inter-Ministerial Consultations. Regarding- Clarification.

The undersigned is directed to say that a draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011 has been prepared and put in the public domain (www.dolr.nic.in) on July 29th, 2011 for comments from the stakeholders. Comments/views have been requested from all the stakeholders up to 31st August,2011.

As per the Instructions of the Cabinet Secretariat regarding Inter-Ministerial Consultations, this Department has prepared and circulated the Draft Cabinet note on the Land Acquisition and Rehabilitation & Resettlement Bill,2011 to the various Ministries/Departments of the Government of India for their comments/views. In the said instructions, no mention has been made regarding the process of consultations with various Commissions of the Government of India i.e SC Commission & ST Commission. The Constitution of India enjoins upon the National Commissions to monitor all matters relating to the safeguards provided for the SCs &STs. Clause (9) of Article 338 &338A of the Constitution also provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting SCs/STs. etc." There may be other commissions also in the Government of India.

It is therefore, requested to clarify whether consultations is mandatory separately with these Commissions or the Administrative Ministry/Department under which these Commissions function should consult their respective Commissions

d/c

(Surendra Kumar)
Joint Secretary to the Govt. of India

Cabinet Secretariat, Government of India,
(Shri Rajive Kumar , Joint Secretary)
Rashtrapathi Bhawan, New Delhi.

1/9/11

ANNEXURE 3.VI
(Ref. para 3.31, SR_Ch 3)

टी. के. विश्वानाथन
विधि सचिव
T.K. VISWANATHAN
Law Secretary

भारत सरकार
विधि और न्याय मंत्रालय
विधि कार्य विभाग
नई दिल्ली-110115
GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
SHASTRI BHAWAN
NEW DELHI-110115

D.O. No. 11051/07/Advice-A

26th October 2007

My Dear Cabinet Secretary

The National Commission for Scheduled Castes called me on 7th August 2007 to discuss the issue relating to non-consultation of the Commission while making various substantive legislations and rules affecting the interests of the Scheduled Castes in the country.

2. During the discussion Dr. Buta Singh, the Chairman of the Commission expressed his serious concern by observing in no uncertain terms that the Commission is not being consulted by the Government while taking various decisions /measures affecting the rights of the Scheduled Castes in the country and that such non-consultation violates the provisions of article 338(9) of the Constitution of India. The said article provides that the Union and every State Government shall consult the Commission on all major policy matters affecting the Scheduled Castes. The role of our Department and the Legislative Department in such matters was explained to the Commission. After the discussion, the Hon'ble Chairman directed me to take appropriate steps in the matter and inform the Commission.

3. I shall be grateful if you could kindly advise all Ministries/Departments to strictly follow the provisions contained in the said article as per observations of the Commission.

Yours sincerely

(T.K. Viswanathan)

Shri K.M. Chandrasekhar,
Cabinet Secretary,
Cabinet Secretariat,
New Delhi.

Tel : 91-11-23384777, 23382902 Fax : 91-11-23387259 E-mail : vnathan@nic.in

F. No. 21013/01/2011-LRD
Government of India
Ministry of Rural Development
Department of Land Resources

'G' Wing, NBO Building,
Nirman Bhawan, New Delhi
Dated: 17.02.2012

To

The Secretary,
National Commission for Scheduled Tribes,
6th Floor, B-wing, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.

Sir,

Please refer to NCST's letters No.NCST/2008/REHAB/01 dated 03.02.2012 and 13.02.2012 and the discussion held in the Chamber of Chairperson, NCST on 16.02.2012 at 3 pm.

2. I am to state that I have been on leave from Aug '11 to Feb '12 – a fact which my successor would have informed the Commission during the discussions held on 3rd Nov '11. The Letter of the Commission dated 14.10.2011 was replied vide the Department's letter dated 21.11.2011. This was also clarified in the meeting held in the Commission on 16.02.2012.

3. It was suggested that the DoLR may provide documentary evidence for the chronological progress of why the Commission was not consulted. It was clarified that copies of relevant documents had already been enclosed to the Department's letter dated 21.11.2011. However, if NCST wishes to peruse any other records in this regard, DoLR will be willing to provide the same.

This is for your kind information.

Your faithfully,

Chaudhary

(Anita Chaudhary)
Secretary to the Govt. of India

National Commission for Scheduled Tribes

Proceedings of the Meeting taken by Dr. Rameshwar Oraon, Chairperson , NCST with the Secretary, Deptt. of Land Resources, Ministry of Rural Development on 29.07.2011

A list of officers present in the meeting is at the Annexure

2. The Chairperson, NCST extended warm welcome to the Secretary, Deptt. of Land Resources, Ministry of Rural Development and other Officers present in the meeting. He mentioned that the meeting was convened due to non-receipt of action taken report from the Ministry of Rural Development regarding the recommendations of the Commission sent to the Ministry on the draft Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment) Bill, 2007.

3. Initiating the discussion, Joint Secretary, NCST mentioned that the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its 33rd Report had also desired had desired feedback regarding action taken by the concerned Ministries/Deptts./Organisations on the recommendations/observations of the Commission on various policy related matters. He mentioned that Clause (9) of the Article 338 A of the Constitution makes it obligatory on the part of all the Ministries/ Deptts/ Organisations to consult the Commission on all major policy matters affecting Scheduled Tribes. However, the Ministry of Rural Development had not so far sought comments of the Commission on the draft Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment) Bill, 2007. Notwithstanding this, the Commission had, suo-moto, communicated its views/suggestions to the Ministry of Rural Development on the both the Draft Bills vide D.O. letter dated 6th August, 2010.

4. The Commission emphasized that the tribals need special consideration through a special chapter in the Bills considering the following major factors:

(i) Special provisions have been made in the Constitution for protection as well as safeguarding the rights of STs and administration in Scheduled Areas. The Constitution also provides for the measures to be taken to ensure that a particular Legislation may not be applicable in the Scheduled Area or a special law may be enacted with reference to good regulation in the Scheduled Areas

(ii) Land being the primary means of production in the tribal society, acquisition of tribal land leading to their landlessness, is both socially and economically depriving the tribals, who have limited capacity to have their livelihood outside their habitat and any activity not involving agricultural land.

(iii) Land regulations generally prohibit transfer of tribal lands to others except with the approval of designated competent authorities. Tribal Rights in land are unalienable both by individual as well as State, in the spirit of the

Rameshwar Oraon

Supreme Court Judgement in Samatha vs. Govt. of Andhra Pradesh

(*transfer in favour of a person who is member of a Scheduled Tribe or Society is only permitted (person includes both natural persons and constitutional body*).

(iv) Diligent effort is essential to comprehensively identify all the environmental / displacement risks which tribals would be exposed, consequent to displacement; and to establish the overriding public interest which demands such sacrifice from them.

(v) The definition of public purpose in the Land Acquisition (Amendment) Bill is covering all sorts of projects which may not necessarily serve public interest. 'Public purpose' should be determined through a participatory and transparent process and should incorporate additional safeguards for tribals. Considering the fact that much larger extents of land than absolutely necessary are being commandeered as a substitute for capital mobilization by the State under the Public Private Partnership (PPP), the Commission is of the view that the definition of public purpose should preferably be restricted for acquisitions of land for re-development as in the British Law, and State owned/managed institutions only.

5. Secretary, Deptt. of Land Resources, Ministry of Rural Development mentioned that an integrated Bill was being proposed now covering both land acquisition and rehabilitation and resettlement. The Integrated Bill has special provisions for the Scheduled Tribes. Secretary, Deptt. of Land Resources, MoRD further apprised the Commission of the salient features of the Bill especially with regard to STs (enclosed) and mentioned that most of the concerns of the Commission relating to STs had been addressed in the draft Integrated Bill. MoRD also informed the Commission that the draft Integrated Bill was being hosted on their website for seeking suggestions/comments of public. After examination of the suggestions/comments, MoRD will initiate inter-Ministerial consultation. At this stage, the view of the Commission would also be invited. The Commission was of the view that that the matters for advice under the provision of Article 338A(9) may be referred to the Commission after completion of internal process of drafting the Bill and before submission to the Apex Cabinet Committee.

6. The Commission observed that in view of the issues discussed above, a separate Chapter, mentioning the manner in which the provisions of the draft Bill will be applicable to the Scheduled Tribes and the Scheduled Areas should be included in the Bill. Further, for the consultation with the NCST, as envisaged under Art. 338A(9) of the Constitution to be meaningful, the draft Bill finalized in the Ministry after inter-Ministerial consultations, may be referred to this Constitutional Commission and the observations of the Commission and views of the Ministry on those observations may also be placed along with the draft Bill for consideration by the Apex Cabinet Committee. The Secretary, Deptt. of Land Resources, MoRD mentioned that the Ministry would consider the observations of the NCST and, if considered necessary, the matter will be decided in consultation with the Ministry of Law. The Commission advised that the MoRD may take appropriate action immediately, before submission of the draft Bill to the Apex Cabinet Committee.

Rameshwar Oraon

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Annexure

List of officials present in the meeting taken by Dr. Rameshwar Oraon, Chairperson, NCST with the Secretary, Deptt. of Land Resources, Ministry of Rural Development on 29.07.2011

	National Commission for Scheduled Tribes (NCST)		**Deptt. of Land Resources, Ministry of Rural Development,**
1	Sh Aditya Mishra, JS	1	Ms. Anita Chaudhary, Secretary
2	Smt. K.D. Bhansor, Dy.Dir.	2	Shri Charanjit Singh, Director

ANNEXURE 3.IX

(Ref. para 3.34, SR Ch 3)

BY

FAX/

SPEED

POST

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

No. NCST/2008/REHAB/01 Date: 14th March , 2012

To

Ms. Anita Chaudhary,
Secretary,
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhavan,
New Delhi. - 110011

Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by the Deptt. of Land Resources, MoRD with reference to (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011.

Sir,

I am to refer to your letter No.21013/01/2011-LRD dated 17/02/2012, submitting your statement in pursuance of the position explained by the Commission to you in the Sitting taken by the Chairperson on 16/02/2012 with reference to NCST letter of even number dated 03/02/2012 and accompanying brief.

2. The statement has been examined. The Commission has noted that non-compliance/non-receipt of any response from you to the NCST communication dated 13/10/2011, asking you to produce a chronological record of the action taken on the request of the Commission, has been occasional as a result of your absence on long medical leave during the period. The Commission has, therefore, not proceeding with any action in this regard.

3. The Commission has, however, noted that despite exhortations, the (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011 were not forwarded to the Commission as mandated under Clause (9) of Article 338A of the Constitution. The draft Land Acquisition and Rehabilitation & Resettlement Bill, 2011 was also not forwarded to the Commission for its views/

comments even at the time of inter-Ministerial consultations, as assured by you in the meeting taken by the Chairperson on 29/07/2011.

4. The Commission has noted that the treatment of the case in your capacity as the Secretary of the MoRD, reflects lack of proper understanding of Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution. Further, instead of responding substantively to the issues raised by the Commission in the meeting taken by the Chairperson on 29/07/2011, extraneous and illusory questions had been raised regarding the powers of the Commission (para 6 of minutes of the Meeting held on 29/07/2011 refer). These transgressions are viewed as deliberate disregard of the authority vested with the Commission under Clause (8) (b) of Article 338 A, whereby the Commission, while investigating any matter, inter- alia, referred to in sub-clause (a) has all the powers of a Civil Court in regard to production of documents. The Commission has viewed that such perfidious actions on the part of a very senior officer of the level of Secretary to the Government are to be deprecated as deliberate failure to maintain transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes; and the same do not exhibit the expected sensitivity of approach/attitude towards weaker sections.

5.. However, taking a lenient view of the matter, the Commission has decided to advise the DoPT, which is the Cadre Controlling Authority for the All India Services (IAS), as well as the Cabinet Secretariat, to take appropriate action in the matter; and also take requisite measures to avoid recurrence of such cases in future keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998.

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Encl: As above.

Copy to:

The Secretary,
Deptt. of Personnel & Training,
North Block, New Delhi.

For further action keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998. The action taken in the matter may please be advised urgently, positively by 19/03/2012

Copy also forwarded to:
The Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi.

In continuation of NCST letter No. 12/04/Coord. Dt. 29/02/2012, forwarding proceedings of the Sitting taken by the Chairman, NCST on 21/02/2012.

It is requested that appropriate action on the subject

may please be taken with requisite measures to avoid recurrence of such cases, keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998. The action taken in the matter may please be communicated urgently, positively by 19/03/2012.

(Aditya Mishra)
Joint Secretary

ANNEXURE 3.X
(Ref. Para 3.34 SR Ch 3)

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
Department Of Personnel & Training, New Delhi

OFFICE MEMORANDUM

No. 36036/2/97-Estt.(Res) Dated: 01,January 1998

Sub: Reservation policy for the Scheduled Castes and Scheduled Tribes-Implementation of

The undersigned is directed to say that, in terms of this Department's O.M. No. 36011/15/79-Estt(SCT) dated January 6, 1981, if other Ministries/ Departments intend to depart from the policies laid down by the Department of Personnel, it is mandatory for them to consult the Department of Personnel, in terms of sub rule 4 of Rule 4 of the Transaction of Business Rules, otherwise the policies laid down by the Department of Personnel are binding on them.

2. The instructions contained in this Department's Office Memorandum dated July 2, July 22, August 13, and August 29, 1997 continue to be in operation and there is no proposal to withhold or to keep in abeyance their implementation.

3. In the All India Indian Overseas Bank Scheduled Castes and Scheduled Tribes Employees Welfare Association and others Vs. Union of India and others (Civil Appeal No. 13700 of 1996) the Supreme Court has held that the National Commission for Scheduled Castes and Scheduled Tribes has no power of granting injunctions, whether temporary or permanent. The Court also held that the powers of the Commission in terms of Article 338(8) of the Constitution are all the procedural powers of a civil court for the purpose of investigating and inquiring into the matters and that too for that limited purpose only.

4. In view of the judgment of the Supreme Court referred to in para-3, the National Commission for Scheduled Castes and Scheduled Tribes has no power to direct withholding of the operation of any orders issued by the Government.

5. Ministry of Agriculture etc. may, therefore, keep in mind the directions contained in this Department's O.M. dated 06.01.1981 and the judgment of the Supreme Court referred to above while dealing with the directions given by the National Commission for Scheduled Castes and Scheduled Tribes. Ministry/ Departments etc. must, however, in all fairness consider the recommendations of the Commissions in the light of policies laid down by the Department of Personnel and Training.

Sd/-
(J. Kumar)
Under Secretary to the Govt. of India

To,

1. All Ministries/ Departments of the Government of India.
2. Department of Economic Affairs (Banking Division), New Delhi
3. Department of Economic Affairs (Insurance Division), New Delhi
4. Department of Public Enterprises, New Delhi
5. Railway Board
6. Union Public Service Commission/ Supreme Court of India/ Election Commission/ Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Office/ P.M.O./ Planning Commission.
7. Staff Selection Commission, CGO Complex, Lodhi Load, New Delhi.
8. All Officers/ Sections of the Department of Personnel and Training/ Deptt. of Administrative Reforms & Public Grievances/ Department of Pensioners Welfare.

ANNEXURE 3.XI
(Ref. para 3.34, SR_Ch 3)

Department of PersonnelE and Training O.M. No.36036/2/97-Estt.(Res), dated the 30 th November, 1998, to all Ministries/Departments, *etc.*

Subject:- National Commission for SC and ST cannot issue any instructions in the nature of injuction on implementation of the Government's orders.

The undersigned is directed to refer to this Department's Office Memorandum of even number, dated 1-1-1998 and letter No. 4/3/98-SSW. II, dated Nil, addressed to the Secretary, Department of Personnel and Training by the National Commission for Scheduled Castes and Scheduled Tribes with copies endorsed to all Ministries/Departments of the Government of India, etc., and to say that the aforesaid letter of the Commission tends to create the impression that the Commission has powers have not been vested in the Commission in terms of Article 338 of the Constitution. As the Commission lacks the authority to issue directions in the nature of injunction, the aforesaid action of the Commission is clearly beyond its powers and is illegal.

2. The National Commission for Scheduled Castes and Scheduled Tribes is assigned the important role of safeguarding the interests of the Schedule Castes and the Schedules Tribes and has been vested with certain powers in discharge of its role in terms of Article 338 of the Constitution. The Ministries/Departments, etc., are therefore expected to extend maximum cooperation to the Commission in the discharge of its role and to give its recommendations/suggestions due consideration. They Ministry of Agriculture, etc., are, however, advised to ignore such of the instructions. The Ministry of Agriculture, etc., are, however, advised to ignore such of the instructions issued by the Commission as may purport to either amend or withhold or keep in abeyance the instructions issued by the Government in implementation of the reservation policy for the SCs and STs.

Ministry of Law & Justice
Department of Legal Affairs

3682/11/LS

Reference notes on pre-pages.

2. Department of Food and Public Distribution has sought our opinion on the following points with reference to the proposed National Food Security Act:-

(i) Is it mandatory to consult the NCST on the draft National Food Security Bill? Is similar consultation also required with National Commission for Scheduled Castes and any other body?

(ii) At what stage should the consultation with the Commission(s) be held? Should it be at the stage of inter-ministerial consultation on the draft cabinet note? Or

(iii) Would consultation require that the Commission (s) be consulted after the draft Bill is finalized and is to be placed before the Cabinet?

3. According to the long title, the proposed National Food Security Bill, 2011 seeks to provide for food and nutritional security, in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices, for people to live a life with dignity and for matters connected therewith or incidental thereto.

4. As such, the proposed Bill intends to provide food security, in general, to the people of India and not to particular class or community. However, under clause 22 of the proposed Bill, 'State Food Commission' shall be constituted by the every State Government and under clause 26 of the proposed Bill, 'National Food Commission' shall be constituted by the Central Government. In both the Commissions, one person each belonging to the Scheduled Castes and Scheduled Tribes shall be appointed as a Chairperson or Member or Member Secretary. Further, according to clause 36 of the proposed Bill, Vigilance Committees shall be set up by every State Government at the State, District, Block and Fair Price Shop level, in which due representation shall be given to the Scheduled Castes and Scheduled Tribes.

5. In view of the above provisions of the proposed Bill, and provisions of article 339A (9) of the Constitution, which provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes, the National Commission for Scheduled Tribes may be consulted on the draft National Food Security Bill. So far as the consultation with National Commission for Scheduled Castes is concerned, position is the same and a similar consultation may be held with SC Commission under article 338 (9) of the Constitution

6. As regards point (ii) and (iii) above, in the absence of any statutory provision or any provision in the 'Manual of Parliamentary Procedures in the Government of India' in this regard, it is for the administrative department to take an appropriate decision as at which stage, the Commissions should be consulted.

May kindly see.

(R.K. Srivastava)
Deputy Legal Adviser
22.11.11

3682/LS/11
29.11.11

JS&LA (Dr S. S. Chahar)

Law Secretary

MLJ

406/MPSA/2011
30/11/11

Deptt. of Food & P.D

ANNEXURE 3.XIII
(Ref. para 3.43, SR_Ch 3)

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Constitutional mandate for consultations with National Commission for Scheduled Tribes on Policy matters/ Legislations affecting Scheduled Tribes and Scheduled Areas.

Article 338A of the Constitution vests the National Commission for Scheduled Tribes (NCST) with the duty to monitor and evaluate the working of safeguards provided for the Scheduled Tribes, participate in the planning process and advise the Union and the State Governments on major policy matters affecting Scheduled Tribes, and submit report on the working of those safeguards to the President, annually and at such other times as the Commission may deem fit. The Constitution has also made special provisions for development of Scheduled Areas under Fifth Schedule and Tribal Areas under Sixth Schedule to the Constitution. The National Commission for Scheduled Tribes has decided to submit a Special Report on Good Governance for Scheduled Areas/ Tribes, also highlighting the need for meaningful Consultations with the National Commission for Scheduled Tribes.

2. While the Constitutional provisions regarding consultation with the Commission on policy matters (which would include legislative matters) affecting Scheduled Tribes and the Scheduled Areas which have been in existence for a long period (a similar provision existed regarding the predecessor joint Commission for Scheduled Castes and Scheduled Tribes since 1990), it has been noted by the Commission that various Ministries/ Departments of the Government of India have not implemented this mandate in desired spirit. Ministries/ Departments are very often faulting in lack of proper understanding of the Constitutional provisions (Clause 9 of Article 338A) – in particular, the obligation to consult the Commission in a meaningful manner, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes and exhibiting sensitivity of approach in respect of matters affecting the Scheduled Tribes and Scheduled Areas specified under Schedule V and Schedule VI to the Constitution. Their apathy is demonstrably revealed from the processes adopted by the Ministry of Tribal Affairs, Ministry of Rural Development, Ministry of Mines and the Ministry of Consumer Affairs (Department of Food & Public Distribution) in the context of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 and National Food Security Bill, 2011 respectively.

(A) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

3. No formal reference was made by the Ministry of Tribal Affairs (MTA) with the National Commission for Scheduled Tribes as required under Article 338A (9) of the Constitution on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005. The Commission, however, considered it appropriate to make a detailed mention in its First Report (submitted to the President on 8th August, 2006) about its observations on the various provisions included in the draft Bill, that was available in public domain through the website of the Ministry of Tribal Affairs. However, by the time First Report of the Commission was finalized it was learnt that the Bill had already

been introduced in the Parliament and referred to the Joint Parliamentary Committee (JPC) headed by Shri V Kishore Chandra S Deo for further examination. The Commission also mentioned in the Report that it pained to note that no formal consultation on such a major policy issue affecting the interests of Scheduled Tribes was made with it in terms of Clause 9 of Article 338A of the Constitution. by the Ministry of Tribal Affairs. MTA did not consult the Commission while framing the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 also.

4. Thus, the case illustrates that the Ministry of Tribal Affairs, which amended the Constitution for making provision therein that the Union and every State Government shall consult the NCST on policy matters affecting the Scheduled Tribes, completely disregarded the mandate of the NCST while finalising ***the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill,*** *but also while drafting the Rules viz.* ***the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2007.***

(B) Mines and Minerals (Development and Regulation) Bill, 2011

5. The National Commission for Scheduled Tribes noticed from news Reports that the Group of Ministers (GoM) had approved the new draft Mines and Minerals (Development & Regulation) Bill, 2010 (MMDR Bill, 2010). As mining affects tribals in a large measure, particularly their livelihood, settlements, environment and culture, this Commission felt anxious that certain important concerns need to be adequately addressed in the Bill, notwithstanding the fact that the Ministry of Mines had not referred the draft Bill for advice of the Commission before its submission to the GoM. Accordingly, the comments of this Commission regarding safeguards of the STs in the MMDR Bill, 2010 were communicated to Hon'ble Minister for mines vide DO letter No.12/2/2009-Coord dated 11-10-2010. The Ministry, however, did not inform the Commission regarding the action taken on the comments/ suggestions made by the Commission.

6. In the meanwhile, a DO letter on the subject was also sent to the Union Minister of Mines on 13-07-2011 with the request to have the views of the Commission in the matter considered by the Council of Ministers before re-introducing the Bill in the Parliament. In view of this the Chairperson, NCST decided to have discussions on the subject with the Secretary, Ministry of Mines on 25-07-2011. The Secretary, Ministry of Mines alongwith other senior officers attended the meeting on 25-07-2011. The Secretary, Ministry of Mines was informed that the meeting was convened in pursuance of the observations of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its 33rd Report, wherein the Committee had desired feedback regarding action taken by the concerned Ministries/ Departments/ Organizations on the recommendations/ observations of the Commission of various policy related matters. It was further mentioned that Clause (9) of the Article 338 A of the Constitution makes it obligatory on the part of all the Ministries/ Departments/Organizations to consult the Commission on all major policy matters affecting Scheduled Tribes but, the Ministry of Mines had not so far sought views/ comments of the Commission on the draft MMDR Bill,2010. Representative of the Ministry of Mines clarified during the sitting that the draft MMDR Bill was formulated in terms of the National Mineral Policy, 2008, which had been approved by the Government in March, 2008. Further, since the present proposal pertained to legislation and not policy matter, the draft MMDR Bill was not referred to NCST. However, once the concerns of the NCST were received, the same were considered

suitably for incorporation. As the draft MMDR Bill had been referred by the Cabinet Secretariat to a Group of Ministers, and the GoM had held two rounds of meetings, Vice-Chairman, NCST was so informed by Hon'ble Minister of Mines vide his D.O dated 27.9.2010. The Draft MMDR Bill, 2010 after consideration by the Group of Ministers (GoM) had been recommended by the GoM to the Cabinet after legal vetting for consideration and the concerns of the Commission on various provisions of the draft Bill had been appropriately taken care of.

7. The Commission observed that since the draft MMDR Bill, as finalized and being processed had not been referred to the National Commission for Scheduled Tribes for comments by the Ministry of Mines, the Commission was not in a position to discharge its mandated function in regard to an important legislation relating to STs like the MMDR Bill, 2010. A copy of the draft MMDR Bill as recommended by the Group of Ministers was also called from the Ministry of Mines. The Joint Secretary, Ministry of Mines promptly informed vide letter dated 11-08-2011 as follows:

> *2 While appreciating the need to share the draft MMDR Bill with the Commission, since the draft Bill is presently under Cabinet process, and in order that no violation of the established process is committed, a clarification has been sought from the Department of Legal Affairs in the matter on:*
>
> *(i) Whether the draft MMDR Bill, 2011, as a legislation based on National Mineral Policy, 2008, qualifies as a policy matter affecting Scheduled Tribes in terms of the provisions of clause (9) of Article 338A of the Constitution of India, and*
>
> *(ii) Whether the draft MMDR Bill, 2011, can be shared at this stage with the National Commission for Scheduled Tribes, when the Group of Ministers has recommended the draft Bill to be placed before the Cabinet (since it is a part of the Cabinet process)*
>
> *3. Based on the outcome of the advice of the Department of Legal Affairs, further action in the matter is intended.*

8. Disagreeing with the contention of the Ministry of Mines, the Commission decided to hold another sitting with the Secretary, Ministry of Mines on 17-08-2011. In the meeting taken by the Chairperson, NCST on 17th August, 2011, the Commission was informed that the views of the Ministry of Law were being sought on the observations of the NCST that for the consultation with the NCST, as envisaged under Article 338 A(9) of the Constitution to be meaningful, the draft Bill finalized in the Ministry, should be referred to the Commission; that the reference to the Ministry of Law in the matter and their views, if received, would also be made available to the Commission. It was stated that the views of the Ministry of Law were awaited. The Ministry was requested that views of the Ministry of Law in the matter may be made available to the Commission immediately along with a copy of the Bill as finalized by the Ministry.

9. As views of the Ministry of Law and action taken by the Ministry of Mines in the matter was not received, another meeting was held on 15-09-2011. In the wake of the matter pending with the Ministry of Law & Justice, the Secretary (Legal Affairs), Ministry of Law & Justice was also invited to attend the meeting. The meeting was attended by the Secretary, Ministry of Mines and the Joint Secretary, Deptt. of Legal Affairs, Ministry of Law and Justice. The Joint Secretary (Legal Affairs) informed that the Ministry of Law was in the process of finalization of its views in the matter and its opinion would be communicated shortly. The Joint

Secretary (Legal Affairs), vide his letter dated 22-09-2011 informed the Commission that opinion of this Department on the issue of making available to the Commission a copy of the draft Bill on the aforesaid subject has been sent to the Ministry of Mines vide FTS No.3120/11/Adv.A on 15-09-2011. A copy of the advice sent to the Ministry of Mines was also received from the Department of Legal Affairs.

10. Relevant extracts from the advice to the Ministry of Mines by the Ministry of Law & Justice are reproduced below:

> *"5. From the above, it may be seen that the draft Mines and Minerals (Development and Regulation) Bill, 2011 is yet to be submitted to the Cabinet as recommended by the GOM. The administrative Ministry has neither disclosed nor placed on file any instructions/guidelines prohibiting to share the draft Bill with the NCST which is under the constitutional obligation to participate and advise on the planning process Socio-economic development of the Scheduled Tribes and to evaluate the progress of their development in terms of Article 338A(5)(c). The Commission also possesses powers of Civil Court under Article 338(8). Further, in terms of Clause (9) of Article 338A, the Union and every State Government are under an obligation to consult the Commission on all major policy matters affecting Scheduled Tribes.*
>
> *6. In view of above, we are of the opinion that the concerns expressed by the National Commission for Scheduled Tribes in their letters dated 06-08-2010 (p.23/c.) and 11-10-2010 (p.96-97/c) relate to the safeguards of the Scheduled Tribes and the provisions of the draft Bill may likely to affect the Scheduled Tribes and as such, may be a major policy matter affecting Scheduled Tribes. Hence in our opinion, the Ministry of Mines is under constitutional obligation to consult the Commission. Thus, there may be no legal or constitutional objection in sharing the draft Bill the Commission before its submission to the Cabinet."*

11. In view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, the Chairperson, National Commission for Scheduled Tribes decided to call the Secretary, Ministry of Mines on 3rd November, 2011 to:-

(a) Produce a chronological record of the action taken on the requests made by the Commission regarding the MMDR Bill, 2010.

(b) Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs; and

(c) Explain why legal action should not be instituted against the Secretary, Ministry of Mines, for repeated disregard of the Commission's requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

11A. In response, the Ministry of Mines informed vide letter dated 03-11-2011, re-iterating their view that the consultation on the draft legislation may not be qualitatively of same order, where consultation on policy matters is mandated under the Constitution with the NCST. The Ministry further stated that there are no clear guidelines on whether the draft Bill, having been referred to the GoM, could be taken up for consultations with the NCST at such a stage.

12. *The case illustrates that the Ministry of Mines have faulted in lack of proper understanding of the Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution,*

maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes and failed to exhibit expected sensitivity of approach/attitude towards weaker section. The views expressed by the Secretary, Ministry of Mines that MMDR Bill 2010 being a legislation based on National Mineral Policy 2008 may not qualify as a policy matter affecting STs in terms of the provision of Clause (9) of Article 338A of the Constitution and seeking opinion of the Ministry of Law in the matter is by itself a poor reflection of the understanding of the Constitutional provisions regarding mandatory consultation with the Commission; and sharply indicates the need for modifying the Transaction of Business Rules of the Government to unambiguously implements this Constitutional obligation in terms of the Legal Advice tendered by the Ministry of Law.

13. In this case also, MTA, the administrative Ministry for NCST has not consulted the Commission on the Bill.

(C) Land Acquisition, Rehabilitation & Resettlement Bill, 2011

14. The Commission learnt from news reports that the Government had formulated/ introduced the new Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 in Parliament in December, 2007. These Bills were passed by the Lok Sabha, but could not be tabled in the Rajya Sabha. The Commission noted that the Ministry of Rural Development did not consult the National Commission for Scheduled Tribes before introducing the Bill in the Parliament. However, considering the imperative need for normative definition/ implementation of rehabilitation and resettlement measures through law, the Commission conveyed detailed comments on the proposed legislation to the Ministry of Rural Development and Ministry of Tribal Affairs vide d.o. letter dated 06 August 2010 and 25 August, 2010 respectively from Shri Maurice Kujur, Vice-Chairperson, and acting Chairperson, National Commission for Scheduled Tribes.

15. Subsequently, the Ministry of Rural Development processed an integrated Bill, Land Acquisition and Rehabilitation & Resettlement Bill, 2011. As land acquisition effectively transfers ownership of tribal land to others, the Commission was anxious that certain important concerns need to be adequately addressed in the Bill, and requested the Department of Land Resources, Ministry of Rural Development, on several occasions to submit the Bill as finalized; for obtaining the views/ comments of the Commission under Article 338A(9) of the Constitution. The Ministry of Rural Development vide letter dated 19-08-2011 informed the Commission that a draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been prepared and put in the public domain. The Ministry sought the comments and suggestions of the Commission on the draft Bill as placed in the public domain. The NCST vide letter dated 30-08-2011 highlighted that for a meaningful consultation, the Commission would be able to furnish the comments only after the draft Bill has been finalised by the Ministry of Rural Development.

16. The Ministry of Rural Development, Department of Land Resources was also apprised by the Commission that the Department of Legal Affairs, in response to a reference by the Ministry of Mines have opined vide letter dated 22-09-2011 that "the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may be no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet." As it was already evident from the response of the Ministry of Rural Development that the Ministry was not prepared to have meaningful consultations with the NCST on the subject and take cognizance

of the views/ comments of the Commission on the Bill, since the Bill had already been introduced in the Lok Sabha on 07-09-2011, without having consultations with the Commission. The same were sent to the Hon'ble Prime Minister vide D.O. letter dated 17-10-2011 from the Chairperson, NCST requesting the Prime Minister to have the views of the Commission considered by the Government even while the matter was engaging the attention of the Standing Committee of the Parliament.

17. In view of this position, the Chairperson, National Commission for Scheduled Tribes called the Secretary, Department of Land Resources, Ministry of Rural Development for discussions on 3rd November, 2011, wherein it was desired that a chronological statement of the manner in which the request of the Commission had been dealt with by different officials at different stages so that the cause can be included in the Annual Report of the Commission.

18. The Ministry of Rural Development *vide* letter dated 21-11-2011 furnished the reply w.r.t. the meeting held in the NCST on 03-11-2011. It was stated in the letter that the Department has followed the guidelines/ instructions of the Cabinet Secretariat regarding inter-ministerial consultations. It was also highlighted in the letter that the Cabinet Secretariat vide its letter dated 21-10-2011 has informed that **"the sponsoring ministry/ department may consult the concerned administrative Ministry/Department dealing with the relevant Constitutional body/Commission/Statutory body etc. except in cases where there is no administrative Ministry/Department specified for such bodies/Commission etc."** (Copy of the Cabinet Secretariat letter is enclosed)

19. While the Ministry's reply is a clear afterthought, Cabinet Secretariat letter is dated 21/10/2011 while the Bill was introduced in Parliament on 07/09/2011 t*he case reveals that the Ministry of Rural Development has disregarded the provision under Article 338A(9) of the Constitution, despite several communications from this Commission, and also did not consider the advice of the Ministry of Law that Ministries are obligated by the Constitution to consult the Commission on the provision of the draft bill affecting Scheduled Tribes. It would also appear that the Cabinet Secretariat had not been fully cognizant of the impart of Constitutional obligations. The Law Secretary, vide his letter dated 26/10/2007 (copy enclosed), also written to the Cabinet Secretary requesting him to advise all Ministries/ Departments to follow strictly the provision contained in the said Article 338A(9). This advice of the Law Secretary is not correctly reflected in the clarification issued to the Ministry of Rural Development, which attempts to transfer this obligation to "Administrative Ministries". Interestingly, MTA, the administrative Ministry dealing with the NCST also did not refer the Bill to NCST for consultations.*

(D) National Food Security Bill, 2011

20. It was learnt from the news reports that the Department of Food & Public Distribution, Ministry of Consumer Affairs is processing the Draft National Food Security Bill and it has been hosted on the Ministry's website. This Commission vide D.O. letter dated 18th October, 2011 requested the Secretary, Deptt of Food and Public Distribution, Ministry of Consumer Affairs, Government of India to forward a copy of the Bill, as finalized, for seeking views of the Commission in accordance with the provisions of Clause 9 of Article 338A of the Constitution. In this connection, the opinion of the Ministry of Law emphasizing that the Ministries are obliged by the Constitution to consult the Commission on the provision of a draft Bill affecting STs, was also forwarded.

21. In response, the Department of Food & Public Distribution sought the views of the Commission on the Bill as available in the public domain only. Subsequently, Secretary, Department of Food & Public Distribution was informed vide D.O. letter dated 27th October, 2011 that the Deptt. of Food and Public Distribution had failed to appreciate the purport of NCST's communication wherein it was clearly mentioned that views of the Commission were required to be sought on the Bill, as finalized by the Ministry, for meaningful consultation with the NCST, as envisaged under Article 338A(9) of the Constitution. The Secretary, Deptt. Of F&PD was also informed that seeking views of the Commission at this stage, when the Ministry has not finalized its views on the Bill, does not serve the intended purpose and the spirit of the Constitution.

22. It was further understood from the news reports that the draft Bill, after incorporating certain changes to the version provided in the public domain would be drafted by the Department of Food & Public Distribution shortly. The matter was placed before the Chairperson, National Commission for Scheduled Tribes. The Chairperson decided to discuss the matter with the Secretary, Deptt. of Food & Public Distribution, Ministry of Consumer Affairs **on 11-11-2011 at 1430 hrs**.

23. The meeting called by the Chairperson, National Commission for Scheduled Tribes with the Secretary, Department of Food & Public Distribution, Ministry of Consumer Affairs on 11-11-2011 was attended by the Joint Secretary, Department of Food & Public Distribution as the Secretary Department of Food & Public Distribution was stated to be away. Joint Secretary, Department of Food & Public Distribution, informed the Commission that first round of discussion on the Bill was already over and inter-Ministerial consultations were being held on the Bill. At this stage, the Ministry of Consumer Affairs, Food & Public Distribution, was also separately referring the Bill to the National Commission for Scheduled Tribes for their comments. The Commission mentioned in the meeting that seeking views of the Commission at this stage, when the Ministry has not finalized its views on the Bill, does not serve the intended purpose and the spirit of the Constitution, as envisaged under Article 338A(9) of the Constitution. He also invited opinion of the Ministry of Law & Justice in the matter (also communicated to the Ministry of Consumer Affairs, F&PD vide letter dated 18th October, 2011), emphasizing that the Ministries are obliged by the Constitution to consult the Commission on the provision of a draft Bill affecting STs. The Joint Secretary, Department of Food & Public Distribution, Ministry of Consumer Affairs, mentioned that after receipt of comments from the various Ministries on the Bill, the Deptt. of F&PD is expected to finalize it within a very short period. He assured that the draft Bill after its finalization by the Ministry, and before consideration of the Cabinet, would be referred to the Commission for seeking views/ comments. He, however, requested the Chairperson, NCST to have views/ comments of the Commission on the draft Bill finalized by Ministry of Consumer Affairs, Food & PD, within one or two days.

24. Pending receipt of final draft Bill from the Department of Food & Public Distribution, the observations of the Commission on the revised draft Food Security Bill, 2011 (circulated for inter-ministerial consultations, as received from the Department of Food & Public Distribution, Ministry of Consumer Affairs and discussed in the meeting of the Commission held on 11-11-2011) were also forwarded to the Department of Food & Public Distribution, Ministry of Consumer Affairs vide letter dated 22-11-2011. It was pointed out to the Ministry that the revised Bill circulated for inter-ministerial consultations was not substantially different

from the earlier version. The Ministry was, therefore, requested to forward by 28-11-2011, a copy of the Bill as finalized by the Ministry before consideration of the Cabinet. The Secretary, Department of Food & Public Distribution, Ministry of Consumer Affairs personally met the Chairperson, National Commission for Scheduled Tribes on 28-11-2011 and assured the Chairperson that the final draft Bill will be made available to the Commission personally by 10:00 AM on 01-12-2011 and requested that the views/ comments of the Commission may be made available to the Ministry at the earliest as the Bill was slated to be submitted to the Cabinet shortly.

25. The Department of Food & Public Distribution, Ministry of Consumer Affairs vide letter dated 01-12-2011 forwarded for views/ comments of the Commission, a copy of the National Food Security Bill, 2011 finalized by the Department before its submission to the Cabinet. The Commission held special meeting on 01-12-2011 to consider the final draft of the National Food Security Bill, 2011 as received on that date from the Ministry. The Commission noted that the Bill, as finalised by the Department of Food & Public Distribution was not much different in substance than the earlier draft, and the views/comments communicated on that draft Bill were not considered while finalizing the final version. These views/ Comments of the National Commission for Scheduled Tribes on finalised Bill received on 01/12/2011 were forwarded to the Department of Food & Public Distribution, Ministry of Consumer Affairs on the same day i.e. 1st December, 2011with the request to communicate the action taken on the recommendations for its inclusion in the forthcoming Report to be submitted by the Commission to the President. As the information about action taken on the recommendations made by the Commission on the National Food Security Bill, 2011 has not been received so far, the Hon'ble Chairperson has convened another meeting with the Secretary, Deptt. of Food & PD on 5th January, 2012.

26. *The case reveals that MTA, the administrative Ministry for the Commission did not seek consultation with the Commission on the Bill. The Ministry of Consumer Affairs, Deptt. of F&PD also did not seek views/comments on the Bill; and it was forwarded to the Commission only after repeated persuasion through letters and sittings at the level of the Chairperson. Finally, the views of the Commission were sought by the concerned Deptt. but with a condition that the comments may be communicated to them same day. The Commission has noted that neither the views/ comments of the Commission on the draft Bill were incorporated by the Ministry while finalizing the draft Bill for consideration by the Cabinet nor did the Ministry inform the Commission about the consideration, if any, given by the Ministry to the views/ comments furnished by the Commission. Further, the action taken on the recommendations of the Commission has not been made available to the Commission, which is required for incorporation in the forthcoming reports of the Commission to be presented to the President.*

27. The following major areas of concern emerge from the position explained above:

i. Ministry of Tribal Affairs, the administrative Ministry for the NCST did not refer even the important Bills concerning the Scheduled Tribes like the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Land Acquisition (Amendment) Bill, 2007, Rehabilitation and Resettlement Bill, 2007, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011, National Food Security Bill, 2011 for consultation with the Commission

ii. Notwithstanding the explicit provisions in the Constitution, none of the administrative Ministries dealing with the above Bills sought the comments of the Commission.

iii. Even when Commission suo-moto communicated its recommendations in respect of the Land Acquisition (Amendment) Bill, 2007, Rehabilitation and Resettlement Bill, 2007, Integrated Land Acquisition Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011, the concerned Ministries could not place the recommendations for consideration by the Cabinet.

iv. The concerned Ministries dealing with Rehabilitation and Resettlement Bill, 2007, Integrated Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 sought views of the Commission on the Bill, as available in the public domain, which does not serve any purpose because for a meaningful consultation as envisaged under Article 338A(9) of the Constitution, it is desirable for the concerned Ministry to seek consultation with the Commission after finalization of internal process of drafting at the time of inter-Ministerial consultations.

v. The repeated efforts by the Commission to impress upon the concerned Ministry dealing with these Bills to incorporate the recommendation of the Commission for consideration of the Cabinet did not yield any result and the Ministries indulged in seeking clarifications from the Cabinet Secretariat and the Ministry of Law in the matter on the issue incorporated into Constitution over 20 years ago.

vi. Though after repeated communications including sittings taken by the Chairperson, with the Secretary, Deptt of Food & Public Distribution, Ministry of Consumer Affairs, F&PD, Deptt. of F&PD referred the Bill to the Commission for its views/ comments indicating that these are required within a day. Thus, adequate time was not given to the Commission in the matter. (The manner in which the views/ comments of the Commission have been submitted by the Deptt. of F&PD for consideration of the Cabinet have also not been communicated as yet).

vii. The Commission is required to include Action taken on its recommendations on the matters concerning the Scheduled Tribes in the Report to be submitted to the President as required under Article 338A of the Constitution. The position explained above and the absence of feed-back from the concerned Ministries in this regard has incapacitated the Commission to discharge its constitutional duties in such an important area.

28. In earlier Reports, the Commission recommended to the President that the Cabinet Secretariat and the Ministry of Law, Justice and Legal Affairs should be tasked with the responsibility of ensuring meaningful consultations with the Commission before legislative proposals are placed for consideration by the Council of Ministers. A copy of the Commission's Report were also forwarded to the Prime Minister vide D.O. letter no. 4/2/11-Coord. dated 20-07-2011. Since, the Ministry of Law has tendered a detailed opinion on the subject, the Commission is of the view that the existing instructions contained in the Hand Book on "Writing Cabinet Notes" Section 3 of this Hand Book issued by the Cabinet Secretariat, including

consolidated instructions applicable to Notes for the Cabinet/ Cabinet Committees/ EGoM/ GoMs and the clarifications issued by the Cabinet Secretariat to the Ministry of Rural Development by the Cabinet Secretariat vide its letter dated 21-10-2011, quoted in para 16 above, need review in view of the following:

i. The existing instructions as well as the clarifications issued to the Ministry of Rural Development by the Cabinet Secretariat. vide letter dated 21-10-2011 have not been able to serve the intended objective regarding mandatory consultation enshrined under Article 338A (9) of the Constitution, which have also been emphasized by the Ministry of Law and Justice.

ii The position explained in sub-para (i) to (v) of para 27 above highlight the gap of understanding amongst the Ministries of the Government regarding the constitutional responsibility of the NCST and the constitutional obligation for the Union Government under Article 338A(9) of the Constitution and also lack of sensitivity towards the needs and problems of the Scheduled Tribes and the Scheduled Areas in the country, for which special provisions have been incorporated in the Constitution.

iii The National Commission for Scheduled Tribes is a Constitutional body and it should not be treated as a subordinate organisation. The views/ recommendations made by the Commission are required to be laid in both Houses of Parliament along with action taken Memorandum explaining the acceptance/ non-acceptance of those recommendations. Therefore, Ministry of Tribal Affairs, or for that purpose any other Ministry, has no oversight role to play in the context of recommendations made by the Commission or amending those recommendations. The provision to seek consultation with the Ministry/ Department only, (as per existing instruction 39 of Hand Book on "Writing Cabinet Notes"), and consultation with the Commission through the concerned Ministry/Department (as per the clarifications issued to the Ministry of Rural Development by the Cabinet Secretariat. vide letter dated 21-10-2011 refer) dilute the role of the Commission regarding mandatory consultation with the Commission as enshrined in Article 338 (A)9 of the Constitution.

Iv *The Commission has recommended in its earlier reports that w*henever matters are referred to this Commission for advice or comments, the views expressed by this Commission should invariably be placed, without any oversight or modification, before the concerned authorities for their consideration, as the final decision on the issue rests with the concerned authority. The instructions no.39 of the consolidated instructions applicable to Notes for the Cabinet/ Cabinet Committees/ EGoM/ GoMs issued by the Cabinet Secretariat ("*the views of the consulted Ministries/ Departments need to be faithfully reflected in the main note to ensure that the Cabinet/ Cabinet Committees could peruse them before arriving at a decision. The comments of the consulted Ministry should not be edited or para-phrased in a manner as to alter their connotation and all the comments/ conditionalities should be incorporated in the note/ annexures")*, should therefore, be strictly followed in respect of the recommendations of the Commission too.

ANNEXURE 3.XIV
(Ref. para 3.44, SR_Ch 3)

AJIT SETH

सत्यमेव जयते

मंत्रिमंडल सचिव
CABINET SECRETARY
NEW DELHI

D.O. No. 703/1/1/2011-CA.V **January 4, 2012**

Dear Secretary,

Article 338A(9) of the Constitution of India provides that the Union and every State Government shall consult the National Commission for Scheduled Tribes on all major policy matters affecting the Scheduled Tribes.

2. The Commission has observed that various Ministries/Departments of Government of India are not consulting them on policy matters including legislative matters affecting Scheduled Tribes and the Scheduled areas. Such non consultation violates the provisions of Article 338A(9) of the Constitution of India. The Commission has expressed their concern regarding this lapse.

3. I would request you to strictly follow the provisions laid down in the said Article.

With regards,

Yours Sincerely,

(Ajit Seth)

ANNEXURE 3.XV
(Ref. para 3.45, SR_Ch 3)

आलोक रावत
ALOK RAWAT

सत्यमेव जयते

MOST IMMEDIATE
सचिव (समन्वय एवं लोक शिकायत)
मंत्रिमंडल सचिवालय
राष्ट्रपति भवन, नई दिल्ली
SECRETARY (COORD. & PG)
CABINET SECRETARIAT
RASHTRAPATI BHAWAN
NEW DELHI-110004

D.O. No. 703/1/1/2011-CA.V

February 10, 2012

Dear Secretary,

You may kindly recall that all Ministries/Departments had been requested vide Cabinet Secretary's D.O. letters No. 701/6/4/2007-CA.V dated 20th November, 2007 and D.O. No. 703/1/1/2011-CA.V dated 4th January, 2012 to follow the provisions laid down in the Constitution of India with regard to consultation with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

2. I would like to clarify that such consultations in respect of major policies with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes are to be carried out through the concerned administrative Ministries in respect of all major policy issues including those placed before the Cabinet/Cabinet Committees as required under the Constitution.

3. I shall be grateful if you issue appropriate instructions to all concerned for strict compliance in your Ministry/Department.

With regards,

Yours sincerely,

10.2.2012

(Alok Rawat)

Secretaries to the Government of India (As per list attached)

ANNEXURE 3.XVI
(Ref. para 3.45, SR_Ch 3)

No. 1/3/2/2012-Cab.
GOVERNMENT OF INDIA (BHARAT SARKAR)
CABINET SECRETARIAT (MANTRIMANDAL SACHIVALAYA)
RASHTRAPATI BHAVAN
*****

New Delhi, the 16th February 2012

OFFICE MEMORANDUM

Subject:- Instructions on preparation of notes for the Cabinet/Cabinet Committees/Empowered Group of Ministers/Group of Ministers.

The undersigned is directed to state that some instances have been brought to the notice of the Government where the National Commission for the Scheduled Castes, and/or the National Commission for the Scheduled Tribes have not been consulted as envisaged under the Constitution on major policy matters affecting the Scheduled Castes or the Scheduled Tribes, respectively, by the Ministries/Departments concerned. All Ministries/Departments have, keeping in view the Constitutional mandate of Article 338(9) and Article 338A(9), been advised *vide* Cabinet Secretary's D.O. letters no. 701/6/4/2007-CA.V dated 20.11.2007 and 703/1/1/2011-CA.V dated 04.01.2012 to ensure strict compliance of the relevant provisions of the Constitution. It has further been clarified *vide* D.O. letter no. 703/1/1/2011-CA.V dated 10.02.2012 from Secretary (Coord.), Cabinet Secretariat that such consultations would also be required in respect of major policy issues placed before the Cabinet/Cabinet Committees.

2. Accordingly, the sponsoring Ministries/Departments are advised to ensure that the National Commission for the Scheduled Castes, and the National Commission for the Scheduled Tribes, as the case may be, shall mandatorily be consulted by them through the Ministry/Department administratively concerned with the Commission before finalization of such notes for consideration of the Cabinet/Cabinet Committees. In all such cases, the administrative Ministry/Department concerned will place the views of the concerned National Commission, as the case may be, as received by them, before the Minister-in-charge of the Ministry/Department before their final views/comments on such issues are communicated to the sponsoring Ministry/ Department. It has also been decided that the unabridged/unedited views of the concerned Commission along with the views of the Ministry/Department administratively concerned with the Commission be included in/enclosed with the note for consideration of the Cabinet/Cabinet Committees along with responses thereon by the sponsoring Ministry/Department.

3. It is requested that the above instructions may be disseminated to all concerned for ensuring strict compliance.

4. The consolidated instructions relating to preparation of notes for the Cabinet/Cabinet Committees, as also the Handbook on writing Cabinet notes stand duly modified to the extent as indicated above.

(K.L. Sharma)
Director (Cabinet)
Tele No. 2301 5802

To

All Secretaries to the Government of India.

ANNEXURE 3.XVII

(Ref. para 3.47, SR_Ch 3)

National Commission for Scheduled Tribes

PROCEEDINGS OF THE SITTING HELD ON 21/02/2012

Subject: (i) Consultation with the National Commission for Scheduled Tribes under Clause(9) of Article 338A of the Constitution and

(ii) Empanelment of officers belonging to the Scheduled Tribes for appointment at the level of Secretaries in the Government of India

A Sitting was held at 12:45 Hrs. on 21-02-2012 in the Chamber of Dr. Rameshwar Oraon, Chairperson, National Commission for Scheduled Tribes. Shri Upendra Tripathy, Additional Secretary, Shri Rajive Kumar Additional Secretary, Smt. Nivedita Shukla Verma, Joint Secretary and Shri K. L. Sharma, Director in the Cabinet Secretariat attended the sitting. Both the issues mentioned above were discussed in the Sitting. Initiating the discussions, Shri Aditya Mishra, Joint Secretary, National Commission for Scheduled Tribes mentioned that a sitting was held on 04-01-2012 in the Chamber of the Chairperson, National Commission for Scheduled Tribes to discuss the above mentioned two issues with the Cabinet Secretary, Government of India. As the finalization of the Special Report of the Commission was pending for want of information about action taken on the decisions taken in the sitting held on 04/01/2012, the Commission decided to hold another Sitting, being hel;d on the day.

(i) Consultation with the National Commission for Scheduled Tribes under Clause(9) of Article 338A of the Constitution

2. The Commission was informed that the Cabinet Secretariat, after considering the decisions taken in the last Sitting held on 04/01/2012, vide D. O. letter No. 703/1/1/2011-CA.V dated 10/02/2012 from Secretary (Coordination) has separately emphasized regarding consultations with the Commission in respect of all major policy issues including those placed before the Cabinet/ Cabinet Committees as required under the Constitution. Further, instructions on preparation of notes for the Cabinet/ Cabinet Committees/ Empowered Group of Ministers/ Group of Ministers have been modified vide O. M. No. 1/3/2/2012-Cab. dated 16/02/2012. A copy each of the afore mentioned references were furnished to the Commission. The Commission was further informed that action for amending the guidelines issued by the Cabinet Secretariat for drafting the note for Cabinet/Cabinet Committees, etc. as also consequential changes in the Handbook had been completed and the consolidated instructions and the modified Handbook uploaded on the website of the Cabinet Secretariat.

3. Commission noted that the Secretary (Coord. & PG) vide D. O. letter No.703/1/1/2011-CA.V dated February, 10, 2012 has reiterated the instructions contained in the D.O. letter dated 4th Jan., 2012. The letter further clarified that such consultations with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes in respect of major policies are to be carried out through the concerned administrative Ministries in respect of all major policy issues including those placed before the Cabinet/ Cabinet Committees as required under the Constitution. Further, according to the revised instructions issued vide OM dated 16.2.2012, the sponsoring Ministries/ Departments were advised to ensure that the National Commission for the Scheduled Castes, and the National Commission for the Scheduled Tribes, as the case may be, shall mandatorily be consulted by them through the Ministry/Department administratively concerned with the Commission before finalization of such notes for consideration of the Cabinet/Cabinet Committees. In all such cases, the administrative Ministry/Department concerned will place the views of the concerned National Commission, as the case may be, as received by them, before the Minister-in-charge of the Ministry/ Department concerned before their final views/ comments on such issues were communicated to the sponsoring Ministry/ Department. It has also been decided that the unabridged/unedited views of the concerned Commission along with the views of the Ministry/Department administratively concerned with the Commission be included in/enclosed with the note for consideration of the Cabinet/ Cabinet Committees along with responses thereon by the sponsoring Ministry/Department.

4. The Commission pointed out that the revised procedure for consulting the Commission through the Ministry of Tribal Affairs creates a dilatory mechanism, which dilutes the responsibility of the Govt., as incorporated under Article 338A of the Constitution, to ensure mandatory consultation with the Commission on policy related matters concerning Scheduled Tribes and fastens it on to a Nodal Ministry instead. Further, this would give 00000greater opportunity/ alibi for evasiveness on the part of the sponsoring Ministries, considering the facts neither the sponsoring Ministry nor the Administrative Ministry consulted this Commission regarding the (Integrated) Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 and the National Food Security Bill, 2011 and even after the Commission had advised these Ministries, they resorted to seeking opinion of the Ministry of Law for obtaining legal opinion in such matters , effectively aborting the Constitutional imperative in the process. The Commission, therefore, emphasized that the revised instructions/ procedures are also fraught with risk of failures as noticed in the past; and therefore, fool proof system should be designed to avoid recurrence of such cases in future. The Commission invited the attention of the Cabinet Secretariat towards

instructions No. 46 to 49 of the Handbook of instructions issued by the Cabinet Secretariat. These instructions read as follows:-

46. National Manufacturing Competitiveness Council should be consulted in all cases relating to manufacturing sector.

47. All proposals concerning revival or restructuring of public sector undertakings should be first referred to BRPSE and thereafter brought up before the Cabinet/Cabinet Committees after necessary inter-ministerial consultations.

48. In respect of proposals concerning North Eastern Region, consultations with the Ministry of Development of North Eastern Region should be carried out before finalizing the proposals(s) for consideration of the Cabinet/Cabinet Committees.

49. In respect of social sector schemes, the Ministries/Departments should necessarily consult the Ministry of Panchayati Raj to enable empowerment of these democratic institutions at grass root level. The Ministry of Panchayati Raj should also be consulted in all cases relating to centrally sponsored Programmes/ Schemes.

5. Instructions no. 46 and 47 specifically require consultation with the NMCC and BRPSE respectively without mentioning that such consultations will be done through their administrative Ministry/ Department. In this context it is worth mentioning that the NMCC, which is to be consulted in all cases relating to manufacturing sector ,is an autonomous body set up in October 2004, by a Government Order, under the Department of Industrial Policy and Promotions in the Ministry of Commerce and Industry and similarly, BRPSE, to which proposals concerning revival or restructuring of public sector undertakings should be first referred to, is an Advisory Body set up in December, 2004, by a Resolution of the Government, under the Department of Public Enterprises in the Ministry of heavy Industries & Public Enterprises. In contrast, the National Commission for Scheduled Tribes is a Constitutional Commission having legendary existence since the adoption of the Constitution. Therefore, in view of above the Cabinet Secretariat should have no reluctance in requiring directing for direct consultation with the National Commission for Scheduled Tribes in all major policy matters (including Notes for Cabinet Committees and the Legislative proposals) affecting Scheduled Tribes. The sponsoring Ministries may also be required to specifically mention in their Note/ proposal that the National Commission for Scheduled Tribes has been consulted and the views/ comments furnished by the concerned Commission were appended to the Note/ proposal.

6. The Cabinet Secretariat assured the Commission that the revised instruction/ procedures would be reviewed after sometime and requisite corrections, if necessary, will be issued and incorporated in the Handbook of Instructions.

(ii) Empanelment of officers belonging to the Scheduled Tribes for appointment at the level of Secretaries in the Government of India

7. The Commission was informed that the guidelines for empanelment of officers at the level of Secretary/ Additional Secretary, *inter-alia*, provide for suitable relaxation of the criteria for empanelment to give due representation to the category of Women/ Scheduled Castes/ Scheduled Tribes/ State Cadres, in case the empanelment process does not lead to their adequate representation. The adequacy of representation would mean the cumulative representation in four batches, i.e., the current batch and the immediately preceding three batches being less than 66⅔% of the all India percentages of empanelment. The number of officers to be empanelled on this basis shall not exceed 15% of the number in the panel and selection would follow the process laid down albeit with suitably relaxed norms. The Commission was further informed that the analysis done for the last 4 years indicate that:

(a) one of the main reasons for non-empanelment of ST officers at the level of Secretary was due to the fact that officers did not have prior Central experience; and

(b) ST Officers have been empanelled at the Secretary level by using the special provisions for empanelment under relaxed conditions.

8. The Commission noted that the response was obfuscatory since the Cabinet Sectt., had still not furnished para-wise comments on the issues raised in the matter as mentioned in para 5 and 6 of the agenda brief circulated for the meeting held on 4/01/2012. The surviving issue pertained to the denial to the ST officers of placement as Secretaries in the Govt. of India after empanelment, in respect of which the Cabinet Sectt., has not proposed any corrective mechanism addressing the issue. The Commission advised the Cabinet Sectt., that as a measure of increasing transparency predictability and fair play in the system, the Cabinet Sectt., should formulate their views on the issues raised by the Commission in para 5 and 6 of the agenda brief quoted above. The Commission further observed that the suggested action on the part of the Cabinet Sectt.,, was not a matter of choice but a responsibility to ensure true implementation of Constitutional safeguards in the proper spirit.