CHAPTER-V

RABHA HASONG AUTONOMOUS COUNCIL VS 73RD CONSTITUTION (AMENDMENT) ACT 1992

Part-x of the constitution of India deals with the Scheduled Caste and Tribal Area. Article 244(1) of the constitution of India relates to administration of scheduled Areas and Tribe as, which provides for Fifth Schedule of the constitution. As per this Article, the provisions of 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, Tripura, Nagaland and Arunachal Pradesh. Article 244(2) states the provisions of the Sixth Schedule areas, which will be autonomous districts under the Sixth Schedule. Initially the two hill districts of Assam namely - Karbi Anglong and North Cachar Hills were included under the Sixth Schedule areas. Recently, the Bodoland Territorial Areas Districts (BTAD) has also been included in the Sixth Schedule.

Therefore, it is clear that in Assam, the areas inhabited by plains tribes have been left out of purview of both Fifth and Sixth Schedule of the constitution of India. Whereas the hills tribes of Assam, tribals of Meghalaya, Tripura and Mizoram are included in the Sixth Schedule of
the constitution, tribal areas of the states other than North Eastern Region are generally included under the Fifth Schedule of the Constitution. This has led to a great resentment amongst the plains tribes' communities of Assam as they have been deprived of the autonomy and other constitutional rights enjoyed by the Scheduled Tribes in other parts of the country.

After Bodoland Territorial Area District has been brought under Sixth Schedule of the constitution, the demand for autonomy by other plains tribes communities of Assam has been renewed. The Misings, the Laimings (Tiwa) and the Rabhas have already been granted Autonomous Councils by the state Government under respective Acts as was the case earlier with Bodos. After the BTAD has been granted Sixth Schedule status, there is perhaps no justification for not giving the same status to the other three Autonomous Councils.¹

Under the above circumstances, the Govt. of Assam has already agreed, on principle that the Rabha Hasong Autonomous council should be included in to the Sixth Schedule of the constitution.

The Chief Minister has also announced this at several places. Further this stand of the Assam Govt. is recorded in the meeting between, Chief Minister and representatives of BTAD and ABSU leadership held on March 10, 2005.
But as the area of the Autonomous Councils has not yet been concretely demarcated, as the matter requires amendment of the constitution (which is a lengthy process involving passing of a Bill in the parliament) and alteration of certain administrative boundaries, the Ministry Sub Committee needs more time for detail study of the demand before making any final recommendation. The members wished to make a visit to Tripura and study the constitution and functioning of Tripura Tribal Areas Autonomous District Council (TTAA DC) in detail. On the other hand developmental works can not remain suspended and the democratic process must continue. It is a matter of grave concern that the three Autonomous councils have been running on ad-hoc basis without elections being held since 1995.

Therefore, in Interim Report, the Committee made the following recommendation for establishment of democratically elected councils, provide more autonomy to accelerate development works and to protect interest of the tribal communities as well as non-tribals.

1. The area of the Rabha Hasong Autonomous Council should be notified immediately on the basis of core and Satellite Area. The core Area and satellite Area are to be defined as follows:

   a. Core Area shall consist of compact and contiguous areas predominantly inhabited by Rabha people, as the case may be having
more than 50% ST population as a whole in the area and not necessarily in individual villages.

b. Satellite Area or Areas shall consist of non-contiguous cluster of villages predominantly inhabited by Rabha people, as the case may be, having more than 50% ST population as a whole in the cluster and not necessarily in individual villages.

2. Demarcating of Core Area and Satellite Areas: The list of villages submitted by Rabha organizations was sent to the Deputy Commissioner for verifications and then the Assam Institute for Research on Tribals & SCs was asked to examine population figures and carve out core Area and satellite Areas. The AIRTSC has submitted list of villages for three councils, which the Committee recommended that the Govt. of Assam should immediately notify. The population pattern of the proposed councils is as follows:

**Mising Autonomous Council**

<table>
<thead>
<tr>
<th>Total Villages</th>
<th>1613</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population in the proposed MAC area</td>
<td>842672</td>
</tr>
<tr>
<td>ST population as per 2001 census</td>
<td>547235</td>
</tr>
<tr>
<td>ST % in MAC area</td>
<td>65%</td>
</tr>
</tbody>
</table>
TIWA AUTONOMOUS COUNCIL

Total Villages : 415
Total population in the proposed TAC area : 313387
ST population as per 2001 census : 164399
ST% in TAC area : 52%

RABHA HASONG AUTONOMOUS COUNCIL

Total Villages : 779
Total population in the proposed RHAC area : 543192
ST population including Garos and Hajongs : 305856
ST% in RHAC area : 56%

The committee mentioned that there was substantial karbi population in Nagaon, Morigaon and Kamrup districts who lived in close proximity with the Tiwa villages. The Karbi, which is a Schedule Tribe in the hill districts of Assam are hitherto not recognized as ST in the plains of Assam. Various Karbi organizations have submitted Memoranda to the Sub-Committee that the all the plains Karbi villages should be included in to the Tiwa Autonomous council and that the Karbis be recommend for recognition as ST. The Govt. of Assam have already agreed to recognition of the Karbis as ST in the plains and Kamrup districts should be included in to the TAC treating the Karbi
population as tribal for all purposes including demarcation of the core Area and satellite Area of the TAC.

In case of RHAC, the committee recommend inclusion of Garo, Boro and Hajong Villages in to the RHAC. The Garos and Hajongs were not enumerated as ST in census-2001 as they have been enlisted as ST only in 2003. There population has been counted as per report of the Deputy commissioner.

There is no necessity of creating satellite areas as the RHAC will remain confined to only southern parts of Goalpara and Kamrup districts only.

I recommended that on the basis of the report of the AIRTSE, the core Area and satellite Areas of the RHAC should be immediately notified.

**Protection of rights of the non-tribal and other ethnic groups:**

The Acts of the councils provides following provisions for protection of the rights of other ethnic groups:

The General Council shall consist of 40(forty) members of which 35 (thirty five) shall be directly elected and 5(five) shall be nominated by the Government from amongst the groups or communities residing in the Council Areas and not otherwise represented in the General Council.”
All rights and interest of the non-tribal citizens and other ethnic groups Rabhs community within the Council area as existed at the commencement of this Act, in matters pertaining to their language, literature, culture, religion, customs and traditions, trade and commerce, industry, land etc. shall be protected.\(^2\)

Farther, clause 4.3 of the Memorandum of settlement with the BLT states the following:

"4.3 Safeguards for the settlement rights, transfer and inheritance of property etc. of non tribals will be suitably incorporated in para 3 of the Sixth Schedule. Any such law as may be made by the BTC in this regard will not, in particular:

a) Extinguish the rights and privileges enjoyed by any citizen of India in respect of his land at the commencement of BTC, and

b) Bar any citizen from acquiring land either by way of inheritance, allotment, settlement or by way of transfer if such citizen were eligible for such bonafide acquisition of land within BTC area.

While Development Blocks are the main unit for planning and execution of all rural development schemes, Revenue circle is the main unit for Land Revenue administration. Administration becomes easier if these two units are made co-terminus.
It strongly recommended that the Development Blocks and Revenu circles should be reconstituted to make them co-terminus and so that an entire Block or circle falls within council area where it is feasible. Further, it will be necessary to reconstitute certain Gaon panchayats so that an entire Gaon panchayat falls within the council area.

**Equal status to Boro, Garo, Hajong and other tribes:** Clause 15 of the Memorandum of settlement with BLT. 2003 states that - "Government of Assam will consider inclusion of all tribals including Bodos in RHAC in consultation with leaders' council.” The council Act provides for reservation of 50% seats in the General council only for Rabha.³

**Holding of Elections:** The committee also noted, though the Autonomous councils have been functioning for over almost eight years, the elected councils are yet come into existence. The administration of these councils is being run by the interim councils, which was supposed to be very short-term measure. A number of court cases have also been filed in these regard and courts have given direction to Government of Assam to hold elections forthwith.

The committee strongly recommends that the Government should hold elections to this Autonomous council immediately.
Powers & Functions: The committee thoroughly studies the provision for power & functions of the three Autonomous councils of Assam and the same in case of Darjeeling Gorkha Hill council model to provide maximum possible powers & functions for better and effective autonomy.

One of the critical problems of the tribals in Assam is land alienation. There is frequent allegation against violation of the provision of the provision of Tribal Belts and Blocks under chapter-X of ALRR, 1886. Therefore, it strongly recommended that no allotment settlement of land should be given in council areas without the recommendation of the respective Autonomous council Necessary legislation should be enacted in this regard.

There are 34 subjects enlisted to be under the Autonomous councils. But the mechanism for entrusting these subjects to the councils is yet to be evolved. Therefore, we recommend these subjects to the councils should be worked out immediately.

Fund:

The committee also observes that present system for release of funds for various developmental schemes to these autonomous councils is not satisfactory. Small amount of fund is released
development departments and the council have to pursue proposals for release of funds with each of the development departments.

The committee recommends that as in the case of BTAD all the funds to a particular council should be released with ‘Single Window’ system from a single budget have to be provided in the budget of the WPT & BC department.

It also recommended that the three Acts viz. MAC Act, 1995; TAC Act, 1995 and RHAC Act, 1995 should be suitably amended in the current Budget Session to incorporate the above recommendations and also to provide maximum powers & functions.

Conclusion:

The Election Manifesto of congress (I) party for 2001 Assembly Elections had promised to protect the Tribal Belts & Blocks under chapter X of Assam Land Revenue Regulation, 1886 (clause 23.A.a) and also to provide constitutional and administrative power to BAC, MAC, MAC and RHAC along with protection of the rights and security of the non-tribals (clause 23.A.a). Already BAC has been converted into BTC under the sixth schedule and peace and progress have returned to the troubled Bodo areas. The above recommendations will be another bold step towards fulfillment of the promise made in
the Election Manifesto and will solve a long standing problem of the state and usher in an era of peace, harmony and prosperity.¹

The Tribals of the plains of Assam have been demanding Autonomy under the Sixth Schedule of the Constitution for more than a decade, now and their demand has been intensified after grant of BTC following an accord with the BLT.

The committee studied the problem by paying visits to Morigaon, Dudhnoi and Gogamukh, the Had Quarters of Tiwa Autonomous Council, Rabha Hasong Autonomous Council and Mising Autonomous Council. The Committee held discussions with various political, social and cultural organizations representing both tribal and non-tribal communities.⁵

The Committee received Memorandums from various organizations demanding immediate grant of Autonomy under the Sixth Schedule of the Constitution, which the committee examined thoroughly.

It is interesting to note that at Gogamukh in Dhemaji district, some organizations protested against grant of Sixth Schedule to the Autonomous Council fearing loss of non-tribal’s rights particularly over their land. The committee received Memoranda from these organizations and held discussions with them.
The committee went through constitutional provisions and all past records regarding tribal autonomy in plains of Assam and studied the following three Reports:

i) Report of the One Member Committee with Dr. Bhupinder Singh on Tribal Affairs in Assam (vide Notification No. TAD/BC/300/94/Pt. IX/3, dtd. 19 October, 1995.)


iii) Report of the Committee of Members of parliament and Experts constituted to make recommendations on Law concerning extension of provisions of the Constitution (Seventy Third amendment) Act. 1992 to schedule Areas (Bhuria Committee)

The Committee also studied Memoranda of Understanding / Settlement between Assam Govt. and representative organization of the Mising, Rabha and Tiwa tribal people signed in 1995 and 1998. The Act passed by the Assam Legislative Assembly following these MoUs were also studied thoroughly by the committee.
It also studied the constitution and functioning of Tripura Tribal Areas Autonomous District Council (TTAADC) that spreads over the whole state covering the predominantly tribal areas which are not contiguous.6

**Conflict with Panchayati Raj: A Constitutional Impasse:**

Contrary to the agreement in Sub-clause (A) of Clause-5 of the MoU signed with the tribal organizations, the Govt. of Assam did not include any provision to keep the areas of the three Councils out of the purview of the Assam Panchayat Act, 1994 an Assam Municipal Act, 1994. Thus two local self authorities were brought in to existence exercising the same powers & functions in the areas predominantly inhabited by Mising, Rabha and Tiwa (Lalung) people.

The All Tiwa Students’ Union Rabha Hasong Suraksha Parishad, Shri Rajib Basumatary, S/o Late Duiracha Basumatary, resident of Village Lechera, Borbari, Borpeta Road and Shri Jatin Boro, S/o Sri Nagen Ch. Boro, resident of village Garh, Baghmara, Borpeta in their Writ Petition challenged the holding of Panchayat Elections in the Autonomous council areas. According to the petitions two local self-governing authorities could not function simultaneously.
in any given area. The Gauhati High Court disposed of the Writ petitions with the following directions:

i) Writ petition No. 8204 of 2001 filed by All Tiwa Students Union and petition No. 7667 of 2001 filed by the Rabha Hasong Suraksha Parishad are disposed of with the direction to the State Government to implement the Memorandum of Settlement reached between the Government of Assam and those two organizations.

ii) Writ petition No. 8205 of 2001 is disposed of with the direction that the State Government shall initiate steps for implementation of the Memorandum of Settlement. 2003 in letter and spirit fulfilling the aspirations of the Bodo and Tiwa people. 7

Article-234M of the Constitution exempts the following areas from application of the Constitution (73rd Amendment) Act, 1992:

i) the functions and powers of the Darjeeling Gorkha Hills Council

ii) the states of Nagaland, Meghalaya and Mizoram, each of whose legislature may extend the provisions in the state concerned, barring the tribal areas of article 244 (2)
iii) The hill areas in the state of Manipur for which District Councils exist under any law for the time being in force

iv) The Schedule Areas of Article 244 (1) notified for which as per the Fifth Schedule and tribal areas of Article 244 (2) notified as per the Sixth Schedule.

As the three Autonomous council areas area created under Acts of the Government of Assam and not exempted from the purview of the 73rd Amendment of the constitution under Article 244M, the state Govt. of Assam is not in a position to implement the MoU signed with the tribal organizations. Thus a constitutional impasse is existing with two local-self authorities in existence exercising the same powers & functions in the areas predominantly inhabited by Mising, Rabha and Tiwa (Lalung) people.

Article 243 M 94) (b) of the Constitution provides that for the Scheduled areas (Areas under the Fifth Schedule) and Tribal Areas (Areas under the Sixth Schedule), Parliament may extend the provisions of Article 243 A to Article 243 L (i.e. provisions of the 73rd amendment) with such exceptions and modifications that it feels necessary. The Government of India appointed a Committee of MPs and Experts to make recommendations on law concerning extension of the provisions of the Constitution (73rd Amendment) Act 1992 to
Schedule Areas. The committee, called the Bhuria Committee submitted its report in 1995. Subsequently, the parliament passed The Provisions of the Panchayats (Extension to the Schedule Areas) Act, 1996. But the said Act, is now not applicable to the three Autonomous Councils of Assam as they are included neither in the Fifth Schedule nor in the Sixth Schedule.

The requirement now is to get the plains tribal areas of Assam included either in the Fifth or the Sixth Schedule for application of any law passed by the parliament in this regard.

The creation of BTC under the Sixth Schedule by a Constitutional amendment has solved this impasse in BTAD areas. But in the three other Autonomous Council areas, the impasse is existing, which can only be solved by Constitutional amendment and not by any other means.

A Constitutional Impasse and its Solution

The Bodoland Autonomous Council into existence in 1993 is a result of Bodoland Autonomous Council Act 1993. The other three Councils have been constituted in 1995 consequent on the passage of Rabha Hasong Autonomous Council Act, 1995. All the four Councils have interim nominated Council members. Elections to these bodies have yet to take place. In the meantime, as a result of the passage of
Seventy-third Constitutional Amendment Act 1992, elected Panchayats have come into being. Panchayats have been functioning above confer on the Councils powers similar to these four legislations, mentioned above confer on the Councils powers similar to those exercisable by the Panchayats under the Assam Panchayat Act 1992. Thus, an anomalous and piquant situation has emerged on account of self-management duality on the ground.

To deal with the matter, the Govt. of Assam had constituted a Committee of its officers which submitted its report in August 1995. It recommended that the Govt. of India be requested to exempt the operation of Part IX of the Constitution in Bodoland Autonomous Council area and, for the purpose, the Constitution should be amended. The recommendation was made on the analogy of exemption of the Gorkha and Autonomous Council in West Bengal from the purview of Part IX, as per Article 243 (3) of the constitution.

Amendment of the Constitution as suggested by the aforesaid Committee may not be an easy task and, in any case, it may take a long time considering the configuration of the political parties in the parliament after the recent elections.

Article 243 rules out automatic application of provisions of Part IX of the Constitution (brought into effect by the Seventy-third
Constitutional Amendment Act 1992) to the Schedule Areas (areas under the Fifth Schedule) and Tribal Areas (of the Sixth Schedule). Article 243 M (4) (B) (See Annexure VIII) provides that for the Scheduled Areas and Tribal Areas, parliament may extend the provisions of Article 243 A to Article 243 T with such exceptions and modifications that it feels necessary and any such law shall not be deemed to be an amendment of the Constitution in terms of the provisions of Article 368 of the Constitution. The Government of India appointed a Committee of M.Ps and Experts to make recommendations on law concerning extension of the provisions of the Constitution (Seventeenth Amendment) Act 1992 to Scheduled Areas. This Committee, called the Bhuria Committee, made its recommendations in a report which was submitted to the Prime Minister in February 1995. The sole member of the present Committee was a member of that committee and was largely responsible for drafting its report. A copy thereof is available of Annexure IX. The report has to be processed by the Government for placing before the parliament draft legislation for Scheduled Areas and Tribal Areas in accordance with Article 243 M(4) (b). The four Councils areas have been scheduled neither under the Fifth nor under the Sixth Schedule. As such, any law
passed by the Parliament under Article 243 M (4 (B) will not, ipso facto, become applicable to the four Council areas.

Under the circumstances, the first requirement is to get the four Council areas (and, if necessary, other tribal areas in Assam) scheduled under the Fifth Schedule of the Constitution. This does not require amendment of the Constitution. The Government of India in the Ministry of Welfare can process the case for the purpose. The Committee addressed the Govt. of India in the Ministry of Welfare as to whether its understanding of the situation as set out is correct, as in copy of letter placed in Annexure X of this report. The Ministry's reply dated 30 April 1995 is placed at Annexure XI. As may be seen, they have confirmed that any area in the country can be scheduled under the Fifth Schedule of the Constitution through issue of a notification in the name of the President after following the prescribed procedure. This would imply that the State Government will have to make proposals with complete area and demographic details to the Ministry of Welfare on the basis of which the latter may might process the matter for issue of the requisite notification. Once the four council areas have been scheduled, they will attract the provisions of Article 243M(4) (b) and, as such, the law specifically passed by the Parliament will apply to them.11
The new parliament has been constituted in May 1996. A new government has come into being at the Centre in June 1996. Considering the present circumstances, it is likely that it may be sometime that Government comes forward with a bill under Article for scheduling of Council areas. It may be desirable to expedite the proposals for scheduling of Council process culminating in the issue of notification is completed before consideration by parliament of the bill. This will enable the four Council area to get covered by the law passed by the Parliament. It may be added that in case this does not happen and the parliament passes a law before the scheduling notification is issued, a proposal for its applicability to the four Council area will have to be tabled in the Parliament separately entailing needless work and delay. In other words, scheduling of the four areas should precede passage of the law by the parliament to save time.

A present question was raised at the Ministerial Sub-Committee's meeting as to the properly and even feasibility of co-existence of Gaon Panchayats, Village Councils and Apex Councils. The Councillors wanted abolition of Gaon Panchayats. As has been observed elsewhere, there is considerable overlap in the statutory functions assigned to the Gaon Panchayats on the hand and the other two types of Councils on the other. The overlap surfaces prominently
in the matter of power conferred on these institutions for collection of taxes, tolls fees etc. For instance, should the Gaon Panchayats proceed under the Assam Panchayat Act 1992 and the village Councils proceed under the four Council Acts 1995 to make collection of taxes etc. For instance, should the Gaon Panchayats proceed under the Assam Panchayat Act 1992 and the Village Councils proceed under the four Council Acts 1995 to make collection of taxes etc. simultaneously, conflict situation will be inevitable. It is a different matter that neither institution is not even to do so and this prevents ugly situations. In fact the two co-exists, carrying on in the same manner as other component plans. They can use funds of each other a component contribution to different development department and get work done. The present five-year life of Gaon Panchayats in Assam would expire in 1997 when fresh elections to these bodies will become due. It urgently necessary to take all necessary steps to ensure that before the expiry of the Gaon Panchayats tenure, the Village Councils and the General Councils become operative and effective. In addition thereto, it will have to be ensured that the notifications for scheduling of village Councils areas issue and these areas are covered by the law passed by the parliament under Article 243M(4)(b).
There has been a widespread demand that if the councils concept has to work properly, the Gaon Panchayats should be abolished in the Council's areas and should be replaced by village council and envisaged in four Acts. It has been indicated the Gaon Panchayats have constitutional mandate in Article 243, though created under a state law, the Assam Panchayat Act 1990, on the other hand, the four councils have been created under four state laws. Further, only interim councils have been constituted and the full procedure for constitution of the four councils has yet to be followed. As such, abolition of the Gaon Panchayats at this stage is neither legal nor a practical proposition. The way ou suggested in the forgoing may be more feasible.

Another demand related to abolition of ITDPs. The Councillors felt that the functions of ITDPs should be wound up. This is a matter which, prima facie, appears reasonable. But considering the fact that the General Councils have yet to be equipped in every respect legally, financially, administratively, organizationally – the time is not ripe as yet for them to take over the responsibilities of the ITDPs. But, in course of time, when the four Councils acquire strength in different spheres the proposition should be considered in all its ramifications.

The delivery systems for tribal development in the state of Assam has become complex and over-grown over the years. It requires
ration zation and stream-lining. Presently, at the state level, there are: WPT & BC department. Directorate of APT & BC. Assam Tribal Development Corporations (APTDC) Assam Institute of Research for Tribals and Scheduled castes (AIATSC). It appears that there is overlap of functions between ATDA & APTDC, since both are mostly funds-dispensing organizations. Further, some families are able to obtain funds in the field, but many come to headquarters for receiving funds from ATDA and APTDC. It is not only organizationally and financially, wasteful but also publicly vexatious. One view was that both should be abolished and the functions could be performed by the WPT & BC department or directorate. A second view was that there dispenser and other related tasks. It is to be noted that the ATDA had been created to plan for tribal development particularly in the plains of Assam, and oversee implementation. The functions of APTDC were more in the nature of coordinating cooperative activities in farm and forest spheres. From what the committee could learn, the original functions have been set aside and the two bodies have become more and more fund-dispensers. Now that the ethnic councils have to take on planning and implementation of schemes and programmes of tribal development, it is appropriate that multiplicity of organization should be eliminated and
the entire system rationalized. The committee feel that it may not be too much for the WPT & BC directorate to take on the responsibility of supervising the planning and implementation of development and other functions to be undertaken by the Councils, without the intervention of either A^TDA or APTDC. Considerable savings might ensure to the exchequer thereby and, at the same time, efficiency may be another welcome consequence. Boldness of decision would, however, be required.

The demand was made at the meeting held at Gogamukh that the ethnic demand was not clear. However, it seems that the Councillor who raised the demand desired that the ethnic councils should be endowed with powers and functions as large and extensive as the Autonomous District. Councils of the Sixth Schedule. It needs to be understood that the ethnic councils cannot be compared with the ADCs which are conterminous with a population and an area as big as district such as Karbi Anglong and North Cachar Hills. Particularly, the Lalung and Rabha Councils are of much smaller size and extent. Further, the four Councils have yet to take full shape and grow. In course of time, the questions of their powers and functions could be reviewed.
Summary of Recommendations:

The Committee has been called upon to suggest:

a. Steps for harmonization of Fifth, Sixth, Eleventh and Twelveth Schedules of the Constitution as they impinge upon the Panchayati Raj Institutions.

b. Salient features of the law that may be taken up or enactment by Parliament for extending the provisions of the Par IX of the Constitution to the schedule Areas referred to in clause (1) of Article 244 of the Constitution subject to such exemptions and modifications as may be necessary under Article 243 M(4) (b):

and

c. Variations and modifications in other articles relevant to the Fifth Schedule Areas in order to strengthen Institutions of local Government in Fifth Schedule Areas.13

It is felt that while certain of "The Constitution Seventy Third Amendment Act, 1992 on the Panchayats" were wholesome and should be incorporated in the law to be passed by parliament under Article 243M(4)(b), certain unique characteristics of tribal societies and tribal areas need to be kept in view. Important among then are that many tribal societies have had their own customary laws, traditional practices, community ethos, political and
administrative systems etc. In considering the aforesaid law, their mode of living, organization, cultural deprivation, marginalization etc. would have to kept in focus. Since many tribal communities have been living autonomously cut off from the rest of the society, they have exercised control over and had access to natural resources, moulding their institutions. Their Gram Sabhas and village councils have been vibrant institutions in the administrative, religious, political, economic, justice etc. fields. The committee felt that while shaping the new Panchyati Raj structure in tribal areas, it is desirable to blend the traditional with the modern by treating the traditional Institutions as the foundation on which the modern supra-structure should be built.

A: per article 243M(4)(b) Parliament may, by extend the provisions of para IX to Scheduled Areas and tribal areas covered by clause (1) and clause (2) respectively of Article 244 subject to such exemptions and modifications as may be specified in such law. Parliament may consider our recommendations for such legislation. Parliament will be applicable to Scheduled Areas and Tribal Areas to the suppression of corresponding provisions of any State law.
Most of the tribal societies in India have been practicing democracy, having been characterized by egalitarian spirit. Cognizance has to be taken of their indigenous institutions and ethos while considering democratic decentralization in tribal areas.

Time-honoured customary usages and arrangements in tribal areas should be respected and allowed to continue. Traditional tribal conventions and laws should continue to hold validity. Harmonization with the modern systems should be consistent therewith.

Panchayati Raj bodies in tribal areas should be made more effective and more participative in the context of the foregoing. More than in the past they have to function as institution of self-economic goals for removal of poverty, illiteracy, ill-health etc. among the people.

For attainment of the aforesaid goals flow of adequate funds has to be ensured. Such funds should be utilized for the purpose they are set apart and should not be diverted. Suitable financial mechanism should be created for proper utilization of funds.

Since the 1992 Act does not take into account the unique feature of tribal areas, so the committee make recommendation as embodied in this report.
In drafting the law under article 243M(4)(b), advantage should be taken of both Fifth and Sixth Schedule. The Fifth Schedule should be deemed as a board and powerful over-arching frame, serving as the fountain head of essential and beneficial legislation. The design and the content of the Sixth Schedule could serve as the relevant reference frame for a district within the broader canvas of the Fifth Schedule. However, ethnic regional and other related variation should be given due consideration. The Sixth Schedule should be regarded with such reformation and changes as are necessary, as a broad character of autonomy at the district level and be adopted.

The Tribal advisory council, envisaged by the Fifth Schedule as a consultative body at the State level, needs to be reformed to make it an effective and functional organization. The Chief Minister of the State should be its Chairman and its meeting should be once every three months.

At the Centre, the Centre Advisory Council should be revived, serving the purpose of (a) a sounding board for tribal policies and programmes and (b) advice in disputes between a State Government and the Tribal Advisory Council or between a District Council and the tribal Advisory Council. Its advice should
normally be binding The Welfare Minister, Home Minister, Rural Development Minister, Deputy Chairman, planning Commission etc.

Many of the present-day administrative boundaries were determined during colonial times. Notwithstanding changes, by and large, the earlier boundaries have stayed. Reorganization of boundaries based on geographic, ethnic and demographic considerations may be considered and finalized within a couple of years.

The tribal societies are characterized by a communitarian and a cooperative spirit, visible in many undertakings like shifting cultivation, house construction. The potential of this ingrained attribute has not been taken advantage of so far. Cooperative organizations among tribals should be constituted suitable to their oral traditions and milieu.

It has been observed that in tribal areas the lower functionaries of departments like police, Excise, Forest, Revenue have generally been acting against tribal interests and not unoften have even become repressive and exploitative tribal interests and not unoften have even become repressive and exploitative. While their role in tribal areas is minimal, they tend to overbear on the
tribal and village communities. Hence, they should be assigned minimal role and should work under the control of concerned panchayats.

The 1992 Act envisage a Panchaya at village in addition to panchayats at intermediate and district levels, as per Article 243B. The concept of a Panchayat at village level may fit in well for non-tribal areas, since villages there are generally large. But in tribal areas, with mostly hilly topography, the villages are usually scattered and population-wise small. These small villages or hamlets are known as “Tolas” in some areas. But a small village or group of hamlets or habitations may have its own Gram Sabha. The Gram Sabhas should be allowed to exercise their customary traditional role unhindered. Further, a Gram Sabha may have a traditional village council which performs varied functions religious, political, economic, judicial etc. – on its behalf. The Gram sabha may nominate body and may delegate to it functions like execution of development works.

A number of hamlets aggregated may constitute a village panchayat, called variously a Gram panchayat or Anchal or Parha or Pargana Panchayat. This tier corresponds to the lowest tier envisaged in the 1992 Act. Its members may be elected.
Constituencies may be delimited for election of members to the intermediate and district tier panchayats. The District level panchayat may be called Autonomous District Council (ADC).

In certain districts, schedule tribe population may be less than 50% of a district’s total in some block or a subdivision or subdivision. We have recommended the sub-district council may be constituted for such areas and designated as Autonomous Sub-District Councils (ASDCs). ASDCs should be at par with ADCs. However, this may be regarded as an interim arrangement, pending reorganization of administrative boundaries which we have recommended elsewhere.

So far as the organizational structure of an ADC is concerned, we recommended adoption of the broad frame-design of autonomous district council contained in the Sixth Schedule of the Constitution in force in the state of Assam, Meghalaya, Mijoram and Tripura. The Sixth Schedule has been conceived to be an instrument of Self-management and socio-economic development. It may not be too far wrong to say that, to an extent, it has fulfilled the ethnic aspirations of tribal communities. We have enumerated in this Report (para 16) some shortcomings of the Sixth Schedule and these would need to be reformed. In addition, we feel that some
scope should be opened up through setting apart seas (may be not exceeding 5 in number) for nomination in the district council of minority tribal communities, who cannot find place through election process. The nominations may be made in consultation with the Governor.

The 1992 Constitution Amendment Act provides for representation of Members of the House of People and members of the Legislative Assembly of the state, representing constituencies which comprise wholly or partly a Panchayat area, at a level other than the village level. We recommended that Lok Sabha Scheduled Tribe MPs should be associated at the intermediate (Block) Panchayat and the District Council. But the representation should not be restricted to Scheduled Tribe MLAs and even non-ST MLAs should be associated in the two tiers.

Since the Schedules Areas and Tribal Areas are expected to have majority of tribal population, the different tier Panchayats therein should have a majority of Schedule Tribe Members. Further, both the chairman and vice-chairman should belong to STs.

The Sixth Schedule confers power of legislation and administration of justice on the district council apart from the
executive developmental and financial responsibilities. We should adopt for districts in Scheduled Areas the Sixth Schedule format, but expand it to include subjects that are indicated in the Eleventh Schedule of the constitution.

The legislative power of the autonomous district councils in the Fifth Schedule Areas have been proposed more or less on the same lines as in the Sixth Schedule, with some amendments. Insofar as administration of justice is concerned, the Committee has been emphatic that a traditional jury-based legal system evolved by tribal societies should be recognized and should be not involving non-heinous offences. Such cases should be under the domain of the Gram Sabha. Insofar as development functions are concerned, this also is a vital area. Our proposal is that the functions enumerated in the Sixth Schedule as well as in the Eleventh Schedule should be discharged by the ADCs.
Foot Notes:

1. Hazarika N.: "Movement for Ethnic Autonomy in Assam" a lecture published by Dimoria College


3. Memorandum of Settlement between the BLT and the Govt. of Assam. 2003

4. Interim Report of the Ministerial Sub-Committee; Ibid.


6. Interim Report of the Ministerial Sub-Committee; Ibid.

   (l) Write Petition No. 7667 of 2001
   (c) Write Petition No. 8205 of 2001


12. Memorandum to the Govt. of Assam by ARSU.

13. Interim Report of the Ministerial Sub-Committee; Ibid.