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Subject: Promulgation of the Andaman and Nicobar Islands (Tribal Councils) Regulations, 2008.

The Ministry of Home Affairs had forwarded a draft Note for the Cabinet for promulgating the Andaman and Nicobar Islands (Tribal Councils) Regulations, 2006 under article 240 of the Constitution with a view to provide a three tier structure for the Tribal Councils at the village level, island level and district level, on the pattern of Panchayat Raj Institutions, in the Nicobar District which was examined with certain observations by the Department of Legal Affairs vide their Notes on page 18-19/ante and this Department vide Notes at pages 19A-20/ante on 18<sup>th</sup> December, 2006.

2. The proposal was examined again vide our Notes at pages 21-23/ante on 22<sup>nd</sup> December, 2006 and the Ministry of Home Affairs was advised to take necessary steps in the light of the observations made by the Ministry of Tribal Affairs, Ministry of Panchayati Raj and the Department of Legal Affairs which had expressed strong reservations *inter-alia* about the proposed three tier system, separation of powers and independence of judiciary.

3. The Ministry of Home Affairs revised the Note for the Cabinet by omitting the provisions relating to Village Judicial Council, its powers and judicial procedures. The Department of Legal Affairs concurred with the proposal again vide their Notes at page 25/ante and on the basis of the revised draft Note for the Cabinet, Regulations were drafted by this Department and forwarded to the Ministry of Home Affairs for their confirmation vide our Notes at page 36/ante on 17<sup>th</sup> September, 2008.

4. Now, the Ministry of Home Affairs has further revised the Note for the Cabinet thereby modifying the policy in a major way. Now, the Ministry propose to have "two tier" system instead of "three tier" system and intend to restrict the composition of Tribal Councils to Nicobari tribals only. Further, it is proposed to constitute a District Planning Committee at the District level which is an entirely new concept. However, these new policy decisions have neither properly elaborated nor reflected in the draft Note for the Cabinet. Further, it is observed that on one hand, it is made applicable to the District of Nicobar and Nicobari settlement areas in the Union territory of Andaman and Nicobar Islands excluding areas to which Andaman and Nicobar Islands (Panchayats) Regulation, 1994 extends, and on the other, these Regulations are sought to be restricted to Nicobari Tribals. The non-tribals will neither be on the electoral rolls nor will they be eligible to be elected as Members of these Tribal Councils. This kind of provisions will lead to exclusion of non-Nicobari tribals from the Panchayat Regulation as well as Tribal Councils Regulation.

5. This aspect will have to be examined by the Department of Legal Affairs. Further, there are many other anomalies which are required to be settled across the table while drafting the Regulations.

6. In view of the above, we may advise the Ministry of Home Affairs to revise their Note for the Cabinet accordingly and obtain the views / comments of the Ministry of Panchayati Raj and the Ministry of Tribal Affairs and thereafter seek the concurrence of the Department of Legal Affairs on the revised draft Note for the Cabinet.