CHAPTER-IV

POWERS AND FUNCTIONS

The Rabha Hasong Autonomous Council Act\(^1\) provides certain specific functions to the General Council and Village Council as below:

**Powers and Functions of the General Council:**

The General Council shall have executive powers in relation to the Council Area over the following subjects:

1. Cottage Industry
2. Animal Husbandry and Veterinary
3. Forest other than reserved forest.
4. Agriculture
5. Rural Roads and Bridges.
6. Sericulture
7. Education.

(i) **Adult Education**
(ii) **Primary Education**
(iii) **Up to Higher Secondary including vocational training**
8. Cultural Affairs
9. Soil conservation
10. Co-operation
11. Fisheries
12. Panchayat & Rural Development
13. Handloom & Textile
14. Public Health Engineering - Drinking Water
15. Minor Irrigation
16. Social Welfare
17. Flood Control Schemes for protection of villages (not of highly technical nature)
18. Sports & Youth Welfare
19. Weights & Measures
20. Library services
21. Museum and Archaeology
22. Urban Development, Town & Country Planning
23. Tribal Revenue
24. Publicity & Land Revenue
25. Publicity & Public Relation
26. Tourism
27. Transport
28. Any other matter connected with development.

29. Municipal Board, Improvement Trust, District of Boards & other local self-Government of Village Administration.

30. Tribal Welfare

31. Market and Fair

32. Lotteries, Theatres, Dramatic performances & Cinema

33. Vital Statistics including registration of birth and deaths.

34. Food & Civil Supplies

**Other matters to be under the control of administration of the General Council:**

Subject to the general policy of the Government, the General Council shall—

1) Formulate integrated development plans for the Council Area.

2) Implement schemes and programmers for the development of the Council Area.

3) Have powers to appoint class III and class IV staff within the Council Area.

4) Have power to regulate trade and commerce within the council area in accordance with the existing laws including issue of permit or licenses to individuals within the council area.
5) Guide customs and traditions and social justice of the Rabha community according to the traditional laws.

6) Organise special recruitment drive into Army, Navy, and other paramilitary forces, police Forces and other Central Government establishment for appointments of the persons belong to the Rabha Hasong Community.

7) Allot permits for trade and commerce to the people residing in the Council Area preference being given to the Rabha Community.

**Power and function of Apex Councils**: 

1. Land and Land Revenue management

2. Management of Forest & Environment not being a Reserved Forest

3. Use of any canal or water course for the purpose of agriculture

4. Agriculture

5. Public Health and sanitation, hospitals and dispensary

6. Tourism

7. Vocational Training

9. Construction and maintenance of all roads except national highways and state highways

10. Transport & Development of Transport

11. Management of burials and burial grounds, cremation and cremation grounds

12. Reservation, protection and improvement of livestock and prevention of animal diseases, veterinary training and practices

13. Founds and the prevention of cattle trespass

14. Water that is to say water supplies, irrigation and canals, drainage and embankment, water storage:

15. Fisheries

16. Management of Markets and Fairs not being already managed by Municipal authorities, Panchayat samities or Goad Panchayats

17. Education – Primary, Secondary and Higher

18. Works, lanes and buildings vested in or the possession of the General Council

19. Small scale and Cottage industries

20. All matters connected with customary law relating to inheritance of property, marriage and divorce, social customs etc. of both tribal and non-tribal communities
21. Development of languages, tribal/folk-culture in all aspect
22. Snare of royalties from licenses or leases of minerals
23. Any other matter connected with development.

**Power to impose, levy and collect taxes:**

Subject to the provisions of any other law in force, the General Council shall have the power to collect within the Council area such taxes as are payable under the law in force in the manner as may be prescribed. Provided that the tax or taxes as aforesaid shall be collected from such date as may be appointed by the Government by notification in this behalf in the official Gazette.

The Government may prescribe maximum rates of taxes to be levied by the General Council. Under such situation the General Council shall -

1. Levy tolls persons, vehicles or animals of any class, for the use of any bridge or road, or ferry constructed or established and managed by it.

2. Levy the following fees and rates, namely.
   a. Fees on the registration of boards or vehicles.
   b. Fees for providing sanitary arrangements at such places of worship, pilgrimage, fairs, melees, other public places within the
Council Area as may be specified by the Government by notification in the Official Gazette.

c. Fees for Licenses

d. Water rates, where arrangements for irrigation or drinking water is made by it within the Council Area.

e. Lighting rate where arrangement for lighting of public street or places are made by it within the Council Area.

(3) However the General Council shall not undertake registration of any vehicle or levy any fee in respect thereof and shall not provide sanitary arrangement at places of worship, pilgrimage, fairs, maals or other public places within the Council Area or levy and fees in respect thereof if such vehicle has already been registered by any other authority under the law for the time being in force, or if such provisions for sanitary arrangements has already been made by the Government or any other local authority.

(4) The collection of tolls, fees or rates and the terms and conditions for the imposition thereof shall be such as may be prescribed by the bye-laws. Such bye-laws may international provide for exemption from all or any class of cases.

(5) The General Council may any fees or taxes on any or all the subject assigned to the village council.
The Government may, in consultation with the General council, entrust either conditionally or without any condition, to the General Council or their officers any function in relation to any matter not enumerated in the Act which the executive power of the Government extends

**Power to acquire, hold and dispose of property:**

The General Council, subject to the previous approval of the Government and subject to such terms and conditions as may be imposed by the Government, shall have the power to acquire, hold or dispose of any immovable property or movable property the value of which exceeds rupees one lakh and to enter into any contract or agreement with any party or authority.

**Power to make Bye-laws:**

The General Council may, subject to the provisions of the Act and the rules made there under and subject to the approval of the Government, make bye-laws to be applicable within the council area with respect to all or any of the matters enumerated in sections 18, 19, 43 and 44 for the regulation, control and administration thereof.

All bye-laws made by the General Council shall have effect upon their publication in the official Gazette.
Powers & Functions of the Executive Council:

The executive power of the General Council shall vest in the Executive Council. All orders or instructions made or executed by the Executive Council shall be deemed to have been made or executed by or under the authority of the General Council.

Every order made or instruction issued or resolution passed by the General Council shall be authenticated by the signature of the Chief Executive Councilor, or in his absence, by any one of the Executive Councilors.

The Chief Executive Councilor shall, for the smooth and convenient transaction of business of the Executive Council, allocate among the Executive Councillors such business as he may deem fit.

The Executive Council may, in cases where the Chief Councillor is required to take, in accordance with the provisions of the Act, any action subject to the approval of the Executive Council, by a special or general resolution, authorize the Executive Councillor to take such action.

Powers and Functions of the Village Council:

The Village Council shall have the executive power in relation to the Village Council area over the following subjects.
1. Agriculture including agricultural extension.
3. Fisheries.
4. Social and Farm Forestry/Minor Forest produce, fuel & fodder.
6. Rural Housing.
7. Drinking water.
8. Road, building, culverts, bridges, tunnels, waterways and other means of communication.
9. Rural Electrification.
12. Education including Primary Schools.
13. Adult & Non-formal Education.
15. Cultural Activities.
17. Rural Sanitation.

21. Welfare of weaker section and in particular the SC/ST.


23. Maintenance of community assets.

24. Construction and maintenance of cattle sheds, similar institutions.

25. Construction and maintenance of cattle sheds, pounds and cart stands.

26. Maintenance of public parks and play grounds.

27. Construction and maintenance of slaughterhouses.


29. Such other functions as may be entrusted by the Government from time to time.

Other Matters to be under the control of administration of the Village Council:

Subject to the General policy of the Government and subject to the general control and supervision of the General council, the Village Council shall-

a. Formulate integrated development plans for the Village Council Area.
b. Implement schemes and programmes for the development of the Village Council Area.

c. Have powers to appoint Class-III and class-IV staff of the village council.

d. Have powers to regulate trade and commerce within the Village Council area in accordance with the existing laws including issue of permits or licenses to individuals within the Village Council area.

e. Guide customs and traditions and social justice of Rabha Community according to their traditional laws. and

f. Allocate permits for trade and commerce to the people residing in the Village Council area preference being given to the Rabha Community.

**Power to impose, levy and collect taxes:**

Subject to the provision of any other laws for the time being in force and subject to the previous approval of the General Council, the Village shall have the power to collect within the Village Council area such taxes as are payable under the law for the time being in force in the manner as may be prescribed. Provided that the tax or taxes as aforesaid shall be collected from such date as may be appointed by the
Government by notification in this behalf in the official Gazette. The Village Council shall also:

a. Levy tolls on prescribed vehicles or animals of any class for the use of any bridge, or road other than kacha road, or ferry constructed or established by it.

b. Levy the following fees and rates namely:
   - Fees on the registration of boats or vehicle.
   - Fees for providing sanitary arrangements as such places or worships, pilgrimage, fairs, melas or other public places within the Village Council area as may be specified by the Government by notification in the official Gazette.
   - Fees for licenses.
   - Water rates where arrangement for irrigation or drinking water is made by it within the Village Council area.
   - Lighting rate where arrangements for lighting on public streets or places are made by it within the Village Council area.

However, the Village Council shall not undertake registration of any vehicle or levy any fee in respect thereof and shall not provide sanitary arrangement at places of worship, pilgrimage, fairs, melas or other public places within the Village Council area or levy any fees in respect thereof, if such vehicle has already been registered by any other
authority: under the law for the time being in force or if such provision for sanitary arrangements has already been made by the Government of any other local authority.

The collection of tolls, fees or the terms and conditions for the imposition thereof shall be as such as may be prescribed by the bye-laws. Such bye-laws may international provide for exemption from all or any class of cases.

**Power to entrust functions:**

The Government may, in consultation with The Village Council, entrust either conditionally or without any condition to the village council or its officers any functions in relation to any matter not enumerated in section 43 to which the executive power of the Government extends.

**Power to acquire, hold and dispose of property:**

The Village Council subject to the previous approval of the Government and subject to such terms and conditions as may be imposed by the Government, shall have the power to acquire, hold and dispose of any immovable property or movable property the value of which exceed rupees fifty thousand and to enter into any agreement or contact with any party or authority.
Funds, Audit And Budget:

There shall be two funds to be called respectively the General Council Fund, meant for the General Council and the Village Council Fund meant for the village Council.

Each fund as aforesaid shall be under separate sub-heads within the state budget to be held for the purpose of the Act and all moneys realized or realizable under this Village Council, as the case may be shall credited to its respective fund.

The Government shall provide funds to the General Council Fund and the Village Council Fund from the Tribal areas Sub-plan and other resources in accordance with the appropriate formulas to be worked out keeping in mind the resources of the Government, priorities or development works in other areas including other tribal areas along with other relevant deciding factors.

The following shall be deposited to the Village Council fund.

a. Contributions and grants received from the Government.

b. Contributions and grants from the General Council.

c. All receipts on account of donation, rates, taxes etc.

d. All other sums received by or on behalf of the village council.
e. Land revenue and local rates, if any, on land including Tea Garden, which falls in the Village Council area.

The allocation made under these sub-heads shall be in keeping with the guidelines laid down by the Government of India from time to time in the spirit of the Constitution of India.

The Government shall not divert the fund allocated under these sub-heads except in exigencies when there is inhabitable budget deficit.

All funds, as may be allocated by the Central Government or the State Government for the General Council or the Village Council, as the case may be shall be assigned to it and shall be credited to the General Council fund or the Village Council Fund, as the case may be.

The General Council or the Village Council, as the case may be, subject to provision of loans by any law relating to the raising of local authorities, raise with the approval of the Government loans for the purposes of the Act and create a sinking fund for the repayment of such loan.

The money credited to the General Council fund or the Village Council Fund shall be applied for the payment of all sums, charges and costs necessary for carrying out the purposes of the Act.
No payment shall be made out of the General Council fund or the Village Council Fund unless such expenditure is covered by a current budget grant. Provided that the General Council or the Village Council as the case may be may make payments in terms of refund of deposits by contractors or for urgent works under undertaken in an emergency or when required by the Government in the interest of the public or under the decree or order of a civil or criminal court against the General council or the village council, as the case may be and for such other cases as may be prescribed. Provided further that such expenditure shall be reported to the General council or the village council as the case may be, for taking such action under the provision of this Act as may appear to it to be feasible for covering the amount of such payments.

Surplus moneys standing at the credit of the General Council or the village council, as the case may be, at the end of the financial year, shall be invested in accordance with such bye-laws as may be made by the general council, in this behalf.

Provided that no funds standing at the credit of the General Council or the village Council, as the case may be, shall be lapsed but shall be carried over to the budget of the next financial year.
The General Council shall make bye-laws for the management of the General Council Fund and the Village Council fund and for the procedure to be followed in respect of payment of money into the said funds, withdrawal of moneys therefore, the custody of the moneys therein and any other matter incidental thereto or connected therewith.

The accounts of the General Council and the Village Council shall be kept in such form and manner as may be prescribed in consultation with the accountant general, Assam.

Audit:

Subject to the provisions of the Comptroller and Auditor General (Duties, Power and Conditions of Service) Act, 1971 and the rules and the orders made thereunder, the audit of the accounts of the General Council and Village Council shall be entrusted by the Government to the Comptroller and Auditor General of India who may submit to Governor such report therein as it may deem fit. The Government shall transmit the report to the General Council and the village councils for discussion and consideration. The General Council and the Village Councils shall return the report to the Government with comments, if any. The Government shall lay such report along with the
Budget:

The General Council shall at such time and in such manner as may be prescribed prepare in each financial year a budget of its estimated receipts and disbursements for the following financial year and submit it to the Government by 1st November of the current year in the like manner and shall submit the same to the General Council for consideration and onward transmission to the Government on or before the 1st October of the current financial year.

The Government may within such time as may be prescribed, either approve the budget or return it to General Council or the Village Council concerned, as the case may be, for reconsideration on the observations of the Government, if any. The general council or the Village Council concerned as the case may be shall thereupon resubmit the budget along with its cements on the observation and if the approval of the Government upon such submission or resubmission as the case may be, is not received by the General
Counci or the Village Councils as the case may be, the budget shall be deemed to have been approved by the Government.

No expenditure shall be incurred unless the budget of the General Council as well as the budget the Village Councils are either approved or deemed to have been approved by the Government.

**Miscellaneous**

**Effect of Bye-law etc**

All the bye-laws, regulations made, others passed and notification issued under this Act by the General Council or Executive Council or the Village Councils as the case may be shall subject to maintenance of security and safety of the State of Assam and Government shall have the powers to take such steps as may be deemed necessary for the purpose.

**Power to issue instructions**

The Government shall have the general power to issue instructions from time to time for the purposes of implementation of the act.
Protection of the right of the non-tribal and other ethnic groups:

All rights and interest of the non-tribal citizens and other ethnic groups other than the Rabha Community within the Council areas as exist at the commencement of the Act. in matters pertaining to their language, literature, culture, religion, customs and traditions, trade and commerce, industry, land etc. shall be protected.

Properties situated in the Council area:

Subject to such restriction as the Government may impose all properties specified below and situated in the Council area shall vest in and belong to General Council namely.

a. All Public Building constructed or maintained out of the General Council Fund.

b. All public roads which have been constructed and maintained out of the General Council Fund and stones and other materials there of ad also trees, erections, materials implements and things provided for such roads.

c. All land and other properties movables or immovable transferred to the General Council by the Government.
d. Such properties owned and controlled by the Municipality or the panchayat as may be assigned to the General Council by the Government

The properties and construction and maintenance of which has been done out of the Village Council fund shall vest in and belong to the Village Council within the area in which the property is situated.

The properties vested by the Act and all other properties, which may be vested in the General Council, as the case may be, shall be under the management, direction and control of the General Council or the Village Council concerned as the case may be.

Special Provision for Council areas

The Government shall consult and give due regard to the views of the General Council before any law is made and implemented in the Council Area on the following subjects:

- The religions and social practice of the Rabha Community.
- The customary laws and procedures of the Rabha Community.
- Ownership and transfer of land within the Council Area.
Reservation for services

Subject to the provisions of the law for the time being in force the General Council shall have the power to reserve jobs for the scheduled tribes within its jurisdiction.

Validation

No act or proceedings of the General Council or the Executive Council or the village council, as the case may be, shall be deemed to be invalid merely by reason of existence of any vacancy therein or any defect or irregularity in the constitution thereof.

Indemnity

No suit or other legal proceedings shall lie against the General Council or the Executive Council or the Village Council or any member, or officer or employee thereof for anything done in good faith or intended to be done in pursuance of the act.

A Comparative Study of the Rabha, Mising, Tiwa and Darjeeling Autonomous Councils, highlights certain differences.

All the four Acts are States Acts enacted by the Legislative Assemblies of the respective states of Assam and West Bengal and not under any Constitutional provision. The Darjeeling Gorkha Hill
Autonomous Council Act has been enacted for "the establishment of an autonomous council for the social, economic, educational and cultural advancement of the Gorkhas and other sections of the people residing in the hill areas of the District of Darjeeling."

But the three Autonomous Council Acts are enacted for the establishment of Mising/Rabha Hasong Autonomous Councils "Within the State of Assam with maximum autonomy within the State of the Constitution, comprising of core areas covering the existing tribal Belts & Blocks, Tribal Sub plan areas irrespective of population pattern therein and the satellite areas and other villages having 50% or more tribal population for social, economic, educational, ethnic and cultural advancement of the Mising/Rabha/Tiwa Community residing therein."

The area of operation of the Gorkha Hill Autonomous Council is well defined in the Act; but the three Acts of Assam have not defined the area of operation in clear terms.

All the four Acts provide for constitution of General Council with both elected and nominated members.

Sub-Section (2) of section 24 of the DGHAC provides to the General Council the executive power in relation to "the allotment, occupation or use, or setting apart, of land other than any land which is a reserved forest for the purpose of agricultural purposes, or for any
other purpose likely to promote the interest of the inhabitants of any village, locality or town. Such allotment occupation or use, or setting apart, of land shall be subject to the provisions of the West Bengal Land Reforms Act, 1995 and the rules made thereunder:

But no such power on land has been vested with the three Autonomous Councils of Assam.

There are 34 subjects listed in the three Acts of Assam, in relation to which the Executive power of the General Councils apply but DGHAC has listed only 21 subjects including Land and revenue.

The DGHAC Act empowers the General Council with power of (i) Supervision over municipalities, Panchayat Samitis and Gram panchayats and (ii) Inspection of works of Panchayats. Article 243-M of the THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992 has also exempted the DGHAC from the purview of the Panchayati Raj System.

**Inspection of Works of Panchayats:** The General Council may -

(a) inspect, or cause to be inspected, an immovable property used or occupied by a panchayat Samiti under it or any work in progress under the direction of the panchayat Samiti.
(b) Inspect or examine, or depute an officer to inspect or examine, any department of the panchayat Samiti, or any service, work or thing under the control of the Panchayat Samiti.

(c) Inspect or cause to be inspected utilization of funds in respect of schemes or programmes assigned to the panchayat Samiti by the Government for execution either directly or through the General Council.

(d) Require a panchayat Samiti, for the purpose of inspection or examination as aforesaid –

i) To produce any book, correspondence or other documents, or

ii) To furnish any return, plan, estimate, statement, accounts or statistics, or

iii) To furnish or obtain any report or information.

If any dispute arises between a Gram Panchayat or a Panchayat Samiti or a municipality in the hill areas and the General council, such dispute shall be referred by the General Council to the Government and the decision of the Government thereon shall be final."

But there is no such provision in the three Acts of Assam nor has The Constitution (Seventy-Third Amendment) Act, 1992 exempted the Council areas of Assam from its application. However, the three
Autonomous Councils under the General Council with population of 6000 to 8000, as such, if the three Council Acts are fully implemented, there shall be two elected bodies exercising the same power and functions leading to a constitutional impasse. This needs to be solved immediately.

In case of DGHAC, the Chairman is also Chief Executive Councillor who is empowered to nominate other Executive Councillors and the Vice-Chairman. But in case of the three Autonomous Councils of Assam, the post of Chairman, and the Chief Executive Councillor are different. Further, the Executive Councillors and the Vice-Chairman are elected by the General Council and not selected by the General Council and not selected or nominated by the Chief Executive Councillors.

With the power of land and revenue administration in Council area and with the power for (i) supervision over municipalities, Panchayat Samitis and Gram Panchayat and (ii) Inspection of works of panchayats, the Darjeeling Gorkha Hill Autonomous Council is a very Powerful Autonomous Council in the Country. The main reason for peace and tranquility of Darjeeling since the establishment of the DGHAC is hidden in the powerful provisions in the DGHAC Act, which has really given power to the people treating all citizens in equal
footing and thus bringing about faster development. One may think in same line while giving more power and autonomy to the three Autonomous Councils of Assam, namely Mising Autonomous Council, Tiwa (Lalung) Autonomous Council and Rabha hasong Autonomous Council.
Foot Notes:

1. The Rabh Hasong Autonomous Council Act. 1995. (Assam Act No. XVII), (Received the assent of the Governor on 5th July 1995).


5. The Mising Autonomous Council (Amendment) Act. 2001. (Assam Act No. VIII of 2001). (Received the assent of the Governor on 21st March 2001)

