

# PESA ACT AND ITS IMPLEMENTATION IN TRIBAL AREAS OF ORISSA AN EMPIRICAL EVALUATION

Prof. (Dr.) A. B. Ojha, A.S.  
Dr. K.K. Patnaik, I.A.S. (Retd.)  
Shri A. K. Ghoshal, I.A.S.



Scheduled Castes and Scheduled Tribes Research and  
Training Institute (SCSTRTI), Bhubaneswar

ST & SC Development Department  
Government of Orissa

2010

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**Prof. (Dr.) A. B. Ota, I.A.S.**  
Director, SCSTRTI, Bhubaneswar

**Dr. K.K. Patnaik, I.A.S. (Retd.)**

**Shri A. K. Gamango**  
Research Officer, SCSTRTI, Bhubaneswar

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B-51, Saheed Nagar, Bhubaneswar -751 007  
capital\_a1press@yahoo.com

## **RESEARCH TEAM**

**Prof. (Dr.) A.B. Ota, I.A.S.**  
Director, SCSTRTI

**Dr. K.K. Patnaik, I.A.S. (Retd.)**  
Former Director, Panchayati Raj Department  
Government of Orissa  
*(Technical Consultant)*

**Shri A.K. Gamango**  
Research Officer, SCSTRTI

**Shri N.B. Khuntia**  
Research Assistant

**Shri Sanjaya Kumar Ghadai**  
Research Assistant

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**Scheduled Tribes and Scheduled Castes  
Development Department  
Government of Orissa.**

**P.A., ITDA, Rayagada/Gunupur/Karanjia**

**Sub-Collector, Rayagada/Gunupur/Karanjia**

**Special Officer, DKDA, Chatikona/HKMDA, Jashipur**

***Villagers of Nuagada, Souraguda, Kenedi, Badabrundabadi of  
Bissamcuttack Block in Rayagada District and Badamahuladiha,  
Salaibeda, Gobarajoda, Guliajodi of Thakurmunda Block in  
Mayurbhanj District of Orissa***

## **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

### **I. Background:**

To provide self-rule for tribals, a bill was introduced in Parliament in December 1996 based on the recommendations of the Bhuria Committee after a thorough examination of the tribal scenario in the country. The Bill was passed by the Parliament and became an Act after the President's assent on 24<sup>th</sup> December 1996. The Act is known as the Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (No 40 of 1996). It has been made clear in Article 243(M) (4) (b) that extending the provisions of Part IX of the Constitution shall not be deemed as an amendment to the Constitution under Article 368.

With the passing of the Panchayats (Extension to Schedule Areas) Act (PESA) 1996 (Central Act), the state government of Orissa amended the Orissa Gram Panchayat Act, 1964, Orissa Panchayat Samiti Act 1959 and Orissa Zilla Parishad Act, 1991 w.e.f. 22.12.1997, i.e. within the mandatory period of one year of coming into force of PESA i.e. 24<sup>th</sup> December 1996. In the amended laws, matters relating to different subjects have been placed within the preview of Panchayats at respective tiers.

Researchers of Government and research organizations have carried out a number of studies relating to implementation and impact of PESA Act in Orissa. The present study tried to assess the status of functioning of PESA and locate the gaps of the Act through conduct of personal interviews with the PRI representatives and officials. It is felt that people's perception towards the Act can also contribute towards securing better suggestions for the improvement of the Act. Hence, the present study intends to find the gaps and suggestive measures for effective implementation of the said Act by assessing people's

perception including PRI representatives about the working and understanding of the Act.

The study was carried out in the two selected districts, i.e. Rayagada and Mayurbhanj under scheduled areas of Orissa for the purpose. Sampling of blocks, GPs and villages was chosen randomly. Each one Block was selected randomly for the purpose. Two GPs from each Block consisting of accessible and in accessible areas were selected. From each G.P., two villages were identified purposively, one exclusively ST predominated and another, a congregation of different castes with tribal majority. Apart from the two villages, one village with Primitive Tribal Group (PTG) was also covered from each selected block. In the process, a total of 10 villages were selected for the study.

Data were collected from both primary and secondary sources. Primary data includes (i) Household survey (ii) FGDs (iii) Semi-structured/informal interviews with the key stakeholders like elected Panchayat representatives, officials, NGOs/CBOs, village leaders and cross-sections of the society and (iv) Field observations. Household data covering all the existing households, i.e. 226 numbers covered in four villages one each from selected 4 GPs. But FGD method was adopted in all the 10 villages including two PTG villages under two micro project areas in the respective study districts. Secondary data were collected from GPs, Blocks, Zilla Parishads, ITDAs/Micro Projects/Revenue/Block authorities/offices and published/unpublished reports.

The study report is divided into five chapters. First chapter is Introduction covering PESA Act, historical background, key provisions and conformity legislations in Orissa. Second chapter focuses on review of literature, objectives, sample design and methodology. Profile of the study area is discussed in the Third chapter. Fourth chapter examines the status of Working of PESA in Orissa. Critical gaps in the implementation and suggested steps for effective implementation of the Act are reflected in the fifth chapter.

## **II. Key Findings:**

### ***(i) Official Source***

- ( ) Both the ITDAs (Gunupur & Karanjia) which cover the study villages are trying to give attention to developmental activities, like irrigation, education, communication, drinking water facilities, vocational training for skill up-gradation and different poverty alleviation programmes.
- ( ) No specific training has been organized at ITDA level relating to strengthen implementation of PESA Act.
- ( ) The Govt. of Orissa in ST & SC Development Department have made serious efforts and regularly provided a number of trainings on PESA Act at SCSTRTI, Bhubaneswar, for PRI representatives, Tribal elites and official functionaries deputed by all ITDAs for their capacity building.
- ( ) DKDA has taken initiatives in SHG formations, community development works, horticulture, plantation, and development of irrigation canals; land developments, financial assistance to SHGs through bank linkage, pipe water supply for drinking water, admission of girl students to hostels, health camps, etc. In respect of HKMDA, almost the same activities have been taken-up.
- ( ) Regarding steps taken for strengthening PESA by DKDA, awareness was created among Dongaria Kondhas through field functionaries and the Special Officer of DKDA. As reported by HKMDA, neither any steps have been taken for strengthening PESA nor any staff of HKMDA has been given training on PESA for capacity building.



**ii) Household Information**

- (1) The average size of the family in the study villages is 5.0. As regards average size of family, it is bigger in case of Mayurbhanj district than Rayagada district. Between the two study districts, proportion of male population is more in Mayurbhanj district than Rayagada district.
- (2) The maximum head of households belong to 26-45 years age group. While comparing the position of two districts, it is seen that more than 50 per cent persons of total households of Rayagada district are heading the family whereas it is more than 60 per cent in case of Mayurbhanj district.
- (3) Out of 226 households, 210 (92.92%) are scheduled tribes, 04 (1.77%) scheduled castes and 12 (5.31%) belong to **other backward class groups**.
- (4) In both the study districts, majority households are tribal. Among the study villages, Kanedi is exclusively a tribal village. It was found that the Kandha in Rayagada district and Kolha and Santhala in Mayurbhanj district are dominant tribes in their respective areas.
- (5) On the whole, among the literate masses 19.5 per cent people even have not studied upto primary level, whereas 6.6 per cent studied upto primary level, 5.9 per cent upto middle school, 3.8 per cent upto secondary and 1.65 per cent are under -graduates and 6.82 per cent graduates.
- (6) Out of total workforce of 972, the highest number of people, i.e. 641 are engaged in agriculture and agriculture labour followed by 211 people in wage labour. Only 14 persons in the study villages are service holders.
- (7) The highest percentage of households belongs to the income group below Rs.1000/-per month. While comparing between the two districts, economic conditions of people of Mayurbhanj are better than that of people of Rayagada district.

- (i) Participation of people in Gram Sabha is low in Rayagada district as compared to Mayurbhanj district. Participation in Gram Sabha is very poor in Kanedi village which is only 8.75 per cent. Out of 226 respondents, 160 (70.80 %) have not attended Gram Sabha meetings during the last 2 to 3 years.
- (ii) Family income is not sufficient for 148 (65.48%) families to meet their daily expenses. Mostly they depend upon their relatives (66.92%) and SHG of women of the village (28.37%). SHGs are taking major role of banking in the villages by providing financial help at the time of need to its members. They are also maintaining passbook and other records for smooth transaction of business and for ensuring transparency.
- (iii) Practice of taking liquor is linked to customs and traditions of tribal community. In Mayurbhanj district, almost all adult members of families used to drink *handia*, (handmade country liquor) prepared in their own houses. They do not know of any law which is intended to prohibit or restrict the preparation and use of 'handia' by themselves. Among tribals, 64.15 per cent consume liquor out of which 65.51 per cent manufacture liquor in their houses. Illicit and unlicensed liquor shops were found in Nuagarh and Kanedi villages of Bissamacuttack block of Rayagada district.
- (iv) Out of total 226 respondents, 164 (72.56%) depend their livelihood on collection of MFP. Buyers play an important role to fix the rates of the MFP.
- (v) In the study villages, 161 (71.23%) are landholders in 226 families. The number of landless families is more in the study villages of Rayagada district than Mayurbhanj district. Acquisition of land for developmental projects did not take place in these areas. No case of land transfer was detected in the study areas.

- (i) Out of the total 226 respondents, 89(39.38%) only get surplus products. Households having surplus produce in Mayurabhanj district depend upon local markets for sale, while in Rayagada district middlemen take the advantage of marketing in fixing the rate of surplus produce.
- (ii) Out of total number of respondents, only 10.18 per cent have an overall basic knowledge about PESA Act.

***iii) Focus Group Discussions***

- (i) As regards the working of PESA in relation to role of Gram Sabha, it is found that it was not working because except for selection of beneficiaries under different schemes, no subject under PESA like regulating consumption of intoxicants, land alienation, regulation of village market, regulation of MFP, money lending business, etc are discussed in the meeting of Gram Sabha.
- (ii) Collection of MFP, like Hill Brooms, Siali leaf, Harida, Bahada, Amala, Turmeric, Mango, Lemon, Banana, Jackfruit, Tamarind, Jhuna, Kenduleaf, honey, etc are the main sources of livelihood of the people of study villages. Male members of the family are collecting MFPs more than the female members.
- (iii) The villagers collect MFP and sell either directly to the businessmen outside the Panchayat or in some cases, the traders directly approach the primary collectors of MFP at the spot and buy the products. The traders fix the price of MFPs, which the collectors of MFP are bound to accept due to non-availability of alternative market facilities. Because of compulsions due to poverty they are forced to sell the produce even at a lower price than the actual prevailing market price. The villagers including elected representatives did not know about the role of Panchayats in regulating MFP price. No trader has registered with the Gram Panchayat in any of the study Gram Panchayats for trading MFP in the Panchayat area.

- (i) The villagers did not have any idea that Panchayat can intervene in land alienation cases. The villagers were not aware if the alienation cases are raised/discussed in Gram Sabha meetings. As regards awareness about PESA relating to land alienation, the people only know that tribal lands cannot be transferred to non-tribals. But they do not know that this provision comes under PESA Act 1996 and Amendment Rule of 2002 of OSATIP, Regulation (2) 1956.
- (ii) At present, the system of money-lending has been changed. They do not depend on traditional and professional money-lenders. They themselves help each other at the time of need. SHG members have no problem because they transact money-lending business among themselves and depend on bank loan facilities. They do not need money-lenders as such. As regards awareness about money-lending rules under PESA Act, villagers including elected representatives hardly have any idea about such rule.
- (iii) The villagers in the study area are preparing country liquor on their own. No liquor shop (manufacturing) was found in the study Panchayats. Some illicit/unauthorized liquor shops were reportedly established as reported by the villagers during interaction. The villagers have no problem for the presence of these illicit/unauthorized liquor shops. So no complaint was being given to either the Panchayat or the police. They did not have any idea that Panchayat has control over issue of license to start liquor business in the Panchayat area.

### **III. Gaps and Suggestions:**

- (i) The provisions of PESA Act 1996 need to be analyzed in the light of claims of many activists that it has miserably failed to materialize people -centric governance and accountability

structures at the grass root level thereby jeopardizing the very rationale of 73<sup>rd</sup> amendment and the Panchayati Raj institutional mechanism.

- (i) Section 4(a) of the Act does not take into consideration the presence of multi-culture contents of different tribes even in the same geographical area. In consequence, the words "customary law", "social and religious practices" are general in nature. Since they are not tribe specific, cannot be applied uniformly.
- (ii) Another vital point of omission in the law is that in the event of a dispute as to whether a particular state legislation is in consonance with customary law or not, there is no specific provision in the law for reference or redressal. Therefore, there is need for a provision in the law for creating viable mechanism to accommodate diverse claims of multi-tribes in the same geographical configuration.
- (iii) The definition of village as mentioned vide section 4 (b) in Scheduled Areas is placed in a uniform manner probably with a view to expand the scope for assimilation of new categories of people in the village. This is likely to dilute the spirit of the legislation, as it may not claim to be in consonance with the tribal customary laws. Therefore, the definition of village could be redefined based on the ethnic composition of the people in Schedule V Areas. In fact, several communities may be living in one village where it may be difficult to demarcate a village. In that case a revenue village may not be co-terminus with traditional tribal village.
- (iv) The term community is not properly defined and it may lead to various complications and confusions. Therefore declaring each hamlet as a Panchayat may not be rational in view of economic viability and other considerations. The provision under section

4(d) that every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution consistent with relevant laws in force and in harmony with the basic tenets of the constitution and human rights, is a very restrictive provision and indirectly downsizes the self-governing power of Gram Sabha.

- (i) The term community is not clearly defined either in the PESA Act or in the state laws. Since there are varieties of customary laws, social and religious practices amongst the various tribes, it may not be possible to have different legislations for each of the tribes. It may not also be possible to have different legislations for each of the tribes in a particular district or the state.
- (ii) PESA Act, which is applicable only to schedule V Areas and excludes the Sixth Scheduled Areas, needs to be analyzed if this law could be extended to areas other than V<sup>th</sup> and VI<sup>th</sup> Scheduled Areas where there is preponderance of tribals. Otherwise, tribals living within this area are likely to be deprived of the benefits of the Act (PESA). For example, in the Sixth Scheduled Areas, the structure of Autonomous District area is not necessarily co-terminus with the administrative boundaries. There is no statutory body below either the intermediate or village level. At sub-district level, there is neither a democratic nor a traditional structure. Therefore, a void is created and no organic linkage is available between the lower and higher level local bodies.
- (iii) For the development and advancement of the tribals, a Tribes Advisory Council is set up in every state. Speculations with regard to likely controversy in the working of Panchayati Raj institutions at the local level and the role of TAC are still active. The PESA Act hardly specifies about the linkage between the TAC and Panchayat bodies in the Scheduled Areas.

- (i) Although PESA is grounded on the principle of participatory democracy as the basic unit of governance, the terms Gram Sabha and Gram Panchayat are being used interchangeably. In fact, Gram Sabha is the core unit of PESA Act, which stands entirely on a different footing as against the Gram Panchayat. Consequently, most of the state legislations reading the two terms as synonyms have empowered the Panchayat which, for all practical purposes, actually dis-empowers the Gram Sabha. Therefore, adoption and implementation of PESA by states should take cognizance of this ambiguity.
- (ii) In most of the state laws, Gram Sabha exercises, control mostly over schemes and programmes sanctioned from above. Nothing is allowed to spring from below. Since many of the state governments allege to have not been consulted before PESA Act was enacted, it may be necessary to go for fresh consultations and bring out a single but small legal document after examining various state laws and the inconsistencies existing therein. What is important is to retain the principle of self-determination of the village by the community itself towards a participatory democracy and the village as a self-governing village.
- (iii) It is almost a decade and half since PESA came into force that the obstacles in enforcing its provisions have remained largely un-addressed. States have not come out with clear-cut policies and procedures indicating definite rights of tribals in matters like forest and minor forest produce. In matters relating to forest resources, states, like Maharashtra, Gujarat and Orissa in their effort to perpetuate state control over forest resources have tried to dilute the provisions of PESA.

- ( ) It has been seen that states which come under the Schedule V Areas have amended the respective Panchayat Acts which are very radical and difficult to handle with particularly in relation to Gram Sabha's mandatory role on land acquisition for development projects and grant of concessions for lease of minor minerals and prevention or restoration of alienated land to the rightful tribal owners.
- ( ) In the process, some of the key provisions of the central Act intending to recognize the traditional rights of the tribals over natural resources, like land, water and forest have been diluted, if not implemented, far from expectation. The land laws have failed miserably to protect the tribals from alienation of their land. In matters of acquisition of land for development projects, the role of Gram Sabha or the Gram Panchayat has been relegated to the background.
- ( ) Different states have devised different agencies other than the Gram Sabha. While Maharashtra assigns these powers to Gram Panchayat, Orissa has given this power to Zilla Parishad. Practically, no state government except Andhra Pradesh has formulated any clear and comprehensive rules, regulations and procedures for implementing the provisions of the Central Act.
- ( ) Similarly many state governments appear to be not making serious efforts in providing training to government functionaries, PRI representatives and NGO functionaries in the Schedule V Areas.
- ( ) In case of Orissa as in many states, the mandatory provisions are to be more specific and explicit which seem to have been lost sight of while legislating conformity laws at the state level. Although the powers and functions of Gram Sabha are left to the wisdom of state legislatures, different states have adopted varied legislations in implementing PESA Act. The Gram Sabha



is mandated to deal with plans, programmes and projects of socio-economic development but this is not given due space in the state legislation. Although devolution of power and authority to the Panchayati Raj Institutions is required to be specific and unambiguous, this aspect does not find place in the statutory provisions in respect of Scheduled Areas and Panchayats in Scheduled Areas find themselves on the same footing as of the Panchayats in normal areas.

- (i) Implementation of PESA in Orissa has not resulted in any spectacular or specific results in terms of the ideals and objectives envisaged in the Act. The state laws have been amended more as a routine than real application of the spirit of the Act.
- (ii) The Central Act envisages a strong, powerful and self-reliant Gram Sabha but Orissa law seems to have restricted its functions in as may be prescribed from time to time'. The rationale behind PESA Act to empower Gram Sabha to approve and sanction all matters relating to tribal society and their economy needs to be ensured.
- (iii) In matters of devolution of powers to PRIs in the Scheduled Areas, no specific devolution is either performed or adopted. The PRIs in Scheduled Areas are treated on the same footing as in the non-PESA areas except for reservation of seats and posts as provided in the Central Act. In consequence, the role of state agencies, political leadership, the bureaucracy and the attitude of non-tribals and power holders continue to dominate in the traditional fashion without any change or orientation in outlook.
- (iv) There is hardly any prescribed or unwritten mechanism by which the tribals in PESA areas could demand for proper implementation of PESA Act and require state legislative measures to their advantage.

- ( ) Although the traditional practices of community resources have been acknowledged by the state, which includes forests of all descriptions, yet the precise relationship between the community, the Gram Sabha and the state, needs clear formulation and clarification.
- ( ) Part-IX concerning the Panchayats and Part-IX (A) concerning the municipalities of the constitution was not made applicable, inter alia, to the Scheduled Areas covered under the Sixth schedule. While Bhuria Committee covered the Scheduled Areas and had given its recommendation concerning the structure of both the Panchayats and the Municipalities, the situation in other areas appears not to have been studied or analyzed by the Central Government.
- ( ) Ironically, the pattern of Sixth Schedule has been adopted as a model for designing the administrative arrangement in the Panchayats at the district level in the scheduled Areas. Besides, the areas that remain outside the preview of Part IX and Part IX A are not studied. Similarly, some other areas like the North-East remains to be studied in depth.
- ( ) Although the position with regard to extension of the Scheduled Areas was discussed in the second report of Bhuria Committee, the position remains unchanged. The legal position concerning the extension of general laws to the urban areas within the Scheduled Areas of other states is also the same. Similarly, many states with substantial tribal population have not been brought under the concerned schedules. Such position prevails in North-East Manipur and non-scheduled areas of Tripura and Arunachal Pradesh. There are many tribal Areas in West Bengal, Karnataka, Kerala and Tamilnadu which have not been scheduled. As a result, small tribal communities which are most vulnerable and are

unable to tend for themselves against formidable adverse forces are left almost defenceless. Therefore, it is necessary that these communities are brought under the Fifth Schedule as per recommendations of Bhuria Committee.

- (c) Although about sixty percent of the tribal population lives in the Scheduled Areas, no action seems to have been taken to cover these tribals in the Scheduled Areas inspite of Bhuria committee's recommendations. Since Gram Sabha is the centre of community bestowed with extensive powers now, it would be a restraint to provide justice to the tribal people remaining outside the Scheduled Areas. They need the benefits of empowerment endowed on the community in the Scheduled Areas mostly. Therefore; the entire sub-plan area may be covered under the Scheduled Areas.

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## ABBREVIATIONS

BPL	Below Poverty Line
CBO	Community Based Organization
CYSD	Center for Youth and Social Development (NGO)
DKDA	Dongria Kondh Development Agency
FGD	Focus Group Discussion
GP	Gram Panchayat
GS	Gram Sabha
HH	House Hold
HKMDA	Hill-Kharia and Mankadia Development Agency
IAY	Indira Awas Yojana
ISED	Institute of Social Economic Development (NGO)
ITDA	Integrated Tribal Development Agency
MFP	Minor Forest Produce
NAC	Notified Area Council
NGO	Non-Governmental Organization
NIRD	National Institute of Rural Development
NTFP	Non-Timber Forest Product
OBC	Other Backward Classes
OFDC	Orissa Forest Development Corporation
OSATIP	Orissa Scheduled Areas Transfer of Immovable Property
PESA	Provisions of Panchayats Extension to Scheduled Areas
PR	Panchayati Raj
PRI	Panchayati Raj Institutions
PS	Panchayat Samiti
PTG	Particularly Vulnerable Tribal Groups
RMC	Regulating Marketing Committee
SC	Scheduled Castes
SCSTRTI	Scheduled Castes & Scheduled Tribes Research and Training Institute
SHG	Self-Help Group
ST	Scheduled Tribes
TAC	Tribes Advisory Council
TDCC	Tribal Development Corporative Corporation
TSP	Tribal Sub-Plan
ZP	Zilla Parishad

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## CHAPTER-I

### Introduction

Primitive, geographically isolated, shy, socially, educationally and economically backward are the main traits that distinguish Scheduled Tribes of our country from other communities. Tribal communities live in about 15 per cent of the country's areas in various ecological and geo-climatic conditions ranging from plains to forests, hills and inaccessible areas. While some tribal communities have adopted a mainstream way of life at one end of the spectrum, there are about 75 Primitive Tribal Groups (PTGs) at the other end who are characterized by (a) a pre-agriculture level of technology (b) a stagnant or declining population (c) extremely low literacy and (d) subsistence level of economy.

There are over 500 tribes (with many overlapping communities in more than one State) as notified under article 342 of the Constitution of India, spread over different States and Union Territories of the country, the largest number of tribal communities being in the State of Orissa. The main concentration of tribal population is in central India and in the North-eastern states.

#### **1 Historical perspective**

It was the colonial Britishers who first made attempt to gather information about the isolated tribes. The isolated tribes' nomenclature has changed from time to time. In the first census report of 1901, the scattered "forest tribes" were included under the sub-heading of 'Agricultural and Pastoral Castes'. Subsequently they were classified as "Animists" in the census Report of 1901 and as "Tribal Animists" in 1911. The 1921 Census described them as "Hill and Forest Tribes" and in 1931 as "primitive Tribes". The government of India Act, 1935 specified them as "Backward tribes". The currently used word "Tribe" means an ethnic group, geographically isolated or semi-isolated. They are identified with one particular territory, having distinct social, economic and cultural practices.

The tribals generally earn livelihood by hunting, cultivation of land as well as by collecting minor forest produce such as mahua flowers, gum, wood, kendu-leaves, Sal-leaf etc. Their economy was considerably based on barter system. They used to give away their products and manual labour in exchange for daily subsistence and goods required for personal consumption. Many tribals even now continue to lead this way of life-style. Therefore, they hardly have savings to fall back upon and have no scope to improve their future socio-economic conditions. They were given, under colonial rule, casual periodical works on a daily wage basis in forest and public works department. Moreover the land occupation laws, laws for regulation of money-lending and prevention of alienation of tribal land, were passed under the colonial rule, and they were not at all conducive to their well-being and growth.

Unequal distribution of land and natural resources has been an intrinsic part of caste and class-ridden Indian society since times immemorial. However, during the British period, the degree of inequality of land distribution worsened when the British government claimed ownership of agricultural as well as forestland. Upper caste people, who by virtue of their early western education, entered the British administration set up, grabbed land with the help of state machinery, deceiving the comparatively less educated and under-privileged tribals. The tribals who had been involved in shifting cultivation for centuries after centuries with customary rights on forest resources, were compelled to work as labourers.

### **1.1 Pre-Independence Status**

The ruthless exploitation of tribals generated strong discontent among them, culminating in many rebellions. The legacy of struggle for land can be traced back to more than two hundred years beginning with revolt in Bengal (1783) against Diwani Rights granted by the British. Some prominent struggles like the Chhotnagpur tribal revolt (1807-08), the Munda rebellion (1832, 1867-90), the Kolha rebellion (1831-32), the Santhal rebellion (1885-86), the Rampa rebellion (1879-90) and the Madri Kalo revolt (1898) under the leadership of legendary

heroes like Kanu, Sindhu Murmu and Birsa Munda which set examples of such uprising against unequal land distribution.

The Srirama Raju's uprising (1922-24) in West Godavari, the Gond revolt (1940) in Adiaband and The Telangana revolt (1946-51) in Nalgonda, Karim Nagar and Warangal district of Andhra Pradesh, the Wari movement (1946-48) in Thane district of Maharashtra, the Santhal agitation (1937-40) in Purnia district of Bihar, the Munda rising (1936-39) in Sundargarh, (Orissa) and the Jharakhanda movement that spread over the major tribal districts in Bihar are also results against land alienation and exploitative practices.

The Halipratha Movement (1920-48) in Valsad, Surat and Bharuch districts of Gujarat against the Patidars and Kanbi landlords, the Tenants Struggles (1920-21 and 1930-35) in Pratapgarh, Rai-Bareilly, Faizabad and Sultanpur districts of UP against the Mahajans, Banias and big landlords, the Tanjore Revolt (1946-49) of Tamil Nadu against higher caste landholders, the Tebhanga Movement (1946-47) in Jalpaiguri, Dinajpur, Malda, Rangapur, Midnapur and Chaubis Praganas of West Bengal against landlords and the Kisan Sabha activities in Andhra Pradesh, Bihar, West Bengal and other states put mounting pressure on the country to protect and promote the land rights of the poor tribals and lower caste peasants .

The relentless struggles of tribal people compelled the British government to introduce some legal measures to quell the discontent of tribals. The Chottanagpur Tenancy Act 1908, the Central Provinces Land Alienation Act 1916, the Bihar Tenancy Act 1885 and the Bombay Land Revenue Code (section 73A) were enacted to protect the interests of these communities from time to time.

## **1.2 Post- independence Situation**

After independence, the welfare of the tribal communities has been the national goal and special responsibilities of the central and various state governments. The government became very keen for the upliftment of tribal people since they are required to take part in the

endeavor of nation-building along with other sections of Indian society. In addition to this, tribal development in India has assumed greater significance in the context of growing awareness among these people for their right place in the broader society. The government's deep concern for the welfare of these people manifests in the launching of several policy initiatives and creation of a wide network of development administration to bring about a radical change in the socio-economic conditions of these primitive communities.

Promotion of all-round development of tribals inhabiting the length and breadth of our country has received priority attention of the government. There are numerous government policies for ensuring their welfare and well-being. The Indian constitution mandates the state to safeguard and promote the interest of scheduled tribes. Under Art.46 of the Directive Principles of State Policy the state shall promote with special care, the educational and economic interests of the weaker sections of the people, and in particular, the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation. A minister shall remain in charge of tribal affairs in the states like Bihar, Orissa, and Madhya Pradesh. Special powers are given to the governor of a state in the Fifth Schedule of the constitution, who is required to submit an annual report to the President of India on the administration of Scheduled Area of the state. The Governor, by notification, can direct any Act of parliament not to be applicable to the scheduled area or shall be applicable with due modification as he may specify with due approval of President of India. Besides he will have powers to make regulations prohibiting and restricting transfer of land by scheduled tribes in scheduled area. The constitution also provides for transfer of funds to states out of the Consolidated Fund of India for development work leading to welfare of scheduled tribes under Article 275 of the constitution. The overall control of union government over administration of scheduled areas and welfare of scheduled tribes is spelt out in Article 339 of the constitution. The President of India may, by order, declare any area/ areas to be scheduled areas and can schedule such areas or increase or decrease or cease such areas by order made on his behalf.

Generally, the criteria adopted for declaring any area as scheduled area is based on the following considerations (i) Preponderance of tribal population (ii) Compactness and size (iii) Under-developed nature (iv) Market disparity in economic standards of people, although no specific criteria is spelt out in the constitution. These norms are adopted on the established principles following excluded and partially-excluded areas declared under 1935 Act and report of Scheduled Areas and Scheduled Tribes Commission 1961. The specification of Scheduled Areas in relation to a state is notified by order of the President after consultation with state government concerned. The same applies for altering, increasing, decreasing, incorporating new areas or rescinding any orders relating to "Scheduled Areas".

### **1.2.1 Seventy-Third Constitutional Amendment Act**

The passage of the 73<sup>rd</sup> Amendment Act in 1992 marks a new era in the federal democratic set up of the country and provides constitutional status to Panchayati Raj Institution. According to the 73<sup>rd</sup> amendment the Scheduled Areas were excluded from the purview of the Act. As per article 243M (4)(2), Parliament may by law extend the provisions of Panchayat to the Scheduled Areas, subject to such exceptions and modifications as may be specified in such a law. Considering the growing discontent among the tribals throughout tribal India, the central government constituted a committee in June 10, 1994 headed by Shree Dillip Singh Bhuria, the then M.P as its chairman to suggest salient features of Panchayat laws to be extended to the scheduled areas of the country. The committee, after discussing the issues emanating from the terms of references and considering various aspects of the subjects, submitted its report in Jan 1995. The committee made several recommendations out of which the followings are some of its important recommendations.

### **1.2.2 Important Recommendations of Bhuria Committee**

- (i) While passing the law under Art-243 (M)(4)(b), important provisions of the 73<sup>rd</sup> constitutional amendment and certain unique characters of tribal societies and tribal areas should be

kept in view since many tribal societies have their own customary laws, traditions, practices community ethos, political and administrative systems, among others. It is essential to give due consideration to their mode of living, organizations, cultural mores, present day predicament of exploitation, deprivation and marginalisation.

- (i) While drafting the law, advantage should be taken of both the fifth and sixth schedules. The fifth schedule should be the fountainhead of essential and beneficial legislation. The design and contents of the sixth schedule could serve as the reference frame for a district within the broader canvas of the fifth schedule. The Tribes Advisory Council, envisaged in the fifth schedule, as a consolidated body at the state level, needs to be reformed into an effective organization. The Chief Minister of the state should be its chair person and its meeting should be held once in every three months.
- (ii) Considering the potential and ingrained attributes the cooperative organizations among tribals should be constituted in line with their oral tradition and social milieu.
- (iii) The Gram Sabhas should be allowed to exercise their customary role unhindered. Further, Gram Sabha may have a traditional village council, which performs the religious, political, economic and judicial functions on its behalf. The Gram Sabha may nominate its executive council or village council, which may be a traditional body and may delegate to it the execution of development work. A number of aggregated hamlets may have a village Panchayat, called variously as Gram Panchayat or Anchal Parha or Pragana Panchyat. This tier corresponds to the lowest tier envisaged in the 73rd constitutional Amendment Act. Its members may be elected.
- (iv) Constituencies may be delimited for election of members to the intermediate and district tier Panchayat. The district level Panchyats may be called Autonomous District Council.



- (c) Since the Scheduled Areas and Tribal Areas are expected to have a majority of tribal population, the different tiers of Panchyats there in should have a majority of scheduled tribe members. Further both the chairpersons should belong to scheduled tribes.
- (c) The Panchyats may receive funds under the provision of 243 H and 243 I of the constitutional amendment Act. Also funds as per the first provision to Art 275(1) should continue to be available normally.
- (c) Education and health sectors should be the first charge on the funds received by a Panchayat in Scheduled Areas and, notwithstanding any other provision, the Panchayat should have the power to appropriate funds from any other head for meeting this obligation.
- (c) All government functionaries and institutions concerned with Panchayats in a Scheduled Area should be brought under the fold of Panchayat Institutions.

### **1.2.3 Provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act 1996**

#### **1.2.3.1 National Perspective**

To provide self-rule for tribals a bill was introduced in Parliament in December 1996 based on the recommendations of the Bhuria committee and for a thorough examination of the tribal scenario in the country. The bill was passed by the Parliament and became an Act after the President's assent on 24<sup>th</sup> Dec 1996. The Act is known as the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Act no-40 of 1996). This Act seeks to extend the provisions of part IX of the Constitution as referred to in clause (1) of Article 244 and calls for the Legislature of a state not to make any law under that part (i.e. part IX) which is inconsistent with any of the provisions given under section-4 of the Act. Some of the important features of the Central Act are:

- (c) The State legislation should be in tune with the customary law, social and religious practices and traditional management practices of community resources.
- (c) Every Gram Sabha should be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of disputes resolution.
- (c) Every Gram Sabha should be responsible for identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
- (c) Every Gram Sabha should have the authority to approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayats at the village level.
- (c) The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat area for whom reservation is sought to be given under part IX of the Constitution; provided that (a) the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;(b) that all seats of Chairpersons of Panchayat at all levels shall be reserved for the Scheduled Tribes. The PRIs have been given the following powers in different subjects under PESA Act.
  - i) The Gram Sabha or the Panchayat at the appropriate level should be consulted before making acquisition of land in the scheduled areas and before, resetting or rehabilitating persons affected by such projects in the Scheduled Areas.
  - ii) The recommendations of the Gram Sabha and the Panchayats at the appropriate level should be mandatory prior to grant of prospecting license or mining lease for minor minerals in the scheduled Areas.

*The Gram Sabha and the Panchayats should;*

- iii) Have the power to enforce prohibition or regulate or restrict the sale and consumption of any intoxicant
- iv) Be endowed with the ownership of the minor forest produce
- v) Be conferred with the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of the Scheduled Tribes
- vi) Have the power to manage village markets and exercise control over money lending to the Scheduled Tribes
- vii) Have the power to exercise control over institutions and functionaries in all social sectors
- viii) Have the power of control over local plans and resources for such plans including the tribal sub-plan.

It is obvious from the specific provisions of PESA Act, 1996 that the Gram Sabhas and the Panchayats have been intended to assume total responsibilities for planning and implementation of plans, programmes and projects with the two objectives contained in Art 243G of the constitution namely- (a) The preparation of plans for economic development and social justice, and (b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to matters listed in the Eleventh Schedule to the Constitution. However, notwithstanding the almost plenary role assigned to the Panchayats by 73<sup>rd</sup> Amendment Act and a wide range of powers given under the PESA Act, Article-243G of the Constitution and Section 4(n) of the PESA Act, Panchayats rely on the state legislature to "endow the Panchayat with such powers and authority as may be necessary to enable them to function as institutions of self government".

During the mentioned period of one year after the PESA Act came into force many states have made some amendments in their relevant

laws. The state government of Orissa implemented the provisions of PESA by amending their state panchayat laws within the time frame of one year. On 22<sup>nd</sup> Dec 1997, the Acts relating to Gram Panchayat, Panchayat Samiti and Zilla Parishada were amended. In the amended laws, the following matters have been placed within the purview of Panchayat at respective tiers: -

***i) Gram Panchayats:***

To exercise such powers and perform such functions to the extent as may be prescribed in respect of the following matters:

- i) Enforcement of prohibition or regulation or restriction of sale and consumption of any intoxicant.
- ii) Ownership of minor forest produce.
- iii) Prevention of alienation of land and restoration of any unlawfully alienated land of a scheduled tribe.
- iv) Control over money-lending to scheduled tribes.
- v) Subject to the control and supervision of Gram Sasan (Gram Sabha is the executive authority of Gram Sasan), Gram Panchayat shall have power to manage village markets etc.

***ii) Panchayat Samiti:***

- ( ) Panchayat Samiti, in consultation with Gram Sasan, shall be competent:
- ( ) To exercise control and supervision, the nature and extent as may be prescribed over institutions and functionaries of various social sectors in relation to programmes and measures by Govt.
- ( ) To prepare local plan including tribal Sub-plan for the area and to exercise control over resources of such plans

***iii) Zilla Parishad:***

- ( ) No prospecting license or mining lease for minor minerals or concession for the exploitation of minor minerals by auction, shall be granted under any law on or after the amendment except with the prior recommendation of the Parishad.

- (c) No acquisition of land for development projects or for resettlement or rehabilitation of persons affected by such projects shall be made under any law without prior consultation with the Parishad.
- (d) The Parishad shall plan and manage the minor water bodies.

### **1.2.3.2 State Perspective**

#### *Confirmity legislations*

The state government has taken the following steps towards confirmity action in relation to the Panchayat Extension to Scheduled Areas (PESA) Act, 1996 (central) read with the amendments to Orissa Panchayat laws.

- (a) The Bihar-Orissa Excise Act, 1915 has been amended in 1999 (Act 2 of 1999). As per the amended provision, no license could be granted in the Scheduled Areas for manufacture, possession or sale or any exclusive privilege, of any intoxicants except with the prior approval of the concerned Gram Panchayat accorded with the concurrence of the Gram Sasan. The authority granting license for the above purpose shall refer every proposal to the concerned Gram Panchayat for its decision within a period of 30 days from the date of receipt of such reference. If the Gram Panchayat fails to communicate its decision within the period of 30 days, it shall be deemed that the concerned Gram Panchayat has accorded the required approval.
- (b) The Orissa (Scheduled Areas) Money-lenders' regulation 1967 has been amended by the Orissa (scheduled Areas) Money-lenders' (Amendment) Regulation, 2000 (Regulation 1 of 2001). As per amended Regulation, no money-lender shall advance loan to a scheduled tribe, except on the prior recommendation therefore of the concerned Gram Panchayat accorded with the concurrence of the Gram Sasan. A money-lender, before advancing a loan to any person belonging to a scheduled tribe, shall send the proposal therefore to the concerned Gram

Panchayat for its recommendation which shall be communicated by it within a period of 45 days from the date of receipt of such proposal. If the Gram Panchayat fails to communicate its recommendation or refusal within the aforesaid period, it shall be deemed that the Gram Sabha has accorded recommendation. If it refuses to accord required recommendation, it shall communicate the reasons therefore in writing, to the money-lender.

- (i) Another important feature of this amended Regulation is that if any debtor belonging to any scheduled tribe is not satisfied about the correctness of the entries made in the statement of the accounts delivered to him or the passbook supplied to him by the money lender containing up- to- date account of the transaction with him, he may bring to the notice of the concerned Gram Panchayat in writing the correctness of such entries. The Gram Panchayat may make an inquiry into the correctness of such entries and if satisfied that the moneylender has charged or recovered from the debt or any excess amount of principal or interest thereon or both, it may direct the licensing authority for appropriate action under law (Section-9).
- (ii) The state government in Panchayat Raj department has brought out a set of rules. These rules are called the "Orissa Grama Panchayat Minor Forest Produce Administration Rules", 2002. Under these rules, the Gram Panchayats shall have the power to regulate procurement of and trading in the minor forest produce whether produced in government lands and forest areas within the limits of Grama or collected from reserve forest and brought into the Grama. Any person intending to procure minor forest produce from the primary gathers or to trade in minor forest produce within the limits of Grama during any trading year, shall register himself as a trader in minor forest produce with the concerned Gram Panchayat on payment of an amount fixed by the Government.

- q The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 has been amended to read as "The Orissa Scheduled Areas Transfer of Immovable Property" (By Scheduled Tribes) Amendment Regulation, 2000 named as Orissa Regulation 1 of 2002 effective from 4<sup>th</sup> September 2002. This amended regulation has brought in the following changes.
1. Any transfer of immovable property by a member of Scheduled Tribe shall be absolutely null and void and have no force or effect.
  2. However property of a Scheduled Tribe can be mortgaged in favor of any financial institution for securing loan for any agriculture purpose.
  3. A member of a scheduled tribe shall not transfer any land if the total extent of land after transfer, will be reduced to less than two acres in case of irrigated land and 5 acres in case of un-irrigated land.
  4. When it is decided by competent authority to settle property with any person other than a person belonging to a scheduled Tribe, he shall obtain prior approval of the concerned Gram Panchayat.
  5. Transfer of agricultural land of Scheduled tribe by fraud shall now be restored back by competent authority.

### **1.3 Comparison between Central PESA Act and Orissa State Act:**

The comparative statement given below indicates disparities between the provisions of the Central PESA Act, 1996 and the counterpart modifications of Panchayat Acts of Orissa in 1997.

Sl. No.	Items	Central Act	Orissa Act
1	Definition of village	A village consists of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.	Adopted the definition of Central Act
2	Status and functions of Gram Sabha	Every village will have a Gram Sabha which will be competent to safeguard and preserve the traditions and customs of the people and their cultural identity	The state Act follows the Central Act However; Orissa Act adds that it should be consistent with the relevant laws in force and in harmony with the tenets of the constitution and human rights.
3	Constitution of the Panchayat	Panchayats will be constituted at the village level with reservation for scheduled tribes in the manner prescribed in part IX of the constitution.	Extended the reservation of elective seats and chairpersons to both Gram Panchayats, intermediate Panchayat and to Zilla Panchayat.



4	For acquisition of land for development projects	The central PESA Act makes it mandatory for consultation with Gram Sabha or Panchayat at appropriate level	Assigned this power to Zilla Parisads
5	For planning and management of minor water bodies	Entrusted to Panchayats at the appropriate level	Assigned this power to Zilla Parishad instead of giving power to Gram Sabha or Gram Panchayat
6	Managing the village market and regulating money lending to STs	Endowed Gram Sabha/ Grama Panchayat.	Given to Gram Sabha but subject to control and supervision of Gram Panchayat.
7	Control over local plans and resources including tribal sub-plans	Endowed Gram Sabha/ Gram Panchayat.	Given the power to Panchayat Samiti.
8	Exercise of control over institutions and functionaries in all social sectors	Endowed Gram Sabha/ Gram Panchayat	Given to Panchayat Samiti but subject to consultation with the Gram Sabha

9	Enforce prohibition/ regulate or restrict sale & consumption of any intoxicant. the power	Panchayats at the appropriate level - the Gram Sabha to be endowed with	Gram Panchayat or Gram Sabha shall exercise the power
10	Ownership of Minor Forest Produce (MFP)	Panchayats at the appropriate level and the Gram Sabha endowed with the powers of ownership.	Followed the Central Act
11	Prevention and Restoration of tribal alienated tribal land.	Panchayats at appropriate level and the Gram Sabha to be endowed with this power.	Subject to the control and supervision of Gram Sasan, Gram Panchayat exercise this power.

The aforementioned table indicates that the spirit of the Central Act to entrust responsibilities to the Gram Sabha in respect of various subjects appears to have been diluted. There was enough justification for devolving powers in respect of land acquisition, minor minerals and water bodies to Gram Sabha/Gram Panchayat instead of the Zilla Parishad.

## CHAPTER-II

# Review of Literature, Study Objectives and Methodology

### 2.1. Review of Literature

The writings and findings from some authentic literatures provide enough scope for the relevance of present study on "PESA Act and its Implementation in Tribal Areas of Orissa: An Empirical Evaluation". These reveal the existing practices and provisions of different Acts provided for scheduled tribes.

#### 2.1.1. National Context

*The book "Panchayats in Scheduled Areas" by K .B Srivastav is the product of an assignment given by the Union Ministry of Rural Areas and Employment. It starts with the provisions of 73<sup>rd</sup> & 74<sup>th</sup> constitutional Amendments and reviews the Bhuria committee reports. It reviewed the PESA Act and its provisions. This central Act (PESA) mentions four types of powers to be given to Gram Sabha. They are (i) mandatory powers, (ii) consulting powers, (iii) recommendatory powers and (iv) powers to be devolved by the State governments. The report under review examines the details of these powers and assesses the extent to which the State governments have operationalised the provisions of the Act. It is reported that in most of the states the spirit of the Central Act was not emulated, none of the states endowed the Panchayats to enable them to function as institutions of self-governance. For proper governance and to overcome difficulties the report suggests certain changes & measures .The Central Act of 1894 on land acquisition as amended in 1984, does not require consultation with Gram Sabha or Gram Panchayat before acquiring land in Scheduled Tribe areas. This is to be suitably amended. Many states, after extending the Panchayats Act of 1996, did not amend the relevant Acts. For example except Madhya Pradesh and Gujarat other states*

did not change mining license, mining lease or concessions for exploiting minor minerals. Except Gujarat and Maharashtra, other states have not changed rules under their Minor Forest Produce Acts for empowering the Panchayats to regulate the collection and disposal of the minor forest produce. In many states, provisions pertaining to land alienation were not changed and hence, Grama Sabhas are ineffective in preventing land alienation. In brief, the state governments while amending their Panchayat Acts, simply followed the letter and not the spirit of the Central Act of 40 of 1996.

In his book, *"History of land systems and Reforms"*, H.R. Trivedy has focused the different stages of land reforms and provisions of Fifth and Sixth schedules of the constitution of India. Under Fifth schedule, the state Governors are given almost unlimited powers to make regulation for improving socio-economic conditions of tribals. Special regulation promulgated by the Governor can modify any law of parliament or state while applying to fifth schedule areas.

*"Landless and land allotment"*, the paper written by R. Murdia (1975) aims at reviewing the prevailing situation of land allotment and alienation with respect to Scheduled Caste and Scheduled Tribes. She examines various laws and measures adopted by state Governments to improve the conditions of tribals with regard to land. The paper also identifies defects in land- laws, regulations and their implementation.

Janardan Rao in his book *"Tribal land rights, government and socio political movements"* observes that conception of land as property is strange to many tribal societies in the world. Tribal land-right is an issue that is essentially related to the whole structure of land relations, introduced, maintained and continued over the decades. He quotes the "National Committee On Development of Backward Area" and observes that by 1981, over one half of the tribal landholdings were alienated in favor of non-tribals.

In *"To be Governed or to be self-governed"* Adivasi folio 2000, S.M. Kothari examines PR Acts, PESA and observes that during the British Raj with one legislative change viz-India's Forest Act, 1865, tribals became trespassers in their own forestlands. Even after independence, Indian government retained the same and continued the same colonial attitude and policies over Adivasis.

In Mid-1980s, B.D. Sharma (Commissioner of STs) highlighted the plight of the Adivasis. Responding to the grave situation, the Parliament set up Bhuria Committee and passed PESA Act recognizing Adivasi's right to self-rule. The 1996 Act empowers the Gram Sabha to secure self-governance. It is reported that in many Scheduled-V Areas Gram Sabha is virtually non-existent. In any case, PESA is a great opportunity to undo a historical injustice and to make Gram Sabha flexible enough to mould to local conditions.

In a study of the *"Tribal People and Tribal Areas in MP"* by B.K. Dube and F. Bahadur (1996) it was revealed that in the tribal areas which are now more accessible and where moneylenders are well-established, 40% of the tribal families were found to be indebted. The magnitude of indebtedness varies from tribe to tribe and from district to district, depending on their social life, economy and availability of credit agencies.

K.N. Sharma in his study on *"Developmental planning for M.P. Tribes"*, mentions that in the system, a particular money lender-cum-trader-cum contractor is served by a group of tribal families from one generation to another. Almost all the products from such families flow to this person, and all their purchases are made from him. The law does not help because the tribal fully realizes his dependence on the moneylender and because of his simplicity, honesty and ignorance, is unwilling to come to court and contest against the claims of the moneylender.

*"The Tribal culture of India"* by L.P. Vidyarathi and Binaya kumar Rai, starting with the importance of tribal India in the history of Indian civilization, makes a comprehensive study of the economic, social,

political and religious organizations of the Indian tribals. The psychological factors in personality structure in tribal setting have been studied and discussed in detail. The other major aspects discussed are: tribal village, customs, approaches, planning and programme for tribal development and cultural change in the tribes of India, today.

*"Tribal Affairs in India"* by Dr. B.D. Sharma is one of the first authoritative books on relevance of the fifth scheduled in tribal affairs. The book concerns the struggle for survival of more than eight million tribal people in India. They comprise more than hundred communities, small and big at different stages of the so called development right from hunters and gatherers at the one end and shifting cultivators, traditional farmers on to those caught in the whirl of the industrialization at the other end. Our constitution particularly the V<sup>th</sup> schedule presents a near ideal frame for managing the crucial change.

The book presents a historical perspective and the grand vision of our founding fathers. It critically analyses the great confusion, which has prevailed ever since as also the stark unconcern of the rulers and the callous dereliction of duty on their part. Even constitutional bodies have fluttered in their assigned task It has caused irreparable damage to many a people. Some weakest groups are on the verge of extinction. The relevant constitutional conventions, the historic judgment of the Supreme Court and the lists of the scheduled tribes and scheduled areas are also reproduced for handy reference in this book.

### **2.1.2. Orissa Context**

The book *"Two Tribal Friendly Acts and Their Implications"* Edited by A.B. Ota and Karunakar Patnaik is a collection of 19 articles and three Gazette notifications of Government of India. The contributions to this collection of articles are made by distinguished persons representing a wide range of disciplines from government, non-government, academic, social spheres and tribal development practitioners.

Implementation of PESA in Orissa had been a matter of constant debate amongst the interested and enlightened practitioners in different foras

while PESA engulfs about 9 states in India with large tribal population including Orissa. The constitutional mandate seems to have received less attention by the state government in its implementation. The article of Karunakar Patnaik analyses the broad features of constitutional mandate and reflects briefly the recommendations of Bhuria committee. The writer has attempted briefly to reflect the demographic status of tribals and the conformity legislations the state Governments have enacted in devolving powers and functions to Panchayati Raj Institutions in the state. Of the several critical issues connected to PESA, he has raised a few important gaps in the implementation of the Act with its intended objectives and vision.

Shri J.P. Rout and Shri T. Sahoo have placed their reviews on the field research findings reflecting on the socio-economic and ethnic profile of elected Panchayat representatives in six blocks of three districts preceded by a vivid account of historical perspective of the emergence of PR Institutions in Orissa, the constitutional mandate and have placed a comparative chart on conformity legislations and devolution of functions to various tiers of PRIs.

Prof L. K. Mohapatra and Paramjyot Singh have examined PESA from a critical point of view questioning the veracity of commonly used words like *"customary law, social and religious practices"* and *"traditional management practices"* not really specific in applicability context to Gram Sabha in tribal areas.

Sri Saroj Kumar Dash has tried to focus on the constitutional provisions; recommendations of Bhuria committee report and in Orissa context, has tried to explain that implementation of PESA in the state is limited to cosmetic changes only without adequate devolution of power to PRI in tribal areas.

Mr. Damodar Jena in his article "Status of PESA in Orissa, Jharakhanda, and Andhra Pradesh" has placed a status schedule of PESA.

Sankarsana Hota presents a historical perspective of tribal administration over the years and highlights the fundamental principles

of PESA stressing upon various tribal issues including dispute resolution and the mechanism to resolve them.

Mr. Arun Kumar examines the theoretical framework, tribal perspective under the colonial rule, the pre and post-independence historical development and then of course, the positive and negative aspects of PESA. Highlighting the conformity efforts of Andhra Pradesh, he presents the study results of two-village Panchayats of Visakhapatnam district of Andhra Pradesh stressing more on training, awareness and empowerment for implementation of PESA Act. In his article on "*Decentralized governance in Madhya Pradesh*" Mr. Yatindra Singh emphasizes the need for greater participation of people at Grama Panchayat level and enhancement of their capacity building and of the functionaries for more effective implementation of PESA.

Balaji Pandey of ISED explains how PESA Act has been diluted in most of the states. In many states there appears to be vivid reluctance in popularizing the Act and in the process, he holds the states as culpable. Prof R.M. Mallik mentions about the continued exploitation of tribals over the ages and the plethora of conflicting laws regulating tribal administration in the state.

Dr. A.C. Sahoo's critical analysis of the of the "*Scheduled Tribes and Other Traditional Forest Dwellers Act, 2006*" stretches back to historical events and laws and rules relating to forest administration which have affected tribal life very adversely. Dr. Sahoo, while elaborately explaining the provisions of the Act suggests that capacity building and awareness generation of the key stakeholders and government officials on the aforesaid Act needs strengthening.

Shri Sanjay Patnaik of RCDC has very vividly and analytically traced the historical background of forest administration in the country and Meena Das Mohapatra of PRIA assumes the Forest Rights Act as an instrument to ensure Forest Dwellers Rights.

Sweta Mishra of Vasundhara explains that the Forest Rights Act is a "*decisive political shift*" in recognizing the historical injustice caused to tribals hitherto.



Mr. N. Pattanaik made a comparative study of two tribal development blocks in Orissa one in Koraput and the other in Mayurbhanj district. The first block is hilly and forested while the second block has 80 per cent flat plains. In the first block tribals resort to shifting cultivation and also rely on food gathering and forest produce. In the second block the tribals carry on settled agriculture. The study found that in the block in Mayurbhanj tribals are relatively better off than the one in Koraput, although they suffered from land alienation and have very small land holdings.

Mr. J. Samal conducted an ecology based economy study of the tribals of Koraput region. It detailed micro level analysis of 365 days of engagement of the tribal households in 1983-84. Some groups as studied were living in hills with forest cover, others in hills without forest cover and some others in plateau and plains adopting settled agriculture. It focused on the agriculture and non-agricultural pursuits of the tribals, the relative efficiency and productivity of various activities, the level of income and purchase and also the seasonality of their operation.

A study on *"The problem of Land Alienation of the tribal in and around Ranchi"* by S. P. Sinha, states that tribal indebtedness is one of the causes of land alienation. Some of the tribal landowners have been in heavy debt for one reason or the other and it was only to pay off their debt that they often sold away the land for paltry sums of money. The administrators also feel helpless in putting an end to land alienation.

Bhuvanendra P. and Tripathi S.P. in their study on *"Recovery Trend of Land Development Banks-A study of the West Tribal of Madhya Pradesh"* revealed that high over dues of the banks were due for the poor repayment performance of the borrower farmers. They found that the factors responsible for the high overdue were natural calamities, unfavorable geo-physical conditions, power shortage, low prices, low income and high cost of inputs, political influence and willful default.

S.K. Chowdhury's study in Garh-Tumilia village in Ramaghar block of Sundargarh district is to ascertain the change in structure of landholdings and the extent to which Zamindari was abolished was intended to know persons affected by distribution of the surplus ceiling land and to assess efficiency in implementation by size and quality of land allotted and whether the land is effectively operated.

Different institutions/Organizations and social researchers have carried out a number of studies on different aspects of tribals and tribal issues. The review of studies was done with a view to identify the gray areas, which could be taken up in the present study as far as practicable.

A study of NIRD, 2005 in Rajasthan, Chhatisgarh and Orissa on "*Process of Acquisition of Land for Development of Mining Industry in Schedule-V Areas*" examined the strength and weakness of PESA Act in empowering the Panchayat Raj Institutions with regard to grant of land for mining and also award of lease of major and minor minerals, the existence of any conflicts or contradictions between PESA Act and the earlier Acts on the subject as well as the procedures followed in the background of the PESA Act and the nature and extent of violations of PESA Act in these matters. The ISED study (1998) on "*Depriving the Underprivileged for Development*" examined: (i) the socio-economic, cultural and environmental impact of such projects on the people—both those displaced and those likely to be displaced in future. (ii) Reviewed the rehabilitation policies of the different development projects of the state and examined the processes involved in their planning and the nature of their implementation. Another study taken by ISED on "*Women and Land Alienation in Jharkhand, Chattisgarh and Orissa*" (2007) covering the states of Jharkhand, Chattisgarh and Orissa highlights the implications of the aggressive growth centric development on women's livelihood sources which are being taken away or expected to be taken in near future by the state to accommodate new ventures of the corporate sector. Besides, the study examined the increasing vulnerability of women in the wake of opening up of new opportunities as a result of aggressive investment.

There has been continual alienation of land of the marginalized, especially the tribals. No legislation has been able to put a halt to land alienation. Big landholders have been grabbing the land of tribals either by flexing muscles or by manipulation of land records joining hands with the land officials, or by lending money to tribals at exorbitant rates of interest. The study (NIRD, 2005) on *"Alienation of Tribal lands in Schedule V Areas"* covered states like Andhra Pradesh, Madhya Pradesh and Orissa. The study focused on the incidence and magnitude of land alienation, the methods adopted for transfer of lands, its socio-economic and psychological impact on tribal people, particularly the women and the youth and an analysis on the legal strengths and weaknesses of the PESA Act and the role of Gram Sabha in preventing land alienation and restoring alienated tribal lands to their owners.

Dr B.M. Bordolo on *"Transfer and Alienation of Tribal Land in Assam with special reference to the Karbis of the Karbi, Anglong district"* (1991) made an attempt in to study the *'Transfer and Alienation of Tribal Land in Assam'* in order to to investigate as to how transfer and alienation of tribal lands are going on unabated in spite of the existence of legal provisions in the plain districts of Assam and also among the Karbis. The study reflects how adversely transfer and alienation of lands has affected the various aspects of socio-economic life of the tribal people. Similarly alienation of tribal land due to establishment of industrial and irrigation projects and acquisition of land for public purposes, are themselves problems of grave nature, which have resulted in causing sufferings of the affected families. The study tried to bring to light some hither to unknown facts in regard to the transfer and alienation of tribal lands in their proper perspectives. The extent of transfer and alienation, its 'modus operandi' and the consequences thereof are analyzed. After analyzing the causes, problems and consequences, suggestions are put forward for preventing transfer and alienation of tribal land. Behuria and Panigrahi (2001) in *"A Report on Functioning of the Fifth Schedule of the constitution in the state of Orissa"* tried to study the changes in the extent and nature of land alienation and strategies adopted by non-tribals and different agencies

to alienate tribal people from their land resources and safeguards adopted to protect the interests of the tribal people on land.

Approximately, 8550 acres of land has been sold through permission during the period 1957-1997 under Regulation 2 of 1956 in Orissa (Panigrahi, 2001). Out of this, almost half was transferred in the four districts of Malkanigiri, Rayagada, Nowarangpur and Koraput (undivided Koraput district). The protective legislation regarding the problem of land alienation has been less effective. The reasons established by Yunus (1977) in his study "*Orissa Chapter in Land Alienation and Restoration in Tribal Communities in India*" are (i) lacuna in the laws (ii) ignorance of the tribal people (iii) complicated legal procedure involved in land restoration.

## **2.2. Rationale of the Study**

Researchers of Government and research organizations have carried out a number of studies relating to implementation and impact of PESA Act in Orissa. The studies tried to assess the status of functioning of PESA and locate the gaps in the Act through conduct of personal interviews with the PRI representatives and officials. It is felt that people's perception towards the Act can also contribute towards securing better suggestions for improvement in the Act. Hence, the present study intends to find the gaps and suggestive measures for effective implementation of the said Act by assessing people's perception including PRI representatives about the working and understanding of the Act.

## **2.3. Objectives**

The present study aims at the following objectives:

- (i) To examine the implementation status of PESA.
- (ii) To locate the gaps in the implementation process.
- (iii) To suggest the areas of improvement in the implementation of the Act.

## 2.4. Methodology and Sample Design

### 2.4.1. Sample

The study was carried out in the two selected districts i.e. Rayagada and Mayurbhanj under Scheduled Areas of Orissa for the purpose. Randomly, the sampling of blocks, GPs and villages were chosen. Each one block was selected randomly for the purpose. Two GPs from each block consisting of accessible and inaccessible areas were selected. From each GP, two villages were identified purposively, one was exclusively ST predominated and another, a congregation of different castes with tribal majority. Apart from the two villages, one Primitive Tribal Group (PTG) village was also covered from each selected block. In the process, a total 10 villages were selected for the study.

#### Details of sample-

Description						
Select districts	Rayagada			Mayurbhanj		
Select blocks	Bisamcuttack			Thakurmunda		
Total GPs	20			16		
Sample GPs	Bhatpur Chanchuraguda			Digdhar Saliabeda		
Detail description of Sample Village						
Sample Villages for HH Survey	<b>Name</b>	<b>No. HHs</b>	<b>No. of existing HHs Surveyed</b>	<b>Name</b>	<b>No. HHs</b>	<b>No. of existing HHs Surveyed</b>
	Kanedi	81	80	Gobarajoda	39	41
	Nuagada	41	39	Badamahuli diha	64	66
Sample villages for FGDs	Khajuri (PTG) Nuaguda Sauragada Canadi Badabrundabadi			Durdura (PTG) Gobarjoda Guliajudi Saliabeda Sana Mahuladiha		
Total HHs as per Census	81+41+39+64=225					
Total existing HHs surveyed	80+39+41+66=226					

### **2.4.2. Methodology**

Data were collected from both primary and secondary sources. Primary data includes (i) Household survey (ii) FGDs (iii) Semi-structured/informal interviews with the key stakeholders like elected Panchayat representatives, officials, NGOs/CBOs, village leaders and cross-sections of the society (iv) Field observations. Household data covering all the existing households covered in four villages, one each from 4 selected GPs. But FGD method was adopted in all the 10 villages including two PTG villages under two micro project areas in the respective study districts.

#### **2.4.2.1 Primary source**

##### ***Household Survey:***

All the households of the select villages were covered for the purpose. Pre-tested schedules/questionnaires were designed, based on the information on socio-economic conditions of HHs and their understanding about the PESA Act (**Annexure-1**). In order to assess the working of PESA, questions pertaining to the role of Gram Sabha in preventing land alienation, restoration and acquisition of land, control and regulation of intoxicants, money-lending, minor forest produce business and village market and the degree of intervention of Panchayats in these issues were covered for the study. A pilot survey was conducted prior to the finalization of the schedules/questionnaire.

##### ***Focus Group Discussion (FGD):***

FGDs in each select village consisting of members representing various categories in the village were conducted. A semi-structured framework was designed based on the village information including status of working of PESA Act and people's understanding about the Act. For conducting the FGDs the team comprised of three researchers. Out of

them, one researcher coordinated the discussions, second researcher recorded the discussions with the help of audio-visual (handy-cam) and the third researcher interacted with the participants as per the pre-determined framework.

***Informal Interviews:***

Semi-structured informal interviews were taken-up from the elected representatives of local bodies, officials like revenue officers, executive officers, block development officers, special officers (Micro Projects), and cross-sections of the society with regard to the status of implementation of PESA, its role in the implementation process and suggestive measures for effective implementation of PESA Act.

***Field Observations:***

Field observations were recorded during household data collection and FGDs.

**2.4.2.2. Secondary source**

Secondary data were collected from GPs, Blocks, Zilla Parishads, ITDAs/ Special Projects/Revenue/Block authorities/offices and published/unpublished reports.

**2.5. Limitations of the study:**

- i) During collection of HH data, respondents showed interest to provide information, but due to use of their local dialect and illiteracy, they could not supply information up to the desired level.
- ii) Extent of study coverage was limited. It could have been better assessed if the impact and gaps were studied in wider area coverage.

- iii) More queries about the awareness and understanding of the Act could not be placed due to paucity of time.

### **2.6. Chapterisation**

The study report is divided into five chapters. *First chapter* is Introduction covering PESA Act, historical background, key provisions and conformity legislations in Orissa. *Second chapter* focuses on review of literature, objectives, sample design and methodology. Profile of the study area is discussed in the *Third chapter*. *Fourth chapter* examines the status of Working of PESA in Orissa. Critical gaps in the implementation and suggested steps for effective implementation of the Act are reflected in the *Fifth chapter*.



## **CHAPTER –III**

### **Profile of the Study Area**

#### **3.1. Orissa Profile**

Orissa is bounded in the west by the thickly forested hills of the Eastern Ghats. In the East it is bounded by nearly 500 km coastline of the Bay of Bengal. It is surrounded by Jharkhand state on the North, West Bengal on the Northeast, Andhra Pradesh on the South and Chhattisgarh on the West. Orissa is one of the resource-based states of India owing to its fertile land and rich mineral sources viz. coal, iron and bauxite. It covers an area of 1.55.707 sq. km. with 3.68 crore population as per 2001 census. The Scheduled Tribes (ST) and Scheduled Castes (SC) population of the state is 81, 45,081 and 60.82.063 respectively. The ST population constitutes 22.13 per cent of the total population of the state and 9.66 per cent of the total tribal population of the country. The SC population constitutes 16.53 per cent of the state population and 3.65 per cent of the total SC population of the country. Both ST and SC together constitute 38.66 per cent of the total population of the state.

Orissa occupies a distinct place among the Indian states and union Territories for having a rich and colourful tribal dispensation. Majority of Scheduled Tribes live in hilly and forest regions. Their economy is largely subsistence oriented, non-stratified and non-specialized. Their social system is simple but their aspirations and needs are many. Even though the Scheduled Tribes have suffered from social, educational and economic backwardness due to geo-historical reasons, they have retained their distinctness and socio-cultural milieu. Their ethos, ideology, worldview, value orientations and cultural heritage are rich and varied. They are nomadic food gatherers as well as hunters, skilled settled agriculturists, horticulturists, forests and pastoral dwellers. Therefore, they represent a variety of socio-economic panorama of life.

### **3.2. Tribal Situation in Orissa**

Of all the states in India, Orissa has the largest i.e. 62 number of tribes constituting 22.13 per cent percent of the total population of the state. These tribes mainly inhabit the Eastern Ghat hill ranges which run in the north-south direction. More than half of their population is concentrated in three districts of Koraput (undivided), Sundergarh and Mayurbhanj. Food gathering, hunting and fishing are part of their livelihood practices. Even the large tribes like the Santhals, Mundas, Orans and the Gonds who are settled agriculturists often supplement their economy with hunting and gathering. In farming, they make use of a very simple technology and a simple division of labour often limited to the immediate family. Their holdings are small and unproductive due to lack of adequate irrigation facilities.

Many tribes, for instance, the Juangas, Bhuiyans, Saoras, Dharuas and Bondas, practice shifting cultivation or Podu Chasa for their livelihood. They select a plot of land and generally on a mountain slope, slash down all the trees and bushes and burn them to ashes. Spreading the ashes evenly over the land, they wait for the rains before sowing or planting their crops. Due to cultivation for two or three seasons on one plot of land the soil gets depleted. So the tribals move on. It is a way of life for them. There are cattle-breeders among the tribes, notably the Koya tribes. There are simple artisans too like the Mohali and Loharas, who practice crafts of basket weaving and tool making. A sizeable part of the tribal population of Orissa has moved to the mining and industrial belts of the state, notably the Santhals, Mundas, Orans and Hoes. This has helped ease the pressure on small holdings but in the process, tribal villages have been abolished/vanished. Traditional skills, land and other immovable assets have been lost without always bringing in adequate prosperity through jobs in mines and factories. Leaving apart, the state of Nagaland, Orissa carries the highest percentage of tribal population in India. Considering the development index, the President of India, during 1956, declared 62

different tribal communities of Orissa as Scheduled Tribes, out of which 13 are considered as Primitive Tribal Groups (PTG) for special treatment. The scheduled tribes in Orissa speak as many as 74 dialects.

Although Mayurbhanj district is having the highest ST population (12.58 lakh) but the percentage of ST population to total population in Malkangiri district (57.43%) is the highest. Similarly, Ganjam district is having the highest SC population (5.87 lakh) but the percentage of the SC population to total population in Sonepur district (23.62%) is the highest. The sex ratio among ST and SC community is 1003 and 979 respectively. It is observed that Koraput district has the highest proportion of families (83.61%) living below poverty line followed by Malkangiri (81.88%), Boudh (80.2%), Deogarh (78.79%), Kandhamal (78.42%), Nuapada (78%), Mayurbhanj (77.7%) and Keonjhar (76.96%). All these districts are having predominance of tribal population. The districts having relatively higher proportion of families living below poverty line are always handicapped and more dependent on external financial resources.

Almost 44.21 per cent of the total land area covering 118 out of 314 blocks in 12 out of 30 districts in Orissa has been declared as Scheduled Area. Except the coastal belt, many of the districts of the State have been declared as either partially or fully scheduled area. The present Scheduled Area of the state covers seven districts wholly and seven districts partially. The districts of Mayurbhanj, Sundargarh, Koraput, Nawarangpur, Rayagada, Malkangiri and Kandhamal are wholly Scheduled Areas. Out of 314 Community Development Blocks in Orissa, 118 (37.3%) blocks are preponderantly occupied by the tribal communities, which are covered under Tribal Sub-Plan (TSP). The districts predominantly inhabited by tribal communities are Malkangiri (58.51%), Sundargarh (50.74%), Koraput (50.67%), whereas, the districts with a sizeable tribal population are Keonjhar (44.62%), Gajapati (47.88%), Jharsuguda (33.88%), Nuapada (35.95%), and Deogarh (33.31%). Thus the tribal population of Orissa constitutes 22.13 per cent of the total State population. The major tribes of Orissa in terms of their numerical strength, to name a few, are Kondhs, Gonds,

Santals, Saoras, Bhuiyans, Parajas, Koyas, Oraons, Gadabas, Juangas and Mundas. Apart from these, there are also a good number of smaller tribal communities living in Orissa. The Chenchus, the smallest tribal community, are representing only 39 persons. There are 15 tribal groups distributed in Orissa, each covering more than one-lakh persons. When tribal communities like Santals, Gonds, Mundas, Hoes, Birhors, Koyas, Lodhas, Kondhas, Bhumijas, Kharias and Oraons cut across the state boundaries and are found in the neighboring States of Bihar, Chhatisgarh, Andhra Pradesh and West Bengal, the tribal communities like Juangas, Bondas and Didayees are found to be confined to the regions of their origin in the districts of Keonjhar and Malkangiri.

Most of tribal communities of Orissa are of proto-austroloid racial category. However, Mangoloi characteristics are also found among Gadabas and Saoras. The tribes of Orissa belong to three major linguistic divisions. They, by and large, maintain their linguistic identities and quite a sizeable of them belong to Mundari group of Austral language family and South Dravidian sub-group of Dravidian language family. In recent decades few tribal groups like Santals, Hoes, Saoras, and Kui-Kandhas have developed their own scripts. However, almost all these tribes have an undocumented script but well developed means of communication. A large number of tribals of Orissa speak Oriya and express various socio-cultural similarities with the neighboring Oriyas in their life-way processes. Tribal societies, due to certain common characteristics like animism, crude technology, concentrated habitation, use of a common dialect, subsistence economy, etc. keep themselves distinguished from complex and advanced societies. They, by and large, manifest certain cultural features, which signify primitive levels in their socio-cultural background (Behura, 1988-89: 1999).

As per 2001 Census, the total number of workers among the ST communities is 39, 90,007, out of which 22, 88,475 (57.36%) are main workers and the remaining 17, 01,532 (42.64%) are marginal workers. Cultivators account for 33.35 per cent of total workers, whereas

agricultural laborers constitute 46.85 per cent and workers engaged in household industries constitute 46.85 per cent. Workers engaged in household industries constitute 4.77 per cent of the total workers. Thus majority of the workers in tribal communities are agricultural labourers. Most of the cultivators among the Scheduled Tribes are marginal farmers, sharecroppers and small farmers.

**Major Tribes & their Area-**

Name	Area of Concentration (Districts)
Kondh	Keonjhar, Kondhamal, Sambalpur, Bolangir, Koraput, Ganjam & Sundergarh
Saura	Koraput, Ganjam and Bolangir
Gond	Sambalpur, Bolangir, Koraput, Kalahandi and Sundergarh
Santal	Mayurbhanj, Balasore, and Keonjhar
Paraja	Koraput, Kalahandi and Sundergarh
Gadaba	Koraput, Nowrangpur, and Malkangiri
Koya	Koraput and Malkangiri
Oraon	Sambalpur, Sundergarh, Gunupur, and Bonai
Bhuiji	Mayurbhanj, Sundergarh, Keonjhar, Balasore and Pallahara
Bonda	Koraput and Malkangiri
Juang	Keonjhar and Dhenkanal

The list of 62 types of Tribes and the list of 13 Primitive Tribal Groups (PTGs) are mentioned in Annexure-II & III respectively. The rate of literacy among the Scheduled Tribes is 37.37 per cent against the overall literacy rate of 63.08 per cent of the state as per 2001 census. The tribal male and female literacy rates are 51.48 per cent and 23.37 per cent respectively. Over the last decade, there has been a significant improvement in literacy level among the Scheduled Tribes in the state, which recorded an increase from 22.31 per cent in 1991 to 37.37 per cent in 2001.

### **3.3. Profile of Study Districts**

#### **3.3.1. Profile of Rayagada District -**

The Rayagada district is known for its long human history. The district came functionally into existence on 2<sup>nd</sup> October in the year 1992.

From the perspective of the whole of the Rayagada district it can be said that tribal communities are quite predominant here. They comprise of 57.5 percent of the total population. The topography of the district is such that the tribal people could easily retain their original tradition and ethnicity and live on their own whims and desires. The Kondha tribe is quite significant. Besides Rayagada town, they are also concentrated in other parts of the district like Kashipur, Kalyansinghpur, Bissamcuttack and Muniguda as well. Thus the Kondhas are popular names amongst the tribes of Rayagada and have distinct features and characteristics of their own.

Rayagada district comprises of two sub-divisions namely Rayagada and Gunupur. The district occupies the southern part of the state bordering the state of Andhra Pradesh and is located between 82° 54' to 84° 02' East longitude and 19° 00' to 19° 58' North latitude. The district has an area of 7073 sq km. Gajapati district surrounds it on the east, Andhra Pradesh on the south, Koraput to the South-west, Kalahandi to the West and North-west and Kandhamal to the Northeast. The district has eleven Tahasils, eleven blocks, one municipality and two NACs. The district comprises of 171 Gram Panchayats, 2,667 villages of which 200 are uninhabited and 2467 are habited. The district has four Assembly constituencies. According to 2001 census, Rayagada has shown a population count of 8.31 lakhs out of which male population constitutes 51 per cent. In comparison, female population is less and thus constitutes 49 per cent. Children who are below 6 years of age constitute 12 per cent of the total population. Also the literacy rate of Rayagada is quite high even more than the national average i.e., 64 per cent in Rayagada and 59.5 per cent in case of India.

### ***Tribes of Rayagada District -***

The present district Rayagada was carved out of the erstwhile Koraput district on 02.10.1992, as part of the extension plan of districts in the state. The district has a population of 832019, out of which 473379 are tribals. In other words, the district is predominantly a tribal populated district with 57.52 per cent of tribal population. Keeping this in view, all the 11 blocks of the district have been covered under tribal sub-plan with 3 micro projects in operation for the pre-literate indigenous tribal communities. The physiography of Rayagada gives a prefect platform for the tribals in sustaining their ethno-cultural identity in the district. Forest area covers an extent of 4785.36 Sq.K.M. out of which 777.27 Sq.km. is reserved forest. The district has been the homeland of various tribal communities with their sub-tribes, who are found in different level of development depending upon their assimilation with the so-called mainstream or modern communities.

The *Kandhas* and their sub-sections constitute the major percentage of tribal population in the district and the *Souras* stand in the second position. There are also many other tribal communities who are negligible in number but definitely contribute to the exotic intermingling culture of the district. In the ethno-cultural map of Orissa, these two tribes stand out quite prominently for their educational backwardness and continuing ethnic and cultural identity. The 'Kandhas' are inhabiting almost all the blocks of the district. Their highest concentration is found in the blocks of Rayagada, Kashipur, Kalyansinghpur, Bissamcuttack and Muniguda in the district. The Dongraia Kondh section of the tribe is decalred as a PTG.

### ***3.3.2. Profile of Mayrubhanj District -***

Mayurbhanj is a land-locked district with a total geographical area of 10,418 Sq.km. and is situated in the northern boundary of the state with district head- quarters at Baripada. The district lies between 21° 16' and 22° 34' north latitude and 85° 40' and 87° 11' east longitudes. The district is bounded in the north by Midnapore district of West Benagal, Singbhum district of Bihar (now Jharkhand) in the south, Balasore district in the west and Keonjhar district in the east.

The central part of the district is covered by a group of hills known as the Similipal hill range and the remaining portion is covered by undulating plains rising and falling in gentle slopes. Precisely the district may be divided into three distinct natural divisions. The central hill ranges are the dividing lines running between north and south and dividing the plains of the district into two halves Eastern & Western. The eastern division, which slopes gently from the foot of the hills towards the sea is served by a number of hill streams forming an ideal land mass for cultivation comprising Baripada and Kaptipada sub-divisions. The western division is mainly a plain area rising and falling in gentle slopes studded with many rocky mounds and hills. The northern portion of this western division is very fertile for extensive cultivation comprising Bamanghaty sub-division and the southern portion is Panchpir sub-division. The district is situated at 559.31mt. above the sea level. Mayurbhanj presents a panorama of many millennia in the human history. It occupies a unique position being endowed with lush green vegetation, different fauna and flora and rich cultural heritage. The district has a rich mineral base and is home to the Similipal Biosphere, which is famous for the Project Tiger. Mayurbhanj had the distinction of being administered by two contemporaneous medieval ruling families named as "Mayurs" and "Bhanjas" in unbroken continuity for over a thousand years, until its merger with the state of Orissa on 1st January, 1949. As per 2001 census, total population of the district is 2223456 comprising of 1123200 male and 1100256 female persons. The SC population counts 170835 and ST 1258459 in Mayurbhanj district.

#### ***Tribes of Mayurbhanj District -***

The tribes constitute 57.67 per cent of the total population of this district. Though the population of Mayurbhanj is only 6 per cent of the state's total population, the tribal population shares a 15.42 per cent of the state's total ST population. The tribals are popularly known as adivasis, chief among them being "BHUMUA" and "KOLHA". In Tiring and Thakurmunda blocks tribals constitute 70 per cent to 80 per cent of the total population of the respective blocks. The Khadia, Mankadia



and Lodhas are primitive tribals of special mention in the district. The Khadia & Mankadias are nomadic food gatherers and hunters, found in the hilly areas of Similipal hill ranges in Panchpir sub-division particularly in Jashipur block areas. On the other hand, the Lodhas are a tribe of ferocious and unrestive background needing special attention for their socio-economic rehabilitation. They are found in Suliapada & Morada blocks of Baripada sub-division. The SANTHALS, another tribe are mostly marginal farmers and agricultural labourers.

Mayurbhanj is a tribal dominated district. Out of 62 types of tribals in Orissa, as many as 53 types are found in Mayurbhanj district. The major tribes found in Mayurbhanj district are: the Santals, Kolhas, Bhuyans, Bathudi Bhuyans, Gonds etc. and their areas specific distribution is given below:

1. Santali – Bijatala
2. Kolha – Jashipur
3. Bhuyan/Bathudi – Karanjia
4. Bhumija – Shamakhunta
5. Gond – Sukruli
6. Munda – Rairangpur
7. Khadia/Lodha - Shuliapada/Morada

### **3.4. Study Block Profile**

#### **3.4.1. Bissamcuttack Block -**

Bissamcuttack block, situated in Rayagada district of Orissa is located between 19° 31' 0" North, 83° 31' 0" East and geographical coordinates in decimal degrees latitude 19.5167, longitude 83.5167. Its geographical area covers 415 sq. miles. Bissamcuttack is a tourist destination located in Rayagada district. Surrounded by hills, it is situated around 30 km north of Rayagada. The place derived its name from the word '*Bishma Kotta*' or poisonous fort. Most of the inhabitants of Bissamcuttack are tribes. The Society for Nature Education and Health (SNEH) has set up a residential school for Dongria

Kondh tribal girls at Bissamcuttack. There is a Christian hospital functioning here. This village is also famous for the tribal jewelry - making. The Hanuman temple and Markama temples are other attractions. Bissamcuttack is located to the east of Devagiri and Kalyansingpur. Jura Parab festival held in the month of Ashvina (September-October) attracts a large number of people. Bissamcuttack is easily accessible by road as it is situated on the state highway.

Total population of Bissamcuttack block is 83134 (2001 census), which includes ST, SC, OBC & others 50708, 14083 and 18343 respectively. The block covers 20 Panchayats with 312 villages (285 revenue villages, 27 hamlets). As most of the inhabitants are tribes, the total number of reserved wards of Bissamcuttack is 20 for SC, 101 for ST, 97 for women and 19 for other castes. Total number of voters & BPL families of the block are 57003, 21053 respectively. Out of 6 markets, 4 weekly markets i.e. Hata Muniguda, Durgi, Chatikona & Dukum are managed by the RMC Gunupur and rest two daily markets i.e. Chatikona & Bissam Cuttack are being managed by the respective Gram Panchayat.

#### **3.4.2. Thakurmunda Block-**

Thakurmunda block is situated in Mayurbhanj district of Orissa. Its geographical coordinates are 21° 30' 54" North, 86° 9' 7" East and Geographical coordinates in decimal degrees Latitude: 21.515, Longitude: 86.152. Its geographical area is 675.96 Sq. km. This block is inhabited mostly by ST population and covers forest, hills, rivers, rivu-lets and nalas. River Baitarani partly flows through this block. River Salandi and other rivu-lets have emerged from Similipal forest area. Mainly Kolha, Santal, Saunti, Bathudi and Ganda tribes live in this block area. They are almost dependent on settled cultivation. A segment of tribals draw their sustenance from hunting, collection of minor forest produce. Others are landless engaged as labourers in mines and small industries etc. Makara Parva is the prime festival of this block which is celebrated with pomp and grandeur by Adivasis and Non-Adivasis at the end of the Oriya month of 'Pausha' and English month of 'January' when the paddy harvesting is complete. Irrespective of caste, colour,

creed and age all partake in religious gaiety and fervour. Due to natural barriers like existing river, rivu-lets, nalas the people of this block face serious problems during the rainy season.

The total population of Thakurmunda block is 90113 (2001 census) out of which 57033 are ST, 14036 SC and 19044 belong to other castes. The block covers 16 Gram Panchayats in which 175 villages are situated.

### 3.5 Integrated Tribal Development Agencies (ITDAs)

Integrated Tribal Development Agencies (ITDAs) were set-up during the Fifth Five Year Plan. There are 118 blocks of Orissa state having 50 per cent or more of ST population under 21 ITDAs in the state. The list of 21 ITDA is placed in Annexure-IV.

#### 3.5.1 Profile of ITDAs in Study Area

Table-3.1: Area and Population coverage under ITDAs in Study Area

Name of the ITDA	Name of the Blocks Covered	No. of GPs Covered	No. of Population Covered	Tribal Population	Non-Tribal Population
Gunupur	Bissamcuttack, Chandrapur, Gudari, Gunupur, Muniguda, Padmapur, Ramnaguda (7)	95	388022	223760	164262
Karanjia	Karanjia, Raruan, Sukruli, Thakurmunda, Jasipur (5)	70	370898	223922	147067
Total	12	165	758920	447682	311329

Source: ITDA, Karanjia and Gunupur

Table-3.1 indicates the data on area and population covered under the ITDAs, of Gunupur and Karanjia. Under ITDA, Karanjia, 5 blocks namely Karanjia, Raruan, Sukruli, Thakurmunda and Jasipur with 70 GPs comprising a total population of 370898 with 223922 tribals and 147067. Similarly, ITDA, Gunupur, comprises of 7 blocks namely Bissamcuttack, Chandrapur, Gudari, Gunupur, Muniguda, Padmapur and Ramnaguda with 95 GPs, and population of 388022 comprising 223760 tribals and 164262 non-tribals.

### 3.6 Micro Projects-

Primitive tribals are considered as a special category in view of their distinctly different social, cultural and occupational practices and identities. Primitive tribes are distinguished from other tribal communities with regard to their pre-agricultural economy, extremely low-level of literacy, isolated habitation etc. During the fifth Five Year Plan, government of India decided to plan and implement specific programmes for the all-round development of primitive groups. The programmes were mainly intended to deliver packages of services consistent with their cultural, social, educational and occupational background with a view to facilitate them to gradually align with the mainstream of society and enhance their socio and economic status.

Orissa has a total population of 78519 of PTGs residing in 20 blocks of 12 districts of the state. Seventeen micro projects are operating in the state for total development of these PTGs. Various schemes, like agriculture; horticulture, soil conservation and animal husbandary etc are being implemented in these areas. Besides schemes relating to infrastructure facilities, drinking water, education, health, link roads are being provided through micro projects. Out of 17 micro projects, 13 are located in Scheduled Areas and rest four in non-Scheduled Areas. List of 17 micro projects is placed in **Annexure-V**.

*Table-3.2: Area and Population coverage under Micro Projects in Study Area*

Name of the Micro Project	Name of the blocks Covered	No. of villages Covered	No. of Households Covered	No. of population Covered	Tribal Population	Non Tribal Population
DKDA	Bisamcuttack and Muniguda	60	1775	7676	6036	1640
HKMDA	Karanjia and Jasipur	21	659	2082	2082	-
<b>Total</b>		<b>81</b>	<b>2434</b>	<b>9758</b>	<b>8118</b>	<b>1640</b>

Source: DKDA, Chatikona & HKMDA, Jasipur

Table.3.2 represents the area and population covered under two micro projects i.e. DKDA, Chatikona in Rayagada district and HKMDA, Jasipur in Mayurbhanj district. Bisamcuttack and Muniguda part blocks are covered under DKDA, Chatikona. Under the DKDA project area there are 60 villages, 1775 households, 7676 population comprising 6036 tribal and 1640 non-tribal population. In respect of HKDMA, Jasipur, two blocks namely Karanjia and Jasipur, 21 villages, 659 households, 2082 population have been covered for the development of tribal community.

### 3.7 Socio Economic Profile of Study Villages-

Two villages from each of the study blocks were selected. Before undertaking the study, it was necessary to review the socio-economic profile of these villages. Accordingly, the table below (Table-3.3) reflects the demographic structure of the villages.

#### 3.7.1 Demographic Structure-

Table-3.3: Population of Study villages

Name of the District	Name of the Block	Name of the Village	No. of HHs	No. of Male Population	No. of Female Population	Total Population	Average Size of Family
Rayagada	Bissamcuttack	Nuagada	39	77 (44.77)	95 (55.23)	172 (100.0)	4.4
		Kanedi	80	147 (42.60)	198 (57.40)	345 (100.0)	4.3
Mayurbhanj	Thakurmunda	Badamahuladiha	66	201 (49.50)	205 (50.50)	406 (100.0)	6.2
		Gobarajoda	41	105 (51.47)	99 (48.53)	204 (100.0)	5.0
		<b>Total</b>	<b>226</b>	<b>530 (47.02)</b>	<b>597 (52.98)</b>	<b>1127 (100.0)</b>	<b>5.0</b>

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009

Table 3.3 represents the demographic structure of the study villages. As regards the population, Badamahuladiha has a population of 406 while Nuagarh is having only 172. The total population of the four sample villages is 1127 comprising of 530 (47.02%) male population

and 597 (52.98%) female population. Among the four villages Gobarajoda has the highest percentage of male population i.e. 51.47 per cent whereas Kanedi village has the lowest percentage of male population i.e. 42.60 per cent. Similarly under female category, Kanedi village has highest percentage of population i.e. 57.40 per cent and Gobarajoda village the lowest i.e. 48.53 per cent. The data reveals that female population is more than the male population (shown in Figure-3.1). Overall data shows the average size of the family in the study villages is 5.0. Of the two study districts, proportion of male population is more in Mayurbhanj district than Rayagada district. As regards average size of family, it is larger in case of Mayurbhanj district than Rayagada district.

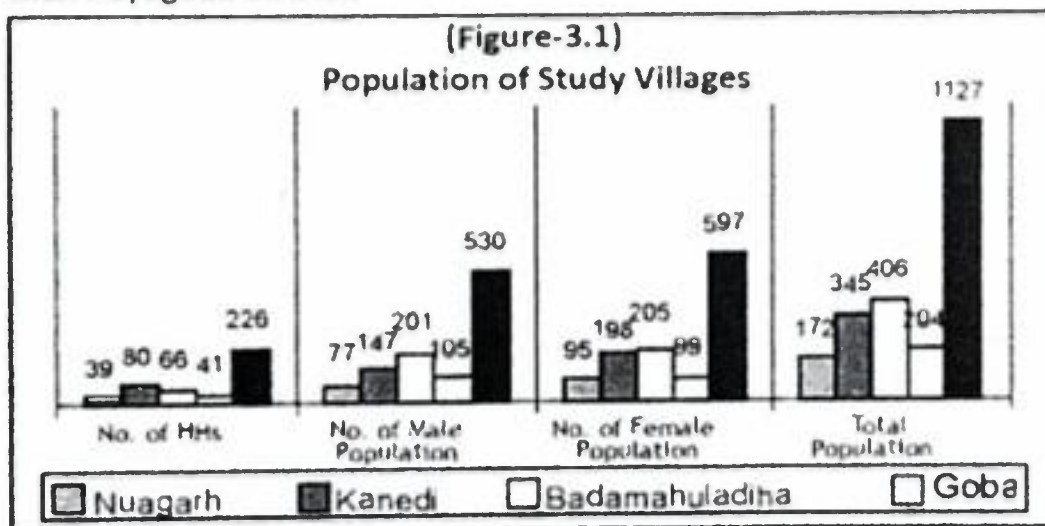


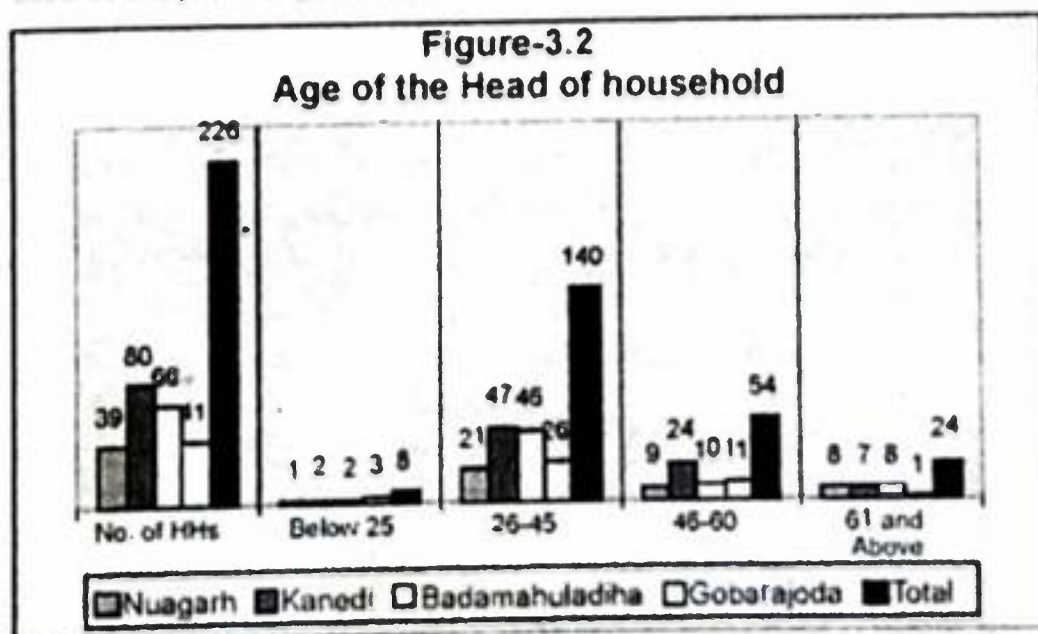
Table-3.4: Age Group of Head of Households-

Name of the District	Name of the Block	Name of the Village	No. of HHs	Below 25	26-45	46-60	61 and Above
Rayagada	Bissamcuttack	Nuagada	39 (100.0)	01 (2.57)	21 (53.84)	09 (23.08)	08 (20.51)
		Kanedi	80 (100.0)	02 (2.50)	47 (58.75)	24 (30)	07 (8.75)
Mayurbhanj	Thakurmunda	Bada mahuladiha	66 (100.0)	02 (3.03)	46 (69.69)	10 (15.15)	08 (12.13)
		Gobarajoda	41 (100.0)	03 (7.32)	26 (63.41)	11 (26.83)	01 (2.44)
		Total	226 (100.0)	08 (3.54)	140 (61.95)	54 (23.89)	24 (10.62)

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009

The age group of head of the households, as shown in Table-3.4, is classified under four groups. Number of head of the households in the age group (below 25 years) is very low i.e. only 08. Their percentage is less than 4 per cent i.e. 3.54. Among the four select villages, Nuagada has the lowest with only one head of the household (2.57%) of below 25 years of age while Gobarajoda is having the highest number of HHs i.e. 3 (7.32%). Under the age group of 26 to 45 years, the highest percentage of head of households was found in Badamahuladiha village i.e. 69.69 per cent followed by Gobarajoda 63.41 per cent, Kanedi 58.75 per cent and Nuagarh with 53.84 per cent. Table shows that in the age group of 46 to 60 years, Kanedi village has the highest number of head of households i.e. 24 (30%) where as Nuagada has the lowest number, i.e. 09 (23.08%). However, very few households (i.e. 61.95%) come under the age group of 61 and above. On the whole, the maximum head of households belong to 26-45 years age group (shown in Figure-3.2). While comparing the position of two districts it is seen that more than 50 per cent of persons of total households of Rayagada district are heading the family whereas it is more than 60 per cent in case of Mayurbhanj district.



The following table (Table-3.5) indicates the village-wise ethnic distribution of households in both the districts of Rayagada and Mayurbhanj.

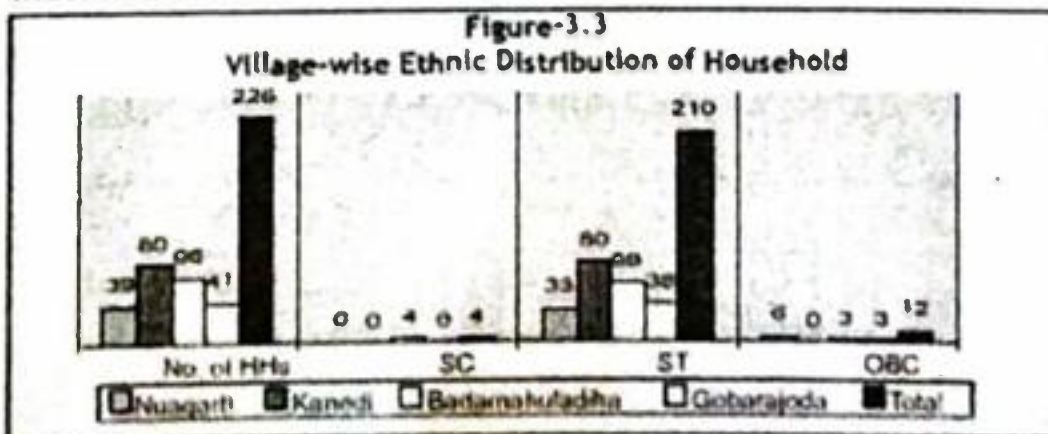
Table-3.5: Ethnic Distribution of Households-

Name of the District	Name of the Block	Name of the Village	No. of HHS	SC	ST	OBC	GEN
Rayagada	Bissamcuttack	Nuagada	39 (100.0)	0	33 (84.61)	06 (15.39)	0
		Kanedi	80 (100.0)	0	80 (100)	00	0
Mayurbhanj	Thakurmunda	Badamahuladiha	66 (100.0)	04 (6.06)	59 (89.39)	03 (4.55)	0
		Gobarajoda	41 (100.0)	0	38 (92.68)	03 (7.32)	0
		Total	226 (100.0)	04 (1.77)	210 (92.92)	12 (5.31)	0

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009

The table indicates that out of 226 households, 210 (92.92%) are scheduled tribes, 04 (1.77%) scheduled castes and 12 (5.31%) belong to other backward class groups. No person belonging to general category has been found in the study villages. Among the four sample study villages, only Badamahuladiha is having 04 SC families. As regards STs, Kanedi has 100 per cent ST HHs as compared to Gobarajoda 92.68 per cent, Badamahuladiha 89.39 per cent and Nuagada 84.61 per cent (shown in Figure-3.3). OBC families are found in all the villages except in Kanedi village. Nuagada is having the highest number of OBC families i.e. 06 against Badamahuladiha and Gobarajoda villages with three families each. In both the study districts, maximum households are tribal households.





### 3.7.2 Caste of the Household-

Table-3.6: Distribution of Tribals according to their Sub-Castes

Name of the District	Name of the Block	Name of the Village	No. of HHS	Kandha	Kolha	Santala	Others
Rayagada	Bissamcuttack	Nuagada	39 (100.0)	33 (84.61)	00	00	6 (15.39)
		Kanedi	80 (100.0)	80 (100)	00	00	00
Mayurbhanj	Thakurmunda	Badamahuladiha	66 (100.0)	00	59 (89.39)	00	7 (10.61)
		Gobarajoda	41 (100.0)	00	00	38 (92.68)	3 (7.32)
		<b>Total</b>	<b>226</b> <b>(100.0)</b>	<b>113</b> <b>(50)</b>	<b>59</b> <b>(26.1)</b>	<b>38</b> <b>(16.82)</b>	<b>16</b> <b>(7.08)</b>

Note: Figure in the bracket Indicates percentage to the total

Source- Field study 2009

Table-3.6 represents distribution of households according to their sub-castes in the surveyed villages. Out of total 226HHS, Kandha community is the most dominating one having 113 (50%) households in two villages namely Kanedi 80 (100%) and Nuagada 33 (84.61%) respectively. In case of Badamahuladiha village, 59 (89.39%) belong to Kolha community while 38 households of Gobarajoda belong to Santal community (shown in Figure-3.4). The above stated figures confirm that one particular tribal group is dominating the villages. It has been found that only 7 per cent households belong to other sub-castes. While examining dominance of sub-castes of tribals in two districts it was found that Kandhas in Rayagada and Kolhas & Santalas in Mayurbhanj district are the dominating castes.

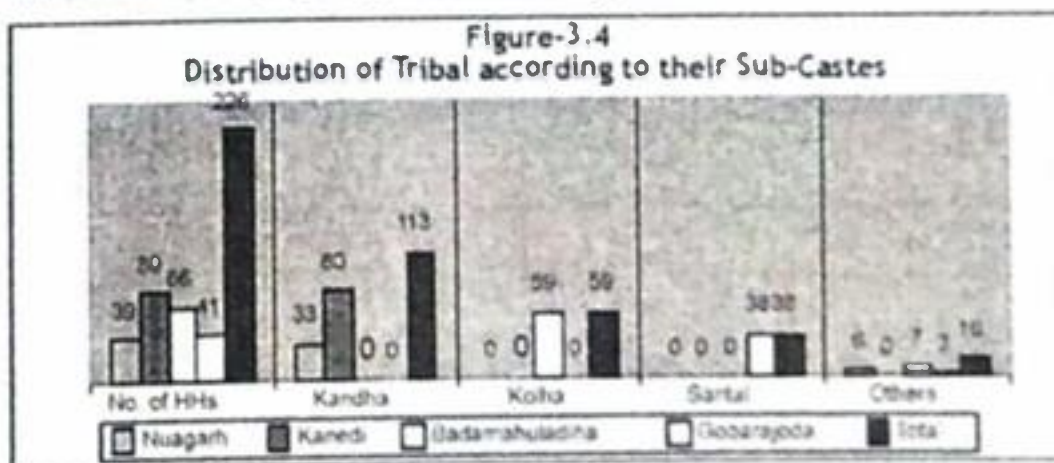


Table-3.7: Educational Status

Name of the District	Name of the Block	Name of the village	Total Population*	Illiterate	Below primary	Primary	Middle school	Secondary	Under graduate	Graduate Above
Rayagada	Bissam cuttack	Nuagada	153 (100.0)	80 (52.29)	46 (30.08)	15 (9.8)	11 (7.19)	01 (0.66)	00	00
		Kanedi	313 (100.0)	270 (86.26)	37 (11.82)	04 (1.28)	02 (0.64)	00	00	00
Mayurbhanj	Thakur munda	Bada mahuladiha	319 (100.0)	168 (52.67)	64 (20.06)	32 (10.03)	29 (9.1)	20 (6.26)	05 (1.57)	01 (0.31)
		Gobara joda	184 (100.0)	80 (43.47)	42 (22.83)	13 (7.06)	15 (8.15)	16 (8.69)	11 (6)	07 (3.8)
		<b>TOTAL</b>	<b>969 (100.0)</b>	<b>598 (61.71)</b>	<b>189 (19.5)</b>	<b>64 (6.6)</b>	<b>57 (5.9)</b>	<b>37 (3.82)</b>	<b>16 (1.65)</b>	<b>08 (0.82)</b>

\* Total Population excluding children below 6 years  
 NOTE: Figure in the bracket indicates percentage to the total  
 Source - Field study 2009

Table-3.7 above indicates the education status of the people in the study villages. Literacy rate of population was calculated from the total population excluding the children below 6 years. It has been found from the study that literacy level among the majority of the adivasi people is very poor. Out of 969 persons (above 6 years), 598 (61.7%) are found to be illiterate. Kanedi village is having the highest percentage of illiterates (i.e. 86.26) while Gobarajoda is having the lowest percentage of illiterates i.e. 43.47. On the whole, among the literate masses 19.5 per cent people have not studied upto primary level. Only 6.6 per cent have studied upto primary level, 5.9 per cent upto middle school level, 3.8 per cent upto secondary and 1.65 per cent are undergraduates and 6.82 per cent graduates. In respect of village-wise data, 1.65 per cent is under-graduates in Badamahulidiha and 0.82 per cent are graduates in Gobarajoda village. Between two districts, more illiterates are found in Rayagada district as compared to Mayurbhanj district.

### 3.7.3 Occupational Pattern-

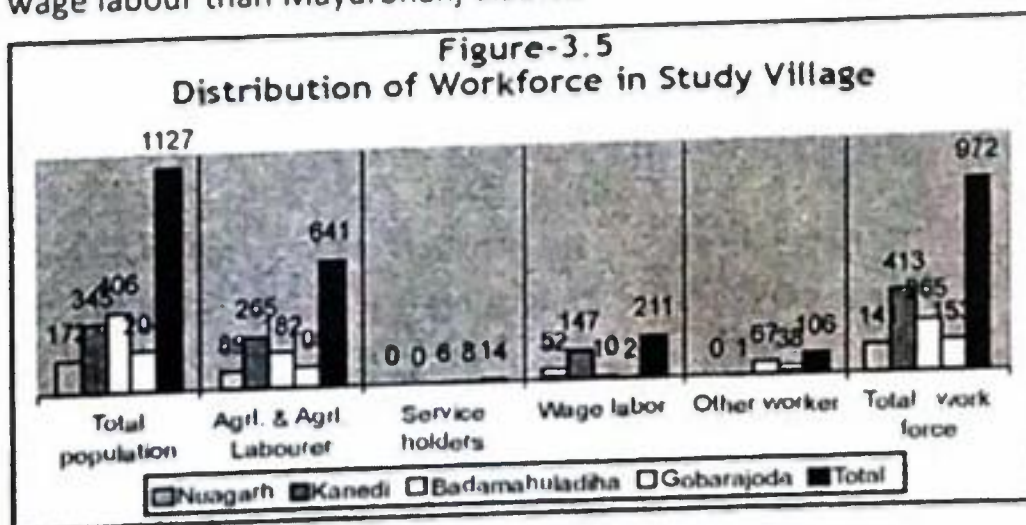
Table-3.8: Distribution of workforce in study villages

Name of the District	Name of the Block	Name of the Village	Total population	Agri. & Agri. Labourer	Service holders	Wage labor	Other worker	Total work force
Rayagada	Bissamcuttack	Nuagada	172	89 (63.12)	0 (0.0)	52 (36.88)	0 (0.0)	141
		Kanedi	345	265 (64.16)	0 (0.0)	147 (35.59)	1 (0.25)	413
Mayurbhanj	Thakurmunda	Badamahuladiha	406	182 (68.67)	6 (2.26)	10 (3.77)	67 (25.30)	265
		Gobarajoda	204	105 (68.62)	8 (5.22)	2 (1.30)	38 (24.86)	153
		Total	1127	641 (65.94)	14 (1.44)	211 (21.7)	106 (10.92)	972

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009

Table-3.8 above reveals the occupational distribution of workforce in study villages. In the study area, people are engaged in more than one occupation depending upon the availability of work during the year. Out of total workforce of 972, the highest number of people i.e. 641 are engaged in agriculture and agriculture labour followed by 211 people in wage labour (shown in Figure-3.5). Only 14 persons in the study villages are service holders. While comparing the two study districts, it is noticed that people of Rayagada are engaged more in wage labour than Mayurbhanj district.



### 3.7.4 Family Income-

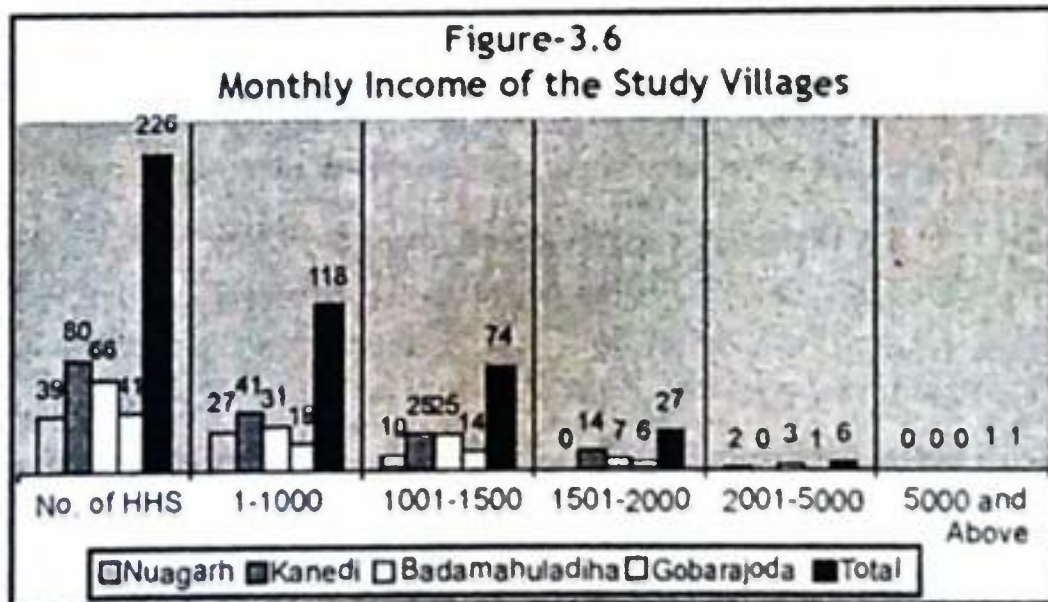
Table-3.9: Monthly income of the Families of the study villages

Name of the District	Name of the Block	Name of the Village	No of HH	1-1000	1001-1500	1501-2000	2001-5000	5000 and Above
Rayagada	Bissamcuttack	Nuagada	39 (100.0)	27 (69.23)	10 (25.64)	0 (0.0)	2 (5.13)	00
		Kanedi	80 (100.0)	41 (51.25)	25 (31.25)	14 (17.5)	00	
Mayurbhanj	Thakurmunda	Badamahuladiha	66 (100.0)	31 (46.96)	25 (37.87)	7 (10.7)	3 (4.56)	00
		Gobarajoda	41 (100.0)	19 (46.34)	14 (34.14)	6 (14.64)	1 (2.44)	1 (2.44)
		<b>Total</b>	<b>226</b> (100.0)	<b>118</b> (52.22)	<b>74</b> (32.74)	<b>27</b> (11.94)	<b>6</b> (2.65)	<b>1</b> (0.45)

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009

Table 3.9 above reveals monthly income of the people of study villages. The overall data shows the poor economic conditions of the people. The highest percentage (52.22%) of households belongs to the income group below Rs.1000/-per month followed by 32.74 per cent of households in the income group of Rs.1000/- to Rs.1500/- per month, whereas 11.94 per cent come within the income group of Rs.1501/-Rs.2000/- and 2.65% comes under Rs.2001/-Rs.5000/- group. Only one household in Gobarajoda has income of more than Rs.5000/- per month (shown in Figure-3.6). While comparing between the two districts, people of Mayurbhanj are seen to be better than people of Rayagada district in terms of monthly earnings.



### 3.8 Study Findings:

The study broadly reveals the following findings, which are summarized below:

- ( ) The average size of the family in the study villages is 5.0.
- ( ) Between the two study districts, proportion of male population is more in Mayurbhanj district than Rayagada district.
- ( ) As regards average size of family, it is bigger in case of Mayurbhanj district than Rayagada district.

- ( ) The maximum head of households belong to 26-45 years age group. While comparing the position of two districts, it is seen that more than 50 per cent of persons of total households of Rayagada district are heading the family whereas it is more than 60 per cent in case of Mayurbhanj district.
- ( ) Out of 226 households, 210 (92.92%) are scheduled tribes, 04 (1.77%) scheduled castes and 12 (5.31%) belong to other backward class groups.
- ( ) Among the study villages, Kanedi has exclusively ST HHs
- ( ) In both the study districts, maximum households are tribal households.
- ( ) While examining dominance of sub-castes of tribals in two districts it was found that Kandhas in Rayagada and Kolhas & Santhalas in Mayurbhanj district are the dominating castes.
- ( ) On the whole, among the literate masses 19.5 per cent people even have not studied upto primary level, whereas 6.6 per cent studied upto primary level, 5.9 per cent upto middle school, 3.8 per cent upto secondary and 1.65 per cent are found undergraduates and 6.82 per cent graduates.
- ( ) Out of total workforce of 972, the highest number of people i.e. 641 are engaged in agriculture and agriculture labour followed by 211 people in wage labour.
- ( ) Only 14 persons in the study villages are service holders.
- ( ) The highest percentage of households belongs to the income group below Rs.1000/-per month.
- ( ) While comparing between the two districts, economic conditions of people of Mayurbhanj are better than the people of Rayagada district.

## **CHAPTER-IV**

### **Status of Working of PESA Act in Orissa**

The organization of Panchayats in rural areas is one of the "Directive Principles of State policy" enshrined in the Indian constitution. Article 40 of the Constitution stipulates that "the state shall endow them with such powers and authority as may be necessary to enable them to function as units of self-government". The Panchayat (Extension to Scheduled Areas) Act, 1996 has prepared the legal framework to make the Gram Sabha more or less a palpable statutory body to usher in the new era of direct democracy at grassroots level. The Act is meant to enable tribal society to assume control over their own destiny and to preserve and conserve their traditional rights over natural resources. The Panchayats have been made accountable to Gram Sabha for their every action and deed. The Act has made it virtually mandatory for Panchayats to execute their socio-economic development responsibilities transparently and ensure a corruption free development process.

The present study examined the strength and weakness of PESA Act in empowering the Panchayat Raj Institution in regard to matters of prohibition or regulation or restriction of the sale and consumption of any intoxicants, the ownership of the minor forest produce, control over money-lending, land acquisition, land transfer, lease of minor minerals and control over minor water bodies, resolution of conflicts and contradictions between PESA and the earlier Acts as well as the procedures followed in the background of PESA Act and the nature and extent of violations of provisions and non-conformity of PESA Act in the above matters.

The response, particularly among the sampled Gram Sabha members, is found to be less enthusiastic. On the other hand, Gram Sabha/Gram Panchayat has been almost dysfunctional with respect to the following provisions as most of the respondents have either presented negative views or expressed their ignorance about (i) exercising control and regulating intoxicants, (ii) exercising control over MFP, (iii) control over money lending etc.

The main objective of the study is to assess the impact of the state legislation on the empowerment of the Gram Sabha as well as to examine the levels of awareness of people and their consequent participation in the deliberations of the Gram Sabha. The various provisions of PESA empower the Gram Sabha but such empowerment is found to be limited. In order to assess the status of working of PESA, household data, FGDs and official data from ITDA and micro projects like DKDA and HKMDA in the study area were verified. The position is analyzed below.

#### **4.1 Assessment of Working of PESA on Household Information:**

Household data were collected from 4 villages of 2 select GPs in each of the Rayagada and Mayurbhanj districts. All the households were covered for the purpose. In order to assess the status of working of PESA, questions pertaining to different subjects under PESA Act were administered to the respondents of the households. The responses covering different subjects are briefly summarized below.

##### **4.1.1 Participation in Gram Sabha:**

In Orissa, Gram Sabhas are reportedly not working properly at many places. In the study areas, meetings are held once or twice a year. Sarpanches are not convening meetings of Gram Sabha due to inefficiency and grid. The subjects of discussion in the Gram Sabha are mostly kept confined to specific issues of development of villages or the hamlets. It was observed that the proceedings of the Gram Sabha are mostly confined to individual-oriented schemes like distribution of Indira Abas, Old age pension, etc. But due to political considerations,



Gram Sabhas are not performing for the larger benefit of the people in the villages and the community as a whole. Planning, budget preparation and expenditure are not being done according to priority in the Gram Sabha meetings, which create confusion and chaos in Panchayats for distribution of funds, beneficiary selection and formation of village works committee.

In the present study it was found that around 160 (70.80%) out of the total 226 respondents have not attended Gram Sabha during the last 2 to 3 years as indicated below in the Table 4.1. Attendance in Gram Sabha is significantly low (8.75%) in the village Kanedi of Bhatapur Gram Panchayat of Rayagada District. Female attendance is found to be lower than the males. The cause of non-attendance may be attributed to several factors namely (i) most of them have no idea about the Gram Sabha, (ii) they engage themselves in economic activities and (iii) lack of information and awareness. Participation in Gram Sabha in Mayurbhanj district is slightly better in comparison to Rayagada district.

Table-4.1: Participation in Gram Sabha

Name of the District	Name of the Block	Name of the Village	Number of Respondents	Number participation	No of respondents not participated in Gram Sabha
Rayagada	Bisama cuttack	Nuagarh	39 (100.0)	15 (38.46)	24 (61.54)
		Kanedi	80 (100.0)	07 (8.75)	73 (91.25)
Mayurbhanj	Thakura munda	Bada mahuladiha	66 (100.0)	26 (39.39)	40 (60.61)
		Gobara joda	41 (100.0)	18 (43.90)	23 (56.10)
		<b>Total</b>	<b>226 (100.0)</b>	<b>66 (29.20)</b>	<b>160 (70.80)</b>

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009-10

As indicated in Table 4.2 below most of the people do not know how and when Gram Sabhas are being held. The Panchayat gives no information to the people or members about the Gram Sabha. Out of 226 respondents, 162 constituting 71.68 per cent of members do not know about the number of Gram Sabhas held in a year. While enquiring about the number of Gram Sabhas held in a year, 43 respondents (19.02%) answered that only one Gram Sabha was held whereas 16 respondents reported that two Gram Sabha meetings were held. The number varied from respondent to respondent. Two members responded that 3, two respondents said that 4 and one respondent reported that 4 meetings of Gram Sabha are held in a year. It, therefore, indicates that people of the study area have no proper information or knowledge about conduct of Gram Sabhas.

Table-4.2: Responses about number of Gram Sabhas held

Name of the District	Name of the block	Name of the Village	Number of Respondents	People's response about number of gramasabhas conducted					
				One	Two	Three	Four	More than Four	Do Not Know
Raya-gada	Bisama cuttack	Nuagarh	39	01 (2.56)	11 (28.2)	00	02 (5.12)	00	25 (64.10)
Mayura bhanja	Thakura munda	Kanedi	80	02 (2.5)	00	02 (2.5)	00	01 (1.25)	75 (93.75)
		Bada mahuladiha	66	25 (37.87)	02 (3.03)	00	00	39 (59.09)	
		Gobarajoda	41	15 (36.58)	03 (7.31)	00	00	00	23 (56.09)
		Total	226 (19.02)	43 (7.07)	16 (0.88)	02 (0.88)	02 (0.44)	01 (71.68)	162

Note: Figure in the bracket indicates percentage to the total  
Source- Field study 2009-10

Out of the total respondents in study areas, (Table-4.3) only 66 (29.20%) reportedly attended different Gram Sabhas while 160 (70.8%) did not participate in any Gram Sabha. While enquiring about the reason for not participating in Gram Sabha, nearly 50 per cent members said that they had no interest in Gram Sabha. About 41.88 per cent reported that they did not get any information about the Gram Sabha

meeting and 6.87 per cent said that due to time constraints and other difficulties they did not attend any meeting as no benefit was accrued to them. Among the four study villages, maximum (about 70%) people of Kanedi village have not participated due to non-receipt of any information regarding conduct of Gram Sabha. Lack of information regarding Gram Sabha is reported more in Rayagada district as compared to Mayurbhanj district.

Table-4.3: Reason for not participating in Gram Sabha

Name of the District	Name of the block	Name of the village	No. of respondents not participated	Time Constraint	No Benefits	No Interest	No Information about Gram Sabha
Rayagada	Bisama	Nuagarh	24 (100.0)	01 (4.17)	02 (8.33)	15 (62.5)	06 (25)
		Kanedi	73 (100.0)	00 (0.0)	00 (0.0)	22 (30.14)	51 (69.86)
Mayura bhanja	Thakura munda	Bada mahuladiha	4010 (100.0)	01 (25)	23 (2.50)	06 (57.50)	(15.00)
		Gobarajoda	23 (100.0)	00	00	19 (82.60)	04 (17.40)
		Total	160 (100.0)	11 (6.87)	03 (1.87)	79 (49.38)	67 (41.88)

Note: Figure in the bracket indicates percentage to the total  
Source- Field study 2009

#### 4.1.2 Money Lending:

Despite the existence of legal and protective measures to curb money lending in Scheduled Areas and provisions for debt-relief, enforcement has been weak and ineffective. The non-recognition of consumption needs of tribals and the non-availability of institutional consumption credit drives the tribal people to fall an easy victim to moneylenders, and the enormous rates of interest keep the tribals in perpetual debt, resulting in mortgage and ultimate loss of land and property. Section 4(M)(iii) of PESA Act envisages that the Panchayat at the appropriate level and the Gram Sabha will be specifically endowed with the power to exercise control over Money-Lending to the Scheduled Tribes. It may be mentioned that the term "Money lending" is generic and has

been used here in that sense without limiting its scope to certain specific items or types of money-lending. It, therefore, would cover all transactions concerning lending of money to the tribal people, private or institutional including loans and advances by co-operatives and government.

The SC & ST Development Department of Government of Orissa has already taken steps for amendment of the "Orissa (Scheduled Areas) Moneylenders' Regulation, 1967" to empower the GPs for exercising control over money lending in Scheduled Areas. As per amended Regulation, "Orissa (Scheduled Areas) Money-Lenders (Amendment) Regulation" 2000, no money-lender shall advance loan to a scheduled tribe except on the prior recommendation therefore of the concerned Gram Panchayat accorded with the concurrence of the Grama Sasan. A money lender, before advancing loan to any person belonging to a scheduled tribe, shall send the proposal, therefore, to the concerned Gram Panchayat for its recommendation which shall be communicated by it within a period of 45 days from the date of receipt of such proposal. If the Gram Panchayat fails to communicate its recommendation or refusal within the aforesaid period, it shall be deemed that the Gram Sabha has accorded recommendation. If it refuses to accord required recommendation, it shall communicate the reasons therefore in writing, to the money-lender.

Another important feature of this amended Regulation is that if any debtor belonging to any scheduled tribe is not satisfied about the correctness of the entries made in the statement of the accounts delivered to him or the passbook supplied to him by the money lender containing up to date account of the transaction with him, he may bring to the notice of the concerned Gram Panchayat, in writing about the correctness of such entries. The Gram Panchayat may make an inquiry into the correctness of such entries and if satisfied that the moneylender has charged or recovered from the debtor any excess amount of principal or interest thereon or both, it may direct the licensing authority for appropriate action under law (Section-9).

In the study area it was noticed that family income is not sufficient for 148(65.48%) families out of 226 of the respondents to meet their daily expenses. Table 4.4 below indicates the position.

*Table-4.4: Dependence on others to meet extra expenses*

<i>Name of the District</i>	<i>Name of the block</i>	<i>Name of the Village</i>	<i>No. Of Households</i>	<i>No. Of persons depending on others to meet extra expenses</i>
Raya gada	Bisamacuttack	Nuagarh	39 (100.0)	36 (92.31)
Mayurabhanja	Thakuramunda	Kanedi	80 (100.0)	63 (78.75)
		Bada mahuladiha	66 (100.0)	32 (48.48)
		Gobarajoda	41 (100.0)	17 (41.46)
		<b>Total</b>	<b>226 (65.48)</b>	<b>148 (100.0)</b>

*Note: Figure in the bracket indicates percentage to the total*  
*Source- Field study 2009*

As revealed in Table-4.5 below they depend upon their relatives (66.92%) and SHG women of the village (28.37%). They are deprived of getting any loan from Bank. Only 0.68 per cent of people bring loan from Banks. SHGs are playing the major role of banking in the villages by providing financial help at the time of need to the members. They are also maintaining passbook and other records for smooth transaction and ensuring transparency

The following table, (table 4.5) indicates the different sources from which the people secure money to meet their extra expenses.

From the above table it is seen that only in one case out of 226 respondents, Rs-2000/ was brought as loan from a money-lender who was very cordial to the loanee charging 5 per cent interest, though no procedure and passbook was maintained. No recommendation was sought from the Gram Panchayat concerned for such money- lending. It was the mutual understanding between the loanee and the lender.

Table-4.5: Sources of meeting extra expenses

Name of the District	Name of the Block	Name of the persons Village	No. of depending on others to meet extra expenses	Bank	Sources SHG	Money lender	Relatives/	Others Friends
Rayagada	Bisama	Nuagarh cuttack	36	00	24 (66.66)	01 (2.77)	06 (16.66)	05 (13.88)
		Kanedi	63	00	01 (1.58)	00	62 (98.42)	00
Mayura bhanja	Thakura munda	Bada Mahuladiha	32	01 (3.12)	09 (28.13)	00	22	00 (68.75)
		Gobarajoda	17	00	08 (47.05)	00	09 (52.95)	00
		<b>Total</b>	<b>148</b>	<b>01 (0.68)</b>	<b>42 (28.37)</b>	<b>01 (0.68)</b>	<b>99 (66.92)</b>	<b>05 (3.38)</b>

Note: Figure in the bracket indicates percentage to the total Source- Field study 2009

The table below reflects the number of persons who depend on money-lenders, the average amount of loan availed and the rate of interest charged.

Table-4.6: Money-lending under PESA

Name of the District	Name of the Block	Name of the Village	Total Respondents	No of persons depending on money lender	Average amount of money lending (Rs)	Rate of interest	Maintenance of passbook for loan and repayment
Rayagada	Bisama cuttack	Nuagarh	39	01	2000	05	-
		Kanedi	80	00	00	00	-
Mayura-bhanja	Thakura munda	Bada mahuladiha	66	00	00	00	-
		Gobarajoda	41	00	00	00	-
		<b>Total</b>	<b>226</b>	<b>01</b>	<b>2000</b>	<b>05%</b>	<b>-</b>

Source- Field study 2009

From the above analysis it transpires that money-lending business is not that rampant or active now- a- days as it used to be earlier. Even though loans through banks are not available in their areas, formation of SHGs and the practice of hand loan serve the temporary

requirements of the people. But it is clear that neither the Gram Panchayat nor its members are aware of the provisions of law on money-lending. This requires creation of massive awareness among the functionaries, PRIs and the people of the area.

#### **4.1.3 Regulation on Consumption of Intoxicants:**

The most insidious intrusion in the tribal system has been through liquor, i.e. exotic control over manufacture, sale and consumption of intoxicants of all descriptions. It is a very important area of the socio-economic life of people, whether tribal or non-tribals in which the community alone plays an important and decisive role with no outside interference. Section 4 (M)(i) of PESA Act unequivocally envisages endowment of power on the Panchayats at appropriate level and the Gram Sabha "to enforce prohibition, or to regulate or restrict the sale and consumption of any intoxicant". The central Act (PESA) of 1996 mandates the state governments to bring conformity legislations in the existing states laws to empower PRIs particularly the Gram Sabha/ Gram Panchayat to exercise control over enforcement, regulation or restriction on manufacture, sale or consumption of any intoxicants.

Revenue and Excise Department of Government of Orissa vide notification no 22977/r dt. 22.04.1999 have amended the Bihar & Orissa Excise Act 1915 which provides that no such license or exclusive privilege shall be granted except with the prior approval of the concerned Gram Panchayat with the concurrence of the Gram Sasan. The GP is to give permission within 30 days. If the Gram Panchayat fails to communicate its decision within the period of 30 days, it shall be deemed that the concerned Gram Panchayat has accorded the required approval. The study team analysed the consumption pattern, available sources, use of liquor in the study villages and the position is reflected in the following tables (tables 4.7 & 4.8)

**Table 4.7: Consumption of Intoxicants**

Name of the District	Name of the Block	Name of the Village	Total no of Respondents	No of intoxicants consumers	Manufacturing liquor in the house	Getting liquor from local shop	Getting liquor from outside
Rayagada	Bisama cuttack	Nuagarh	39	32 (82.05)	00	00	32
		Kanedi	80	18	00	00	18
Mayurbhanja	Thakuramunda	Badamahuladiha	66	62 (93.93)	62	00	00
		Gobarajoda	41	33 (80.48)	33	00	00
		<b>Total</b>	<b>226</b>	<b>145 (64.15)</b>	<b>95 (65.52)</b>	<b>00</b>	<b>50 (34.48)</b>

Note: Figure in the bracket indicates percentage to the total  
Source- Field study 2009

As indicated in the Table-4.7 above, consumption of liquor is a common phenomenon among the tribals 64.15 per cent (145/226) of people consume liquor out of which 65.52 per cent manufacture liquor in their houses. Others 35.48 per cent (50/145) get it from outside. No permission was given by the Panchayat to open liquor shop in the Panchayat.

Table 4.8 below reveals that illicit and unlicensed liquor shops were found in Nuagarh and Kanedi village of Bissamacuttack block of Rayagada district. Thirty (30) out of 39 (76.92%) respondents in Nuagada and 09 out of 80 (11.25%) in the village Kanedi confirmed about this fact. Though 5 respondents faced problems for illicit liquor shop, only one of them informed the Sarpanch about this and Sarpanch did not take any legal step. He only warned the shop owner to close the business. In Mayurbhanj district almost all adult members of families are used to drink *handia* (home made liquor), being prepared in their own houses. They do not know about any law prohibiting or restricting the preparation and use of liquor by them. During special occasions and festivals they offer handia to Gods and Goddesses and then distribute among all members of the families. Thus practice of taking wine/liquor is linked to customs and traditions of tribal community.



**Table-4.8: Availability of illicit/unlicensed liquor shop**

Name of the District	Name of the Block	Name of the Village	Total No of Respondents	Presence of illicit/unlicensed liquor shop	No of persons facing problems action	No of persons informed Sarpanch	No of cases taken for	Type of action taken
Raya gada	Bisama cuttack	Nuagarh	39	30 (76.92)	05 (12.82)	01 (2.56)	01 (2.56)	Warning to stop shop
		Kanedi	80	09 (11.25)	00	00	00	00
Mayura bhanja	Thakura munda	Bada mahuladiha	66	00	00	00	00	00
		Gobarajoda	41	00	00	00	00	00
		<b>Total</b>	<b>226</b>	<b>39</b>	<b>05</b>	<b>01</b>	<b>01</b>	<b>00</b>

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009

The study, therefore, reveals that awareness among the people about the provisions of the PESA Act empowering the Gram Sabha/Gram Panchayat to be consulted before giving permission to manufacture and sale intoxicants within GP area is not known to the respondents. The Sarpanch is reportedly not very much aware of the role and responsibility of the Gram Panchayat in this matter. Illicit liquor preparation and distribution seems to be in force in the area.

#### 4.1.4 Minor Forest Produce:

Forest and minor forest produce play a vital role in the day-to-day livelihood requirement of tribals. Section 4(m) (iii) of PESA Act envisages that "State Legislature shall ensure that Panchayat at the appropriate level and the Gram Sabha are endowed specifically with the ownership of minor forest produce". The study conducted in the identified Scheduled Areas clearly portrayed the existence of vital relationship between the forests and the traditional livelihood systems of tribal inhabitants of forests for the past several centuries. They enjoyed free access to forests for collecting food materials and honey besides hunting of animals and fishing in streams and common water bodies, collecting fuel woods for cooking, warmth and lighting and agricultural tools, house building materials, materials for rope making,

medicinal herbs and roots and grazing land for their animals and varieties of minor forest produces for consumption and sale.

After the enactment of PESA, the state amended the Orissa Gram Panchayat Act, 1964, Orissa Panchayat Samiti Act, 1959 and Orissa Zilla Parishad Act of 1991 in Dec 1997. Rules have been framed thereafter to enable the Gram Panchayat to own control and manage MFP in March 2000 and Nov.2002. This is called the "Orissa Gram Panchayat Minor Forest Produce Administration" Rules 2002. But the mainframe of forest Act of the state i.e. Orissa Forest Act of 1972 has not yet been amended to enable the Gram Panchayat to own control and manage MFP. The transit rules have been modified to lift the restrictions on the movement of MFP and handed over to Gram Panchayat. No other forest Acts and rules have been amended to endow the ownership rights over MFP to the Gram Sabha.

In March 2000, (Resolution No-5503/F and E 31.03.2000) the Forest Department brought out an executive order named as NTFP policy which classified the forest produce into NTFP, MFP, lease bar items, tree-borne oilseeds etc. This policy handed over 60 items to Gram Panchayat for ownership, control and management. Then the Panchayati Raj Department came up with detailed guidelines for registration of traders and management of MFP by the Gram Panchayat, role of Forest officials, TDCC and OFDC. Thereafter the forest department again brought resolution in August 2000 to handover 7 more MFP to the Gram Panchayat. Subsequently one more MFP item has been handed over to Gram Panchayats. In all 68 forest-produce items have been notified for transfer to Gram Panchayats from time to time.

In the study areas besides their traditional agriculture, the tribals collect MFP to meet their day-to-day expenses. Table no 4.9 below reveals that out of total 226 respondents, 164 (72.56%) depend their livelihood on collection of MFP. In Mayurbhanj district people are more dependants on MFP. All the households in Badamahuladiha and 37 (90.28%) out of 41 in Gobarajoda village, depend on forest as their

major source of livelihood. Usually, kenduleaf, mahuli, tentuli, jhuna, are common products they collect from the forest. Here buyers play an important role in fixation of the rate of the MFP as indicated in the table 4.9 below.

Table-4.9: Implementation of MFP rule under PESA

Name of the District	Name of the Village	Total no of Respondents	No of persons collecting MFP	Name of the Products	Name of the party fixing the MFP Price				
					Buyer	Seller	GP	PS	Other Party
Rayagada (Bissama cuttackblock)	Nuagarh	39	08 (20.51)	Kendu, Mahuli, Tentuli	08 (100)	00	00	00	00
	Kanedi	80	53 (66.25)	Kendu, Mahuli, Tentuli Jhuna	46 (86.8)	07 (13.2)	00	00	00
Mayurbhanja (Thakurmunda block)	Bada mahuladiha	66 (100)	66 Mahuli,	Kendu, (90.9) Tentuli	60 (9.1)	06	00	00	00
	Gobarajoda	41	37 (90.24)	Kendu, Mahuli, Tentuli	37 (100)	00	00	00	00
	<b>Total</b>	<b>226</b>	<b>164</b> <b>(72.56)</b>		<b>151</b> <b>(92.07)</b>	<b>13</b> <b>(7.93)</b>	<b>00</b>	<b>00</b>	<b>00</b>

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009

#### 4.1.5 Control over minerals resources:

The state authority over mineral resources is its exclusive domain hitherto enjoyed. Mines and mineral development are the concerns of both the Union and the concern state. The major minerals are under the exclusive control of the union government where as the states can manage minor minerals. In the PESA Act the power of the state government now stands constrained. Sub-section (k) of section-4 envisages that the recommendation of the gram Sabha or the Panchayat at the appropriate level shall be made mandatory prior to grant of prospective license or mining lease for minor minerals in the scheduled areas. Further under sub-section (k) the prior recommendation of Gram Sabha or the Panchayat at the appropriate

migration of non-tribals has also changed the ownership of land in the Scheduled Areas to the disadvantage of STs.

Under the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation 1956, transfer of lands belonging to tribals was permissible with prior approval of competent authority. Due to various reasons this law could not fully protect the interest of tribals in Scheduled Areas. Under the PESA Act, the state governments are required to protect the interest of tribals in regard to alienation and restoration of tribal lands. In pursuance of the constitutional mandate, the state Government of Orissa has brought out changes in the existing land regulations for tribal areas.

The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation 1956 has been amended to read as "The Orissa Scheduled Areas Transfer of Immovable Property" (By Scheduled Tribes) Amendment Regulation, 2000 named as Orissa Regulation 1 of 2000 effective from 4<sup>th</sup> September, 2002. This amended regulation has brought in the following changes;

- i) Any transfer of immovable property by a member of scheduled tribe shall be absolutely null and void and have no force or effect.
- ii) However, property of a scheduled tribe can be mortgaged in favor of any financial institution for securing loan for any agriculture purpose.
- iii) A member of a scheduled tribe shall not transfer any land if the total extent of land after transfer, will be reduced to less than two acres of irrigated land or five acres of un-irrigated land.
- iv) Where it is decided by competent authority to settle property with any person other than a person belonging to scheduled tribes, he shall obtain prior approval of the concerned Gram Panchayat.

- v) Transfer of agriculture land of Scheduled Tribe by fraud shall now be restored back by competent authority.

In the study villages 161 (71.23%) out of 226 families are landholders. Out of 226 families, 16 (41.02%) out of 39 households have lands and other families are land less and daily laborers in the village Nuagada. Likewise 39 (48.75%) out of 80 in Kanedi, 65 (98.48%) out of 66 in Badamahuladiha and all households in village Gobarajoda have agricultural lands. It is seen that the number of landless families are more in the study villages of Rayagada district than Mayurbhanj district. Most of the landowners possess only 1 to 2 acres (61.49%) and a few (33.54%) possess 2 to 5 acres lands. Only 8 (4.97%) have lands above 5 acres as indicated in the table 4.11 below. No case of land alienation is found in the study villages. Likewise, acquisition of land for developmental projects is not seen or reported here. No case of land transfer was also detected in study area.

Table-4.10: Status of Land ownership in study villages

Name of the District	Name of the Block	Name of the Village	No. of HHs	No. of Land Holders	No. of Persons Landless after Alienation	No. of Tribal Land Alienation Cases
Rayagada	Bisama cuttack	Nuagarh	39	16 (41.02)	00	00
		Kanedi	80	39 (48.75)	00	00
Mayura bhanja	Thakura munda	Bada mahuladiha	66	65 (98.48)	00	00
		Gobarajoda	41	41 (100)	00	00
		<b>Total</b>	<b>226</b>	<b>16 (71.23)</b>	<b>100</b>	<b>00</b>

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009

Table-4.11 Landholding Status

Name of the District	Name of the Block	Name of the Village	No. of Land Holdings			
			Land Holders	1-2 Acre	2-5 Acre	5 Acre & Above
Rayagada	Bisama cuttack	Nuagarh	16 (100.0)	13 (81.25)	02 (12.5)	01 (6.25)
		Kanedi	39 (100.0)	21 (53.84)	15 (38.46)	03 (7.69)
Mayura bhanja	Thakura munda	Bada mahuladiha	65 (100.0)	41 (63.07)	22 (33.85)	02 (3.08)
		Gobarajoda	41 (100.0)	24 (58.54)	15 (36.58)	02 (4.88)
		<b>Total</b>	<b>161 (100.0)</b>	<b>99 (61.49)</b>	<b>54 (33.54)</b>	<b>08 (4.97)</b>

Note: Figure in the bracket indicates percentage to the total

Source- Field study 2009-10

#### 4.1.7 Management of Village Markets:

Market is the nerve center of the socio-economic life of the tribal people. Section 4(M)(iii) envisages that the Panchayats at appropriate level and the Gram Sabha will be endowed with the power to manage markets by whatever names called. The management of village markets is an important task assigned to the Panchayati Raj Institutions under the PESA. However, the finding of the study reveal that it's functioning is not effective due to lack of knowledge among the elected representatives in scheduled areas.

Out of total 226 respondents, 89(39.38%) (Table no 4.12) only get surplus products. It is 17(43.58%) in Nuagada, 27 (33.75%) in Kanedi, 32(48.48%) in Badamahuladiha and 13(31.7%) in Gobarajoda as shown in the Table-4.12 below.

Table-4.12: Status of surplus Produce in study villages

Name of the District	Name of the Block	Name of the Village	No. of HHs	No of HHs having Surplus Product
Rayagada	Bisamacuttack	Nuagarh	39	17 (43.58)
		Kanedi	80	27 (33.75)
Mayurabhanja	Thakuramunda	Bada mahuladiha	66	32 (48.48)
		Gobarajoda	41	13 (31.7)
		<b>Total</b>	<b>226</b>	<b>89 (39.38)</b>

Note: Figure in the bracket indicates percentage to the total  
Source- Field study 2009

Table 4.13 below indicates that households having surplus produce in Mayurbhanj district depend upon local markets for sale, while in Rayagada district middlemen take the advantage of marketing and fix the rate of surplus produce. The people of these areas do not take much strain to go to distance places for marketing as no local market is found within five kilometers.

Table-4.13: Sale and marketing of surplus produce

Name of the District	Name of the Block	Name of the Village	Number of HHs having	Source of Local Market Surplus Produce	Marketing Middle Men	Outside Panchayat	Other Place
Rayagada	Bisamacuttack	Nuagarh	17	00	17 (100)	00	00
		Kanedi	27	00	27 (100)	00	00
Mayura bhanja	Thakura munda	Bada mahuladiha	32	27 (84.37)	5 (15.63)	00	00
		Gobarajoda	13	13 (100)	00	00	00
		<b>Total</b>	<b>89</b>	<b>40 (44.94)</b>	<b>49 (55.06)</b>	<b>00</b>	<b>00</b>

Note: Figure in the bracket indicates percentage to the total  
Source- Field study 2009-10

Regulatory mechanism of village market in the study areas can be known from Table-4.14. It reveals that out of 89 households having surplus produce, 85 (95.5%) regulate the market and decide the prices of the commodities. Panchayats (1.12%) provide little assistance give fewer hints towards village markets on the fixation of the prices of surplus produce.

*Table-4.14: Regulatory Mechanism of village market*

Name of the District	Name of the Block	Name of the Village	Number of HHs having Surplus Produce	Name of the party to prices of the produce regulate		
				Panchayat	Sellers	Others
Rayagada	Bissama cuttack	Nuagarh	17 (100.0)	1 (5.88)	13 (76.47)	3 (17.65)
		Kanedi	27 (100.0)	00	27 (100.0)	00
Mayurbhanja	Thakura munda	Bada mahuladha	32 (100.0)	00	32 (100.0)	00
		Gobarajoda (100.0)	13 (100.0)	00 (100.0)	13	00
		<b>Total</b>	<b>89 (100.0)</b>	<b>1 (1.12)</b>	<b>85 (95.50)</b>	<b>3 (3.38)</b>

*Note: Figure in the bracket indicates percentage to the total*  
*Source- Field study 2009-10*

#### **4.1.8 Management of water bodies:**

Management of water sources has been a vital area of natural resource management in the present day situations. Competing claims are forthcoming for water sources from sectors like agriculture, industry, urban centers etc. It is an irony that even though tribal areas are source of all major river systems, their own needs and requirement for water is no where in the picture of distribution and management of water and water bodies. The provision in section 4 of PESA Act envisages that "Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayat at the appropriate level".



In Orissa, the state government have, by amendment in 1997 entrusted the work of planning of management of minor water bodies to the Zilla Parishad. In absence of any clear declaration with regard to the definition of minor water bodies in the Panchayat/Irrigation laws, the aforesaid notification specifies that water bodies up to 40 acres of area will be treated as minor water bodies. On a reference to the respondents in the study area it was noticed that most of them did not know that the management of such water bodies is the responsibility of Zilla Parisads.

#### **4.2 Understanding about PESA Act:**

Table 4.15 below reveals the position about awareness of PESA in the study areas. Out of total number of respondents, only 10.18 per cent have, to some extent, an overall knowledge about the Act. Interestingly, the level of awareness about the Act is lower among the Scheduled Tribes. About 89.82 per cent of respondents do not know anything about PESA, as compared to the non-ST respondents. Out of total respondents, only 38 (16.81%) know about the procedure of election in the Panchayat and how a non-tribal cannot contest for Sarpanch in the PESA area. Knowledge about money-lending rules and restrictions and prohibition of intoxicants, laws about MFP seemed to be poor in the respective subjects in the proportion of 1.33 per cent, 5.76 per cent and 1.77 per cent respectively.

Moreover, the level is comparatively much lower among the primitive tribe respondents. Similarly, it was observed that none of the sampled Sarpanches or Panchayat Samiti members in the areas is aware about the powers of Gram Sabha under the PESA Act. The studies have confirmed that PESA has not been able to establish grassroots democracy in the scheduled Areas in accordance with the ethos of tribal people. The status of tribal people remains more or less the same as they were in 1996. Studies have also reflected that there is lack of a strong political will at the state level to devolve power to the PRIs and GS in the tribal areas. The position is reflected in the following table-4.15.

Table-4.15: Understanding of PESA

Name of the District	Name of the Block	Name of the Village	Number of respondents	About election	Money lending	Control of intoxicants	Knowledge about MFP	General awareness
Rayagada	Bisama	Nuagarh cuttack	39	12	1	04	00	06
Mayura bhanja	Thakura munda	Kanedi	80	05	0	00	00	02
		Bada mahuladina	66	12	1	08	04	10
		Gobarajoda	41	09	1	01	00	05
		<b>Total</b>	<b>226</b>	<b>38</b> <i>(16.81)</i>	<b>03</b> <i>(1.33)</i>	<b>13</b> <i>(5.76)</i>	<b>04</b> <i>(1.77)</i>	<b>23</b> <i>(10.18)</i>

Note: Figure in the bracket indicates percentage to the total  
Source- Field study 2009

#### 4.2.1 Findings of the Empirical study:

The following are the major findings of the study, which were taken up in both the districts of Rayagada and Mayurabhanja.

- ( ) Out of 226 respondents, 160 have not attended Gram Sabha meetings during last 2 to 3years.
- ( ) The participation in Gram Sabha is very poor in Kanedi village, which is only 8.75 per cent.
- ( ) The participation of people in Gram Sabha is low in Rayagada district as compared to Mayurbhanj district.
- ( ) Family income is not sufficient for 148 (65.48%) families out of 226 to meet their daily expenses. Mostly they depend upon their relatives (66.92%) and SHG women members of the village (28.37%),



- ( ) SHGs are taking major role of banking in the villages by providing financial help at the time of need to its members. They are also maintaining passbook and other records for smooth transaction of business and for ensuring transparency
- ( ) Only one instance out of 226 respondents is found securing Rs-2000/ as loan from money-lender.
- ( ) Among tribals, 64.15 per cent consume liquor out of which 65.51% manufacture liquor in their houses.
- ( ) Illicit and unlicensed liquor shops were found in Nuagarh and Kanedi of Bissamacuttack block of Rayagada district
- ( ) In Mayurbhanj district almost all adult members of families used to drink 'handia', prepared in their own houses. They do not know of any law which is intended to prohibit or restrict the preparation and use of 'handia'.
- ( ) Practice of taking wine is linked with customs and traditions of tribal community.
- ( ) Out of total 226 respondents, 164 (72.56%) depend their livelihood on collection of MFP
- ( ) Buyers play the important role to fix the rates of MFP.
- ( ) In the study villages, 161(71.23%) are landholders out of 226 families.
- ( ) The number of landless families is more in the study villages of Rayagada district than Mayurbhanj district.



- ( ) Acquisition of land for developmental projects did not take place in these areas. No case of land transfer was detected in the study areas.
- ( ) Out of the total 226 respondents, 89 (39.38%) only get surplus products.
- ( ) Households having surplus produce in Mayurbhanj district depend upon local markets for sale, while in Rayagada district ;) middlemen take the advantage of marketing and fixing the rate of surplus produce.
- ( ) Out of total number of respondents, only 10.18 per cent have an overall basic knowledge about PESA Act.

#### **4.3 Assessment of Working of PESA based on FGD**

Broad findings of Focus Group Discussion (FGD) on different subjects under PESA conducted in 10 villages including 2 villages from micro project areas (DKDA and HKMDA) are summarized below:

##### **4.3.1 Role of Gram Sabha**

- ( ) The villagers are very much acquainted with Palli Sabha but not well acquainted with the objectives of Gram Sabha and PESA Act.
- ( ) No proper information is communicated to the people including ward members regarding venue and date of Gram Sabha.
- ( ) Female members are not required to attend the meetings as reported by the participants in the FGDs.



- ( ) The villagers including ward members are not aware about the importance of Palli Sabha and Gram Sabha.
- ( ) The agenda of the meetings are based mainly on IAY, Pension, selection of BPL beneficiaries, etc.
- ( ) Gram Sabha is not conducted regularly except in Saliabeda GP of the study area. The people of Saliabeda GP are aware of Gram Sabha and Palli Sabha and their importance. Decisions taken in Palli Sabha are being approved in Gram Sabha. They are aware of PESA Act a little due to intervention of CYSD (A state level NGO).
- ( ) As regards the working of PESA in relation to role of Gram Sabha, it was found that it was not working. Except for selection of beneficiaries under different schemes, no subjects under PESA like regulating consumption of intoxicants, land alienation, regulating village market, regulation of MFP, money lending business, etc. are discussed in the meeting of Gram Sabha.

#### **4.3.2 Minor Forest Produce (MFP)**

- ( ) Collection of MFP like Hill brooms, Siali leaf, Harida, Bahada, Amala, Turmeric, Mango, Lemon, Banana, Jackfruit, Tamarind, Jhuna, Kenduleaf, Honey, etc. is the main source of livelihood of the people of study villages.
- ( ) Male members of the family are collecting MFPs more than the female members.
- ( ) The villagers collect MFP and sell either directly to the businessmen outside the Panchayat or in some cases, the traders



directly approach the primary collectors of MFP at the spot and buy the products.

- (i) The traders fix the price of MFPs, which the collectors of MFP are bound to accept due to non-availability of alternative market facilities.
- (ii) Because of compulsions due to poverty they are forced to sell the produce even at a lower price than the actual prevailing market price.
- (iii) The villagers including elected representatives did not know about the role of Panchayats in regulating price of MFP.
- (iv) No trader has registered in any of the study Gram Panchayats for trading MFP in the Panchayat area.
- (v) It all shows that PESA provisions with regard to regulation of MFP are not being implemented properly in the study Panchayats.

#### **4.3.3 Land Alienation**

- (i) Between the study Panchayats of two districts, the villagers of Rayagada district have a very few patta lands whereas in case of Mayurbhanj district, most of the villagers are in the possession of patta lands. In the former case, the villagers possess either encroachment land or lands through inheritance or share-cropping.
- (ii) More than 50 per cent of the households are landless in Kanedi village of Bhatpur GP in Rayagada district.
- (iii) One land alienation case was found in Sauraguda village of Chancharaguda GP in Rayagada district. A non-tribal Telugu speaking person from Andhra Pradesh, cheated the villagers and taken away about 97 acres from the villagers by fraudulent means. They did not report either to any authority of revenue

department or to the local Sarapanch about the fraudulent transaction.

- (C) The villagers did not have any idea that Panchayat can intervene in land alienation cases.
- (C) One woman of Badabrundabadi village of Bhatpur GP expressed that a non-tribal took 5 acres of her land away 17 years ago.
- (C) A villager named Pandav Soren of Gobarajoda village of Digdhar GP in Mayurbhanj district expressed that 2 acres of his land had been mortgaged 9 years ago for Rs.2000/-. But he could not get his land back.
- (C) As regards awareness about PESA relating to land alienation, the people only know that tribal lands cannot be transferred to non-tribals. But they do not know that this rule comes under PESA Act, 1996 and Amendment Act of 2002 of OSATIP, Regulation (2), 1956.
- (C) The villagers were not aware that alienation cases should be raised/discussed in Gram Sabha meetings.
- (C) No alienation case has ever been discussed/raised or solved in any of the Gram Sabhas of study Panchayats.

Hence, PESA in relation to land alienation has not been properly working in the study areas.

#### **4.3.4. Money- lending**

- (C) The villagers in the study areas used to take loan from traditional money-lenders or the so-called Sahukars long years back.
- (C) At present, the system has been changed. They do not depend on traditional and professional money-lenders. They themselves help each other at the time of need.

- ( ) In the entire study area, only one person borrowed money of Rs.2000/- at 5 % rate of interest per annum.
- ( ) SHG members have no problem because they transact money-lending business among themselves and depend on bank loan facilities. They do not need help of money-lender as such.
- ( ) As regards awareness about money-lending provisions under PESA, villagers including elected representatives hardly have any idea about such rule.
- ( ) While enquiring about working of PESA with regard to money-lending business through Panchayats, it was found that PESA Act was almost non functional.

#### **4.3.5. Consumption of Intoxicants**

- ( ) The villagers in the study area are preparing country liquor on their own.
- ( ) No liquor shop (manufacturing) was found in the study Panchayats.
- ( ) Some illicit/unauthorized liquor shops were reportedly established as reported by the villagers during interaction.
- ( ) The villagers have no problem for the presence of these illicit/unauthorized liquor shops. So no complaint was being given to either the Panchayat or to the police.
- ( ) They did not have any idea that Panchayat has control over issue of license to start liquor business in the Panchayat.
- ( ) They were also not aware about regulation of consumption of intoxicants under PESA Act.





Keeping the above in view, it was evident that PESA with regard to regulating consumption of intoxicants was not functioning properly.

#### **4.4 Assessment of Working of PESA from Official Sources (ITDAs/ Micro Projects):**

- (i) The objectives of ITDAs are to improve the socio-economic condition of the tribals as well as the particularly vulnerable tribes through various income generating schemes and infrastructure development activities incidental to income generation. Special attention is given to irrigation, education, communication, and drinking water facilities, vocational training for skill up gradation and different poverty alleviation programmes. Both the ITDAs (Gunupur and Karanjia) which cover the study villages are trying to give attention to developmental activities like irrigation, education, communication, drinking water facilities, vocational training for skill up-gradation and different poverty alleviation programmes. No specific steps have been taken to strengthen implementation of PESA Act or training has been organized at ITDA level for the capacity building on PESA Act. But, the Govt. of Orissa in ST & SC Development Department have made serious efforts and regularly provided a number of trainings on PESA Act at SCSTRTI, Bhubaneswar, for PRI representatives, Tribal elites and official functionaries deputed by all ITDAs for their capacity building.
- (ii) The objectives of DKDA, a micro project, are intended for all-round development of Dongaria Kandhs in the field of health, education, communication, sanitation, economic development, etc. to



bring them in to the mainstream of civilization. Similarly, the objectives of HKDMA are to develop agriculture, horticulture,



education, communication, housing, irrigation, drinking water facility, cottage industry, animal husbandry, poultry, SHG, health, etc. DKDA has taken initiatives in SHG formations, community development works, horticulture, plantation, development of irrigation canals, land developments, financial assistance to SHGs through bank linkage, pipe water supply for drinking water, admission of girl students to hostels, health camps, etc. In respect of HKMDA, almost the same activities have been taken-up. Regarding steps taken for strengthening PESA by DKDA, awareness was created among Dongaria Kondhas through field functionaries and the special officer of DKDA. DKDA officials have also been provided training on PESA Act at SCSTRTI, Bhubaneswar. As reported by HKMDA, neither any steps have been taken for strengthening PESA nor any staff of HKMDA has been given training on PESA Act for capacity building.

#### **4.5. Assessment of Working of PESA based on Key Stakeholders Survey**

For the purpose of the study, opinions of different key stakeholders like Block officials, R.Is, Sarapanchas, School Teachers, Village Health workers, Panchayat secretaries and key village leaders were taken. During the interaction, they were asked questions to know the level of awareness about PESA and their role and responsibility in regard to the implementation of PESA.

Unfortunately, among the categories of respondents, the level of awareness among the PRI members is very low and even they do not have any idea about the PESA Act. RIs dealing with land, they know about the rules of land alienation and restoration. About other provisions of PESA, they are ignorant. Almost all officials who have an overall knowledge of the Act are aware of the following powers of the Gramsabha (i) Discussing and approving the socio-economic development, plans/programmes, projects for the villages and (iii) Identifying beneficiaries for different Poverty Alleviation Programmes.

## **CHAPTER-V**

### **Critical Gaps in the Implementation and Suggested Steps for Effective Implementation of the Act**

The extension of part-IX of the constitution concerning Panchayats to the Scheduled Areas marks the beginning of tribal self-rule as a precursor of Grama Swaraj in the whole country. Although there was nothing spectacular to rejoice the occasion compared to the great sacrifices made by the tribal people in the past, the enactment of PESA Act was definitely a new beginning towards the right of self-governance. But the new law faces several working constraints right from day one. The Parliament defaulted first on its resolution in not making the law in the first year, i.e. by 24.4.1994. It could do it only in 1996 following the Bhuria Committee recommendations. When judicial verdict about the extension of general law to Scheduled Area went against this law, the parliament almost did nothing and remained as a mere spectator. There are still several gaps at the policy level in the implementation of the Act in the country in areas other than the scheduled areas such as the North East. The Central law is still in the nature of a direction and the state legislatures have to make their own laws for proper implementation of the Act. The people at large are yet to be made aware of the provisions of the Act and their duties and responsibilities in it.

Money power and state power are the fundamental elements in respect of land acquisition in the country. The state continues to be supreme under the banner of or the aura of the principle of 'Eminent Domain'. But with the passing of PESA Act the tide seems to have turned. No one probably can enter the homes of tribals any longer

using the aura of money and baton. The PESA Act recognizes two important promises, i.e. (i) the community is the main foundation of the system and (ii) a formal system can be built on the firm foundation of the traditions and customs of the tribal people. The tribals may not be now required to knock at the doors of the authorities. The Gram Sabha is now to be consulted before making acquisition of land in the Scheduled Areas for development projects. The Act seems to be solemnizing the resolve of the Founding Fathers in the Constituent Assembly when they were wandering if the ordinary man will be able to recognize the constitution as his own. Even though Article 40 envisaged the state to take steps to organize village Panchayats and endow them with such powers and authority to enable them to function as units of self-government, the basic premises of this provision about self-governing village Panchayats were at variance with that of the entire formal frame of the Constitution. The provisions in the PESA Act make a break from the impasse in which the formal system refused to recognize even the vibrant tribal community, which has been managing its affairs in accordance with its traditions through the ages. The new Act not only formally recognizes the community, which is designated as Gram Sabha but treats the same as the pivot of the system of self-government in the Scheduled Areas. Some of the structural and implementable gaps that exist in the PESA Act can be broadly summarized as follows:

- (1) The provisions of PESA Act 1996 need to be analyzed in the light of claims of many activists that it has miserably failed to materialize people centric governance and accountability structures at the grass root level thereby jeopardizing the very rationale of 73<sup>rd</sup> amendment and the Panchayati Raj institutional mechanism.
- (2) Section 4(a) of the Act does not take into consideration the presence of multi-culture contents of different tribes even in the

same geographical area. In consequence, the words "customary law", "social and religious practices" are general in nature. Since they are not tribe specific, cannot be applied uniformly.

- (i) Another vital point of omission in the law is that in the event of a dispute as to whether a particular state legislation is in consonance with customary law or not, there is no specific provision in the law for reference or redressal. Therefore, there is need for a provision in the law for creating viable mechanisms to accommodate diverse claims of multi-tribes in the same geographical configuration.
- (ii) The definition of village as mentioned vide section 4 (b) in Scheduled Areas is placed in a uniform manner probably with a view to expand the scope for assimilation of new categories of people in the village. This is likely to dilute the spirit of the legislation, as it may not claim to be in consonance with the tribal customary laws. Therefore, the definition of village could be redefined based on the ethnic composition of the people in Schedule V Areas. In fact, several communities may be living in one village where it may be difficult to demarcate a village. In that case a revenue village may not be co-terminus with traditional tribal village.
- (iii) The term community is not properly defined and it may lead to various complications and confusions. Therefore, declaring each hamlet as a Panchayat may not be rational in view of economic viability and other considerations.
- (iv) The provision under section 4(d) that "every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution consistent with relevant laws in force and in harmony with the basic tenets of the constitution and human rights". The Orissa Act has few

very restrictive provisions and indirectly downsizes the self-governing power of Gram Sabha.

- (i) PESA, which is applicable only to schedule V Areas and excludes the Sixth Scheduled Areas, needs to be analyzed if this law could be extended to areas other than V<sup>th</sup> and VI<sup>th</sup> Scheduled Areas where there is preponderance of tribals. Otherwise, tribals living within this area are likely to be deprived of the benefits of the Act (PESA). For example, in the Six Scheduled Areas, the structure of Autonomous District area is not necessarily co-terminus with the administrative boundaries. There is no statutory body below either the intermediate or village level. At sub-district level, there is neither a democratic nor a traditional structure. Therefore, a void is created and no organic linkage is available between the lower and higher level local bodies.
- (ii) For the development and advancement of the tribals, a Tribes Advisory Council is set up in every state. Speculations with regard to likely controversy in the working of Panchayati Raj institutions at the local level and the role of TAC are still active. The PESA Act hardly specifies about the linkage between the TAC and Panchayat bodies in the Scheduled Areas.
- (iii) The term community is clearly defined neither in the PESA Act nor in the state laws. Since there are varieties of customary laws, social and religious practices amongst the various tribes, it may not be possible to have different legislations for each of the tribes. It may not also be possible to have different legislations for each of the tribes in a particular district or the state.
- (iv) Although PESA is grounded on the principle of participatory democracy as the basic unit of governance, the terms Gram Sabha and Gram Panchayat are being used interchangeably. In fact, Gram Sabha is the core unit of PESA, which stands entirely on a different footing as against the Gram Panchayat. Consequently,

most of the state legislations reading the two terms as synonyms have empowered the Panchayat which, for all practical purposes, actually dis-empowers the Gram Sabha. Therefore, adoption and implementation of PESA Act by states should take cognizance of the ambiguity.

- (c) In most of the state laws, Gram Sabha exercises, control mostly over schemes and programmes sanctioned from above. Nothing is allowed to spring from below. Since many of the state governments allege to have not been consulted before PESA Act was enacted, it may be necessary to go for fresh consultations and bring out a single but small legal document after examining various state laws and the inconsistencies existing therein. What is important is to retain the principle of self-determination of the village by the community itself as a participatory democracy and the village as a self-governing village.

It is almost a decade and half since PESA came into force but the obstacles in enforcing its provisions have remained largely un-addressed. States have not come out with clear-cut policies and procedures indicating definite rights of tribals in matters like forest and minor forest produce. In matters relating to forest resources, states like Maharashtra, Gujarat and Orissa in their effort to perpetuate state control over forest resources have tried to dilute the provisions of PESA. For example, the government of Orissa has circumscribed the provisions of PESA by adding a clause ".....consistent with the relevant laws in force" while incorporating the constitutional provision concerning the competence of Gram Sabha to manage community resources and resolve disputes as per the customs and traditions of the people.

It has been seen that states which come under the Schedule V Areas have amended their respective Panchayat Acts which are very radical and difficult to handle with particularly in relation to Gram Sabha's



mandatory role on land acquisition for development projects and grant of concessions for lease of minor minerals and prevention or restoration of alienated land to the rightful tribal owners. In the process, some of the key provisions of the central Act intending to recognize the traditional rights of the tribals over natural resources, like land, water and forest have been diluted if not implemented far from expectation. The land laws have failed miserably to protect the tribals from alienation of their land. In matters of acquisition of land for development projects, the role of Gram Sabha or the Gram Panchayat has been relegated to the background. Different states have devised different agencies other than the Gram Sabha. While Maharashtra assigns these powers to Gram Panchayat, Orissa has given this power to Zilla Parishad. Practically, no state government except Andhra Pradesh has formulated any clear and comprehensive rules, regulations and procedures for implementing the provisions of the Central Act. Similarly, many state governments appear to be not making serious efforts in providing training to government functionaries, PRI representatives and NGO functionaries in the Schedule V Areas. The process of consent and consultation as prescribed in the PESA Act is often distorted to serve the interest of project and not the people. Of several incidents where the state governments even acted in favour of industries against Gram Sabha resolution could be cited as a few such cases. In Tamnar block of Raigarh district of Chhatisgarh, even though 52 Gram Sabhas had passed resolution against land acquisition for Jindal Steel and Power Ltd (JSPL), the state government granted permission to the company for acquiring land. Similarly, in spite of continuing agitation of tribals in Pakur district of Jharkhand state, land acquisition of about 1300 hectares continued without consultation with the local people. In Orissa, there was lack of trust between the people, the State Government and the company for acquisition of land for the alumina project in Rayagada district. In Kalahandi district of Orissa it was alleged that the district collector prevailed to hold

the Gram Sabha meeting even though there was stiff opposition from the local people. The acquisition of land for the Tata Steel in Kalinga Nagar in Jajpur district of Orissa is an example of prevalence of State control and hegemony over land acquisition.

In case of Orissa as in many states, the mandatory provisions are to be more specific and explicit which seem to have been lost sight of while legislating conformity laws at the state level. Although the powers and functions of Gram Sabha are left to the wisdom of state legislatures, different states have adopted varied legislations in implementing PESA Act. The Gram Sabha is mandated to deal with plans, programmes and projects of socio-economic development but this is not given due space in the state legislation. Although devolution of power and authority to the Panchayati Raj Institutions is required to be specific and unambiguous, this aspect does not find place in the statutory provisions in respect of Scheduled Areas and Panchayats in Scheduled Areas find themselves on the same footing as of Panchayats in normal areas.

**Implementation of PESA in Orissa has not resulted in any spectacular or specific results in terms of the ideals and objectives envisaged in the Act.** The state laws have been amended more as a routine than the real application of the spirit of the Act. The Central Act envisages a strong, powerful and self-reliant Gram Sabha but Orissa law seems to have restricted its functions to as may be prescribed from time to time. The rationale behind PESA Act to empower Gram Sabha to approve and sanction all matters relating to tribal society and their economy needs to be ensured.

There seems to be an underlying taboo of hesitancy and bias on the part of government functionaries in sincerely implementing the Act. In matters of devolution of powers to PRIs in the Scheduled Areas, no specific devolution is either performed or adopted. The PRIs in Scheduled Areas are treated on the same footing as in the non-PESA

areas except for reservation of seats and posts as provided in the Constitutional Act. In consequence the role of state agencies, political leadership, the bureaucracy and the attitude of non-tribals and power holders continue to dominate in the traditional fashion without any change or orientation in outlook.

There is hardly any prescribed or unwritten mechanism which the tribals in PESA areas could demand for proper implementation of PESA and require state legislative measures to their advantage. In the context of recent shift in the development paradigm of the state, construction of dams, major industrial and mining projects, the community resources of the tribals seems to be under threat even though the Gram Sabha is competent to preserve the community resources. The principle of "Eminent Domain" of the state has prevailed and the Gram Sabha can hardly do anything if its decisions are not honoured.

Although the traditional practices of community resources have been acknowledged by the state which includes forests of all descriptions, yet the precise relationship between the community, that is, the Gram Sabha and the state needs clear formulation and clarification. The provision in section 4(M)(iii) of PESA Act clearly envisages that the state legislature shall ensure that Panchayats at appropriate level and the Gram Sabha are endowed specifically with the ownership of minor forest produce. It means to say that so far as forests are concerned, the state accepts the community right over minor forest produce univocally but retains its authority over minor forest produce subject to the traditional management practices of community resource.

Part-IX concerning the Panchayats and Part-IX (A) concerning the Municipalities of the constitution were not made applicable, inter alia, to the Scheduled Areas covered under the Sixth schedule. While Bhuria Committee covered the Scheduled Areas and given its recommendation concerning the structure of both the Panchayats and the Municipalities, the situation in other areas appears not to have

been studied or analyzed by the Central Government. Ironically the pattern of Sixth Schedule has been adopted as a model for designing the administrative arrangement in the Panchayats at the district level in the Scheduled Areas. Besides, the areas that remain outside the preview of Part IX and Part IX A are not studied. Similarly, some other areas like the North-East remains to be studied in depth.

Although the position with regard to extension of the Scheduled Areas was discussed in the second report of Bhuria Committee, the position remains unchanged. The legal position concerning the extension of general laws to the urban areas within the Scheduled Areas of other states is also the same. Similarly many states with substantial tribal population have not been brought under the concerned schedules. Such position prevails in North-East Manipur and non-scheduled areas of Tripura and Arunachal Pradesh. There are many tribal Areas in West Bengal, West Bengal, Karnataka, Kerala and Tamilnadu which have not been scheduled. As a result, small tribal communities which are most vulnerable and are unable to tend for themselves against formidable adverse forces are left almost defenceless. Therefore, it is necessary that these communities are brought under the Fifth Schedule as per recommendations of Bhuria Committee.

Although about sixty percent of the tribal population lives in the Scheduled Areas, no action seems to have been taken to cover the tribals residing in the Non-Scheduled Areas inspite of Bhuria committee's recommendations. Since Gram Sabha is the centre of community bestowed with extensive powers now, it would be a blatant injustice to the tribal people remaining outside the Scheduled Areas. They need the benefits of empowerment endowed on the community in the scheduled Areas . Therefore; the entire sub-plan area may be covered under the Scheduled Area.

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Annexure- I

**Household Survey For Evaluation Study**

**A. Socio-Economic Profile**

1.	Name of the District	Rayagada—1, Mayurbhanj—2
2.	Name of the Block	Bisam Cuttack – 1 (Rayagada district) Thakurmunda—2 (Mayaurbhanj district)
3.	Name of the GP	Bhatpur—1, Cancharaguda—2 (Bissamcutta Block) Digdhar—3, Saliabeda – 4 (Thakurmunda Block)
4.	Name of the Village	Canadi -1, Badabrundabadi-2, Nuaguda-3, Sauraguda-4 (Bissamcuttack Block) Gobarajoda-5, Gulijudi-6, Saliabeda-7, Badamahuladia-8 (Thakurmunda Block)
5.	Name of the Respondent	
6.	Name of the head of	Household
7.	Religion of the Head	Hindu-1, Christian-2, Muslim-3, Other (Specify) - 4
8.	Caste of the head	SC-1, ST-2, OBC-3, General-4
9.	If belongs to SC/ST, what is your sub-caste.	Example- Pana (SC) and Paraja (ST) and so on
10.	Family type	Joint-1, Nuclear-2
11.	Ownership of house	Self-owned-1, Taken on rent-2, Any other (specify) -3

**FAMILY MEMBERS' DETAILS**

Sl. No.	Name of members Start with HHH	Relation with HHH*	Age	Sex*	Marital status*	Qualification*	Occupation*	Monthly income*
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
<b>Total</b>								



**Note-** Use the prescribed codes to fill up the table.

<b>Relation to HHH-</b>	Wife-1, Husband-2, Father-3, Mother-4, Son-5, Daughter-6, Son-in-law-7, Daughter-in-law-8, Grand father-9, Grand mother-10, Uncle-11, Aunt-12, Niece-13, Nephew-14 and any other (specify)- 15
<b>Sex-</b>	For Male -1, For Female-2
<b>Marital Status-</b>	Married-1, Unmarried-2, Divorced/Separated - 3, Widow/Widower-4
<b>Qualification-</b>	Illiterate-1, Below Primary level-2, Primary level-3, Middle school level-4, Secondary-5, Under Graduate-6, Graduate & above-7 & Any other-8
<b>Occupation-</b>	Agricultural labourer-1, Cultivator-2, Artisan-3, Govt. service-4, Private service-5, Business-6, Wage labourer-7 Unemployed-8, Student-9, Household work-10, Retired-11, Non- school going child-12
<b>Monthly Income-</b>	No-income-1 Rs.1/-1000/-2, Rs.1001-1500-3, Rs.1501-2000-4, Rs.2001-5000/-5, Rs.5000/- & above-6, No clear and fixed monthly income-7

**B. Working of PESA and Understanding about the Act**

1. Can a non-tribal contest for Sarapanch in your Panchayat?  
Yes-1, No-2, Do not know-3  
If No. Why not?
2. How many Gram Sabhas are conducted in a year in your GP?  
One-1, Two-2, Three-3, Four-4, More than four-5, Do not know-6. Any other-7
3. Have you participated ever in the Gram Sabha? Yes-1, No-2
4. If yes-What was the agenda of (last 4 GS) Gram Sabha that you attended?

Gram Sabha	Developmental work —1	Ownership of minor forest produce-2	Land alienation & restoration-3	Prohibition/ regulation/ Restriction of intoxicants—4	Control of money lending—5	Management of village markets--6
1 <sup>st</sup> GS						
2 <sup>nd</sup> GS						
3 <sup>rd</sup> GS						
4 <sup>th</sup> GS						
Any other						

5. If not participated in Gram Sabha-Why didn't you?  
*Time constraint—1, No benefits—2, No interest—3, No information about GS-4,*  
*Conduct of no Gram Sabha—5, Any other—6*
6. Whether your income is sufficient to meet your expenses?  
*Yes/No*  
If No-how are you meeting the extra expenses? What are the sources?  
*Bank—1, SHG—2, Moneylender—3, Relatives—4, Friends—5, Others (specify)—6*  
If loan from moneylender what is the amount?  
What is the rate of interest of that amount?  
Have you any passbook for maintaining loans and repayments?  
*Yes/No*  
Can any moneylender advance loan to any person without the knowledge of Sarapanch/Panchayat? *Yes-1, No-2, Do not know—3*  
If No—Why not?
7. Whether you are consuming liquor? *Yes-1, No—2*  
If yes—Whether you are manufacturing liquor yourself? *Yes—1, No—2*  
If No—Where from are you getting?  
*From local liquor shop—1, From out side—2, Any other—3*
- 7 i) Whether there is any illicit/unlicensed liquor shop in your area?  
*Yes—1, No—2*  
If Yes, are you facing any problem for illicit/unlicensed liquor shop? *Yes—1, No—2*  
If yes—Whether you have informed your Sarapanch? *Yes—1, No—2*

If yes—Whether he has taken any action against the person?

*Yes—1, No—2, Any other—3*

If Yes – What action has been taken?

- 7 ii) Can any person in your Panchayat start liquor business without the knowledge of Panchayat? *Yes—1, No—2, Do not know—3*

If No-Why not?

8. Whether you are collecting minor forest produce for your livelihood?

*Yes—1, No—2*

If yes, What are the products?

Who fixes the price of the products?

*Buyer—1, Seller—2, Gram Panchayat—3, Panchayat Samiti—4, Any other—5*

Can any transaction of MFP be done without the knowledge of Panchayat?

*Yes—1, No—2, Do not Know—3*

If No-Why not?

9. Do you possess land? *Yes/No*

If No, are you landless after any type of alienation? *Yes-1, No-2*

If Yes, How much land in acres? (0-2 acre) – 1, (2-5 acres) – 2, (5 & above) – 3

Have you transferred your land to anybody? *Yes-1, No-2*  
(question to put to STs only)

If yes –when? (*Before 1956*)—1, (*1956—2002*)—2, (*after 2002*)—3

What type of transfer?

*Sale—1, Mortgage—2, Verbal transfer—3, Any other—4*

To whom the land was transferred?

*SC-1, ST—2, OBC—3, General—4, Any other—5*

Have you taken permission of any competent authority to sell land to non-tribals?

*Yes-1, No—2*

Has anybody got your land transferred illegally? *Yes-1, No—2*

If yes, Who is the person?

*SC-1, ST—2, OBC—3, General—4, Any other—5*

Have you filed any petition of such illegally transferred land?

*Yes—1, No-2*

If Yes, with whom and when?

What is the present position?

Can you transfer your land to a non-tribal person? *Yes—1, No—2*

If No—Why not?

10. Has any of your land been acquired for any development purpose? (Project mines etc.) *Yes/No*

If yes-have you got compensation for the land? *Yes/No.*

11. Has anybody of your family or other families of the village been displaced due to such project? *Yes/No*

If yes-Has the family been rehabilitated? *Yes/No*

If yes-where and what facilities have been provided in the resettlement colony?

12. Do you have any mines in your village/Panchayat?

*Yes-1, No—2*

Is there any mining industry in your G P area? *Yes—1, No—2*

13. Whether you have surplus produce either from own land or from share cropping?

Yes-1, No-2

If Yes, where do you sell your surplus produce?

*Local weekly market day—1, Middle man—2, Outside the Panchayat—, Any other-4*

Who maintains the market?

*Panchayat—1, Sellers—2, any other—3*

**Understanding about the Act (to be assessed by the researcher)**

*Totally aware—1, up to some extent—2, No idea—3*

Investigator's Signature

## Annexure-II

### ***List of Scheduled Tribes of Orissa***

Sl.No. List of Scheduled Tribes notified (after addition/deletion) as per the Scheduled Castes and Scheduled Tribes Order, 1950 as amended by Modification Order, 1956, Amendment Act, 1976 and The Scheduled Castes and Scheduled Tribes Order (Amendment) Act 2002 No. 10 dated 8.1.2003 of Ministry of Law & Justice republished by the Notification No. 7799/L dated 7.6.2003 of Law Deptt, Govt. of Orissa

- 1 Bagata, Bhakta
- 2 Baiga
3. Banjara, Banjari
4. Bathudi, Bathuri
5. Bhottada, Dhotada, Bhotra, Bhatra, Bhattara, Bhotora, Bhatara
6. Bhuiya, Bhuyan
7. Bhumia
8. Bhumij, Teli Bhumij, Haladipokhria Bhumij, Haladi Pokharia Bhumija, Desi Bhumij, Desia Bhumij, Tamararia Bhumij
9. Bhunjia
10. Binjhal, Binjhar
11. Binjhia, Binjhoa
12. Birhor
13. Bondo Poraja, Bonda Paroja, Banda Paroja
14. Chenchu
15. Dal

16. Desua Bhumij
17. Dharua, Dhuruba, Dhurva
18. Didayi, Didai Paroja, Didai
19. Gadaba, Bodo Gadaba, Gutob Gadaba, Kapu Gadaba, Ollara Gadaba, Parenga Gadaba, Sano Gadaba
20. Gandia
21. Ghara
22. Gond, Gondo, Rajgond, Maria Gond, Dhur Gond
23. Ho
24. Holva
25. Jatapu
26. Juang
27. Kandha Gauda
28. Kawar, Kanwar
29. Kharia, Kharian, Berga Kharia, Dhelki Kharia, Dudh Kharia, Erenga Kharia, Munda Kharia, Oraon Kharia, Khadia, Pahari Kharia
30. Kharwar
31. Khond, Kond, Kandha, Nanguli Kandha, Sitha Kandha, Kondh, Kui, Buda Kondh, Bura Kandha, Desia Kandha, Dungaria Kondh, Kutia Kandha, Kandha Gauda, Mulli Kondh, Malua Kondh, Pengo Kandha, Raja Kondh, Raj Khond
32. Kissan, Nagesar, Nagesla
33. Kol
34. Kolah, Loharas, Kol Loharas
35. Kolha



36. Koli Malhar
37. Kondadora
38. Kora, Khaira, Khayara
39. Korua
40. Kotia
41. Koya, Gumba Koya, Koitur Koya, Kamar Koya, Musara Koya
42. Kulis
43. Lodha, Nodh, Nodha, Lodh
44. Madia
45. Mahali
46. Mankidi
47. Mankirdia, Mankria, Mankidi
48. Matya, Matia
49. Mirdhas, Kuda, Koda
50. Munda, Munda Lohara, Munda Mahalis, Nagabanshi Munda, Oriya Munda
51. Mundari
52. Omanatya, Omanatyo, Amanatya
53. Oraon, Dhangar, Uran
54. Parenga
55. Paroja, Parja, Bodo paroja, Barong Jhodia Paroja, Chhelia Paroja, Jhodia Paroja, Konda Paroja, Paraja, Ponga Paroja, Sodia Paroja, Sano Paroja, Solia Paroja
56. Pentia
57. Rajuar
58. Santal

59. Saora, Savar, Saura, Sahara, **Arsi Saora**, **Based Saora**, **Bhima Saora**, **Bhimma Saora**, **Chumura Saora**, **Jara Savar**, **Jadu Saora**, **Jati Saora**, **Juari Saora**, **Kampu Saora**, **Kampa Soura**, **Kapo Saora**, **Kindal Saora**, **Kumbi Kancher Saora**, **Kalapithia Saora**, **Kirat Saora**, **Lanjia Saora**, **Lamba Lanjia Saora**, **Luara Saora**, **Luar Saora**, **Laria Savar**, **Malia Saora**, **Malla Saora**, **Uriya Saora**, **Raika Saora**, **Sudda Saora**, **Sarda Saora**, **Tankala Saora**, **Patro Saora**, **Vesu Saora**
60. Shabar Lodha
61. Sounti
62. Tharua, **Tharua Bindhani**

*(Note: Names in 'bold' indicate that they were enlisted/ modified subsequently)*

Annexure-III

**List of Primitive Tribal Groups of Orissa**

District	PTGs
Malkangiri	Bonda & Didayi
Keonjhar	Juang
Gajapati	Saora & Lanjia Saora
Rayagada	Dongaria Kondha, Lanjia Saora
Mayurbhanj	Lodha, Hill-Kharia & Mankirdia/Birhor
Ganjam	Saora
Kalahandi	Kutia Kondha
Nuapada	Chuktia Bhunjia
Angul	Paudi Bhuyan
Sundargarh	Paudi Bhuyan
Deogarh	Paudi Bhuyan
Kandhamal	Kutia Kondh

Annexure-IV

**List of ITDA of Orissa**

Sl. No.	Name of the ITDA
01	Nilgiri
02	Baripada
03	Kaptipada
04	Karanjia
05	Rairangpur
06	Keonjhar
07	Champua
08	Kuchinda
09	Bonai
10	Panposh
11	Sundargarh
12	Parlakhemundi
13	Th.Rampur
14	Koraput
15	Jeypore
16	Rayagada
17	Gunpur
18	Nawarangpur
19	Malkangiri
20	Baliguda
21	Phulbani

Sl. No.	Name of the Micro Project	Office Order in which the Micro Project was established
1.	Paudi Bhuyan Development Agency, Jamardihi	No. 7176/TRW dt. 10.3.1978
2.	Paudi Bhuyan Development Agency, Rugudakudar	No. 12360/TW dt. 1.5.1993
3.	Tumba Dev. Agency, Tumba	No. 14009 dt. 20.5.1978
4.	Chuktia Bhunjia Dev. Agency, Sunabeda	No. 29520 dt. 30.9.1994
5.	Paudi Bhuyan Dev. Agency, Khuntagaon	No. 2708 dt. 29.1.1979
6.	Bonda Dev. Agency, Mudulipada	Year 1976-77
7.	Didayi Dev. Agency, Kudumuluguma	No. 23449 dt. 5.8.1986
8.	Dongaria Kandh Dev. Agency, Chatikona	No. 14005 dt. 20.5.78
9.	Dongaria Kandh Dev. Agency, Parsali	No. 12091 TW dt. 15.4.1988
10.	Lanjia Soura Dev. Agency, Puttasinghi	No. 23270/ HTW dt. 4.8.1984
11.	Lanjia Soura Dev. Agency, Seranga	No. 2705/TRW dt. 29.1.1979
12.	Soura Dev. Agency, Chandragiri	
13.	Kutia Kandha Dev. Agency, Belghar	Year 1978-79
14.	Kutia Kandha Dev. Agency, Lanjigarh	Year 1986-87 Dt. 13.8.1986
15.	Juang Dev. Agency, Gonasika	No. 71731/TRW dt. 10.3.1978
16.	Lodha Dev. Agency, Moroda	No. 14382/TW dt. 6.6.1985
17.	Hill-Kharla & Mankirdia Dev. Agency, Jashipur	No. 36089 dt. 1.12.1986

## Annexure-VI

# GOVERNMENT OF ORISSA EXCISE DEPARTMENT.

No. IEx-42/2003/ 5676 / Date 25.09.2004

### NOTIFICATION

In exercise of the powers conferred by section 27 of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act 2 of 1915), the State Government do hereby direct that with effect from the date of issue of this notification the following amendments shall be made to the notification of the Government of Orissa in the erst-while Revenue and Excise Department No. 49731/R, dated the 24th July, 1965 published in the extraordinary issue No. 1176 of the Orissa Gazette, dated the 7th August, 1965, as amended from time to time, namely: -

### AMENDMENT

In the said notification, in the Table appearing under paragraph (1) of Part IX, for Serial No. (ii) and the entries made against them, the following shall be substituted, namely: -

- “(ii) 1. India made Whisky, Gin,  
Rum, Brandy, Vodka  
(Landing cost at Orissa State  
Beverages Corporation  
less than Rs. 600/- per case)      75°      Rs.110/- per LPL
2. India made Whisky, Rum,  
Gin, Brandy, Vodka  
(Landing cost at Orissa State  
Beverages Corporation  
Rs. 600/- to Rs. 850/- per case).      75°      Rs.125/- per LPL

3. India made Whisky, Rum,  
Gin, Brandy, Vodka  
(Landing cost at Orissa State  
Beverages Corporation  
Rs, 851/- to 2,500/- per case)      75°      Rs.150/- per LPL
4. India made Whisky, Gin, Brandy, Rum,  
Vodka (Landing cost at Orissa State  
Beverages Corporation Rs. 2501/-  
or more per case)      75°      Rs.175/-per LPL
5. Whisky, Brandy, Rum, Vodka  
imported in bulk and  
bottled in India      (70.1-78.9)°      Rs.275/- per LPL”

By order of the Governor  
Sd/-

Tarun Kanti Mishra  
Principal Secretary to Government

**Memo No. 5677 / Dt.25.09.2004**

Copy forwarded to the Director, Printing, Stationary and  
Publication, Orissa, Cuttack for information & necessary action.

2)He is requested to publish the above notification in the next  
issue of extra-ordinary Orissa Gazette.

3)An S.R.O. number may be allotted.

4)200 copies may be supplied to this Department.

Sd/-

Deputy Secretary to Government

**Memo No. 5678 / Dt.25.09.2004**

Copy forwarded to the Excise Commissioner, Orissa, Cuttack for  
information and necessary action.

Sd/-

Deputy Secretary to Government

## Annexure-VII

### **ORISSA REGULATION NO. 2 OF 1956\***

The Orissa Scheduled Areas Transfer of Immovable Property  
(By Scheduled Tribes) Regulation, 1956

#### **REGULATION**

### **TO CONTROL AND CHECK TRANSFERS OF IMMOVABLE PROPERTY IN THE SCHEDULED AREAS OF THE STATE OF ORISSA BY SCHEDULED TRIBES.**

WHEREAS it is expedient to control and check transfers of immovable property by the Scheduled Tribes in the Scheduled Areas of the State of Orissa;

Now, therefore, in exercise of the powers conferred by sub-paragraph (2) of paragraph 5 of the Fifth Schedule to the Constitution, the Governor of Orissa, is pleased to promulgate the following Regulation made by him in the Seventh Year of the Republic of India:

Short title 1. (1) This Regulation may be called the Orissa  
extent and  
and commence-  
ment Regulation, 1956.

(2) It extends to all the Scheduled Areas of the State of Orissa.

(3) It shall come into force at once.

Definitions 2. In this Regulation unless there is anything repugnant in the subject or context –



[(a) 'Agriculture' includes making land fit for cultivation, cultivation of land, harvesting of crops, horticulture, forestry, planting of trees, farming, cattle breeding, dairy farming, seed farming, pisciculture, agriculture, sericulture, piggery, poultry farming and such other activities as are generally carried on by agriculturists, dairy farmers, cattle breeders, poultry farmers and other category of persons engaged in similar activities including marketing of agricultural products, their storage and transport and the acquisition of implements and machinery in connection with any such activity; and 'agricultural purpose' shall be construed accordingly;]<sup>1</sup>

Orissa  
Regulation  
2  
of 1956

[(ab) "competent authority" means the Collector and includes any other officer or officers appointed by the State Government by notification to perform all or any of the functions of a competent authority under this regulation;]

Orissa Act  
of 1965

[(b) "Grama Panchayat" and "Grama Sasan" shall respectively mean the Grama Panchayat and Grama Sasan as defined in the Orissa Grama Panchayat Act, 1964;]

(c) "immovable property" does not include standing timber, growing crops or grass;

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<sup>1</sup> Added by Orissa Regulation 1 of 1975

\* This Regulation received the assent of the President on 2<sup>nd</sup> September 1956 and was first published in the Orissa Gazette Extraordinary dated 4<sup>th</sup> October 1956

(d) "prescribed" means prescribed by rules made under this Regulation;

[(d1) "public financial institution" means –

- |   |                      |
|---|----------------------|
| i) any bank to which the Orissa Cooperative Societies Act, 1962 applies ;   | Orissa Act 2 of 1963 |
| ii) a banking company within the meaning of the Banking Regulation Act, 1949;   | 10 of 1949           |
| the State Bank of India constituted under the State Bank of India Act, 1955;  | 23 of 1955           |
| iii) a subsidiary bank within the meaning of the State Bank of India (Subsidiary Banks) Act, 1959;  | 38 of 1959           |
| iv) corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;  | 5 of 1970            |
| v) the Agricultural Refinance Corporation established under the Agricultural Refinance Corporation Act, 1963;   | 1 of 1963            |
| vi) the Agricultural Finance Corporation Ltd., a company incorporated under the Companies Act, 1956;  | 1 of 1956            |
| vii) the Agro-Industries Corporation;   |                      |
| viii) any other financial institution which may be notified by the State Government;]   |                      |
| iv) "Scheduled Areas" and "Scheduled Tribes" shall, respectively mean the Scheduled Areas specified in respect of the State of Orissa in the Scheduled Areas (States of Bihar, Gujrat, Madhya Pradesh and Orissa) Order, 1977 and |                      |

the "Scheduled Tribes" specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time;

- v) "Transfer of immovable property" means mortgage with or without possession, lease, sale, gift, exchange or any other dealings with such property not being a testamentary disposition and includes a charge or contract relating to such property.

Transfer of immovable property by a member of the Scheduled Tribe

3. [(1) Notwithstanding anything contained in any law for the time being in force any transfer of immovable property by a member of a Scheduled Tribe, except by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any Agricultural purpose, shall be absolutely null and void and of no force or effect whatsoever, unless such transfer is made in favour of another member of a Scheduled Tribe:

**Provided that:-**

- i) nothing in this sub-section shall be construed as to permit any member of a Scheduled Tribe or his successor-in-interest to transfer any immovable property which was settled with such member of Scheduled Tribe by or under any authority of the State or the Central Government or under any law for the time being in force;
- ii) in execution of any decree for realisation of the mortgage money, no property

mortgaged as aforesaid shall be sold in favour of any person not being a member of a Scheduled Tribe; and

- iii) a member of a Scheduled Tribe shall not transfer any land if the total extent of his land remaining after the transfer will be reduced to less than two acres in case of irrigated land or five acres in case of un-irrigated land.

**Explanation-I:-** For the purposes of this sub-section, a transfer of immovable property:-

- a) in favour of a female member of a Scheduled Tribe, who is married to a person not belonging to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe; and
- b) shall include a transfer of immovable property to a person belonging to a Scheduled Tribe for consideration paid or provided by another person not belonging to any such Tribe.

**Explanation II:-** For the purposes of clause (iii) of the proviso, the expression "irrigated land" shall mean such land which is irrigated atleast for one crop in a year and the expression "un-irrigated land" shall be construed accordingly.<sup>1</sup>

- 2) Where a transfer of immovable property is made in contravention of sub-section (1) the competent authority may, either on

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**1** Substituted by Orissa Regulation 1 of 2002

application by any one interested therein [or on information received from the Grama Panchayat]<sup>2</sup> or on his own motion and after giving the parties an opportunity of being heard order ejectment against any person in possession of the property claiming under the transfer and shall cause restoration of possession of such property to the transferor or his heirs. In causing such restoration of possession the competent authority may take such steps as may be necessary for securing compliance with the said order or preventing any breach of peace.

[Provided that if the competent authority is of the opinion that the restoration of possession of immovable property to the transferor or his heirs is not reasonably, practicable he shall record his reasons therefore and shall, subject to the control of State Government, settle the said property with another member of a Scheduled Tribe or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act, 1962.

Explanation- Restoration of possession means actual delivery of possession by the competent authority to the transferor or his heir].<sup>3</sup>

[Provided further that where it is decided by the competent authority to settle the said property with any person other than a person belonging

Orissa  
Act  
33 of  
1962

---

2 Added by Orissa Regulation 1 of 2002

3 Added by Regulation 1 of 1966

to a Scheduled Tribe in accordance with the Orissa Government Land Settlement Act, 1962, he shall obtain prior approval of the concerned Grama Panchayat, accorded with the concurrence of the Grama Sasan]<sup>4</sup>

3) Subject to such conditions as may be prescribed an appeal if preferred within thirty days of the date of the order under sub-section (2) shall, if made by the Collector, lie to the [Revenue Divisional Commissioner]<sup>5</sup> and if made by any other competent authority to the Collector or any other officer specially empowered by the State Government in this behalf.

[(3-a) (i) Any order passed by the competent authority under sub-section (1) or under sub-section (2) may, within a period of five years from the date of such order, be revised either on own motion or otherwise, by the Revenue Divisional Commissioner if the order was passed by the Collector and by the Collector if it was passed by any other competent authority, after giving the parties concerned a reasonable opportunity of being heard; Provided that no order shall be revised under this sub-section if an appeal against such order has been entertained under sub-section (3).

ii) For the purpose of revising any order, the Revenue Divisional Commissioner or, as

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4 Added by Regulation 1 of 2002

5 Substituted by Regulation 1 of 1997

the case may be, the Collector shall follow such procedure as may be prescribed and shall have power to call for and examine the records of the proceedings wherein such order was passed and pass such order as he deems fit.)<sup>6</sup>

- 4) Subject to [ any order passed under Sub-Section (3) or sub-section (3-a)] the decision of the competent authority under sub-section (2) shall be final and shall not be challenged in court of law.

Eviction  
of  
person  
in  
authorized  
occupation  
of  
property

[3-A (1) Where a person is found to be in unauthorized occupation of any immovable property of a member of the Scheduled Tribes by way of trespass or otherwise, the competent authority may, either on application by the owner or any person interested therein, [or on information received from the Gram Panchayat] or on his own motion, and after giving the parties concerned an opportunity of being heard, order ejection of the person so found to be in unauthorized occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribe or to his heirs.

- 2) The provisions contained in sub-sections (2), (3) and (4) of section 3 shall, mutatis mutandis, apply to the proceedings instituted or initiated under subsection (1) ]<sup>1</sup>

<sup>6</sup> Substituted in Orissa Regulation 1 of 1997

<sup>1</sup> Substituted by Orissa Regulation 1 of 1975

- 3) In every case after finalization of the proceedings under sub-section (1), the competent authority shall make a report to the concerned Grama Panchayat about the order of ejection passed in respect of any person in unauthorized occupation of any immovable property of a member of a Scheduled Tribe and the restoration of possession of the property to such member on his heirs and in case of failure of such restoration, the reasons for such failure.]<sup>2</sup>

Reversion of land of Scheduled Tribes, which was transferred by fraud.

- [3-B (1) Every person who, on the date of commencement of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2000 (hereinafter referred to in this section as the Amendment Regulation of 2000), is in possession of agricultural land which belonged to a member of a Scheduled Tribe at any time during the period commencing on the 4<sup>th</sup> October, 1956 and ending on the date of commencement of the Amendment Regulation of 2000 shall, within two years of such commencement, notify to the Sub-Collector in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.
- 2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority

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2 Added in Orissa Regulation 1 of 2002



and the agricultural land shall on the expiration of the period aforesaid, revert to the person to whom it originally belonged and if that person be dead, to his heirs.

3) On receipt of the information under subsection (1), the Sub-Collector shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of Scheduled Tribe has been defrauded of his legitimate right he shall declare the transaction null and void and:-

a) Where no building or structure has been erected on the agricultural land prior to such finding, pass an order revesting the agricultural land in the transferor and if he be dead, in his heirs;

b) where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act 1894 and order the person referred to in subsection (1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor.

1 of  
1984

Provided that where the building or structure has been erected after the commencement of the Amendment Regulation of 2000, the provisions of clause (b) shall not apply;

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Collector.]<sup>3</sup>

Inadmissibility of a deed for the purpose of registration

4. Notwithstanding anything contained in the Indian registration Act, 1908 no deed of transfer of any immovable property executed in contravention of the provisions of this Regulation shall be accepted for Registration.

XVI of 1908

Surrender or relinquishment not valid unless settled by land Lord

5.(1) No surrender or relinquishment of any holding or a part of a holding by a tenant to a landlord under any law for the time being in force and applicable to such tenancy, such tenant being a member of a Scheduled Tribe, shall be valid unless after such surrender or relinquishment the landlord thereof by whatever name called either settles the said holding or part of the holding as the case may be, with another member of a Scheduled Tribe or else retains it in his possession or settles it with any other person with the approval of the competent authority when such member of a Scheduled Tribes is not available.

2) Any surrender or relinquishment shall be deemed to be a transfer of immovable property within the meaning of this Regulation and except as otherwise provided in subsection (1) the other provisions of this Regulation shall, so far as may be applied.

3) Nothing in this section shall apply to any tenant holding immediately under the State Government.

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3 Added in Orissa Regulation 1 of 2002

Bar to  
attachment  
of  
immovable

6. In execution of a money-decree against a member of a Schedule Tribe, no right, title or interest held by him in any immovable property within any Scheduled Area shall be liable to be attached and sold except as and if prescribed.

Punishment  
of  
offences.

7. (1) If any person is found to be in possession of any immovable property in contravention of the provisions of this Regulation, then, without prejudice to his liability to ejection under this Regulation, or where any person, having been evicted under any provision of this Regulation from any immovable property belonging to a member of a Scheduled Tribe, continues to be in possession of the same, he shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.
- 2) Where any person, having been evicted under any provision of this Regulation from any immovable property belonging to a member of a Scheduled Tribe, reoccupied the same shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both.
- 3) When a Court imposes sentence of fine or a sentence of which fine forms a part, the Court may, when passing judgement, order the whole or any part of the fine to be paid to the member of Scheduled Tribe to whom the immovable property belongs, or to his heirs.<sup>1</sup>

<sup>1</sup> Substituted by Orissa Regulation 1 of 2002

Offences to be tried by Executive Magistrate and to be cognizable

7. A (1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the Second class for the trial of the offences under this Regulations, and on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973, to be a Judicial Magistrate of the first class or of the second class, as the case may be.
- 2) [An offence under this Regulation may be tried summarily by a Magistrate.
- 3) Every offence under this regulation shall be cognizable.]<sup>1</sup>

2 of  
1974

Consideration money not refundable in case of invalid transfer

- 7 B. Notwithstanding anything contained in any law for the time being in force, where a transfer of immovable property is found to have been made in contravention of the provisions of section 3 and the transferee or any other persons in possession of the property has been evicted therefrom under the said section, the transferee shall not be entitled to the refund of any amount paid by him to the transferor by way of consideration for the transfer.

Burden of proof and power of Court to ignore admission.

- 7 C. Notwithstanding anything contained in any other law for the time being in force,
- a) If any proceedings under this Regulation the validity of the transfer of

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1 Substituted by Orissa Regulation 1 of 2002

relinquishment of any immovable property is called in question or if such proceedings are for the recovery of possession of immovable property the burden of proving that the transfer or relinquishment was valid shall lie on the transferee, [for any person claiming the right to the property through the transferee.]<sup>1</sup>

- b) the Court shall, in any suit or proceeding relating to the transfer of immovable property of a member of the Scheduled Tribes, have power to require any fact expressly or impliedly admitted by such member to be proved otherwise than by mere admission.

Amendment of the Limitation Act, 1963 in its Application to the Scheduled Area.

- 7 D. In the Limitation Act, 1963 in its application to Scheduled Areas in the Schedule, after the words "twelve years" occurring in the second column against article 65, the words, brackets and figure "but thirty years in relation to immovable property belonging to a member of Scheduled Tribe specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950" as modified from time to time shall be added.

Bar of jurisdiction of civil courts.

- [7 E. No Civil Court shall have jurisdiction to try and decide any suit or proceeding so far as it relates to any manner which any officer or other competent authority is empowered by or under this Regulation to decide.]<sup>2</sup>

1. Added in Orissa Regulation 1 of 1997

2. Added in Orissa Regulation 1 of 1997

Rules

8 (1) The State Government may from time to time make rules consistent with the provisions of this Regulation to carry out the purposes thereof.

2) All rules made under this section shall be published in the Gazette and on such publication shall have the effect as if enacted under this Regulation.

9 1) On and from the date of commencement of this Regulation the following shall stand repealed, namely:

a) The Agency Tracts Interest and Land Transfer Act, 1917.

Madras  
Act of  
1917

b) The enactment mentioned in column 2 of the Schedule to the extent specified in column 3 there of in so far as they are in force [in the scheduled areas].

2) Notwithstanding such repeal by this Regulation the repeal shall not affect -

a) the previous operation of such law or provisions so repealed or the validity, effect or consequence of anything done or suffered there under;

b) any right, title, privilege, obligation or liability acquired, accrued or incurred under the said law or provisions or

c) any investigation, legal proceedings or remedy in respect of such right, title, privilege, obligation or liability or

- d) any release or discharge from any debt, penalty obligation liability, claim or demand, and any such investigation, legal proceedings of remedy may be instituted, continued or enforced and any such penalty, forfeiture of punishment may be imposed as if his Regulation had not been made.<sup>1</sup>

### SCHEDULE

List of Enactment Repealed (See Section 9)

Number and year		Short title	Extent of Repeal
1	2	3	3
1	Madras Act 1 of 1917	Agency Tracts Interest and Land Transfer Act, 1917	The whole
2	Orissa Act IV of 1950	Orissa Merged States (Laws) Act, 1950	The words "subject to the restriction that no transfer of a holding from a member of a aboriginal Tribe to a member of a nonaboriginal Tribe shall be valid unless such transfer is made with the previous permission of the Sub-Divisional Magistrate concerned" in item 1 of clause (d) of Section-7 shall be omitted.
3	[(Central Provinces Act XI of 1893	Central Provinces Tenancy Act 1898 amended by Orissa Act XIII of 1953.	The proviso to clause (b) of sub-section (2) of section 46 shall be omitted.] <sup>1</sup>

1. Added in Orissa Regulation 1 of 1997

1. Omitted by Regulation 1 1966

## Annexure-VIII

### ORISSA REGULATION 2 OF 1956

# **<sup>1</sup>THE ORISSA SCHEDULED AREAS TRANSFER OF IMMOVABLE PROPERTY (BY SCHEDULED TRIBES) REGULATIONS, 1956**

This document is available at [www.ielrc.org/content/e5604.pdf](http://www.ielrc.org/content/e5604.pdf)

## **A. REGULATION**

*(A Regulation to control and check transfer of immovable property in the Scheduled Areas of the State of Orissa by Scheduled Tribes)*

Whereas, it is expedient to control and check transfers immovable property by the Scheduled Tribes in the Scheduled Areas of the State of Orissa.

Now, therefore, in exercise of the powers conferred by Sub-paragraph (2) of Paragraph 5 of the Fifth Schedule to the Constitution, the Governor of Orissa, is pleased to promulgate following Regulations made by him in the Seventh Year of Republic of India:

<b>Sec.</b>	<b>Page</b>	<b>Sec.</b>	<b>Page</b>
1. Short title, extent and commencement		7. Punishment for offences	
2. Definitions		7-A. Offences to be tried by Executive Magistrate and to be cognizable	
3. Transfer of Immovable property by a member of the Scheduled Tribe		7.B. Consideration money not refundable in case of invalid transfer	

<sup>1</sup> Received the assent of the President on the 21st September, 1956 and was first published in the Orissa Gazette, extraordinary, dated 4th October, 1956.



Sec.	Page	Sec.	Page
3-A. Eviction of persons in unauthorised occupation property		7.C. Burden of proof and power of Court to ignore admission	
3-B. Reservation of land of members of Scheduled Tribes which was transferred by fraud		7-D. Amendment of the Limitation Act, 1963 in its Application to the Scheduled Areas	
4. Inadmissibility of a deed for the purpose of registration		7-E. Bar of jurisdiction of Civil Courts	
5. Surrender or relinquishment not valid unless settled by landlord		8. Rules	
6. Bar to attachment of immovable property		9. Repeal Notification	

**1. Short title, extent and commencement** – (1) These Regulations may be called *the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956*.

2) It extends to all the Scheduled Areas of the State of Orissa.

3) It shall come into force at once.

**2. Definitions** - In this Regulation unless there is anything repugnant in the subject or context -

<sup>2</sup>(a) **“agriculture”** in eludes making land fit for cultivation. cultivation of land, improvement of land including development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting of trees, farming, cattle breeding, diary farming, seed farming, pisciculture, agriculture, sericulture, piggery, poultry farming and such other activities as are

2 Added by Orissa Regulation 1 of 1975.

generally carried on by agriculturists, diary farmers, cattle breeders, poultry farmers and other category of persons engaged in similar activities including marketing of agricultural products, their storage and transport and the acquisition of implements and machinery in connection with any such activity, and agricultural purpose shall be construed accordingly, (x x x)<sup>3</sup>

<sup>4</sup>((a-b) "**competent authority**" means the Collector and inch any other Officer or Officers appointed by the State Government by notification to perform all or any off functions of a competent authority under this regulation)

<sup>5</sup>((b) "Grama Panchayat" and "Grama Sasan" respectively mean the Grama Panchayat and Gr Sasan as defined in the Orissa Grama Panchayat 1964;)

(c) "**Immovable property**" does not include standing standing timber growing crops or grass,

<sup>6</sup>((d-l) "**public financial institution**" means,

- i) Any bank to which the Orissa Co-operative Sc Act, 1962 (Orissa Act 2 of 1963) applies.
- ii) A banking company within the meaning o Banking Regulation Act 10 of 1989.
- iii) The State Bank of India constituted under the Bank of India Act 23 of 1955.
- iv) A subsidiary Bank within the meaning of the Stf Bank of India (Subsidiary Bank) Act 33 of 1959 ;

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3 Subclause (aa) is Omitted vide Notifn. No. 11714-Legis-dt. 4.9.2002 by Regulation 1 of 2002 titled as OSATIP (by ST) Amendment Regulation 2000.

4 Re-numbered by Orissa Regulation 1 of 1975 and renumbered by Notification I 7894, dt. 27.7.97. Regulation 1 of 1997.

5 Substd. by Regulation 1 of 2002 dt. 4.9.2002.

6 Added by Orissa Regulation 1 of 1975.

- v) A corresponding new Bank within the meaning of 1 Banking Companies (Acquisition and Transfer Undertakings) Act, 5 of 1970 ;
- vi) The Agricultural Refinance Corporation established under the Agricultural Refinance Corporation Act 1963 ;
- vii) The Agricultural Finance Corporation Limited, a company incorporated under the Companies Act 1 of 1956;
- viii) The Agro-Industries Corporation ;
- ix) Any other financial institutions which may be notified by the State Government;

7((e) **“Scheduled Areas”** and **“Scheduled Tribe”** shall respectively means and

Scheduled Areas specified in respect of the State of Orissa in the Scheduled Areas (State of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 and the “Scheduled Tribes” specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time.)

(e-1) ( x x x )<sup>8</sup>

**Explanation** - For the purposes of conversion, one acre shall be equal to 0.4047 hectare.)

- f) **“Transfer of immovable property”** means mortgage with or without possession, lease sale, gift, exchange or any other dealings with such property not -being a testamentary disposition and includes a charge or contract relating to such property.

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7 Substituted by Orissa Regulation, 1 of 1979.

8 Omitted by Regulation 1 of 2002 dt. 4.9.2002.

### 3. Transfer of Immovable property by a member of the Scheduled Tribe -

“(1) Notwithstanding anything contained in any law for the time being in force any transfer of immovable property by a member of a Scheduled Tribe, except by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose, shall be absolutely null and void and of no force or effect whatsoever, unless such transfer is made in favour of another member of a Scheduled Tribe : Provided that -

- i) nothing in this sub-section shall be construed as to permit any member of a Scheduled Tribe or his successor-in-interest to transfer any immovable property which was settled with such member of Scheduled Tribe by or under any authority of the State or the Central Government or under any law for the time being in force;
- ii) in execution of any decree for realisation of the mortgage money, no property mortgaged as aforesaid shall be sold in favour of any person not being a member of a Scheduled Tribe; and
- iii) a member of a Scheduled Tribe shall not transfer any land if the total extent of his land remaining after the transfer will be reduced to less than two acres in case of irrigated land or five acres in case of unirrigated land.

**Explanation 1** - For the purposes of this sub-section, a transfer of immovable property :

- a) in favour of a female member of a Scheduled Tribe, who is married to a person not belonging to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe; and
- b) shall include a transfer of immovable property to a person belonging to a Scheduled Tribe for consideration paid or provided by another person not belonging to any such Tribe.

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9 Substituted by Orissa Regulation 1 of 2002 dt. 4.9.2002.

**Explanation II-** For the purposes of clause (iii) of the proviso, the expression "irrigated land" shall mean such land which is irrigated at least for one crop in a year, and the expression "unirrigated land" shall be construed accordingly"; and

(2) Where a transfer of immovable property is made in contravention of Subsec, (i) the competent authority may, either on application by any one interested therein<sup>10</sup> \*(or on information received from the Gram panchayat) or on his own motion and after giving the parties, an opportunity of being heard order ejection against any person in possession of the property claiming under the transfer and shall cause restoration of possession of such property or the transferor or his heirs. In causing such restoration of possession the competent authority may take such steps as may be necessary for securing compliance with the said order or preventing any breach of peace.

<sup>11</sup>(Provided that if the competent authority is of the opinion that the restoration of possession of immovable property to the transfer his heirs is not reasonably practicable, he shall record his reasons thereof and shall, subject to the control of the State Government settle the said property with another member of Scheduled Tribe or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act, 33 of 1962.

\*("Provided further that where it is decided by the competent authority to settle the said property with any person other than a person belonging to a Scheduled Tribe in accordance with the Orissa Government Land Settlement Act, 1962, he shall obtain prior approval of the concerned Grama Panchayat, accorded with the concurrence of the Grama Sasan.")

**Explanation -** Restoration of possession means actual delivery of possession by the competent authority to the transfer or his heirs)

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\* Added by Orissa Regulation of 1 of 2001 dt. 4.9.2002.

<sup>11</sup> Added by Orissa Regulation. 1 of 1966.

(3) Subject to such conditions as may be prescribed an appeal if preferred within thirty days of the order under Sub-sec (2) shall if made by the Collector lie to the <sup>12</sup> (Revenue Divisional Commissioner) and if made by any other competent authority to the Collector, or any other officer specially empowered by the State Government in this behalf.

<sup>13</sup>{(3-a) (i) Any order passed by the competent authority under sub-section (1) or under sub-section (2) may, within a period of five years from the date of such order, be revised, either on own motion or otherwise, by the Revenue Divisional Commissioner if the order was passed by the Collector and by the Collector if it was passed by any other competent authority, after giving the parties concerned a reasonable opportunity of being heard :

**Provided that** no order shall be revised under this subsection if an appeal against such order has been entertained under sub-section (3).

a) For the purpose of revising any order, the Revenue Divisional Commissioner or, as the case may be, the Collector shall follow such procedure as may be prescribed and shall have power to call for and examine the records of the proceedings wherein such order was passed and pass such order as he deems fit.) ;

4) Subject to the provisions of <sup>14</sup>(any order passed under Sub-sec. (3) or Subsec. (3-a)) the decision of the competent authority under Sub-section (2) shall be final and shall not be challenged in Court of law.

<sup>15</sup>**3-A. Eviction of persons in unauthorised occupation property - (1)**  
Where a person is found to be in unauthorised occupation of any immovable property of a member of the Scheduled Tribes by way of trespass or otherwise the competent authority may, either on application by the owner or any person interested therein, <sup>2</sup>(or on information received from the Grama Panchayat) or on his own motion,

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12 Substituted by Notification No. 7894 dt. 27.7.97.

13 Inserted by *ibid*.

14 Substituted by Notification No. 7894 dt. 27.7.97.

15 Added by Orissa Regulation. 1 of 1975.

and after giving the parties, concerned an opportunity of being heard order ejection of the person so found to be in unauthorised occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribes or to his heirs.

(2) The provisions contained in Sub-sections (2), (3) and (4) of Section 3 shall *mutatis mutandis* apply to the proceedings (instituted or initiated under Sub-sec. (1).

<sup>16</sup>“(3) In every case after finalisation of the proceedings under sub-section (1), the competent authority shall make a report to the concerned Grama Panchayat about the order of ejection passed in respect of any person in unauthorised occupation of any immovable property of a member of a Scheduled Tribe and the restoration of possession of the property to such member or his heirs and in case of failure of such restoration, the reasons for such failure.)”

<sup>17</sup>“(3-B. Reservation of land of members of Scheduled Tribes which was transferred by fraud - (1) Every person who, on the date of commencement of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2000 (hereinafter referred to in this section as the Amendment Regulation of 2000), is in possession of agricultural land which belonged to a member of a Scheduled Tribe at any time during the period commencing on the 4th October, 1956 and ending on the date of commencement of the Amendment Regulation of 2000 shall, within two years of such commencement, notify to the Sub-Collector in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

(2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land

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<sup>16</sup> Added by Orissa Regulation 1 of 2002 dt. 4.9.2002

<sup>17</sup> Inserted by *ibid.*

without any lawful authority and the agricultural land shall on the expiration of the period aforesaid, revert to the person to whom it originally belonged and if that person be dead, to his heirs.

(3) On receipt of the information under sub-section (1), the Sub-Collector shall make such enquiry as may be necessary about all such transactions or transfer and if he finds that the member of Scheduled Tribe has been defrauded of his legitimate right he shall declare the transaction null and void and, -

- a) where no building or structure has been erected on the agricultural land prior to such finding, pass an order revesting the agricultural land in the transferor and if he be dead, in his heirs;
- b) where any building or structure has been erected on the, agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 and order the person referred to in sub-section (1) to pay to the transferor the difference-, if any, between the price so fixed and the price actually paid to the transferor.

Provided that where the building or structure has been erected after the commencement of the Amendment Regulation of 2000, the provisions of clause (b) shall not apply :

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Collector.”)

**4. Inadmissibility of a deed for the purpose of registration -** Notwithstanding anything contained in the Indian Registration Act, XVI of 1908 no deed of transfer of any immovable property executed in contravention of provision of this Regulation shall be accepted for registration.



**5. Surrender or relinquishment not valid unless settled by landlord -**

(1) No surrender or relinquishment of any holding or a part of a holding by a tenant to a landlord under any law for the time being in force applicable to such tenancy; such tenant being a member of a Scheduled Tribe, shall be valid unless after such surrender or relinquishment the landlord thereof by whatever name called either settles the said holding or part of the holding, as the case may be, with another member of a Scheduled Tribe or else retains it in his possession or settles it with any other person with the approval of the competent authority when such member of a Scheduled Tribe is not available.

(2) Any surrender or relinquishment shall be deemed to be a transfer of immovable property within the meaning of this Regulation and except as otherwise provided in the Sub-section (1) the other provisions of this Regulation shall so far as may be applied.

(3) Nothing in this section shall apply to any tenant holding immediately under the State Government.

**6. Bar to attachment of immovable property -** In execution of a money decree against a member or a Scheduled Tribe, no right, title or interest held by him in any immovable property within any Scheduled Area shall be liable to be attached and sold except as and if prescribed.

**18(7. Punishment for offences -** (1) If any person is found to be in possession of any immovable property in contravention of the provisions of this Regulation, then, without prejudice to his liability to ejectment under this Regulation, or where any person, having been evicted under any provision of this Regulation from any immovable property belonging to a member of a Scheduled Tribe, continues to be in possession of the same, he shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

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18 Substituted by Orissa Regulation, 1 of 2002 dt. 4.9.02.

(2) Where any person, having been evicted under any provision of this Regulation from any immovable property belonging to a member of a Scheduled Tribe, reoccupies the same shall be punishable with rigorous imprisonment for a term, which may extend to three years, or with fine, which may extend to ten thousand rupees, or with both.

(3) When a Court imposes sentence of fine or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine to be paid to the member of Scheduled Tribe to whom the immovable property belongs, or to his heirs.

**7-A. Offences to be tried by Executive Magistrate and to be cognizable – (1)**

The State Government may confer, on a Executive, Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of the offences under this Regulation and on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973, to be a Judicial Magistrate of the first class or of the second class, as the case maybe.

(2) An offence under this Regulation may be tried summarily by a Magistrate.

(3) Every offence under this Regulation shall be cognizable.)

**7.B. Consideration money not refundable in case of invalid transfer -**

Notwithstanding anything contained in any law for the time being in force, where transfer of immovable property is found to have been made in contravention of the provisions of Section 3 and the transferee or any other person in possession of the property has been evicted therefrom under the said section, the transferee shall not be entitled to the refund of any amount paid by him to the transfer by way of consideration for the transfer.

**7.C. Burden of proof and power of Court to ignore admission -**

Notwithstanding anything contained in any other law for the time being in force.

- a) If in any proceedings under this Regulation the validity of the transfer or relinquishment of any immovable property is called in question or if such proceedings are for the recovery of possession of immovable property, the burden of proving that the transfer of relinquishment was valid shall lie on the transferee <sup>19</sup>(or any person claiming the right to the property through the transferee) :
- b) The Court shall in any suit or proceeding relating to the transfer of immovable property a member of the Scheduled Tribes have power to require in fact expressly or impliedly admitted by such member to be proved otherwise than by admission.)

<sup>20</sup>(7-D - Amendment of the Limitation Act, 1963 in Its Application to the Scheduled Areas - In the Limitation Act, 1968 in its application to the Scheduled Areas in the Schedule, after the words "twelve years" occurring in the second column against Art, 65, the words "twelve years" and figure "but thirty years in relation to immovable property belonging to a member, of a Scheduled Tribe specified in respect of the State of Orissa in <sup>21</sup>(the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time shall be added.)

<sup>22</sup>(7-E. Bar of jurisdiction of Civil Courts - No Civil Court shall have jurisdiction to try and decide any suit or proceeding so far as it relates to any manner which any officer or other competent authority is empowered by or under this Regulation to decide.)

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19 Substituted by Orissa Regulation 1 of 2002 dt. 4.9.02.

20 Inserted by Notification No. 7894 dt. 27.7.1997.

21 Which was inserted therein by Orissa regulation of 1975 shall be deemed to have been so inserted with effect from the 2 day of October, 1973 (Orissa Regulation 1 of 1976).

22 Inserted by Notification No. 7894 dt. 27.7.1997, Regulation 1 of 1997.

**8. Rules -**

- 1) The State Government may from time to time make Rules consistent, with the provisions of this Regulation to carry out the purposes thereof.
- 2) All Rules made under this section shall be published in the Gazette and on such application shall have the effect as if enacted under this Regulation.

**9. Repeal -**

- 1) On and from the date of commencement of this regulation shall stand repealed namely.
  - a) The Agency Tracts Interests and Land Transfer Act, 1917 (Madras Act of 1917) ;
  - b) The enactments mentioned in Column 2 of the (Scheduled to the extent specified in Column 3 thereof in so far as they are in force <sup>23</sup>(in the Scheduled Areas).
- 2) Notwithstanding such repeal by this regulation the repeal shall not effect -
  - a) the previous operation of such law of provisions so repealed or validity affect or consequence of anything done or suffered thereunder ;
  - b) any right title, privilege, obligation or liability acquired, accrued or incurred under the said law or provision; or
  - c) any investigation, legal proceedings or remedy in respect of such right, title, privilege obligation or liability; or
  - d) any release or discharge from any debt, penalty, obligation, liability, claim or demand and any such investigation, legal

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23 Substituted by Orissa Regulation 1 of 1966.

proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Regulation had not been made.

**NOTE-** Madras Act 1 of 1917, Orissa Act IV of 1950 & Central provinces Act XI of 1898 repealed by Regulation 1 of 1966.

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Annexure-IX

**The Orissa Gazette  
EXTRAORDINARY  
PUBLISHED BY AUTHORITY**

**No. 2091, CUTTACK, FRIDAY, NOVEMBER 15, 2002/KARTIKA 24, 1924  
PANCHAYATI RAJ (G. P.) DEPARTMENT**

**NOTIFICATION**

The 14th November 2002

S. R. O. No. 934/2002—Whereas the draft of certain rules which the State Government propose to make in exercise of the powers conferred by clause (w) of subsection (1) of Section 44 read with Section 150 of the Orissa Grama Panchayats Act. 1964 (Orissa Act 1 of 1965) was published as required by sub-section (1) of Section 150 of the said Act in the extraordinary issue No. 1241, dated the 9th August 2002 of the *Orissa Gazette* under the notification of Government of Orissa in the Panchayati Raj (Grama Panchayat) Department No. 9570/G.P., dated the 6th July 2002 bearing S.R.O. No. 701/2002 inviting objections and suggestions from all persons likely to be affected thereby till the expiry of a period of thirty days from the date of publication of the same in the *Orissa Gazette*;

And whereas objections and suggestions received during the period specified above have been duly considered by the State Government.

Now, therefore, in exercise of the powers conferred by clause (w) of sub-section (1) of Section 44 read with Section 150 of the said Act, the State Government do hereby make the following rules, namely :—

1. (1) These rules may be called the Orissa Grama Panchayats (Minor Forest Produce Administration) Rules, 2002.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. (1) In these rules, unless the context otherwise requires—
- i) "Act" means the Orissa Grama Panchayats Act, 1964 ;
  - ii) "Form" means a form appended to these rules :
  - iii) "Minor Forest Produce" means any or all of the Minor Forest Produces specified In the Schedule appended to these rules:
  - iv) "Section" means section of the Act; and
  - v) "Trading year" means the seasonal year commencing from the first day of October and completing on the thirtieth day of .September of the following year.
- (2) All oilier words and expression used but not defined in these rules shall have the same meaning as have been respectively assigned to them in die Act.
3. (1) The Grama Panchayat shall have the power to regulate procurement and trading of minor forest produce whether produced in Government lands and forest areas within the limits of the Grama or and trading of collected from Reserve Forests and brought into the Grama.
- (2) In case of the forest areas where Vana Sanrakshyana Samiti has been formed the Grama Panchayats shall give priority to such Samities and its members in the matter of collection and trading of minor forest produce.
4. (1) Any person intending to procure Minor Forest Produce from the primary gatherers or to trade in of trades minor forest produce within the limits of Grama during any trading year shall register himself as a trader in Minor Forest Produce in the Grama Panchayat.
- (2) Any person intending to be registered as a trader in minor forest produce shall apply to the Grama Panchayat in Form No.1. All such applications shall be placed before the Grama Panchayat immediately in its next meeting and with the approval of the

Grama Panchayat the Sarpanch shall register live applicant as a trader in minor forest produce for one trading year ending next September and grant a Certificate of Registration in Form No.2 to that effect.

- (3) The names of all the traders of minor forest produce registered under sub-rule (2) each year shall be recorded in a Permanent Register to be maintained in Form No.3 in the Grama Panchayat.
  - (4) At the time of filing of application under sub-rule (2) the applicant shall deposit with the Grama Panchayats the required registration fees for each item of Minor Forest Produce applied for.
  - (5) No application for registration shall be entertained if the required fees has not been deposited under sub-rule (4)
  - (6) The fees for registration for every item of Minor Forest Produce shall be such as may be notified by Government from time to time.
5. (1) (a) In the month of September even' year the Panchayat Samiti shall by adopting a resolution to that effect fix-up the minimum price of procurement of different Minor Forest Produces payable to the primary minimum price gatherers during the next trading year, which shall be applicable to all the Grama Panchayats within the block.

Provided the Grama Panchayat shall be competent to modify the minimum price so fixed under this sub-rule or sub-rule (3) by the Panchayat Samiti according to the local need by adopting a resolution to that effect

- (b) The representatives of Divisional Forest Officer, Tribal Development Cooperative Corporation, Orissa Forest Development Corporation and Tribal Co-operative Marketing Development Federation of India Ltd., shall be invited to the meetings convened under this sub-rule or under sub-rule(3).



- (2) The minimum price fixed under sub-rule (1) or sub-rule (3) shall be notified in the notice board of the Panchayat Samiti and copies thereof shall be communicated to the Collector. Divisional Forest Officer. District Panchayat Officer. Sub-Collector and all the Grama Panchayats within the Block.
  - (3) If at any time or in any case it appears to the Collector that a Panchayat Samiti has failed to fix up the minimum price for procurement of Minor Forest Produce under sub-rule (1) the Collector shall convene a Special Meeting of the Panchayat Samiti preferably in the month of October to fix-up the minimum price of procurement of Minor Forest Produce.
  - (4) On receipt of intimation under sub-rule(2) regarding fixation of the minimum procurement price of the Minor Forest Produce fixed under sub-rule(1) or (3) the Grama Panchayat shall place the same before the Grama Sabha in its next meeting for ratification.
6. (1) A trader registered under these rules shall furnish a monthly return of Minor Forest Produce to the Furnishing Grama Panchayat within fifteen days of the following month in Form No.3.
    - (2) Within one month of the closure of the trading year .the dealer shall also file an annual return of the Minor Forest Produce for the trading year in Form No.3.
    - (3) The Grama Panchayat shall communicate a copy of the annual return received under sub-rule(2) to the Forest Range Officer concerned.
  7. (1) If at any time or in respect of any case it appears to the Sarpanch that a trader ,registered under these rules ,has failed to-
    - i) Pay the minimum price of procurement to the Primary gatherers fixed by the Grama Panchayat in Minor Forest Produce;

- ii) register himself in the Grama Panchayat; or
  - iii) Comply with the conditions of registration; the Sarpanch shall issue a notice to such dealer or person, as the case may be to show cause as to why the registration shall not be cancelled or action shall not be taken against him for such illegal trading.
- (2) If such trader or person fails to show cause within seven days of receipt of the notice or show cause which is not satisfactory, the Sarpanch shall conduct an inquiry and after giving the traders or the person an opportunity of being heard, place his inquiry report before the Grama Panchayat in its next meeting together with the explanation, if any, received from such trader or person for its decision.
- (3) On consideration of the inquiry report of the Sarpanch and the explanation of the trader if the Grama Panchayat are satisfied that circumstances specified in sub-rule(1) exist in relation to such trader or person, the Grama Panchayat shall resolve to cancel the registration of the dealer for the trading year and may also refuse to register him as trader for the subsequent trading years;

Provided that if the person is engaged in the trading of minor forest produce without registering himself in Grama Panchayat the Sarpanch or Secretary of the Grama Panchayat shall lodge necessary complaint before the Divisional Forest Officer concerned for taking appropriate action against the person concerned for such illegal trade under the appropriate provisions of law.

- 4) In pursuance of the decisions of the Gram Panchayat under sub-rule (3), the Sarpanch/Secretary shall cancel the registration of the trader and in case of the person carrying an illegal trade in Minor Forest Produce, the Sarpanch shall forthwith lodge the complaint with the concerned Divisional Forest Officer.

- (5) If after cancellation of the registration under sub-rule (4) it appears to the Sarpanch/Secretary that the trader is still continuing his trade in the Minor Forest Produce, the Sarpanch/Secretary shall report the matter to the Divisional Forest Officer for taking action against the person under the appropriate provisions of law.
- (6) The item of Minor Forest Produce seized by the Divisional Forest Officer from the dealer or person shall be sold by public auction and the sale proceeds thereof be deposited under the appropriate Head of Account as provided under the Orissa Forest Act.
8. Any person aggrieved by the decision of the Grama Panchayat under these rules may prefer an appeal under Section 133 of the Act. The appeal shall be disposed of within thirty days from the date of admission of the appeal.
9. (1) Public Sector undertakings like the Orissa Forest Development Corporation, Tribal Development Co-operative Corporation and Tribal Co-operative Marketing Development Federation of India Ltd, shall be deemed to have been registered under these rules.
- (2) Notwithstanding the relaxation provided under sub-rule (1), the provisions of rules 6, 7, and 8 shall apply to these public sector undertakings.
10. The Government may from time to time issue such instructions, as occasion may require for,—
- a) smooth implementation of these rules and
  - b) Removal of any doubt or difficulties arising out of implementation of these rules.

## **SCHEDULE**

### **(See rule 2(i)(iii))**

#### **LIST-OF MINOR FOREST PRODUCES**

1. Tamarind de-seeded Tamarind, Tamarind. seeds.
2. Mahua Flower
3. Hill Brooms
4. Thorn Broom (Jhadu or Ghoda Lanji)
5. Phula Jhadu
6. Broom Grass
7. Nux Vomica (Kochila Seseds)
8. Hardad
9. Baliada
10. Anla
11. Soaj Nut (Ritha Phala)
12. Marking Nut (Bhalia)
13. Cleaning Nut (Ninnala)
14. Honey
15. Siali Leaves
16. Sabai Grass
17. Mngo Kernel
18. Thatch Grass
19. Simul Cotton
20. Arrow Root (Palua)
21. Dhatuki Flower

22. Putrani
23. Sikakai
24. Jungal Jada or Gaba
25. Palasa Seed
26. Siali Seed
27. India Jaba(Korai Seed)
28. Gila(Seed and Coat)
29. Benachera
30. BanaHaladi
31. Gaba
32. Basil
33. BanaKalatha
34. Makhena Seed(Kanla Padma)
35. Tala Makhana Seed
36. Baidanka Seeds
37. Baghanakhj Seeds
38. Kamala Gundi Fmit
39. Landa Baguli
40. Bela
41. Chirai(a(Bhui Neem)
42. Khajuripata
43. RihiniFruit
44. Bhurusunga Leaves
45. Phenaphena Fmil

46. Rasana Root
47. SidhaFmit
48. Selhabari
49. KthaLai
50. AundiLai
51. KheluaLai
52. Suatn Lai
53. Eksira Fruit
54. Katha Chhatu(Mushroom)
55. Mat Reed(Sapa Masina Grass)
56. Anania Mula
57. Antia Pata
58. Nageswar Flower
59. MankadKendu
60. Atundi Fruit
61. MaiwlaSeed
62. Kusum Seed 61 Karanja Seed
64. Neem Seed
65. Char Seed
66. Chakunda Seed
67. Bbul Seed
68. Balbirang Seed

Annexure-X

**THE PROVISIONS OF THE PANCHAYATS  
(EXTENSION TO THE SCHEDULED AREAS)  
ACT, 1996 No.40 OF 1996  
(24th December, 1996)**

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Be it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

**Short title**

1. This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996

**Definition**

2. In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution.

**Extension of part IX of The Constitution**

3. The provision of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.

**Exceptions and modifications to part IX of The Constitution**

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:-

- a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
- b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;
- c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;
- d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;
- e) every Gram Sabha shalli. approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level; ii. be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;
- f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause(e);
- g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution; Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats; Provided further that all seats



of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;

- h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level: Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;
- i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;
- j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;
- l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;
- m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-
  - i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

- ii) the ownership of minor forest produce;
- iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
- iv) the power to manage village markets by whatever name called;
- v) the power to exercise control over money lending to the Scheduled Tribes;
- vi) the power to exercise control over institutions and functionaries in all social sectors;
- vii) the power to control over local plans and resources for such plans including tribal sub-plans;
- n) the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha;
- o) the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.

**Continuance of existing laws on panchayats:**

5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which this Act receives the assent

of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President;

Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council, by each House of the Legislature of that State.

*K.L. MOHANPURIA,  
Secy. To the Govt. of India*

Annexure- XI

Scheduled Areas of Orissa

Sl. No.	Name of the District	Detail of the Tracts declared as Scheduled Areas	Area of the tract under Scheduled Areas (insq.km)	Population (Total &ST) as per 2001 Census		Major Tribes concentration
				Total	ST	
I	II	III	IV	V	VI	VII
1	Mayurbhanja	Whole District	10416.60	2223456	1258459	Santal, Munda, Ho, Kolha, Bhumij
2	Sundergarh	Whole Dist	9921.40	1830673	918903	Oraon, Kisan, Munda, Gond, Bhuyan
3	Koraput	Whole Dist	8534.00	1180637	585830	Kondh, Paroja, Gond, Gadaba
4	Rayagada	Whole Dist	7584.70	831109	463418	Saors, Kondh, Kondh Gauda, Bagata
5	Nowrangpur	Whole Dist	5135.30	1025766	564480	Gond, Bhottada, Omanatya, Dharua

6	Malkangiri	Whole Dist	6115.30	504198	289538	Koya, Paroja, Bhumia, Dharua Kondh, Gond, Kondh Gauda Saora, Kulis, Mahali, Shabara Lodha
7	Kondhmal	Whole Dist	7645.70	648201	336809	
8.	Gajapati	(I) R. Udayagiri Tahsil of Parlakhemundi subdivision (II) Guma Block of Parlakhemundi Tahsil of Parlakhemundi subdivision (III) Rayagada Block of Parlakhemundi Tahsil of Parlakhemundi subdivision	2498.80	347022	237489	
9.	Sambalpur	Kuchinda Tahsil of Kuchinda sub-divisions	2367.30	255359	142972	Oraon, Kisan, Mirdha, Gond, Kondh

10.	Keonjhar	2 Tahsils of Keonjhar Sub-divisions namely (I) Keonjhar Tahsil (II) Telkoi Tahsil 2 Tahsils of Champua Sub-divisions namely (I) Champua Tahsil (II) Barbil Tahsil	6935.60	1148700	594840	Santal, Bathudi, Saonti, Sabar Iodha, Munda, Kol-lohara
11.	Kalahandi	2. Blocks namely: (i) Th. Rampur and (ii) Lanjigarhof Bhawanipatna subdivision	1323.50	140912	74543	Gond, Kondh, Baiga
12.	Balasore	Nilagiri block of Nilagiri Subdivision	223.60	110232	61902	Santal, Munda, Kolha, Bathudi, Bhumija

13.	Ganjam*	Suruda Tahsil Excluding Gazalbadl and Gochha Gram Panchyat in Ghumsur Subdivision (Bhanjanagar)	912.00	165795	16898	Sabaralodha, Kondh, Matya, Kondh & Gouda
		<b>Total Scheduled Area</b>	<b>69613.80</b>	<b>10412060</b>	<b>5546081</b>	
		<b>State Total</b>	<b>155707.00</b>	<b>36804660</b>	<b>8145081</b>	
		<b>Percentage of Scheduled areas to that of State</b>	<b>44.71</b>	<b>28.29</b>	<b>68.09</b>	

\* Not included in Tribal Sub Plan Areas.

(Courtesy: TSP Study, SCSTRTI, Bhubaneswar)

## Annexure-XII

### **Devolution of Powers GOVERNMENT OF ORISSA Panchayati Raj Department**

**No.I-PS-2/2003\_\_6886\_\_\_\_\_/PS Dated\_04 /07/2003**

From:

Sri Pratip K. Mohanty, IAS,

Chief Secretary & Chief Development Commissioner, Orissa.

To

The Principal Secretary to government, Finance Department/

The Principal Secretary to government, S.T & S.C Dev. Deptt./

The Principal Secretary to government F.S & C.W Department/

The Commissioner-cum-Secretary to government, Agriculture  
Department

The Commissioner-cum-Secretary to Govt. Cooperation Department

The Commissioner-cum-Secretary to Govt. School & Mass Edn. Deptt.

The Commissioner-cum-Secretary to Govt. Health & Family Welfare  
Deptt./

The Commissioner-cum-Secretary to Govt. Women & Child Dev. Deptt.

The Commissioner-cum-Secretary to government, F. & A.R.D  
Department

The Commissioner-cum-Secretary to Govt. Water Resources  
Department /



The Commissioner-cum-Secretary to Govt. Rural Development Dept.

**Sub: Devolution of powers to Panchayati Raj Institutions (PRIs).**

Sir/Madam,

In inviting your kind attention to the subject cited above, the mandate of the Constitution is reiterated for appreciation of the matter.

1. As per 73rd Amendment of the Constitution, the panchayati raj Institutions (PRIs) are required to be endowed with adequate responsibilities and powers to enable them to function as the "Institutions of self-government". Article 243-G of the Constitution of India, which deals with the crucial issue of powers, authority and responsibilities of the panchayats (3 tier of panchayats) reads as: "Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon the panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to (a) the preparation of plans for economic development and social justice; and (b) the implementation of such schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."
2. Panchayat laws of Orissa have been amended consistent with provisions of 73rd Amendment of the Constitution. Section 3(3) of

the Orissa zilla parishad Act, 1991 has since been amended. Steps are being taken to incorporate similar provisions by amending the Orissa panchayat samiti Act, 1959 and the Orissa grama panchayat Act, 1964 to enable the PRIs to function as institutions of self-government. It is necessary to make panchayati raj Institutions clear about the role that they are expected to play for economic development and social justice.

3. After careful consideration, government has been pleased to assign definite functions and provide functionaries to PRIs for implementation/execution of functions as mentioned hereunder.

#### **4. AGRICULTURE DEPARTMENT-**

**The Functions, which are transferred, include** Kharif and Rabi programme, Soil conservation, Horticulture and water shed activities.

- 4.1. District Agriculture Officer will remain accountable to zilla parishad for preparation and approval of District Kharif and Rabi programme. Similarly the District Soil Conservation Officer and the District Horticulture Officer will remain accountable for preparation of plans and implementation of schemes relating to soil conservation, watershed and horticulture in the district.
- 4.2. Casual leave of above mentioned officers will be sanctioned by the president, zilla parishad.
- 4.3. President, ZP will supervise the activities of the above-mentioned schemes. He will also report about their

performance to the Head of the Department who will take appropriate steps on the report of the zilla parishad.

- 4.4. Junior Agriculture Officer will remain accountable to panchayat samiti for preparation and approval of Kharif and Rabi programme. Chairman, panchayat samiti will review the Kharif and Rabi programme and report about performance of duties to the zilla parishad. Project Director, DRDA & Ex-Officio Executive Officer, Z.P will take up the matter with the District Level Officers of the Department and Head of the Department.
- 4.5. Chairman, PS will sanction **casual leave** of the J.A.O.
- 4.6. Village Agriculture Worker will attend the grama panchayat meeting. sarapanch of the G.P will visit V.A.W Centre and report about performance of duties. Such report will be sent to the BDO and Chairman of the P.S who will take appropriate action.

## **5. COOPERATION DEPARTMENT-**

- 5.1. Deputy Registrar/Assistant Registrar of Cooperative Societies will be accountable to the zilla parishad for preparation and implementation of credit plan. president, zilla parishad will visit primary cooperative societies, give his suggestions and recommend for smooth implementation of cooperative activities.

- 5.2. Casual leave of Deputy/Assistant Registrar of Cooperative Societies will be sanctioned by the president, zilla parishad.
- 5.3. President, Z.P will give report about performance of Dy.Registrar/Asst.Registrar to the Head of the Department who will take appropriate action.
- 5.4. Inspector of Cooperative Societies will remain accountable to panchayat samiti for preparation and implementation of credit plan. Chairman, panchayat samiti can visit the primary cooperative societies and give his suggestions for implementation of the credit plan.
- 5.5. Sarapanch can send report regarding activities of Primary Cooperative Societies to the Chairman, P.S and B.D.O, panchayat samiti.

**6. SCHOOL AND MASS EDUCATION DEPARTMENT-**

- 6.1. Circle Inspector/District Inspector of Schools will be accountable to zilla parishad for activities relating to primary education, non-formal education and adult education in the district.
- 6.2. President, Z.P will sanction casual leave of C.I./D.I of Schools.
- 6.3. Suggestions and report of the president, Z.P will be considered by the Head of the Department promptly and remedial measures will be taken.
- 6.4. Sub-Inspector of Schools will be accountable to the panchayat samiti for activities relating to primary education.

adult education and non-formal education. He will help BDO in drawal and disbursement of salary of primary school teachers.

- 6.5. Transfer-** A Committee comprising Chairman, BDO and D.I of Schools will make transfer of primary school teachers within the panchayat samiti and limits of Educational District. The recommendations of the sarpanches will be given due weightage for transfer within the panchayat samiti. If it is considered to transfer a teacher from one P.S to another P.S, the above-mentioned Committee will recommend the same to the zilla parishad. A committee comprising president, zilla parishad, Executive Officer, zilla parishad and C.I of Schools/D.I of Schools will take decision regarding inter-Block transfer of Primary School teachers within the Educational District.
- 6.6. Visit of Schools-** Chairman, P.S and sarpanch can visit the Primary Schools, non-formal education and adult education centers.
- 6.7.** The sarpanch of the G.P. will sanction casual leave of only Headmaster-in-charge Headmaster of Primary schools. sarpanch can verify the attendance of teachers and they can report about absence of teachers. Such report will be enquired and appropriate action will be taken on the report of the sarpanch.

**7. FOOD SUPPLIES & COMSUMER WELFARE DEPTT.**

- 7.1. Civil Supplies Officer will remain accountable to zilla parishad for public distribution system.
- 7.2. Casual leave of Civil Supplies Officer will be sanctioned by the president, zilla parishad.
- 7.3. Report of the president, zilla parishad regarding performance of duties by the C.S.O will be given due weightage by the Head of the Department.
- 7.4. Inspector of Civil Supplies will remain accountable to the panchayat samiti for public distribution system.
- 7.5. Chairman, panchayat samiti can report about performance of duties by Inspector of Civil Supplies. The report will be sent to the Project Director, DRDA & Ex-Officio Executive Officer of the zilla parishad and president, Z.P. Appropriate action will be taken on such report.

**8. S.T & S.C DEVELOPMENT DEPARTMENT-**

- 8.1. District Welfare Officer will remain accountable to the zilla parishad for primary education activities of ST & SC Development Department.
- 8.2. Casual leave of District Welfare Officer will be sanctioned by the president, zilla parishad.
- 8.3. President can report about performance of duties by the District Welfare Officer to the Head of the Department for appropriate action.

8.4. Welfare Extension Officer (WEO) will remain accountable to the panchayat samiti for activities assigned to him.

8.5. Sarapanch and Chairman, panchayat samiti can visit Sevashrams, give suggestion for improvement and report about performance of duties by the Welfare Extension Officer and Sevashram teachers. The report will be sent to the Project Director, DRDA & Ex-Officio Executive Officer of the Z.P and president, Z.P for appropriate action.

**9. HEALTH & FAMILY WELFARE DEPARTMENT-**

9.1. Chief District Medical Officer will remain accountable to zilla parishad for health and family welfare schemes. president, zilla parishad can visit primary health centers, send his recommendation to the Head of the Department. president, Z.P can report about performance of the Chief District Medical Officer to the Head of the Department for appropriate action.

9.2. President, zilla parishad will sanction casual leave of Chief District Medical Officer.

9.3. The doctors of Primary health centers/hospitals will remain accountable to the panchayat samiti for health and family welfare schemes. Chairman, panchayat samiti can visit primary health centers/hospitals.

9.4. The casual leave of only Medical Officer in charge of PHC/ Hospitals will be sanctioned by the Chairman of P.S.

- 9.5. As and where necessary, report of the Chairman, PS regarding attendance of doctors will be sent Chief District Medical Officer and E.O. of Z.P. for appropriate action.
- 9.6. Village Health Workers and ANMs will attend grama panchayat meeting and will remain accountable to grama panchayat for activities at the village level.
- 9.7. Sarapanch/naib-sarapanch whosoever is a woman will be competent to sanction casual leave to Village Health Worker/A.N.M.
- 9.8. As and where necessary, report of sarapanch/ naib-sarapanch whosoever is a woman regarding attendance of Village Health Workers and A.N.M will be sent to the Medical Officer of the PHC/Hospital and Chairman, panchayat samiti for appropriate action.

**10. WOMEN & CHILD DEVELOPMENT DEPARTMENT-**

- 10.1. District Social Welfare Officer will remain accountable to the zilla parishad for social security schemes and mid-day meal programme.
- 10.2. President, zilla parishad will sanction casual leave of District Social Welfare Officer.
- 10.3. Report of president, Z.P regarding performance of duties by the District Social Welfare Officer will be given due weightage by the Head of the Department.



- 9.5. As and where necessary, report of the Chairman, PS regarding attendance of doctors will be sent Chief District Medical Officer and E.O. of Z.P. for appropriate action.
- 9.6. Village Health Workers and ANMs will attend grama panchayat meeting and will remain accountable to grama panchayat for activities at the village level.
- 9.7. Sarapanch/naib-sarapanch whosoever is a woman will be competent to sanction casual leave to Village Health Worker/A.N.M.
- 9.8. As and where necessary, report of sarapanch/ naib-sarapanch whosoever is a woman regarding attendance of Village Health Workers and A.N.M will be sent to the Medical Officer of the PHC/Hospital and Chairman, panchayat samiti for appropriate action.

#### **10. WOMEN & CHILD DEVELOPMENT DEPARTMENT-**

- 10.1. District Social Welfare Officer will remain accountable to the zilla parishad for social security schemes and mid-day meal programme.
- 10.2. President, zilla parishad will sanction casual leave of District Social Welfare Officer.
- 10.3. Report of president, Z.P regarding performance of duties by the District Social Welfare Officer will be given due weightage by the Head of the Department.

- 10.4. Child Development Project Officer and Social Education Organiser will remain accountable to the panchayat samiti for social security schemes and mid-day meal programme.
- 10.5. Chairman/Vice-Chairman whosoever is a woman will sanction casual leave of CDPO.
- 10.6. The suggestion regarding smooth implementation of social security scheme and mid-day meal programme and performance of duties by the C.D.P.O and S.E.O will be sent to the Executive Officer of zilla parishad and District Social Welfare Officer for appropriate action.
- 10.7. Sarapanch/naib-sarapanch whosoever is a woman will send report about attendance of Anganwadi Worker and such report will be considered by the C.D.P.O and appropriate action will be taken.

#### **11. FISHERIES & ANIMAL RESOURCES DEVELOPMENT DEPARTMENT-**

- 11.1. Chief District Veterinary Officer, District Fisheries Officer and Assistant Director of Fisheries will remain accountable to the zilla parishad for dairy and fishery activities.
- 11.2. Casual leave of above mentioned officers will be sanctioned by the president, zilla parishad.
- 11.3. President, zilla parishad will send report regarding performance of duties of the above-mentioned officers to the Head of the Department who will give due weightage to the report.

- 11.4. Veterinary Assistant Surgeon and Fisheries Extension Officers will remain accountable to the panchayat samiti for dairy and fisheries activities.
- 11.5. The casual leave of V.A.S will be sanctioned by the chairman, panchayat samiti.
- 11.6. Chairman, PS can visit veterinary dispensaries and livestock centers.
- 11.7. Report of the Chairman, panchayat samiti regarding performance of duties by Veterinary Assistant Surgeon and Fishery Extension Officer to the Executive Officer, ZP will be given due weightage.
- 11.8. Sarapanch can report about attendance of Live Stock functionary to the Chairman and Veterinary Assistant Surgeon. Such report will be enquired and appropriate action will be taken.

## **12. RURAL DEVELOPMENT DEPARTMENT-**

- 12.1. Executive Engineer/Assistant Engineer, RWSS will remain accountable to the zilla parishad for drinking water and sanitation programme.
- 12.2. President, zilla parishad will sanction casual leave of the Executive Engineer, RWSS.
- 12.3. President, ZP will visit the works executed by the Executive Engineer/Assistant Engineer, RWSS. He can send a report

regarding performance of the Executive Engineer/Assistant Engineer to the Head of the Department who will take appropriate action thereon.

12.4. Junior Engineers, RWSS will remain accountable to the panchayat samiti for drinking water and sanitation schemes.

12.5. Report of the Chairman, panchayat samiti regarding performance of duties by the Assistant Engineer and Junior Engineer will be sent to the Executive Officer, Z.P and Executive Engineer, RWSS for appropriate action.

### **13. PANCHAYATI RAJ DEPARTMENT-**

13.1. Block Development Officer, Addl. Block Development Officer, Assistant Engineer and all Extension Officers of different Departments will remain accountable to the panchayat samiti for works entrusted to them.

13.2. Chairman of panchayat samiti will sanction casual leave of BDO. Casual leave of all other officers working in the Block shall be sanctioned by B.D.O.

13.3. Sarapanch will send report regarding attendance of village level worker which will be duly considered by the Chairman, panchayat samiti and B.D.O.

### **14. WATER RESOURCES DEPARTMENT-**

14.1. Executive Engineer, M.I will remain accountable to the zilla parishad for functioning of Minor Irrigation Project having ayacut area up-to 100 acres.

- 14.2. **Casual leave** of Executive Engineer, MI will be sanctioned by the president, Z.P.
- 14.3. Report of president, Z.P regarding performance of duties by the Executive Engineer, MI will be given due weightage by the Head of the Department.
- 14.4. Assistant Engineers and Junior Engineers of MI will remain accountable to the panchayat samiti for functioning of M.I projects up-to ayacut area of 100 acres.
- 14.5. Chairman, panchayat samiti will sanction casual leave of Assistant Engineer, Minor Irrigation.
- 14.6. The report of Chairman, panchayat samiti regarding performance of duty of Assistant Engineer and Junior Engineer will be sent to the Executive Engineer and Executive Officer, ZP for appropriate action

**15. CHIEF EXECUTIVE OFFICER OF ZILLA PARISHAD-**

- 15.1. The Collector & District Magistrate will continue to be the Chief Executive Officer of the zilla parishad. The Project Director, District Rural Development Agency (DRDA) and other district level officers shall continue to function as Executive Officer and additional Executive Officer respectively.
- 15.2. The Block Development Officer will continue to function as Executive Officer of panchayat samiti.

15.3. Village Level Workers (VLW) and Village Agriculture Workers (VAW) will be appointed as Executive Officer of the grama panchayat. The panchayat samiti will issue specific order allotting grama panchayat to each VAW/VLW as the case may be. As Executive Officer VAW/VLWs shall perform the functions and duties as per job chart prescribed by government from time to time.

15.4 Sarpanch shall sanction Casual Leave of Executive Officer of gram panchayat.

**16. ACCOUNTABILITY:**

16.1. The district level, Block level and grama panchayat level functionaries of different departments of government the subjects of which have been transferred to PRIs will attend the meetings of zilla parishad, panchayat samiti and grama panchayat respectively.

16.2. They shall remain **accountable** to respective level of PRI though they shall continue as employees of their respective department.

16.3. They shall place plans and schemes for discussion and approval in the meeting of respective level of PRI.

16.4. The president, zilla parishad, Chairman, panchayat samiti and Sarpanch, grama panchayat are vested with authority to supervise the work and function of government functionaries at respective level., calling for information and report from time to time. They can submit proposal to the

appropriate level about indiscipline, irregularity and other shortcomings of the respective level officers.

16.5. Similarly, they can also submit suggestions/recommendations on improvement of function of these functionaries through appropriate level of PRIs as well as District Level officers.

16.6. The Project Director, DRDA as the Executive Officer of zilla parishad, will call for the report on behalf of the zilla parishad from the District Level Officers and will place such report before the president, zilla parishad which can be discussed in the meeting of zilla parishad and the concerned District Level Officers can also be called upon to explain the matter to zilla parishad.

16.7. After assessment of the activities of different Departments, the president of zilla parishad can submit report to the Head of Department as well as to government. Such proposals emanating from zilla parishad shall be given due consideration and decision taken thereon shall be communicated to other PRIs.

All the Departments will please ensure that these instructions are implemented in letter and spirit as this will help in improving the quality of delivery of services thereby improving the standard of living of the people in rural areas of the State.

Yours faithfully,

Sd/

**Chief Secretary, Orissa**



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